

SOUTH AFRICA / JUDGMENT

Rewu and Another v Moko and Others (67303/2013) [2014]

ZAGPPHC 846 (23 October 2014)

[2014] ZAGPPHC 846

COURT

North Gauteng High Court, Pretoria

BEFORE

D S Fourie

CASE / FILE NUMBER

67303/2013

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IN

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG

DIVISION, PRETORIA)

Case

No: 67303/2013

Date: 23 October 2014
Not
reportable
Not
of interest to other judges
In the matter

between: BUTI
SOLOMON
REWU.....First
Applicant
DIRECTOR
GENERAL OF THE DEPARTMENT
OF
HOUSING, GAUTENG
PROVINCE.....Second
Applicant
and
MAMORETLO
GLADYS
MOKO.....First

Respondent
EMFULENI
LOCAL
MINUCIPALITY.....Second
Respondent
THE
REGISTRAR OF DEEDS,
PRETORIA.....Third
Respondent

JUDGMENT

FOURIE, J

- [1] This is an application for an order cancelling title deed No TL118072/2000 with regard to Erf 901, Bophelong Township registered in the name of the first respondent. The applicants also seek an order directing the second applicant to hold an investigation and a proper hearing in terms of the Conversion of Certain Rights into Leasehold or Ownership Act, No 81 of 1988 to determine who the lawful claimant to the property is.
- [2] The applicants contend that the property was registered in the name of the first respondent as a result of an error committed by the registering municipality, alternatively due to an irregular process. The application is opposed by the first respondent. She maintains that the claim has become prescribed, the second applicant has become functus officio and, as far as the merits are concerned, the property was properly awarded to her by a panel appointed by the second applicant.

BACKGROUND

- [3] According to the first applicant he is the nephew of the late Daniel Rewu who obtained occupational rights in respect of the property in 1965. The first applicant had been residing with Daniel Rewu and his wife Leah on this property since 1971. After the death of Daniel Rewu in 1988, his wife Leah succeeded him as lawful occupier of the property. Leah lodged a claim in terms of the provisions of the Conversion of Certain Rights into Leasehold or Ownership Act, No 81 of 1988 with regard to this property, but died in January 1999 before the property could have been awarded to her. On 16 April 1999 the first applicant, in his capacity as lawful occupier of the property, submitted a claim of his own in terms of a residential permit. During September 2000 the first applicant was informed that the property had been registered in the name of the first respondent.
- [4] The matter was then investigated by the second applicant and on 16 May 2013 a memorandum was issued with regard to the registration of this property into the name of the first respondent. The following recommendation has been made:

"This (property) should be de-registered and be adjudicated upon between Buti Solomon Rewu and Gladys Moko. It was an irregular step to just call Gladys Moko to the offices to sign Draft Deed, who:

- has never lived in this property;
- had not claimed this property. ”

[5] According to the first respondent the property was properly awarded to her by a panel appointed by the second applicant. She relies in this regard on a document titled “ADJUDICATION: CASE NUMBER. 53244” dated 16 November 1999. It appears that the adjudicator was a certain S C Mopeli and the chairperson of the local committee P J Poee. According to a summary of the evidence referred to in this document the first respondent wanted the property to be allocated to her “because she grew up at this property when her grandfather died.” The decision is formulated as follows:

"Since there is only one claimant in this matter who has also claimed the property after the death of the permit holder, I am left with no other option but to take her (Moko Mamoretlo Gladys') claim not to be challenged by anyone. Therefore, Property 901 Township Bophelong is allocated to Moko Mamoretlo Gladys. ”

DISCUSSION

- [6] It was contended on behalf of the first applicant that the main issue to be decided is whether the first respondent was entitled to have the property registered in her name and if it is found that the property was erroneously or fraudulently registered in her name, then I should grant an order for the cancellation of the registration which took place in the name of the first respondent. I can only grant an order for the cancellation of the said registration if I can conclude that the registration was erroneously executed and that the special defences raised by the first respondent have no merit. I am unable to do so on the papers before me for the reasons set out hereunder.
- [7] According to the evidence there are two internal documents. Both appear to be official documents emanating from the same department, the one supporting the case of the first applicant and the other that of the first respondent. No doubt, there exists a serious factual dispute with regard to the contents thereof as well as the question who is entitled to this property.
- [8] The relief sought by the first applicant, i.e. cancellation of registration of the immovable property, is a final order. If such an order were to be granted now the first respondent would be divested of her property. Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless there are special circumstances, motion proceedings cannot be used to resolve factual disputes because they are not designed to determine probabilities (National Director of Public Prosecutions v Zuma [2009] ZASCA 1; 2009

(2) SA 277 (SCA) par 26).

[9] Where there is a dispute of fact which cannot be resolved without the hearing of oral evidence, the Court may, in its discretion, dismiss the application, alternatively order oral evidence to be heard on specified issues or it can order the parties to trial (Rule 6(5)(g)). When exercising my discretion in this regard, I am unable to find that the first applicant should have foreseen, when launching the application, that a serious dispute of fact was bound to develop with regard to the internal memorandum prepared by the second applicant on which the first applicant relies.

[10] Furthermore, it appears that there are various other issues involved also, such as a special plea of prescription and that the second applicant is functus officio, some of which might even be a compound of law and fact. It would in these circumstances not be proper to limit the nature of the

evidence. The matter should rather be referred to trial to enable the parties to address all the issues properly.

ORDER:

In the result I grant the following order:

- (a) The application is referred to trial;
- (b) The notice of motion shall stand as a simple summons;
- (c) The opposing affidavit shall be regarded as a notice of intention to defend;
- (d) The first applicant shall serve and file a declaration within 10 days from date hereof;
- (e) The Uniform Rules dealing with pleadings and the conduct of trial shall thereafter apply;
- (f) The costs of this application shall be costs in the trial.

D S FOURIE

JUDGE OF THE HIGH COURT

PRETORIA

Date: 23 October 2014

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