

SOUTH AFRICA / JUDGMENT

Mphirime v Pouane and Others (59991/2015) [2017]

ZAGPPHC 959 (29 March 2017)

[2017] ZAGPPHC 959

COURT

North Gauteng High Court, Pretoria

BEFORE

ML Senyatsi

CASE / FILE NUMBER

59991/2015

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 59991/2015

29/3/2017

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO

(3) REVISED: YES/NO

In the matter between:

MOHANUWA

ELISA MPHIRIME

Applicant

And

GEORGE

PUOANE

First

Respondent

EXECUTOR IN THE ESTATE OF THE LATE

MOTHOGOANE ABIA PUOANE

THE

DIRECTOR-GENERAL OF DEPARTMENT OF,

Second

Respondent

HUMAN

SETTLEMENTS, GAUTENG PROVINCE

MEC OF DEPARTMENT OF HUMAN

SETTLEMENTS, Third

Respondent

GAUTENG PROVINCE
THE REGISTRAR OF DEEDS
(PRETORIA) Fourth
Respondent

JUDGMENT

SENYATSI AJ

[1] This is an application in terms of which the applicant seeks the court for the following order directing:-

1.1 that the Registrar of Deeds, Pretoria who is cited as the fourth respondent, to cancel Title Deed No.: T118476/2003, which deed holds property known as Erf 6970 Stretford Extention 4 Township which is currently in the name of Mothogoane Abia Puoane;

1.2 that the Registrar of Deeds, Pretoria to, after cancellation of Title Deed T 118476/2003, register the ownership of the property in the name of the applicant.

1.3 As an alternative to 1.2 above that after cancellation of the Title Deed No.: T118476/2003, the property should revert to its original owner, Provincial Government of the Province of Gauteng, represented by the third respondent, to enable the second respondent to comply with the adjudication order under case number 58270 of 25th September 2002.

1.4 that a costs order be awarded to the applicant against any party who opposes the application.

[2] All the cited respondents with the exception of the first respondent, who is the executor of the estate of the late Abia Puoane whose relevance to the application will become clear in the judgment, did not oppose the application.

[3] The applicant has been in possession of and occupies Erf 6970 Stretford Extension 4 township in Orange Farm, which is a property established in terms of Government's Reconstruction and Development Programme housing. For the sake of simplicity, this property will be referred to as the RDP house. She has been in occupation of the RDP house since 22 July 2001.

[4] The permit holder of the RDP house was one Mothogoane Abia Puoane ("Puoane") who was the father of the first respondent and has passed away.

[5] Puoane and the applicant concluded a donation agreement by way of affidavit in terms of which the rights to occupy the RDP property were transferred to the applicant during 2001.

[6] It is important to note that the property was undeveloped when the applicant took occupation. It consisted of a shack. The applicant effected improvements on the property by building a 4 roomed house with a single garage and partially walled boundary fence.

- [7] After the conclusion of the donation agreement, the applicant and Puoane, reported the agreement to the local council offices and requested registration of the property in her name. They completed a Form 3, which was part of the papers in support of her application. They were informed by the council offices that the process of issuing the title deed would take some time due to the volume of applications that were being dealt with at the time. They were advised that they would be informed when the title deed was ready for collection. This process took place during March 2002.
- [8] During the same year, the applicant received an invitation for hearing at Housing Adjudication to attend on 25 September 2002 to determine the rightful owner of the property. There was no dispute between the applicant and Puoane and the invitation came as a surprise to her.
- [9] She attended the hearing and Puoane did not attend as he felt that such attendance was not necessary as there was no dispute on who the rightful owner of the RDP house was. The Housing Adjudication Committee held that the Puoane was, based on the local council file, the lawful permit holder of the RDP house and that he had transferred lawfully his right, title and interest to the applicant. The decision was that the RDP property was allocated by default as of 9 October 2002 to the applicant. She was advised to wait for the title deed which never came.
- [10] The applicant received a call note addressed to Puoane during October 2005 to collect the title deed from the local council offices of the City of Johannesburg and this was despite the ruling by the Housing Adjudication Committee of the third respondent, that the applicant had received lawful transfer of right, title and interest of the RDP house.
- [11] On attendance at the third respondent's offices, she was again advised to bring Puoane, despite the ruling by the Housing Adjudication Committee during October 2002. She brought Puoane to the offices of the third respondent on a later date and he confirmed that the title was wrongly registered in his name and it should have been in the name of the applicant. I must pause here to say that if the evidence of the first respondent is acceptable, it is highly unlikely that this took place 1n October 2005 as Puoane was already suffering from stroke attack.
- [12] She followed up the progress of correcting the error without any success and during 2008 when she confronted the official of the third respondent, she was not provided with a proper explanation for the delay. The applicant claims that when she approached Puoane to sign rectification papers during 2008, she was upset as he had business to run.
- [13] The applicant claims in her papers that subsequent to that meeting, Puoane moved to Pietersburg Polokwane and became difficult for her to have further contact with him. She later learned that Puoane passed away in 2013 and advised the Housing Department on the recommendation of the Housing Department, she made contact with the family of Puoane who advised her that no executor had been appointed.

[14] She has continued to live in the RDP property and her hopes were shattered when she received a demand letter from the first respondent on 29 June 2015 to vacate the property as she had failed to take ownership thereof. The third respondent on being approached for assistance washed its hands in spite of the ruling by the Housing Adjudication Committee that settled the matter on 9 October

2002. As a consequence she had no option but to approach this court with the necessary relief.

[15] The first respondent contests the donation and avers in his demand letter that the applicant should vacate the property as she failed to take the necessary steps to have the property registered in her name. He furthermore disputes the donation evidenced by the affidavit in support of the application as well as the Housing Adjudication Committee ruling.

[16] To support his contention, he claims that the handwriting on the affidavit as well as the signature are not that of Puoane and furthermore that in fact there was a sale agreement in terms of which the applicant had to pay Puoane R5 000.00 for the purchase of the property. Furthermore, the first respondent claims that it is highly unlikely that Puoane attended any of the meetings referred to in the evidence adduced by the applicant in her papers as Puoane suffered a stroke during 2005. He does not take this court in his confidence by providing hard evidence in support of his claim on the illness. He made an attempt to submit copies of the medical records, which were objected to by counsel for the applicant. The court refused the request.

[17] As a consequence, the third respondent avers that the application should be dismissed.

[18] Puoane told the first respondent that of the R5 000.00 purchase price of the RDP property, only R2 000.00 deposit was paid by the applicant. In her replication to this claim, the applicant contended that she paid R5 000.00 gratuity to Puoane as a gesture of goodwill as Puoane had provided her with accommodation in the times of need and that the payment was never considered a purchase price.

[19] The issues to be determined can be summarised as follows:

19.1 Whether or not there was a valid agreement between Puoane and the application to donate the RDP property.

19.2 Whether or not the ruling by the Housing Adjudication Committee was binding and enforceable.

[20] I am of the view that Puoane and the applicant concluded a legally binding donation agreement as evidenced by the affidavit.

Puoane had the full capacity during 2001 when the donation agreement was concluded, to enter into an agreement with the applicant. No evidence was adduced on papers before this court that he could not conclude a legally binding agreement in terms of which his rights, title and interest on the permit of the RDP house could be transferred.

- [21] I find no reason to doubt the evidence adduced before this court and supported by the relevant papers such as the permit which annexure "C", the donation affidavit referred to as "O"; pictures of the RDP property referred to as 'E'; Adjudication Committee decision referred as "G" and the demand letter by the first respondent referred to as "H".
- [22] The first respondent made an attempt to persuade this court to believe that an affidavit that was attested to on 1 July 2001 was not signed by Puoane. This argument cannot, in my view, be sustained. No attempt was made in his replying affidavit to demonstrate what Puoane's handwriting was supposed to be. In any event, the person who signs an affidavit does not have to be the author thereof. What is critical is that the commissioner reads the content thereof to him and for the deponent to confirm the contents and take an oath on the contents.
- [23] Section 6(1) of the Deeds Registry Act 47 of 1937 provides as follow:
- "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."*
- [24] Section 24A()1(2) of Gauteng Housing Act 6 of 1998 provides as follows:
- "(1) The Department is authorised to adjudicate on disputed cases that emerge from Housing Bureaus established for the transfer
- of residential properties by Premier's Directives in terms of section 171 of the Local Government Ordinance 1939 (Ordinance No 17 of 1939) and disputed cases that emerged from the transfer of the Conversion of Certain Rights into Leasehold or Ownership Act, 1988 (Act no 81 of 1988).
- (2) The MEC shall ensure that the transfer of residential properties to individuals determined to be lawful beneficiaries in terms of this Act.
- (3) The Department shall deal with disputed cases through adjudication and appeal panels established in terms of section 24B."
- [25] It is not disputed that the applicant and Puoane did approach the local council offices and the Department of Housing represented by the third respondent to give effect to the agreement. There is no explanation offered by the second and the third respondents for the delay in facilitating the implementation of the Housing Adjudication Committee's decision. It is evident from the papers that the second and third respondents' officials were not determined to bring this matter to finality. This is apparent as no initiatives from either the second or the third respondents were forthcoming to assist the applicant to be provided with the title deed dispute promises made to the applicant on number of occasions that the administrative error of issuing the title deed in the name of Puoane would be corrected.

- [26] The administrative decision arrived at the Housing Adjudication Commission should have been given effect by the third respondent. I am of the view that the third respondent failed to discharge the obligation imposed by section 24A(2) of Gauteng Housing Act 6 of 1998 and in the process the applicant's rights to RDP house were prejudiced. The applicant has had no option but to approach this court for redress at great costs to her and that is unfortunate. The third respondent has filed notice to abide by the decision of this court and consequently no order of cost will be made against him.
- [27] It is uncontroverted that the second and third respondents will not on their own have the locus standi to have the title deed issued to Puoane cancelled. but in my view, they could have easily facilitated appropriate steps to have the administrative error corrected with no need for the applicant to initiate these proceedings.
- [28] The first respondent contended, as already stated before, that Puoane could not have donated the RDP property and more importantly even attended the local council offices and the offices of the third respondent after claims in his replying affidavit that Puoane allowed the applicant to stay on the RDP house that had been sold for R5 500.00 to the applicant by Puoane and that the applicant paid a deposit of R2 000.00 implying that the balance of R3 500.00 was never paid. This claim had not been supported by any evidence and stands to be rejected out of hand.
- [29] The first respondent further claims in his replying affidavit that Puoane became homeless after selling his RDP property and was later taken to Ga-Marishane near Jane Furse. The first respondent goes on furthermore to state that shortly after Puoane's stay at Ga-Marishane, he suffered a stroke twice and the last stroke attack rendered him incapable of managing his own affairs. The first respondent did not provide evidence in support of this claim. It is not made clear on the first respondent's papers when Puoane went to live in Ga-Marishane, when the first and the stroke attacks took place. It is consequently impossible for the court to make any finding on these claims.
- [30] What has been proved by the applicant and supported by various annexures to her founding affidavit is that indeed there was an agreement, both herself and Puoane attended the offices of the local council and of the third respondent to give effect to the agreement. Even if the court accepts that Puoane did suffer strokes as averred by the first respondent it is lightly unlikely that when the agreement was concluded, Puoane did not have the necessary capacity to conclude the agreement. It is also interesting to note that the first respondent did not take this court in his confidence about the identity, if any, of the curator bonis that was appointed to manage Puoane's affairs.
- [31] The applicant is, in my view, justified to conclude that the main reason the first applicant sent a demand letter to attempt to evict her was driven by greed. In my view, the first respondent has failed to refute the evidence on papers that a valid agreement was concluded between the applicant and Puoane and that the Housing Adjudication Committee decision was irregular.

[32] As a consequence, the application by the applicant should be allowed.

ORDER

The following order is made: -

1. Title Deed Number T118476/2003 which holds property known as Erf 6970 Stretford Extension 4 Township which is currently in the name of the late Mothogone Abia Puoane is hereby cancelled;
2. The fourth respondent, the Registrar of Deeds, Pretoria is directed to cancel the said Title Deed and after cancellation thereof register the ownership of the property evidenced by the said Title Deed in the applicant's name within 45 court days from the date of this order.
3. The first respondent is ordered to pay the taxed costs of this application on the party and party scale.

ML SENYATSI

ACTING JUDGE OF THE GAUTENG

DIVISION OF THE HIGH COURT

PRETORIA

Date of Judgment: March

2017

Counsel for the Plaintiff: Adv.

L. MEMELA

Instructed by: GCWENSA

ATTORNEYS

Counsel for the Respondents: INPERSON

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Prepared on 10 October 2026 · Esheria