

SOUTH AFRICA / JUDGMENT

N.M.M v Chabalala N.O and Others (2022-021286) [2024] ZAGPPHC 1259 (2 December 2024) [2024] ZAGPPHC 1259

COURT

North Gauteng High Court, Pretoria

BEFORE

E van der Schyff

CASE / FILE NUMBER

2022-021286

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REPUBLIC OF SOUTH
AFRICA

IN THE HIGH COURT OF
SOUTH AFRICA

GAUTENG DIVISION,
PRETORIA

CASE NO.: 2022-021286

(1)

REPORTABLE: NO

(2) OF

INTEREST TO OTHER JUDGES: NO

(3)

REVISED: NO

Date: 2 December

2024

E van der Schyff

In

the matter between:

N[...]
M[...] M[...]
Applicant
And
Millicent
Nchu Muthi Chabalala
N.O.
First Respondent
(Executrix
of Late Estate B[...] P[...] M[...])
Millicent
Nchu Muthi Chabalala
Second Respondent
W[...]
M[...]
Third Respondent
Elizabeth
Baloyi
Fourth Respondent
Master
of the High Court,
Pretoria
Fifth Respondent
Registrar
of Deeds,
Pretoria
Sixth Respondent

JUDGMENT

Van der Schyff J

Introduction

- [1] The applicant approached the court for an order declaring the sale of the immovable property described as ERF 2[...] M[...] V[...] EXTENSION [...] TOWNSHIP, REGISTRATION DIVISION JR, PROVINCE OF GAUTENG, MEASURING 292 square meters, dated 22 January 2022, null and void, setting it aside and canceling the subsequent transfer and registration of the property in the name the fourth respondent.
- [2] The applicant additionally seeks the sale of the property by way of public auction to the highest bidder subject to a reserve price of R340 000.00 and after payment of the amount owing for municipal charges, sheriff's costs, or commission being deducted the remaining proceeds of the sale to be divided as follows: R10 000 to the applicant and the remaining balance divided equally between the Late Estate P[...] B[...] M[...] and N[...] M[...] M[...] (the applicant), alternatively payment in the amount of R170 000.00.

Factual context

- [3] The applicant, Ms. N[...] M[...], and Mr. B[...] M[...] were married in community of property on 2 July 1973. During their marriage, they acquired the immovable property that forms the subject matter of this application. The marriage broke down, and the parties divorced in September 2011. A settlement agreement providing for the division of the joint estate was concluded and allegedly made an order of court. I pause to note that the decree of divorce was not annexed to the founding papers.
- [4] Mr. M[...] passed away on 16 October 2020. The applicant, Ms. N[...] M[...], avers that the division of the joint estate was not finalised when he passed away. She avers that the parties could not come to an agreement regarding the value of the immovable property. The property was subsequently not sold, neither was her half-share purchased by her late husband as provided for in the settlement agreement.
- [5] Ms. N[...] M[...] avers that she only became aware thereof that the property was ostensibly sold to the fourth respondent, the executrix of the estate's mother, and registered in the fourth respondent's name when she obtained a copy of the master's file of the late Mr. M[...]’s estate. Ms. N[...] M[...] denies ever having signed any deed of sale or power of attorney to transfer the property. She denies ever receiving any money for her undivided half-share of the property.
- [6] Ms. N[...] M[...] claims that the transfer of the property was done fraudulently, as a result of which the court can declare the transfer of the property null and void.
- [7] In a belatedly filed answering affidavit, the fourth respondent, Ms. Baloyi, confirms that she is the niece of the deceased and the mother of the executrix of the deceased estate. The respondents take issue with the fact that the conveyancer who tended to the transfer and registration of the property was not joined as a party to the application. I pause to note that the conveyancer's evidence might be valuable, the conveyancer has no direct and substantial interest in the litigation between the parties.
- [8] Ms. Baloyi avers that the deceased informed her in 2016 that R130 000.00 needed to be paid to the applicant for her half-share in the property. Since he did not have the money, he requested her and her daughter, the second respondent, to assist him. They raised the money and gave it to him.
- [9] Ms. Baloyi claims that Ms. N[...] M[...] attended to Mr. Greiventsyn's office to sign documents before the deceased's passing, although she does not know what documents were signed. She avers that the only reason the property could not be transferred in 2016 was because Standard Bank informed them that the property could not be transferred until the money due to them had been paid off. I pause to note that based on the documents filed, the bond was already canceled in 2007.

- [10] In reply, the applicant reiterated that she launched the application to seek to recover the proceeds from the sale of the property, which was facilitated by the respondents behind her back to the extent that her signature was forged in the transfer documents.

Discussion

- [11] In considering the relief sought regarding the cancellation of the transfer and registration of the property into the name of the fourth respondent, it is not the background to the matter, the divorce, the settlement agreement, nor the question of whether the deceased paid over an amount of R 130 000.00 to Ms. N[...] M[...] buying out her undivided half-share in the property that is decisive, but the events that unfolded after Mr. M[...]’s passing.

- [12] It is evident from the Letter of Authority issued in terms of section 18(3) of the Administration of Estates Act 66 of 1965 that the sole asset in Mr. M[...]’s estate was his undivided half-share in the impugned property. Ms. N[...] M[...]’s

half-share has not yet been transferred to him by the time of his passing. I pause to note that no documents filed by the respondents

indicate that Mr. M[...] was on the verge of registering such a transfer when he passed away.

- [13] Ms. Baloyi’s offer to purchase the immovable property is directed to the Estate of Late B[...] P[...] M[...], W[...] M[...], and N[...] M[...] M[...]. This indicates that the late Mr. M[...] and his new wife were co-owners of one half-share, and Mr. N[...] M[...] was the co-owner of the other half-share in the property. The sellers ostensibly signed the offer to purchase on 24 January 2022. The purchaser apparently signed the document on 24 January 2024 (sic.). I accept that it is a typographical error and must read 24 January 2022.

- [14] The power of attorney to pass transfer was ostensibly signed by the executor on behalf of the estate, by the third respondent, the deceased’s widow, and by Ms. N[...] M[...]. This document is dated 22 February 2022.

- [15] The applicant, Ms. N[...] M[...], claims never to have signed the documents. She claims that her signature on the transfer documents has been forged.

- [16] Neither the executor of the estate nor Ms. Baloyi refers to any instance where Ms. N[...] M[...] was approached or required to sign any documentation to effect registration of transfer after the deceased passed away. The sale and registration of transfer would have occurred at the instance of the executrix of the estate, and neither the executrix nor purchaser of the property provides any information or evidence dispelling the applicant’s contention.

- [17] The respondents don't deal pertinently with the applicant's averments that her signature on the documentation was forged. They don't specifically deny the allegation that her signature was forged on the offer to purchase and the power of attorney to pass transfer but claim that she received payment for her half-share already in 2016. Whether she received any payment is irrelevant in light of the uncontested averment that she did not sign the offer to purchase or a power of attorney to pass transfer and that her signature was forged.
- [18] The respondents, particularly the executrix of the late estate, could easily have allayed any uncertainty by submitting evidence by the transferring attorneys indicating that Ms. N[...] M[...] was approached to sign the transfer documentation or by presenting evidence of conversations or meetings they had with the applicant regarding the sale and the transfer of the property to the fourth respondent, Ms. Baloyi.
- [19] The abovementioned is even more relevant in the context that the property was sold to the executor of the deceased estate's mother, while the executor stated in the Application for Endorsement that the purchaser of the property is not one of the persons mentioned in section 49(1) of the Administration of Estate's Act 66 of 1965. The Master's endorsement was obtained on the wrong premise.
- [20] More is required by a respondent to place contentions made by an applicant in dispute before the application of the Plascon-Evans principle applies. In casu, the question of whether Mr. N[...] M[...] received any money from her late husband as the purchase price for her half-share in the undivided property is not the dispute that needs to be adjudicated by the court. The dispute revolves around the question of whether she consented to and signed the documentation necessary to transfer the property, as reflected by the documents. In this regard, the respondents' answers did not give rise to any materially conflicting version.
- [21] I initially opined that the matter needs to be referred to evidence. However, after having heard counsel and carefully scrutinising the papers filed of record, it is evident that the respondents did not present a case in which the applicant agreed to transfer her half-share of the property to the fourth respondent after the deceased passed away. She did indicate her willingness to engage with the executor regarding her half-share in the property, but no case is presented that she signed the power of attorney to pass transfer to the fourth respondent. In addition, the Master's endorsement of the sale was acquired based on an erroneous statement
- that the purchaser of the property was not a person mentioned in section 49(2) of the Administration of Estates Act 65 of 1966.
- [22] Counsel for the respondents submitted that even if the court finds that there was fraud on the part of the respondents, the alleged fraud cannot affect the validity of the sale. I disagree. The Supreme Court of Appeal recently reaffirmed in *Bonaficio and Another v Lombard Insurance Company Ltd*[1] that fraud unravels all.

- [23] As a result, the relief sought by the applicant relating to the transfer and registration of the property stands to be granted.
- [24] The applicant also seeks an order that the property be sold by the Sheriff-Cullinan by way of public auction to the highest bidder subject to a reserve price of R340 000, alternatively that the respondents be directed to pay the applicant the amount of R170 000.00 being the value of her undivided half-share in the property.
- [25] I am of the view that the relief sought in this regard cannot be granted on the papers as they stand. A dispute exists regarding whether the applicant was indeed paid for her shares by her late husband, and evidence needs to be led on this aspect. The valuations obtained at that time can also not be said to reflect the property's current value accurately, and evidence needs to be presented in this regard.
- [26] The general principle is that costs follow success. Since a portion of the relief sought is referred to trial, the applicant is awarded 70% of the costs of the application on scale B. The first to fourth respondents are jointly and severally liable for the costs, the one to pay and the other to be absolved.

ORDER

In the result, the following order is granted:

1. The purported deed of sale dated 24 January 2022 for the sale of the immovable property described as ERF 2[...] M[...] V[...] EXTENSION [...] TOWNSHIP, REGISTRATION DIVISION JR, PROVINCE OF GAUTENT, MEASURING 292 square meters (the Property) held in terms of Deed of Transfer No. T[...] is hereby declared null and void and set aside;
2. The Registrar of Deeds, Pretoria, is hereby directed to cancel the registration of transfer and title deed No. T[...] in respect of the Property and to cancel all the rights accorded to Elizabeth Baloyi by virtue of said Title Deed;
3. The Registrar of Deeds is hereby directed to transfer and register the Property in the names of the late estate of P[...] B[...] M[...] and N[...] M[...] M[...] and to restore Deed of Transfer T[...] in respect of the Property;
4. The issue of whether the applicant received payment for her undivided half-share in the immovable property and the division of the co-ownership of the immovable property is referred to trial.
5. The notice of motion shall stand as a simple summons.
6. The notice of intention to oppose shall stand as a notice of intention to defend.
7. The applicant shall deliver a declaration before 31 January 2025.
8. Thereafter the rules of court relating to actions shall apply.

9. The respondents are to pay 70% of the applicant's costs on scale B jointly and severally, with the one who pays the others

absolved.

Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be emailed to the parties/their legal representatives.

For the applicant: Adv. M. Motsusi Instructed by: Maphoso Mokoene Inc. For the respondent: Adv. B. Kubeka-Manyelo Instructed by: Mtombeni Cecila Attorneys Date of the hearing: 18 November 2024 Date of judgment: 2 December 2024

[1] (247/2023)

[2024] ZASCA 86 (4 June 2024) at para [19].

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Prepared on 10 October 2026 · Esheria