

SOUTH AFRICA / JUDGMENT

Ramaf and Another v Thlapane and Others (3380/09) [2013] ZANWHC 75 (24 October 2013) [2013] ZANWHC 75

COURT

North West High Court, Mafikeng

BEFORE

A A Landman

CASE / FILE NUMBER

3380/09

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IN

THE NORTH WEST HIGH COURT

MAFIKENG

CASE

NO.: 3380/09

DATE:

24 OCTOBER 2013

In

the matter between:

MADALA

DAVID RAMAFI

.....1st

PLAINTIFF

DANNY-BOY

SALTIEL

RAMAFI.....2nd

PLAINTIFF

And

ELIZABETH

GRANNY

THLAPANE.....1st

DEFENDANT

MASTER

OF THE HIGH

COURT.....2nd

DEFENDANT

REGISTRAR

OF DEEDS,

VRYBURG.....3rd

DEFENDANT

JUDGMENT

LANDMAN J:

Preface

[1] It is unfortunately necessary to preface this judgment with an explanation for delivering it on this date. The plaintiffs'

attorney addressed a letter to the Judge President on 14 October 2013 in which it is said: "The matter was finalised on the 2nd and 3rd July 2013 and our instructing attorneys have requested us to inquire as to when can they expect judgment in the matter."

[2] The facts in the letter are basically correct but incomplete. The trial commenced in April and I heard the remaining evidence during my leave because the age and health of one of the plaintiff's was said to require it. After the evidence had been led the parties agreed to attempt a settlement and did not argue the matter. The plaintiffs' attorney filed heads of argument on 10 July. These heads record that the parties needed until 31 July to attempt a settlement. The defendant filed heads on 26 July.

[3] I left chambers in mid-July and only physically returned on Saturday 12 October to collect files for circuit court. This is when I saw the file in this matter. I do not know when the file was brought to my secretary's office.

[4] I realised that judgment must be delivered expeditiously. The difficulty was that although I had prepared a draft judgment in July, should it be required. I was unable to access my new laptop and left the laptop with instructions that assistance was required. On my return from Vryburg on 18 October a secretary assisted me to access the laptop. Regrettably the plaintiff's attorney did not have the courtesy to contact me about the judgment. This is the judgment.

The

issues

[5] David Madala Ramafi born in 1932, the first plaintiff, claims a declaration that he is the owner of land known as portion 3 of the farm Zwartbank 121, Registration Division JQ, District Bafokeng ("the farm"). Ancillary relief is also sought. His eldest son Danny-Boy Ramafi, born 1964, is the second plaintiff. He claims a declaration that he is the proprietor of a butchery trading at site 714, BaPhiring Section, Luka.

[6] The relief is opposed by the first defendant Elizabeth Granny Thlapeng (nee Ramafi). She is a daughter of the late Mr Rueben

Ramafi (born 1903) and the late Josephine Ramafi and the first plaintiff's sister and the second plaintiff's aunt. She is also and the executrix of the estate of her late parents.

The first claim

- [7] The late Mr Rueben Ramafi held the title deeds to the farm. See Deed of Partition Transfer 196 /84. The first plaintiff did not testify. The second plaintiff testified as did his brother Simon Ramafi. Their evidence, as regards the purchase of the farm, lacks even the most basic detail and is entirely hearsay evidence. Even if it should be taken into account it is highly improbable.
- [8] The brothers cannot provide details of exactly where, when and from whom the farm was purchased and at what price. It is most unlikely that a young man, who had just completed form one and had been taken out of school to assist in his father's butchery, would have the acumen and the funds in 1953 to purchase a farm with two older men (born in 1906 and 1914). Then there is the question whether he would register the farm in the name of his father.
- [9] No evidence was led about the involvement of the first plaintiff in the decision made in 1982 to divide the land into three portion so that each of the three purchasers could take ownership of a portion.
- [10] Very strong evidence is required to displace the presumption that the holder of a title deed is not the registered owner of the farm. The plaintiffs have not produced such evidence.
- [11] The plaintiffs' have not shown that the first plaintiff exercised undisturbed possession in order to sustain a claim based on acquisitive prescription. Various other persons used the farm as a cattle post.
- [12] It follows that the first claim cannot be upheld.

The second claim

- [13] The claim, that the right to trade and that the buildings of the Butchery Shop in Luka Village belong to the second plaintiff, stands on a different footing. I accept that a butcher shop was built on the stand by Mr Rueben Ramafi in about 1930 and that it was known as Luka Butchery. The right to trade on the site was conferred by the office of the then headman.
- [14] The first plaintiff was taken out of school to assist his father in the Butchery Shop. I accept that the first plaintiff assisted his father. I do not accept the evidence that he took over the butchery from his father in 1953 when his father about 50 years of age.
- [15] It may be that later on the first plaintiff operated the butchery on account of his father's other obligations and advancing age. But that is not the evidence presented by the plaintiffs. What is of concern is that the butchery ceased functioning in 1992 and remained closed until the second plaintiff took an interest in matters in

2002. I reject the defendant's evidence that the butchery did not close for this period. The closure of the business coincides, more or less, with the death of Mr Reuben Ramafi. No evidence was presented to explain why the first plaintiff, if he was the owner, closed the butchery at this time. Nothing was said about the reason for closing the business. This lends credence to the defendant's averment that the butchery belonged at all times to her father and not to her brother David, the first plaintiff. I find this to be the case.

[16] It follows that the first plaintiff was not in a position to cede any rights to the butchery to the second plaintiff.

[17] It is clear that the second plaintiff or his close corporation currently operates a butchery on the site allocated to his grandfather Mr Rueben Ramafi. According to Simon, the second plaintiff's brother, the second plaintiff may not have followed the appropriate and respectful procedure when he approached the headman for the right to trade there. But undoubtedly, the butchery which trades there is not that of the late Reuben Ramafi or his late spouse. The right to trade there, vests in the second plaintiff or his close corporation and not in the estate.

[18] None of the furniture, fittings and equipment, in the butchery, falls into the estate. The shop was dilapidated and vandalised over the period of 10 years. The furniture, fitting and equipment in the shop belong to the second plaintiff or his close corporation and not to the estate of the late Mr Ramafi or his late spouse.

[19] The site is on tribal land and tribal laws do not acknowledge individual ownership of land. Some part of the previous building,

which I find was erected by or for the late Reuben Ramafi, was incorporated into the new butcher shop. The value of that part falls

into the estate. No evidence was led concerning the value.

[20] The parties are family and a cost order may serve to entrench the conflict or aggravate it. I do not intend to make an award of costs.

Order

[21] In the result I make the following order:

1. Prayers (a), (c) and (d) are refused and dismissed.
2. It is declared that the second plaintiff or the close corporation Dial-a-Meat CC is the proprietor of the Butchery on site 714,

BaPhiring Section, Luka and all furnishings, fittings and equipment in that butchery.

3.1 It is declared that only the value of that part of the building of the old butchery that has been incorporated into the new building forms part of the estate of the late Mrs Dikoro Josephina Ramafi who died on 13 August 2002.

3.2 Should the parties be unable to agree on the value of the part of the old building which was incorporated into the new building the parties may enrol this matter for evidence and a decision on this issue.

4. There shall be no order as to costs.

A A LANDMAN

JUDGE OF THE HIGH COURT

APPEARANCES:

DATE OF HEARING : 24 – 25 APRIL, 2 – 3 JULY 2013

DATE OF JUDGMENT : 24 OCTOBER 2013

FOR THE PLAINTIFF : ADV H SCHOLTZ

FOR THE DEFENDANT : ADV K MONGALE

ATTORNEY FOR PLAINTIFF : JERRY SITHOLE ATTORNEYS

ATTORNEY FOR DEFENDANT : NKOMO AND PARTNERS

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Prepared on 12 October 2026 · Esheria