

SOUTH AFRICA / JUDGMENT

Nkosi and Others v Tshitangoni and Others (9767/2018) [2024] ZAGPJHC 484 (15 May 2024) [2024] ZAGPJHC 484

COURT

South Gauteng High Court, Johannesburg

BEFORE

N.S. Krüger

CASE / FILE NUMBER

9767/2018

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

Case Number: 9767/2018

1.

REPORTABLE: YES / NO

2. OF

INTEREST TO OTHER JUDGES: YES/NO

3.

REVISED: YES/NO

In

the matter between:

NKOSI,
PATRICK JOSHUA
MAHLANGU,
NELSIWE
MAHLANGU,
JIM MICHAEL
MAHLANGU,
GUGU PATRICIA
MAHLANGU,
BANGANE OSMAN
First
Applicant
Second
Applicant
Third
Applicant
Fourth
Applicant
Fifth
Applicant
and
TSHITANGONI,
THOKOZILE BETTY
TSHITANGONI,
MPHAYA ROBERT
MALINDI,
SANDILE SIBONELO
MALINDI,
THOKOZILE BETTY
MASTER
OF THE HIGH COURT
STUPEL
& BERMAN INCORPORATED
THE
REGISTRAR OF DEEDS, JOHANNESBURG
First
Respondent
Second
Respondent
Third
Respondent
Fourth
Respondent
Fifth
Respondent
Sixth
Respondent
Seventh
Respondent

JUDGMENT

KRÜGER, AJ

Summary

Application for setting aside appointment of executor of deceased's estate as well as the sale and registration of immovable property to the first, second and third respondents and re-registration thereof in the name of the deceased's estate. Postponement and costs.

Order

[1] In this matter, for the reasons set out below, I make the following order:

1. The matter is postponed sine die;
2. The applicants are granted leave to file a supplementary affidavit and the opposing respondents are granted leave to file an affidavit

responding to the applicants' supplementary affidavit;

3. The costs occasioned by the postponement are reserved.

Introduction

[2] The dispute in this matter revolves about an immovable property known as Erf 9[...], P[...]
R[...] Extension [...] Township, Registration Division IR, Province of Gauteng ("the
property").

[3] The applicants brought this application with the express purpose of obtaining information in respect of the transfer of ownership in the property to the first, second and third respondents and to set aside such transfer, as well as setting aside the "purported" appointment of the fourth respondent as executrix of the estate of the late Dudu Elizabeth Mashaba ("the deceased"). It is alleged the property was transferred into the deceased's name in terms of the National Reconstruction and Development Programme by the Gauteng Provincial Housing Advisory Board.

[4] The fifth, sixth and seventh respondents do not oppose the application. The fifth respondent is referred to herein as "the Master". The sixth respondent is a firm of attorneys and conveyancers who was involved in the transfer of the property into the name of the first, second and third respondents ("the 3 conveyancers").

[5] On 15 August 2018, a court order was granted in respect of Part A of the application interdicting the first, second and third respondents from selling, transferring or in any way disposing of the property pending the outcome of Part B. In addition, the Master is ordered to make available to the applicants all documents relating to the appointment of the fourth respondent as executor in the estate of the deceased as well as the letters of authority,

liquidation and distribution accounts, banking accounts and security granted by the fourth respondent to the Master. Further, the conveyancers are ordered to make available to the applicants its entire file in respect of the transfer of the property from the deceased to the first, second and third respondents. The respondents are ordered to pay the costs “...of the application.” The applicants’ legal representative informed me that his understanding of the costs order is that it only relates to Part A of the application.

[6] Part B of the application was set down to be heard on 13 May 2023.

PART B:

- [7] The relief claimed in Part B is for the setting aside of the appointment “...if any...” of the fourth respondent as the executor of the deceased’s estate and ordering her to give account of what she, as executor, did with the assets of the estate. In addition, orders are sought setting aside the sale and transfer of the property by the fourth respondent to the first, second and third respondents and ordering the seventh respondent to re-register the property “...in the name of the deceased.”
- [8] The applicants’ case is based, in the main, upon their belief that the sale and transfer of the property was invalid and fraudulent for several reasons, the most disturbing being that the first and fourth respondent is the same person and that the latter in any event was never validly appointed as executor of the estate as she is not a member of the deceased family and they have never acceded to her being appointed. It is alleged that the proceeds of the sale were never paid to any of the deceased’s family members or any person who could have been a beneficiary had the deceased died without a will.
- [9] From a copy of Ghost Convey which was annexed to an application brought by the first, second and third respondents in the Palm Ridge Magistrates’ Court in 2015 against occupiers of the property, it appears that the property was indeed transferred into the name of the deceased from the Gauteng Provincial Housing Advisory Board. The application is annexed to the founding affidavit. It also appears not to be disputed that ownership of the property is now registered in the name of the first, second and third respondents.
- [10] In the applicants’ papers there are some grounds for inferences that may be drawn in support of their allegations regarding fraud and the mismanagement of the deceased’s estate, as well as whether or not the fourth respondent was in fact validly appointed as executor or at all. Whether or not such inferences may be reasonably drawn from the facts presently known, is not certain. The relief sought by the applicant for the re-registration of the property in the name of the deceased’s estate, if at all possible, seems to me to be dependent on the status of the estate which on the papers are unknown. For purposes hereof I make no finding in respect of any of the above. It is for another court to decide.

The orders made against the Master and the conveyancers:

- [11] The orders made in respect of Part A of the application were duly served upon the Master and conveyancers on 29 July 2021 and 16 August 2021 respectively.
- [12] I was informed by Mr Shamase, the applicants' legal representative, that despite service of the order, the Master and conveyancers failed, omitted or neglected to comply with the order is so far as it relates to them. He also informed me that the applicants have not pursued compliance with the order by either the Master or the conveyancers.
- [13] It is clear that the information held by the Master and the conveyancers probably will resolve the matter and prove or disprove the applicants' allegations. The respondents' legal representative contended that the hearing of Part B of the application is premature in the absence of the information sought from the Master and the conveyancers but demanded that in the event of the matter being postponed in order for the applicants to pursue compliance of the orders made against the Master and the conveyancers, the applicants should bear the costs occasioned by such postponement. The applicants' legal representative disagreed.

Conclusion

- [14] I am of the view that the court which shall adjudicate the matter later once the orders against the Master and conveyancers are pursued to conclusion, shall be in a better position to decide the question of costs.
- [15] For all the reasons as set out above I make the order as set out in [1] above.

N.S. KRÜGER

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

Electronically submitted.

Delivered: This judgment was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the parties / their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date of the judgment is deemed to be 15 May 2024

Appearances:

FOR THE APPLICANT: Mr S Shamase INSTRUCTED BY: Shamase Ramotswedi Attorneys FOR THE RESPONDENT: Adv. N A Mohomane INSTRUCTED BY: Malope-Madondo Attorneys DATE OF ARGUMENT: 13 May 2024 DATE OF JUDGMENT: 15 May 2024

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Prepared on 11 October 2026 · Esheria