

SOUTH AFRICA / JUDGMENT

Motsiri and Another v Sheriff of the High Court and Another (03674/2013)

[2013] ZAGPJHC 158 (10 May 2013)

[2013] ZAGPJHC 158**COURT**

South Gauteng High Court, Johannesburg

BEFORE

TS Madima

CASE / FILE NUMBER

03674/2013

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SOUTH GAUTENG HIGH COURT

JOHANNESBURG

CASE NO.03674/2013

DATE:10/05/2013

In the matter between

CLEMENT HLUPHI MOTSIRI.....First Applicant

MAMPHO MOTSIRISecond Applicant

and

SHERIFF OF THE HIGH COURTFirst Respondent

ASHFAQ MOHAMED.....Second Respondent

JUDGMENT

MADIMA, AJ

Background

The Applicants are husband and wife. They are the initial joint owners of a property described as Erf 139 Henley-on-Klip Township, Gauteng (“the property”). The property was purchased by the Applicants in September 2001 for an amount of R8 000 (eight thousand rand). Transfer and registration was duly effected in both the Applicants’ names.

In October 2003 the Clerk of the Meyerton Magistrate Court issued a warrant of execution against the Applicants. This was for the execution of a judgment in favour of the Midvaal Local Municipality. The property was duly attached and sold in a public auction.

The property was purchased by one Mohammed Ameen Saib ("Saib"). The Second Respondent in turn purchased the property from Saib for an amount of R25 000.00 (twenty five thousand rand). The ownership of the property was transferred to Second Respondent on 2 May 2007.

Eviction Proceedings

The Second Respondent launched eviction proceedings against the Applicants in the Meyerton Magistrate's Court on 19 July 2012. The matter was heard on 10 August 2012. The Applicants were present in Court. The application for eviction was granted.

On 10 September 2012 the Applicants launched an application for the rescission of the eviction order. This was however withdrawn and the Applicants tendered the costs.

On 23 November 2012, a warrant of ejectment was issued by the Clerk of the Court. The Sheriff was instructed to proceed with the eviction.

The instant application

In their notice of motion the Applicants seek an order interdicting the First and Second Respondent from evicting them. They also pray that First Respondent must restore possession of the property to them.

On 12 February 2013 Kgomo J, granted the Applicants interim relief. The Court ordered the Sheriff not to execute the eviction order or any other order pending the finalisation of the matter in the High Court. The Applicants were also authorised to return to the property.

On the return day, which is the matter before me, the Applicants were represented by Adv Monnakgotla while Adv A Laher appeared on behalf of the Second Respondent.

Mr Monnakgotla submitted that the Applicants were the rightful owners of the property. He referred me to the Title Deed that was issued in favour of the Applicants. Mr Monnakgotla however did not dispute the sale in execution. He did not dispute that the Second Respondent was the current holder of the Title Deed over the property. In his submission Mr Monnakgotla implied that there could have been some impropriety in the transfer and registration of the property to Second Respondent.

Mr Laher had little trouble persuading me that the Second Respondent was the rightful and registered owner of the property. He referred me to the Title Deed in Second Respondent's name that was attached to the papers. He referred to the sale in execution. The Applicants clearly had no coherent reply to the submissions regarding the current ownership of the property.

I have no hesitation in arriving at my decision in this regard. If the Applicants are of the view that the registration and transfer of the property to the First Respondent was fraudulently done, they have legal options that they can pursue. Mine is neither a court of appeal nor of review. I cannot set aside the sale in execution or the registration and transfer.

The leading authority in the above regard is (*Oudekraal Estates (Pty) Ltd v City of Cape Town & Others* (2004) 6 SA 222 at 242A-C) where Howie P et Nugent JA (delivering the judgment for the Court) held that “until the administrator’s approval, and thus also consequences of the approval, is set aside by a Court in proceedings for judicial review, it exists in fact and it has legal consequences that cannot simply be overlooked. The proper functioning of a modern state would be considerably compromised if all administrative acts could be given effect to or ignored depending upon the view the subject takes of the validity of the act in question”.

The Court went further and held that “No doubt it is for this reason that our law has always recognised that even an unlawful administrative act is capable of producing legally valid consequences for so long as the unlawful act is not set aside.”

I have already stated above that it matters not that there could possibly be some impropriety in the transfer and registration of the property in the name of Second Respondent. That is not what I am required to determine.

I am satisfied that all the requisites for the eviction of Applicants have been satisfied and accordingly I make the following order:

The rule nisi is discharged

The application is dismissed

Applicants to pay the costs including the costs of counsel.

TS MADIMA: AJ

ACTING JUDGE OF THE HIGH COURT

On behalf of the Applicant: Adv. Monnakgotla

Instructed by: Segaole Attorneya

011 838 6792

On behalf of the Second Respondent: Adv. Laher

Instructed by: Z Saloojee Attorneys

016 422 2616/4988

Dates of Hearing: 09 May 2013

Date of Judgment: 10 May 2013

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