

SOUTH AFRICA / JUDGMENT

Skosana and Another v Molate and Others (8693/2013) [2015] ZAGPPHC 698 (8 October 2015) [2015] ZAGPPHC 698

COURT

North Gauteng High Court, Pretoria

BEFORE

De Klerk

CASE / FILE NUMBER

8693/2013

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IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case number: 8693/2013

8/10/2015

MPITORI PAULUS SKOSANA 1st APPLICANT

SIZANI LINAH SKOSANA

2nd APPLICANT

And

LETHABO JOYCE MOLATE

1st RESPONDENT

CITY OF PRETORIA METROPOLITAN

MUNICIPALITY

2nd RESPONDENT

THE DIRECTOR GENERAL OF THE

DEPARTMENT OF HOUSING, PROVINCE

OF GAUTENG

3rd RESPONDENT

THE REGISTRAR OF DEEDS

PRETORIA

4th RESPONDENT

JUDGMENT

DE KLERK (AJ)

Introduction:

- [1] The First Applicant obtained a residential permit from the Town Council of Mamelodi, on 29 September 1994 in respect of the immovable property situated at Erf [...], Mamelodi, which property was subsequently (on 2 March 2000) registered in his and the First Respondent's names (as co-owners, being married to each other).
- [2] The First Applicant now seeks rectification of the said title deed due to an error in the title deed viz that he and the First Respondent were married to each other. According to the First Applicant they were never married to each other and the First Respondent is not entitled to be the co-owner of the said property.
- [3] To give effect to same the First Applicant seeks an order for the cancellation of the title deed and for the transfer and registration of the property into his name and that of the estate of his late wife.
- [4] The First Respondent opposes the application on the basis that the First Applicant did not have the right to apply for such permit in the first place and that she should be the sole owner of the property.
- [5] The First Respondent further submitted that the First Applicant obtained co-ownership of the property as a result of “unbecoming behaviour and fraudulent activities” on his part, e.g. that the First Applicant furnished wrong information to the authorities. (It is not in dispute that the First Applicant and the First Respondent were never to each other).
- [6] It may be convenient to set out the material allegations made by the parties in their respective affidavits.

Common cause facts:

- [7] The property was previously allocated by the Town Council of Mamelodi to and occupied by a certain Maggie Mashilo.
- [8] Maggie was the First Respondent's aunt.

- [9] The First Respondent and her children resided with Maggie since November 1993. (The First Applicant and the First Respondent were romantically involved since 1973 and three children were born from their relationship.)
- [10] On 13 September 1994 Maggie died at her home in her sleep.
- [11] Immediately after Maggie's death the First Applicant moved in with the First Respondent and applied for occupational rights over the property.
- [12] Consequently on 27 September 1994 the permit, in terms of which Maggie was the permit holder, was cancelled and on 29 September 1994 the Town Council of Mamelodi issued out a permit to the First Applicant to occupy the property.
- [13] In the said permit the First Applicant was referred to as the head of the family and the First Respondent as a lodger. The names of their children and the First Respondent's grandmother, a certain Elizabeth Mashaba, were also inserted on the permit.
- [14] The relationship between the First Applicant and First Respondent in the course of time ended. (It is however in dispute whether the relationship ended in 1998 or 1999 and what the reasons therefore were.)
- [15] The First Applicant's wife and their children came to stay with him.
- [16] The First Respondent obtained a RDP house for her and their children.
- [17] On 2 March 2000 the property was registered in the First Applicant and First Respondent's names.
- [18] During or about 2012 the First Respondent signed documents at the First Applicant's attorneys offices to cancel the title deed and transfer and register the property into the First and Second Applicants' names.
- [19] The First Respondent however later averred that she signed the documents under duress and brought an application to interdict the transfer of the property to the First and Second Applicants.

Disputes:

The First Applicant's version:

- [20] The First Applicant met Maggie shortly before her death while he in his capacity as a taxi driver transported her on a regular basis to the medical centre where she received treatment.
- [21] After Maggie's death the First Applicant contributed an amount of R800.00 towards her funeral costs.

- [22] In turn and as a gesture of thanking him, Maggie's brother and her mother, Elizabeth Mashaba, supported his application with the Town Council to take over occupation of the house Maggie once occupied.
- [23] After the First Applicant took occupation the First Respondent came to reside on the property as a tenant.
- [24] The First Applicant and the First Respondent had an extra-marital romantic relationship whilst she was a tenant.
- [25] Three children were born from this relationship.
- [26] The First Respondent moved out of the property on acquiring rights to her own property.
- [27] The cause of their differences that motivated the First Respondent to seek a place of her own was the First Applicant's refusal that they would live in the property as husband and wife.
- [28] The First Respondent was consumed with jealousy when the First Applicant's wife came to live with him on the property.
- [29] Prior to his wife moving in with him, he and the First Respondent had a good relationship. The relationship ended in 1998.
- [30] During or about 2009 the First Applicant received a copy of the deed of transfer from the Department of Housing.
- [31] It was always understood between the First Applicant and the First Respondent that the property belongs to him and his wife.
- [32] The First Respondent attempted to assist the First and Second Applicant's to rectify the title deed.
- [33] The First Respondent's daughter is behind the First Respondent's change of heart.

First Respondent's version:

- [34] The First Applicant had never met her aunt.
- [35] Her aunt was not ill prior to her demise.
- [36] On or about 12 October 1999 the First Respondent obtained a protection order against the First Applicant. The First Respondent only at the time learnt that the First Applicant had a wife
- [37] The First Respondent was compelled to leave the property due to the physical abuse that she suffered at the hands of the First Applicant.
- [38] The First Respondent thereafter obtained a RDP house.
- [39] The First Respondent had not known of the status of the property until she was summonsed to the offices of the Applicants' attorneys to sign certain documents.

[40] The First Applicant applied for the permit and eventually caused the property to be transferred and registered into their names without her knowledge and in a fraudulent manner e.g. furnished wrong information to the authorities.

Evaluation of the evidence:

[41] The Town Council of Mamelodi was the owner of the said property (in terms of prevailing Legislation).

[42] Maggie Mashilo was at the time of her demise on 13 September 1994 the permit holder.

[43] The remaining occupants at the time were the First Respondent, the latter's four children and her grandmother Elizabeth Mashaba.

[44] Two weeks after Maggie's demise a new permit was issued to the First Applicant in terms of which the property would be occupied by him as the head of the family together with the aforesaid remaining tenants. The First Respondent was referred to as a lodger.

[45] The lawfulness of the First Applicant's conduct in applying and obtaining the said permit is in dispute.

[46] In this regard and in justification of same it was further stated by the First Applicant that: "a simple step to apply was ignored by the First Respondent and I stepped up to apply with the support of Maggie's immediate family."

[47] It is evident from the aforesaid that the application by the First Applicant was not done in conjunction with the First Respondent.

[48] The First Applicant's version on how he obtained the permit (with the support of the deceased holder's mother and brother because he paid R800.00 to them as a contribution towards the first mentioned funeral costs) is not born out by the documentary evidence, namely the permit (which indicated that he was awarded tile permit because he was the head of the family).

[49] The First Applicant's version in this regard is to my mind far-fetched. It further begs the question why and how a taxi driver was able (21 years ago) to contribute R800.00 towards a virtual stranger's funeral costs.

[50] I now turn to a consideration of the evidence with regard to the alleged error in the title deed.

[51] At the very least the First Applicant must set out averments to enable the court to determine how the error really came about.

[52] It is evident from the deed of transfer that the property was sold for a purchase consideration of R1 064.28 (and registered into the First Applicant's and First Respondent's names on 2 March 2000).

[53] This implies an agreement of sale between the First Applicant and First Respondent and the local authority.

[54] However the First Applicant has furnished no evidence in this regard.

[55] The First Applicant only stated in this regard as follows:

“The name of the First Respondent was inserted into the title deed as an error committed by the transferring authorities when my residential permit was converted into ownership in terms of the Conversion Act.

I only suppose that the First Respondent was mistakenly taken by the officials of the transferring authority as my wife due to her name appearing on top of the other names in the permit. “

[56] These contentions are untenable for the following reasons:

The Errors in the title deed entail:

1. that the First Applicant and the First Respondent were married to each other in community of property;
2. that the First Respondent's surname was Skosana; and
3. that the First Applicant and the First Respondent were the co-owners of the property.

[57] The aforesaid erroneous information in the title deed does not correspond with the information contained in the permit more particularly:

1. The First Applicant was referred to as the head of the family;
2. The portion under the heading “wife” and which further provided for the latter's name, identity number, type of marriage and the marriage certificate entry number, was left open
3. The First Respondent's surname was indicated as Molate.
4. The First Respondent's was referred to as a lodger.

[58] The question that begs an answer by the First Applicant is why did he omit (during 1994) to include the particulars of his wife (to whom he got married during 1982) and the children born from this marriage on the permit?

[59] The authorities therefore did not make a mistake by not registering the property in the First Applicant's and Second Applicant's names.

[60] It is further not clear whether the First Applicant instructed Gcwensa Attorney to assist him to facilitate rectification of the error or whether Gcwensa Attorney were requested by the Housing Department to attend to the rectification of the error.

[61] It was stated by the First Applicant in this regard as follows:

“I was referred to Gcwensa as the attorney dealing with transfers of properties. What Gcwensa were asked to do was to assist us to facilitate rectification of the error ...

Pinky from Gcwensa Attorneys requested me to arrange a meeting of the First Respondent, my wife and I with her at her offices.”

[62] Later on it was stated by him in this regard that:

“We were met by Pamela Rudd. She explained that she was requested by the Housing Department to attend to the rectification of the error.”

[63] Mention further needs to be made that it was stated by the First Applicant in his replying affidavit that he resided on the property with his wife and family. However in his founding affidavit he stated that he was residing at another address, to wit 15899, Mamelodi.

[64] The legal position was comprehensively and correctly set out by the First Applicant in his affidavit.

[65] As was held in *Nzimade v Nzimade and Another* 2005 (1) SA 83 W, that such a permit remains valid until set aside by a Court on review.

[66] This is however not what I am asked to determine.

[67] The facts in the present matter are distinguishable from the *Nzimade* case.

[68] In the present matter tenure rights in terms of the (residential) permit had already been converted.

[69] The question to be determined is rectification of an error in the title deed.

[70] It is however relevant to consider the circumstances pertaining to the First Applicant's application for the permit to determine the question at hand.

[71] I have before me no evidence as to how the error came about.

[72] The First Applicant has not established a factual basis for the relief claimed.

Order:

[73] The application is dismissed with costs.

Duties at Pretoria on this 8th day of October 2015

DE KLERK AJ

ACTING JUDGE-OF THE GAUTENG DIVISION HIGH COURT, PRETORIA

APPLICANTS REPRESENTATIVES

ADVOCATE

INSTRUCTING ATTORNEY: Gcwensa Attorneys

RESPONDENTS REPRESENTATIVES

INSTRUCTING ATTORNEY

DATE: 8 October 2015

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