

SOUTH AFRICA / JUDGMENT

Molata v Lakaje and Others (25181/2014)

[2016] ZAGPJHC 116 (26 May 2016)

[2016] ZAGPJHC 116**COURT**

South Gauteng High Court, Johannesburg

BEFORE

T.V. Ratshibvumo

CASE / FILE NUMBER

25181/2014

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Policy**THE****HIGH COURT OF SOUTH AFRICA****GAUTENG****LOCAL DIVISION, JOHANNESBURG****CASE****NO: 25181/2014****DATE:**

26 MAY 2016

In

the matter between:

RAPELO

ALFRED

MOLATA.....Applicant

(RAMPYAPEDI)

And

SEANETT

LAKAJE.....First

Respondent

THE

EXECUTOR IN THE ESTATE OF

THE.....Second

Respondent

LATE

LABAN LAKAJE

THE
DIRECTOR-GENERAL OF THE
DEPARTMENT.....Third
Respondent
OF
HOUSING, GAUTENG PROVINCE
THE
MEC FOR THE DEPARTMENT OF
HOUSING,.....Fourth
Respondent
GAUTENG
PROVINCE
THE
CITY OF
JOHANNESBURG.....Fifth
Respondent
METROPOLITAN
MUNICIPALITY
THE
REGISTRAR OF
DEEDS.....Sixth
Respondent
JOHANNESBURG

JUDGMENT

RATSHIBVUMO AJ:

1. The applicant applies through motion proceedings for an order in the following terms:
1. “An order cancelling Title Deed No. [T4.....], which deed holds property known as ERF [9.....] [M.....] Township, Soweto (“the property”), currently in the names of Seanet Lakaje and the late Laban Lakaje;
2. An order directing the Sixth Respondent (Registrar of Deeds), to cancel Title Deed No. [T4.....], currently registered over the property known as ERF [9.....] [M.....] Township, Soweto, and currently in the names of Seanet Lakaje and the late Laban Lakaje;
3. An order directing the Sixth Respondent (Registrar of Deeds), to after cancellation, transfer the property known as ERF [9.....] [M.....] Township, Soweto, into the estate of the late Molata William Rampyapedi;
4. Alternatively to paragraph 3 above, an order that the ownership of the property should revert to its original owner, the City of Johannesburg Municipality;

5. Simultaneously with an order directing the Third Respondent, the Director General of Housing, Gauteng to hold a hearing in terms of section 2 of the Conversion of Certain Rights into Leasehold or Ownership Act 81 of 1988 for the purpose of determining who the rightful claimant in respect of ERF [9.....] [M.....] Township is;
6. An order for costs against any of the parties opposing this application;
7. Further and/or alternative relief.”

At the hearing, the applicant abandoned the relief sought in respect of paragraph 3 above. He however requested the court to consider

paragraphs 4 and 5 as prayers on their own, as opposed to being alternative relief.

2.

Background:

It is common cause that the Applicant is the son to the late William Molata Rampyapedi (Rampyapedi). Rampyapedi was the occupant of the property who held a Residential Permit to occupy (a Permit) issued by the Department of Non-European Affairs on 18 August 1964.[1] The Applicant's name appears in the same Permit alongside the names of his siblings who have since predeceased him. The Conversion

of Certain Rights into Leasehold or Ownership Act, no. 81 of 1988 (the Conversion of Certain Rights into Leasehold or Ownership Act) empowers the Director General of the Department of Housing to issue the right of ownership to permit holders to the land in the townships.[2]

3. On 29 January 2008, Rampyapedi, armed with a Permit referred to above, joined the queue like many other permit holders from the townships across the country. Sadly, when he died in 2009, he had not yet been issued with a title. Seven years later, the title deed has still not been issued and this time it appears the Director General is not going to issue one unless the court intervenes. The reason for this, according to the Applicant, is that the title deed was erroneously issued to the First Respondent and her deceased husband who did not even have a Permit for that property.
4. The Applicant was able to trace and locate the First Respondent at what he believes to be her residential address being no. [7.....] [M.....] Township, Soweto. This is the address where the Notice of Motion was served by the Sheriff; prompting her to serve a notice of the intention to oppose the application. The Notice of Motion was also served on all the other respondents including the Third Respondent who was served on 18 July 2014. The Third Respondent decided not to oppose this application. For that reason, the allegation by the Applicant to the effect that officers in the Housing Department erroneously issued ownership rights to a wrong person who did not have a Permit remains unchallenged.

5. While the Conversion of Certain Rights into Leasehold or Ownership Act empowers the Director General to award the right of ownership, his powers are limited in that once awarded, he cannot cancel the title deed even in circumstances where it may have been awarded to a wrong person by error. This is because according to the Deeds Registries Act, no. 47 of 1937, a title deed can only be cancelled by a court order.[3] Once cancelled, the title deed cannot just be awarded to the Applicant, unless he was the previous holder of the same. This is because sec 6 (2) of the Deeds Registries Act provides,

“Upon the cancellation of any deed conferring or conveying title to land or any real right in land other than a mortgage bond as provided for in subsection (1), the deed under which the land or such real right in land was held immediately prior to the registration of the deed which is cancelled, shall be revived to the extent of such cancellation, and the registrar shall cancel the relevant endorsement thereon evidencing the registration of the cancelled deed.”

This may explain why the Applicant abandoned the relief sought in paragraph no. 3 of the Notice of Motion.

6. The First Respondent’s version: The position adopted by the First Respondent is rather bizarre. Viewed from the totality of her answering affidavit, it appears she is not opposed to the Applicant’s claim to the right of ownership to the property. All that she avers is that she may have a reason to oppose the application depending on information she may have from the Department of Housing. For now she does not

have such reasons and she is not even certain if she would have them once she gets access to the information as stipulated above. It would appear from her approach that this application prompted her into an investigation. While the First Respondent does not lay any claim to the property ownership, she avers that she resides at no. [9.....] [M.....], Soweto. I will revert to this allegation later.

7. As far back as July 2014, the First Respondent was well aware of this application after the Sheriff served her with the Notice of Motion. She however only initiated her court application aimed at obtaining all the documentation held by the Department of Housing pertaining to the property on 30 September 2015.[4] There is no explanation why this was delayed given the fact that a letter from her attorney dated 19 November 2014 indicated that she had plans to request access to these records.[5] It however appears as though her initiatives will not help this case at all given the delay in approaching the courts for this relief. Moreover, an order giving the First Respondent access to requested records was given on 13 October 2015. However the court order which was authorised on a Draft Order prepared by the First Respondent refers to documents in respect of a different property, to wit, House no. [4.....] [O.....] [E.....], Johannesburg. Counsel for the First Respondent conceded that this was an error. As of the date of hearing, nothing had been done to correct this error by the First Respondent. As a result, the court was not surprised to learn that the First Respondent is yet to receive the said records.

8. It is however surprising that while the Applicant opted to be patient and wait for all the First Respondent's errors to be corrected despite the passage of time the First Respondent opted not to make use of this patience. The First Respondent went on to set down this application for hearing, well knowing that she is yet to receive the records that may or may not give her a reason to oppose the application. The court can only interpret this as a concession on her part that the court should decide this application based only on the documents provided by the Applicant and that she should not be expected to furnish any. Otherwise the court fails to understand why she would set this application for hearing. To summon an enemy army to battle while one is not prepared for it may well be interpreted as an act of suicide.
9. Disputed fact: The Applicant claims to be residing at no. [9....] [M.....] Soweto which is the physical address where the property is located. The First Respondent also claims that she resides there, a fact denied by the Applicant. This appears to be the only fact in dispute. Given the Plascon-Evans test, I am convinced that the court can still find for the Applicant since the nature of a dispute does not affect the case for the Applicant.[6] Where in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief may be granted if those facts averred in the applicant's affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order. In certain instances the denial by respondent of a fact alleged by the applicant may not be such as to raise a real, genuine or bona fide dispute of fact. Residing at a particular address does not grant any person right of ownership to property. It is not even an aspect the Director-General is empowered to consider when awarding such rights in terms of the Conversion of Certain Rights into Leasehold or Ownership Act; but being holder of a Permit.
10. One would have expected that the First Respondent would claim her entitlement to the ownership of the property or the title deed, and maybe ask for documentation from the Third Respondent to substantiate her claim if she does not have them, but she does not. Even if hypothetically speaking, the First Respondent had a reason to lay a claim to the property, the court would have to consider the prejudice she could suffer if the application is granted. If the application is granted, the door would not be closed to the First Respondent since she would still have a right to submit her claim with the Third Respondent when an inquiry is conducted. If she is the rightful claimant, the ownership may still be awarded to her.
11. The Third Respondent's authority to award ownership of the property in terms of the Conversion of Certain Rights into Leasehold or Ownership Act is subject to him conducting an inquiry.[7] In conducting an inquiry, the Third Respondent is obliged to consider all the claims lodged against the property and also notify the occupants thereof. Any award that may have been done without an inquiry that takes into consideration all the claims and without a notification to the occupants of the property would not be an inquiry as envisaged by sec 2 of the Conversion of Certain Rights into Leasehold or Ownership Act, and it would have to be set aside.[8]

12. Making a false statement under oath: One last aspect deserves the court's attention. Whereas the disputed fact does not take the matter any further in respect of this application, the court is concerned over the two statements made under oath, one by the Applicant and another by the First Respondent. They both claim they reside at no. [9.....] [M.....], Soweto. The Applicant disputes that the First Respondent resides at that address. Obviously, one of them is not telling the truth. The court finds it shocking that the deponent to an affidavit would have very little regard to the import of giving evidence under oath to the extent of lying about his or her residential address, something that can be easily disproved. This is a deliberate move to mislead the court and it borders along defeating the ends of justice. Unless punitive steps are taken when a crime of perjury is committed, this practice may continue unabated.
13. For the reasons stated above, the following order is made:
- 13.1 The Registrar of Deeds (Johannesburg) is ordered to cancel Title Deed No. [T4.....], which deed holds property known as ERF [9.....] [M.....] Township, Soweto, and cancel all rights accorded to the First Respondent by virtue of the Title Deed;
- 13.2 The Director-General for the Department of Housing, Gauteng Province, is directed to hold an inquiry in respect of Erf [9.....],
- [M.....] Township, Soweto, in terms of section 2 of the Conversion of Certain Rights into Leasehold or Ownership Act 81 of 1988, for purposes of determining who the rightful claimant in respect of Erf [9.....], [M.....] Township,
- Soweto is.
- 13.3 The First Respondent is ordered to pay the costs of application.
- 13.4 The Registrar of this court is requested to make the copy of this judgment and the affidavits presented by the Applicant and by the First Respondent to the Station Commissioner – Johannesburg Central Police Station;
- (i) for investigations if a crime may have been committed in deposing the said affidavits by the respective deponents;
- (ii) to report to the Director of Public Prosecutions – South Gauteng of the outcome of the said investigations within the period of six months from the date of this order;
- (iii) and for the Director of Public Prosecutions – South Gauteng to decide if anyone should therefore be prosecuted for the crime of perjury or any other crime that the said investigations may uncover.
- 13.5 Copies of this judgment should also be sent to the Director of Public Prosecutions – South Gauteng, the Director-General of the Department of Housing – Gauteng and the Registrar of Deeds – Johannesburg.

T.V. RATSHIBVUMO

ACTING JUDGE OF THE HIGH COURT

Date Heard: 16 May 2016

Judgment

Delivered: 26 May 2016

For the Applicant: Adv. L Memela

Instructed by: Gcwensa Attorneys

Johannesburg

For the Respondent: Adv. RG Cohen

Instructed by: Glynnis Cohen Attorneys

[1] See Annexure D, p. 23 of the Bundle.

[2] Sec 2 (4) of the Conversion of Certain Rights into Leasehold or Ownership Act was amended by Act 108 of 1993 to provide:

(4) At the conclusion of the inquiry and after having considered any relevant claim or objection, the Director-General shall, if he is satisfied that the person concerned, is, subject to the provisions of subsection (3), in respect of the site concerned-

(a) the holder of a site permit, certificate or trading site permit; or

(b) the holder of rights which in the opinion of the Director-General are similar to the rights of the holder of a site permit, certificate or trading site permit, determine whom he intends to declare to have been granted a right of leasehold or, in the case where that site is situate in a formalized township for which a township register has been opened, ownership in respect of the site concerned.

[2] Sec 2 (4) of the Conversion of Certain Rights into Leasehold or Ownership Act was amended by Act 108 of 1993 to provide:

(4) At the conclusion of the inquiry and after having considered any relevant claim or objection, the Director-General shall, if he is satisfied that the person concerned, is, subject to the provisions of subsection (3), in respect of the site concerned-

(a) the holder of a site permit, certificate or trading site permit; or

- (b) the holder of rights which in the opinion of the Director-General are similar to the rights of the holder of a site permit, certificate or trading site permit, determine whom he intends to declare to have been granted a right of leasehold or, in the case where that site is situated in a formalized township for which a township register has been opened, ownership in respect of the site concerned.
- [3] Sec 6 (1) of Act 47 of 1937 provides, “Save as is otherwise provided in this Act or in any other law no registered deed of grant, deed of transfer, certificate of title or other deed conferring or conveying title to land, or any real right in land other than a mortgage bond, and no cession of any registered bond not made as security, shall be cancelled by a registrar except upon an order of Court.”
- [3] Sec 6 (1) of Act 47 of 1937 provides,
- “Save as is otherwise provided in this Act or in any other law no registered deed of grant, deed of transfer, certificate of title or other deed conferring or conveying title to land, or any real right in land other than a mortgage bond, and no cession of any registered bond not made as security, shall be cancelled by a registrar except upon an order of Court.”*
- [4] See case no. 2015/34306 of the Gauteng Local Division – Johannesburg.
- [5] See a letter from her attorneys marked B, p. 83 of the Bundle.
- [6] Plascon-Evans Paints LTD v Van Rebeeck Paints (PTY) LTD [1984] ZASCA 51; 1984
- (3) SA 623 (A) at p. 634H.
- [7] See section 2 (supra)
- [8] Ndzimande and Another v Ndzimande and Others (24490/12)
- [2012] ZAGPJHC 223 (11 September 2012) and Khuzwayo v Estate of the late Masilela (28/10) [2010] ZASCA 167 (1 December 2010).

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