

SOUTH AFRICA / JUDGMENT

Ozoh v Dladla and Others (19/31789) [2021] ZAGPJHC 773 (11 August 2021)

[2021] ZAGPJHC 773**COURT**

South Gauteng High Court, Johannesburg

BEFORE

Majavu

CASE / FILE NUMBER

19/31789

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Source record**IN****THE HIGH COURT OF SOUTH AFRICA****GAUTENG****LOCAL DIVISION, JOHANNESBURG****CASE****NO: 19/31789****REPORTABLE:**

NO

OF

INTEREST TO OTHER JUDGES: NO

REVISED:**Date:**

11 August 2021

In

the matter between:

BONGIWE

MAZIBUKO OZOH

Applicant

And

ZAKHELE

THEOPHELIUS DLADLA

1ST Respondent

ZAKHELE

THEOPHELIUS DLADLA N.O

2ND Respondent

(AS

EXECUTOR OF ESTATE LATE BETTY DLADLA)

THE

DIRECTOR GENERAL OF THE DEPARTMENT

3RD Respondent

OF

HOUSING: GAUTENG PROVINCE
THE
CITY OF JOHANNESBURG METROPOLITAN
4TH Respondent
MUNICIPALITY
THE
REGISTRY OF DEEDS : JOHANNESBURG
5TH Respondent

Coram: Majavu AJ

Heard: 09 June 2021

Delivered: 11 August 2021 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the CaseLines digital system of the GLD and by release to SAFLII. The date and time for hand-down is deemed to be 11h00 on 11 August 2021

Summary: Applicant seeks a declaratory order for cancellation of a Certificate of Right of Registered Leasehold (Title deed”), which was registered in the names of the first and second respondent. The applicant’s mother was the holder of a regulation 7 permit, which was cancelled. The first and second respondents subsequently issued with residential permit, later purchased the property through a 99-year leasehold scheme, in terms of the Black Communities Development Act 4 of 1984, which was later upgraded to full title in terms of the Upgrading of Land Tenure Rights Act 112 of 1999. The said property does not form part of the applicant’s mother’s deceased estate as contended. A declarator seeking cancellation of the first and second respondents’ title deed is thus unmeritorious and unsustainable. Consequently, the application is dismissed with costs.

ORDER

The

application is dismissed with costs, including the costs consequent upon the employment of counsel.

Majavu

AJ

Introduction

[1]

This is an application for the cancellation of a Certificate of Registered the Right of Leasehold number TLXXX/1999 which was registered on 9 March 1999 in the names of the first and second respondent, in respect of

erf number XXX in Meadowlands Township, Registration Division I.Q in the Province of Gauteng. The application is only opposed by the first and second respondents, understandably so. The balance of the other respondents played no role in these proceedings.

[2]

A brief summary of the legal position in respect of residential properties pre the constitutional dispensation, as was specifically crafted for black people, with reference to establishments, that came to be known as townships or urban areas, is necessary in order to appreciate how the dispute came about. In the end, the issue for determination is straightforward and crystallised, as will be more apparent later.

Historical

land rights or lack thereof

[3]

During the dark days of apartheid, Black People, Africans in particular, were prohibited by law to hold full ownership rights in respect of properties in the so-called urban areas and townships. All pre-existing land rights were completely obliterated and replaced with a myriad of laws, including, but not limited to the Black (Urban) Areas Consolidation Act 25 of 1945. In fact, they were not even permitted to reside in urban areas without the permission of a township superintendent in whose area of jurisdiction such an applicant intended to reside. All land rights vested in the Municipality (Bantu Affairs Administration Boards, as they were known as then) in question. In the event that a township superintendent was inclined to grant the application, then on behalf of the Municipality, such an applicant would then enter into an agreement which typified a landlord-tenant relationship, as the houses in that municipal area were owned by the Municipality, and in the present case, the City of Johannesburg (4th respondent). Ex facie such a residential permit, it was made absolutely clear that the right enjoyed is no more than the right to occupy the dwelling on the site. In some instances, a site permit would be issued in respect of a vacant piece of land and the applicant would then build a house thereon. In this case, we are concerned with an already existing house on municipal land, typical 4 roomed houses, also known,

in township parlance, as municipal houses.

[accentuation]

[4]

As proof of successful application to occupy a particular dwelling in the township,

the tenant would then be issued with a document called “residential permit”. Also stated on such a permit would be

applicant, his spouse, children and any other persons in respect of whom the applicant may be a guardian. This was a control mechanism to ensure that only those whose names appear on the permit are authorised to stay on the said property.

[5]

As a quid pro quo, the applicant was obliged to pay “rent” which included a portion of what is now commonly referred to as rates and

taxes. Back in the day, the term rent was used for all levies and consumables (not that there were many) due to the Municipality. Failure to pay such a rent on due dates or allowing

unauthorised persons to leave on the property would usually be met with immediate and arbitrary termination of that agreement, resulting

in the applicant, including those who occupy through him, being evicted and almost immediately being replaced with others, who are supposedly on the waiting list.

[6]

In the event of the death of the permit holder, for example husband or head of the

family, then the permit would “devolve” to the surviving spouse, absent the surviving spouse, to the eldest son, eldest

daughter, and so on, provided those to whom it would devolve were listed on the said permit when it was issued to the applicant or

at any subsequent stage during such applicant’s tenure.

[7]

Later on The Black Community Development Act 4 of 1984 was enacted. This Act allowed

black people some form of phantom-ownership because they were, for the first time allowed to buy properties in terms of a system referred to as “99-year leasehold”.

I call it phantom-ownership in that, it allowed the buyer to “own” property for a period of 99 years and during that period the said buyer could

do as they please with it, including bequeathing it to one’s immediate family members. However, the only catch was that,

the said buyer/owner could not be issued with full title (in the form of a title deed) as a benefit which was only

open to white people at the time. As an upgrade from residential permit, in terms of this new piece of legislation, a buyer would then be issued

with a “certificate of occupation” or leasehold title, evidencing his phantom-ownership.

[8]

There were further enactments namely, in the Conversion of Certain Rights Act 81 of

1988, which came into effect on 8 January 1989,

followed by The Upgrading of Land Tenure Rights Act 112 of 1991. In terms of the

latter Act, people who are holders of 99 year leasehold were regarded as having been granted a “real right” and as

a result the 99 year leasehold automatically qualified for a full title[1].

[9]

Later on, the anomalies of the differentiated land and property ownership rights along

racial lines, had somewhat been regularised

with the advent of the Housing Act 107 of 1997 and most importantly entrenched on the Constitution of the Republic of South Africa[2]

(“the Constitution”) with passing reference to sections

25 and 26 thereof.[3] This is

unfortunately

the sad tale of any black person, who at some point of their life, resided in townships also called urban settlements,

in the

pre-constitutional era. A discussion for another day.

Facts

of the current dispute

The

first respondent’s version

[10]

It is undisputed that prior to 1980, the property in dispute was allocated to Ms Elizabeth Mazibuko,

who was issued a regulation 7

permit[4] in respect thereof, as

a tenant of the Municipality. It is also clear that such tenancy was

formally cancelled on 31 March 1981,

after the death of Miss Mazibuko

the

previous year.

The reasons for such cancellation are not necessarily relevant for

present purposes, save to state that it was always open to the

landlord (Municipality) to terminate, for amongst others, non-payment

of rental, as alluded to earlier. When that happened, Mr

Theophilus

Dladla (“Dladla”) (first respondent) was then allocated

the property.

[11]

Dladla and his family continued to stay in the property, still as a tenant, having been issued with a regulation 7 permit in his name. In 1988 he later became aware that, as a Black person, and in accordance with the advent of the Black Communities Development Act[5], he could now buy the property on the basis of the 99 year leasehold scheme. Determined to purchase the property, he duly submitted his application to the Municipality and such was approved on 7 July 1988, which resulted in the conclusion of a deed of sale with the City of Johannesburg. This was borne out by the deed of sale which was attached to the papers. Needless to say, after concluding such SA, he was not issued with the full title deed, but rather with a document referred to as “certificate of occupation” which evidenced some form of ownership right in terms of the 99-year leasehold scheme. Later in 1999, Dladla was then issued with a full title deed in respect of the said property. This is self-evident from the Title Deed which is attached, reflecting Dladla and his wife’s (Betty Dladla) names thereon. Dladla’s wife has since passed away and he continues to stay in the property to date, albeit in the back room since 2018 when the applicant returned to the property, an aspect I shall return to.

[12]

The applicant is related to Dladla’s wife and this resulted in them taking her in shortly after her mother’s demise, as she was still very young and they felt pity for her. A short while later she left to stay with her other relatives. At all material times since 1981, until the applicant’s return for the first time in 2016, Dladla and his family continued to stay in the property. The applicant then laid claim to the house for the first time and argued that it belonged to her late mother. According to Dladla, he did not take it seriously as he knew that he had purchased the house, and, even prior to him being issued with a regulation 7 permit (as a tenant) the tenancy in respect of the applicant’s mother had already been cancelled previously, by the landlord (the Municipality) and in the result, as at the time of her death, she had no legal

claim whatsoever on the said property. Needless to say, according to Dladla, the applicant similarly could not lay any claim to the property.

[13]

The applicant returned again in 2017, only this time around, she threatened Dladla that she would “return with friends and political comrades” to ensure that Dladla’s family is evicted from the house. Dladla maintained his position.

[14]

Undeterred, around July 2018, the applicant returned with a group of people wearing red regalia and claiming to belong to a political party called the Economic Freedom Fighters (“the EFF”). This incident was covered in a story published in one of the local newspapers. According to Dladla, the applicant then managed to evict the Dladla and his son and had their movables thrown out. He stated further that he sought help from the police, who later informed him that they would not be able to assist him with what they referred to as “a civil matter”.

[15]

Dladla later went to the Department of Human Settlements: Gauteng, whose officials later confirmed that, indeed according to their records, he is still the lawful owner in respect of that property, having followed all the necessary and legal processes. In fact, the municipal invoices from the City of Johannesburg, which were attached, clearly reflects him as the ratepayer.

Applicant’s
version

[16]

She confirms that she is the daughter of the late Elizabeth Mazibuko, who was the holder of a residential regulation 7 permit dated 9 October 1979 and issued in her favour by the Municipality (as the landlord). She is the only surviving heir of her mother.

[17]

She stayed briefly with Dladla and his wife after her mother’s passing on and regarded them as her guardians according to our understanding of what the social workers informed her. She persists with the claim that this property belonged to her mother and as a

consequence, it should devolve into her late mother's estate, of which she is the sole heir or beneficiary. In her view, Dladla somehow engineered and manipulated the processes resulting in him being issued with a Title Deed in respect of her mother's property. She contends further that at no stage was she invited to a hearing by the housing tribunal, as contemplated in section 2 of the Conversion of Certain Rights to Leasehold Act [6] ("the Conversions Act") which was also incorporated into some provisions of the Gauteng Housing Act[7] including, but not limited to sections 20 4A, 20 4B, 20 4C and 20 4D, in terms of which the housing department was authorised to "adjudicate on disputed cases that emerged from the housing bureau established for the transfer of residential properties in terms of the Conversions Act".

[18]

It is indeed common cause that the issue pertaining to this property was never referred to or adjudicated by a housing tribunal. This is unsurprising and of no moment because, there was simply no dispute to refer to the tribunal.

On this score, the applicant is terribly mistaken in that, when Dladla was issued with a residential permit in terms of regulation

7, the permit which was issued to the applicant's mother had already been terminated by the landlord (Municipality). At that

stage, there was no requirement for such termination to be referred to any tribunal whatsoever. In any event, the tribunal to which

the applicant refers, only got established much later in terms of the Gauteng Housing Act, in 1998.

[19]

Beyond the applicant's bold assertions regarding her belief that the property belonged to or at the very least, was allocated to her deceased mother, on the basis of a regulation 7 permit, as well as the fact that to the best of her recollection, no inquiry was held by the tribunal, she has not gainsaid the undisputed and documented version of Dladla. I find the applicant's sudden return to the property and most importantly the claim that she now lays remarkably opportunistic and misconceived. There is simply no legal basis whatsoever to sustain the claim.

Resorting to self-help and employing political means to intimidate the owner of the real right is simply unacceptable. It is also

noteworthy that the time when Dladla and his son were dispossessed, he was 68 years old and now 71 years old. What he has been subjected to offends against one's sense of justice, which is underpinned on the rule of law and not the rule of man (the latter being gender neuter).

[20]

The applicant refers to the case of Khuzwayo v Representative of the Executor in the Estate Late Masilela[8] in

support of her case. In the court a quo,

Masipa J had ordered for the cancellation of a title deed that was incorrectly issued and further ordered the transfer of the property

back to the deceased's estate. But for the first part of that Order, namely cancellation of the Title Deed, t's

he appeal was

dismissed and the part relating to the property reverting to the deceased's estate was replaced with the directive

that an

inquiry by the tribunal was a prerequisite

and

further that such process had to be undertaken. Beyond that, the Khuzwayo case is wholly distinguishable from the present one.

In this

instance, there is no doubt that the property in question does not, and could not, by any stretch of imagination, be held to form part of the deceased estate.

In fact, at the time of the applicant's mother's death,

she already had no title to or interest whatsoever, in respect of the

property, her tenancy having been terminated and the regulation 7 certificate issued to her cancelled[9].

It was therefore open to the landlord (the Municipality) to deal with the property in any manner that it deemed fit. In this instance, the

landlord deemed it appropriate to allocate that property to Dladla (as a tenant) and other later purchased[10]

it, through legally permissible means, resulting in him and his wife being issued a Title Deed. In this application, the applicant seeks

to assail the title deed. I find that there is no merit to that attempt whatsoever and in the result the application must fail.

[21]

To the extent that it is asserted by the applicant that the first and second respondent failed

to report the death of her mother to the

Master of the High Court, and to the extent that it is alleged that the said immovable

property had to form part of her estate, I find that firstly, there was no such obligation resting on the first and second respondents and secondly the property in question or any rights attaching thereto do not form part of applicant's mother's estate.

The applicant's mother was neither the owner of any immovable property (or, at the very least the property in question) nor any title or interest holder in respect of the immovable property that was to devolve into her estate. I also find it curious that the applicant accepts that her mother's tenancy was indeed terminated by the Municipality on 30 March 1981. It is not open

to the applicant to suggest that the onus to prove that such termination was lawful rests on Dladla. To the contrary, this strengthens

Dladla's assertions that, when he was allocated this property, similarly as a tenant, there was already no right which could be argued to be enjoyed by the applicant's mother at the time, as such a tenancy had been terminated by a party entitled to do so, whether rightly or wrongly, such has nothing to do with Dladla. Even when Dladla purchased the said property later (7 July 1988), albeit under some form of phantom-ownership, there was absolutely no prohibition against him purchasing the property.

[22]

I also cannot find any malfeasance as alleged by the applicant or at all, in the conclusion of the deed of sale between the first and second respondent and the Municipality. Similarly and by parity of reasoning, I do not find that the alleged "disposal of the property" by the officials of the third and fourth respondents was either untoward or unlawful.

[23]

Lastly, even though nothing turns on it, the contention by the applicant that the first and second respondents were her legal guardians is unsubstantiated and not borne out by any of the documentation on hand.

Current occupation status

[24]

On my prompting, it was pointed out that currently the applicant is in occupation of the main house, while the first respondent (Dladla)

and his son are relegated to the back room in the same property. The applicant's counsel did not dispute that. This is as a result of the unfortunate and unlawful self-help to which the applicant resorted, allegedly with the help of some EFF members. This type of behaviour has no place in our constitutional democracy. I leave that aspect at there.
[25]

For these reasons I make the following order:

Order
(i)
The application is dismissed with costs, on a party and party scale, including the costs consequent upon the employment of counsel.
Z
M P MAJAVU
Acting
Judge of the High Court
Gauteng
Local Division, Johannesburg
HEARD

ON: 09 June 2021

JUDGMENT

DATE:

11 August 2021

FOR THE APPLICANT:

Adv B.B Ntsimane

INSTRUCTED BY:

Baloyi- Ntsako Attorneys.

FOR THE RESPONDENTS :

Adv L Memela

INSTRUCTED BY:

Gcwensa Attorneys

[1] Section 2(1) provides as follows, " any land tenure right mentioned in schedule one and which was granted in respect of- (a) any error of or any other piece of land in a formalised township for which township register was already opened at the commencement of this act, shall at such commencement be converted into ownership.

[2] Act number 108 of 1996

[3] S 25(1) Property : "no one may be deprived of property, except in terms of law of general application, and no law may permit

arbitrary deprivation of property, Housing S 26 (1): " everyone has the right to have access to adequate housing".

[4] Regulation 7 of chapter 2 of the regulations governing the Control and Supervision of an Urban Bantu Residential Area and relevant matters. G.N.1036 dated June 1968. Please note that Black people were derogatively referred to as Bantu

[5] Act 4 of 1984

[6] Conversion of Certain Rights to Leasehold Act 81 of 1988

[7] Gauteng Housing Act 6 of 1998

[8] (28/2010) [2010] that a SCA 167, [2011] ALLSA 599 (SCA) (1 December 2010)

[9] See cancellation of tenancy document attached and duly signed by the superintendent and stamped 30 March 1981

[10] Total price paid by Dladla was R837.05 as per the document titled sale advice/home ownership and confirmed in the deed of sale

agreement concluded between Dladla and an official of the deed middle City Council, the 4th respondent's predecessor, Mr Godfrey

Maringa

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