

SOUTH AFRICA / JUDGMENT

Mohlolou v Fakude and Another (68750/12) [2018] ZAGPPHC 364 (18 May 2018) [2018] ZAGPPHC 364

COURT

North Gauteng High Court, Pretoria

BEFORE

Nochumsohn

CASE / FILE NUMBER

68750/12

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REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1)

NOT

REPORTABLE

(2)

NOT

OF INTEREST TO OTHER JUDGES

CASE NO. 68750/12

18/5/2018

In

the matter between:

ISRAEL
SAMSON
MOHLOLOU
Applicant
and
MANDLA
FAKUDE
First Respondent
CITY
OF TSHWANE METROPOLITAN MUNICIPALITY
Second Respondent

JUDGMENT

NOCHUMSOHN (AJ)

1. This is an application for the eviction of the First Respondent from Erf [...], Pretoria ("the Property").
2. The Property is registered in the name of the daughter of the Applicant, Betty Name Bade Mohlolo ("the deceased") who died on 28 June 2008 and in respect of whom Letters of Authority in terms of Section 18(3) of the Administration of Estates Act No. 66 of 1965 were issued in favour of the Applicant on 13 August 2008.
3. The Applicant has launched this application *nomine officio*, in his aforesaid capacity as the duly authorised representative, to take control of the assets of the estate of the deceased, in accordance with the said Letters of Authority.
4. The Property is registered in the name of the deceased under Deed of Transfer T65795/04, from which it is apparent that the Property was transferred to the deceased by the Gauteng Provincial Housing Advisory Board, who had truly and legally sold the property to the deceased on 27 November 2003 for an amount of R500.00.
5. The application came before me on 14 May 2018, when same had been enrolled for hearing upon my opposed roll. The application had been opposed inasmuch as the First Respondent had filed an Opposing Affidavit, to which the Applicant had filed a Replying Affidavit.
6. There was no appearance for the First Respondent at the hearing, notwithstanding that M J Mashao Attorneys had filed a Notice of

Appointment as Attorney of Record dated 28 February 2018, upon 2 March 2018. The same attorney had filed a Notice of Withdrawal as the attorney of record for the First Respondent on 14 March 2017.

7. Advocate Leballo of the Pretoria Bar, who appeared on behalf of the Applicant, submitted from the Bar that his instructing attorney, who accompanied him to court, had telephoned M J Mashao Attorneys in order to ascertain why they were not in court. Mr Leballo submitted that Mashao Attorneys conveyed to his instructing attorney that they had no knowledge of the matter and did not know what the case was about.
8. In the Founding Affidavit the Applicant alleged that the First Respondent resided in the Property as a tenant, and the deceased

stayed with her boyfriend elsewhere. The First Respondent paid the rent up until the death of the deceased and ceased such rental

payments thereafter.

9. Against this allegation the First Respondent, in the Answering Affidavit alleged to have entered into an Agreement of Sale with the deceased, for the purchase by him of the property, at a consideration of R25 000.00 (twenty five thousand Rand), R20 000.00 (twenty thousand Rand) of which he had. paid to the deceased.
10. Given this material dispute of fact, I would have been inclined to refer the application to trial. ·
11. However, Mr Leballo kindly drew to my attention the provisions of Section 7(1), (2) and (3) of the Housing Amendment Act 4 of 2001.
12. The provisions of Section 7(1), (2) and (3) of the Housing Amendment Act 4 of 2001 reads as follows:

"7. The following sections are hereby inserted after section 10 of the principal Act:

"Restriction on voluntary sale of state-subsidised housing

10A.(1) Notwithstanding any provision to the contrary in any other law, it shall be a condition of every housing subsidy, as defined in the Code, granted to a natural person in terms of any national housing programme for the construction or purchase of a dwelling or serviced site, that such person shall not sell or otherwise alienate his or her dwelling or site within a period of eight years from the date on which the property was acquired by that person unless the dwelling or site has first been offered to the relevant provincial housing department.

- (2) The provincial housing department to which the dwelling or site has been offered as contemplated in subsection (1) shall endorse in its records that the person wishes to vacate his or her property and relocate to another property and is entitled to remain on a waiting list of beneficiaries requiring subsidised housing.
- (3) When the person vacates his or her property the relevant provincial housing department shall be deemed to be the owner of the property and application must then be made to the Registrar of Deeds by the provincial housing department for the title deeds of the property to be endorsed to reflect the Department's ownership of that property."

13. Mr Leballo failed to draw to my attention the provisions of section 7(4) of such Act which reads:

"(4) No purchase price or other remuneration shall be paid to the person vacating the property but such person will be eligible for obtaining another state-subsidised house, should he or she qualify therefor."

14. Mr Leballo argued that even if the deceased had entered into the disputed sale with the First Respondent, such sale would be invalid

by operation of Section 7(1) of the Housing Amendment Act 4 of 2001, which prohibits the sale of a property granted to a natural person within a period of eight years from the date upon which same was acquired.

15. Such argument would have been persuasive, but on the Applicant's own evidence, the deceased did not reside in the Property, had taken up residence with her boyfriend and had rented the Property to the First Respondent. On that basis and in accordance with Section 7(3) of the Housing Amendment Act 4 of 2001, upon vacation of the Property, the relevant Provincial Housing Department is deemed to be the owner.
16. Mr Leballo argued that subsection (3) to section 7 was rendered dependent upon subsection (2) and that in order for subsection (3) to become operative, it would have been incumbent upon the deceased to apply to the Provincial Housing Department to endorse in its records that she wished to vacate the property. This argument does not hold water inasmuch as subsection (2) is not expressed to be subject to the provisions of subsection (3), and neither is subsection (3) expressed to be subject to the provisions of subsection (2). Whether or not an application for endorsement has been made, the meaning of the legislation is clear. If one vacates, ownership reverts to the relevant provincial housing department.
17. Upon a property construction of subsection (3) to section 7 of the Housing .Amendment Act 4 of 2001, the Provincial Housing Department was deemed to become the owner of the Property upon the vacation of the property by the deceased. That being the case, the Property is not an asset of the estate of the deceased and the Applicant is without locus standi to bring the application.
18. Moreover, it is clear from the above subsection (4) to Section 7 that no purchase price or other remuneration shall be paid to the person vacating. Clearly rental falls into the category of other remuneration, to which the deceased was not entitled by operation of the section.

19. Accordingly, I make the following Order:

The application is dismissed with no order as to costs.

NOCHUMSOHN, G

ACTING JUDGE OF THE HIGH COURT

On behalf of Applicant: Advocate L T Leballo

Instructed by:

M J Mosikari Attorneys

On behalf of the

First Respondent:

No appearance

Instructed by:

M J Mashao Attorneys

Date of Hearing:

14 May 2018

Date of

Judgment:

18 May 2018

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Prepared on 14 October 2026 · Esheria