

SOUTH AFRICA / JUDGMENT

Tlhapi v Bangane and Others (2018/21599) [2025] ZAGPJHC 22 (17 January 2025) [2025] ZAGPJHC 22

COURT

South Gauteng High Court, Johannesburg

BEFORE

Marais

CASE / FILE NUMBER

2018/21599

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

Case

Number: 2018-21599

(1)

REPORTABLE: NO

(2)

OF INTEREST TO

OTHER JUDGES: NO

(3)

REVISED: YES

17

January 2025

In

the matter between:

MOTLALEPULA
ATTALANA TLHAPI
Applicant
and
ABEL
PATRIC BANGANE
First
Respondent
THE
REGISTRAR OF DEEDS
Second
Respondent
TEMBISA
OFFICE OF HOUSING
Third
Respondent
EKURHULENI
DEPARTMENT OF HOUSING
Fourth
Respondent

JUDGMENT

Marais, AJ

- [1] In this opposed application the applicant, Ms MA Tlhapi, seeks an order against the first respondent, Mr AP Bagane, for the setting aside of a transfer to him of an immovable property, Erf 2[...], Portion 9/10, T[...], T[...] (“the property”).
- [2] It is common cause that the property, prior to its transfer to the first respondent, belonged to the Ekurhuleni Municipality, and that it was transferred to the first respondent by the Registrar of Deeds in 2011.
- [3] The applicant’s founding affidavit is cryptic and contains gaps in the sequence of events, and reasoning.
- [4] The applicant claimed that the property belonged Mr Isaac Pule, who is related to her, and allegedly being sickly, he wished to donate the property to her during 2002, resulting in him signing written a “cession agreement” in respect of the property in her favour during 2003. It is not explained what the nature of Mr Pule’s rights were, but it can safely be assumed that what was meant was that Mr Pule allegedly had some form of permit issued by the local municipal council.

- [5] The applicant's case is that prior to the alleged donation and cession agreement, she was already in occupation since 1999, and that she remained in undisturbed occupation until 2012, when the first respondent obtained an eviction order against her in the Tembisa Magistrates' Court. This order was set aside by this court during 2014 on application by the applicant. The basis for the setting aside has not been revealed. The eviction proceedings are still pending in the Magistrates' Court.
- [6] The picture that the applicant painted was that the eviction proceedings came as a total surprise, and she seemed to suggest that in the eviction proceedings the first respondent did not rely on a title deed in respect of the property. This resulted in her questioning the first respondent's status as the registered owner of the property. The applicant's approach was that if the first respondent somehow became the registered owner, this happened in a manner entirely unknown to her.
- [7] Regrettably, the applicant's version was grossly incomplete and misleading.
- [8] The answering affidavit reveals that there was a dispute between the applicant and the first respondent about the property, and that during 2009 the first respondent approached the Gauteng Provincial Government in terms of the Conversion of Certain Rights into Leasehold or Ownership Act 81 of 1988 ("the Act") to adjudicate the dispute between himself and the applicant regarding the right to the property in terms of section 2 of the Act. At the hearing of oral argument, it was common cause that the dispute was submitted for adjudication in terms of the Act.
- [9] It was also common cause that after hearing oral evidence the adjudicator ruled that the first respondent was entitled to receive transfer of the property in his name and that the applicant has no valid claim to the property.
- [10] Not satisfied with the ruling, the applicant then appealed against the ruling in terms of section 3 of the Act. An appeal panel of three adjudicators rejected the applicant's appeal and made a final ruling on the first respondent's entitlement to the property on 19 October 2010.
- [11] In summary, the adjudicator and appeal panel found the following on the evidence before them:
- a. The property in question was initially acquired by Tiger Foods for Mr Pule, who was also employed by Tiger Foods. At the time of the inquiry, the permit issued by the local municipality was still in Mr Pule's name, due to a delay or failure to update the records.

- b. Mr Pule and the First Respondent concluded an exchange agreement during the 1990's in terms of which Mr Pule transferred his rights in the property to the first respondent, in exchange for the right to another property (Stand 5757 Sekhotga Ext 9) to which the first respondent was entitled to. The first respondent obtained the rights to the latter property through an exchange agreement with a Mr J Ramotshela, who similarly obtained his rights through the Tiger Foods employees' housing initiative.
 - c. Mr Pule in his testimony confirmed the exchange agreement alleged by the first respondent. He testified that he cannot read or write and was unaware of the content of the document (the cession agreement) he was asked to sign by the applicant. There was also an allegation that the applicant gave him alcohol before he was asked to sign the document, which was irrelevant to the finding.
 - d. Subsequently, the first respondent was convicted of a criminal offence, and during 1997 was sentenced to a term of imprisonment. He left a Mr Mabiya in control of the property while he was in prison. When he was released from prison during 2004, he found the applicant in occupation of the property as a tenant.
 - e. The applicant's evidence before the adjudicator was that she never held a permit from the local council to occupy the property, but was a tenant there since 1999, paying R500.00 per month to Mr Mabiya. She testified that Mr Pule ceded his rights to the property to her 2003 in terms of a written cession.
 - f. It appeared that the records of the local municipality had not been updated pursuant to the aforesaid exchange agreements as far as occupation permits were concerned, but the accounts for municipal services presented to the tribunal indicated that the account was in the first respondent's name in respect of the subject property, and in Mr Pule's name in respect of Stand 5757 Sekhotga Ext 9. This supported the existence of the exchange agreement, and that it had been implemented by the first respondent and Mr Pule.
 - g. By the time Mr Pule allegedly ceded his rights in the property to the applicant, he had no such rights to cede, and the cession failed to transfer such non-existing rights.[1]
- [12] Consequently, both adjudicator and the appeal tribunal held that the first respondent was entitled to be awarded the property, while the applicant had no right to the property whatsoever.
- [13] Due to the conclusion that I have reached, it is not necessary to make a finding about the correctness of this decision. Nevertheless, it would appear that the inquiries were conducted in a fair and competent manner, and that the findings were both supported by the facts and the law.

- [14] The first respondent's undisputed version is that the property was transferred to him during 2011 pursuant to the aforesaid process. The title deed of the property confirms that the property was transferred to the first respondent by the Ekurhuleni Municipality by virtue of the award to the first respondent on 19 October 2010, which is the date of the appeal tribunal's award in favour of the first respondent.
- [15] In a poorly constructed replying affidavit, devoid of any factual substance, the applicant admitted that the aforesaid processes took place but stated that she intended to take the tribunals on review but failed to do so.
- [16] Section 3(2) of the Act provides that a person aggrieved by the decision of an appeal tribunal, may within 30 days from the date he or she was informed of the appeal tribunal's decision, appeal to a competent court. In terms of section 3(5) this appeal is to be dealt with as if it is an appeal from the Magistrates' Court.
- [17] The applicant did not lodge an appeal against the award in favour of the first respondent.
- [18] It is trite law that a court order or an administrative decision remains in force until set aside. [2] The Ekurhuleni Local Municipality clearly considered itself bound by the decision of the adjudicator and appeal tribunal, with the result that it intended to transfer the ownership of the property to the first respondent. On the other hand, the first respondent intended to take transfer. Consequently, there was clearly a real agreement (saaklike ooreenkoms) for the transfer of the property to the first respondent. In terms of our abstract system of transfer of property, what is required for a valid transfer is a real agreement (i.e. an agreement with the intention to pass transfer) and transfer in the Deeds Office. Importantly, the real agreement should not be equated with the underlying causa which creates personal rights (verbintenisskeppende ooreenkoms - for instance a sale agreement) and defects in the underlying agreement do not vitiate the transfer. Only if the real agreement is invalid the ownership will not pass, despite registration of ownership.[3]
- [19] No case has been made out by the applicant that the real agreement resulting in the transfer of ownership to the first respondent was invalid, nor that there was any other defect in the process of transfer in the deeds office. To the contrary, the first respondent's ownership of the property is, on the facts before the court, unassailable.
- [20] The application must, therefore, fail and costs should follow the result. It will be appropriate for costs to be on Scale "B" to the extent that costs on that scale had been incurred by the first respondent.
- [21] Consequently, the following order is made:

ORDER

1. The application is dismissed; and
2. The applicant is ordered to pay the costs of this application on Scale "B".

DAWID MARAIS

ACTING JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

Date of hearing: 28 November 2024 Date of judgment: 17 January 2025 For the Applicant:
Advocate D V Nxumalo Instructed by Khoza and Matsepe Inc For the Respondent: Advocate S
Mchasa Instructed by Nentswuni and Associates

[1] The adjudicator in essence applied the maxim “*nemo plus iuris ad alium transferre potest quam ipse habet*”.

[2] Oudekraal Estates (Pty) Ltd v City of Cape Town

[2004] 3 All SA1(SCA)

[3] Legator McKenna Inc. v Shea 2010

(1) SA 35 (35) at paragraph [22] and see Hlongwane v Moshooliba 2018 JDR 0689 (GJ)

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