

SOUTH AFRICA / JUDGMENT

Tapala and Another v Tlebetla and Others (89400/16) [2019] ZAGPPHC 46 (22 February 2019)

[2019] ZAGPPHC 46

COURT

North Gauteng High Court, Pretoria

CASE / FILE NUMBER

89400/16

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 89400/16

22/2/2019

In

the matter between:

STEPHEN

TAPALA

1st

APPLICANT

JOHANNA

TAPALA

2nd

APPLICANT

And

LESIBA

JONNY

TLEBETLA

1st

RESPONDENT

THE

MASTER OF THE HIGH COURT

2nd
RESPONDENT
THE
REGISTRAR OF DEEDS
3rd RESPONDENT
THE
CITY OF JOHANNESBURG MUNICIPALITY
4th RESPONDENT
THE
DIRECTOR GENERAL
5th RESPONDENT
HUMAN
SETTLEMENTS

JUDGMENT

[1] The applicants apply for an order declaring wrongful and/ or illegal the sale and subsequent registration in the names of the first respondent of the property known as erf [.....] (the property). They seek an order setting aside the transfer and registration of the property, and declaring the first applicant to be the beneficiary of

the property. They further seek an order directing the fourth and fifth respondents to provide the Court with a comprehensive report

regarding sales of state subsidised properties, the effect of non compliance with section 10A(1) of the Housing Act 107 of 1997 (the Housing Act) and particularly whether Nkhwile Alpheus Moropo (the deceased) who was the initial owner of the property had the authority to sell it to the first respondent. Finally, an order directing the third respondent to cancel the title deed T56991/13 in favour of the

first respondent is also sought.

Background

[2] The property was sold by the deceased, (who had\ obtained title thereto in June 2006), to first applicant and separately to first respondent, without apparent compliance with section 10A(1) of the Housing Act. The deceased's title deeds contained the condition that the property could not be lawfully alienated within eight years of transfer without the consent of the relevant provincial housing department, and unless it had first been offered to the relevant provincial housing department.

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- [3] The parties do not dispute that this did not take place and that the property was sold to first respondent within the eight year period. The most recent deed of transfer reflects that the property was sold and transferred to the first respondent on 31st July 2013. As a result the deceased clearly did not have the requisite authority to sell the property to the first respondent. It is conceded by the applicants that the sale to first applicant likewise did not comply with section 10A(1) of the Housing Act.
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