

SOUTH AFRICA / JUDGMENT

Twala and Another v Kwababa and Others [2023] ZAGPPHC 175; 60705/2021 (8 March 2023)

[2023] ZAGPPHC 175

COURT

North Gauteng High Court, Pretoria

BEFORE

Makhoba

CASE / FILE NUMBER

60705/2021

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Policy**IN****THE HIGH COURT OF SOUTH AFRICA****GAUTENG DIVISION,****PRETORIA****CASE NO. 60705/2021**

REPORTABLE:

NO

OF

INTEREST TO OTHER JUDGES: NO

REVISED:

NO

08/03/23

In

the matter between:

TWALA
NOMAWUSHE
CAROLINE
1st Applicant
SIBIYA
MAGGY NOMTHANDZO
2nd Applicant
AND
KWABABA
NOMPOTAWANA WINNIE
1st Respondent
ZIKODE
MARTINA
2nd Respondent
GAUTENG
PROVINCIAL DEPARTMENT
OF
HUMAN SETTLEMENT
3rd Respondent
REGISTRAR
OF DEEDS
4th Respondent

JUDGMENT

MAKHOBHA J

- 1) This is an application to cancel and set aside the transfer and registration of the deed of transfer number [...], which deed holds the property known as Erf [...] Z [...] street, Daveyton Township Benoni, Registration division IR province of Gauteng.
- 2) The first, second applicants and 1st respondent are biological sisters. The first applicant resides at No: [...] T [...] Drive Maphupheni section Etwatwa Daveyton

Gauteng province.

- 3) The second applicant is NOMTHANDAZO MAGGY SIBIYA (born KWABABA) an adult female person of full legal capacity, who currently resides at No: [...] Z [...] street, Daveyton Township Benoni Gauteng Province.
- 4) The first respondent is NOMPOTSWANA WINNY KWABABA currently resides at No: [...] Z [...] street, Daveyton Township Benoni. Gauteng Province
- 5) The second respondent is MARTINA ZIKODE currently resides [...] Z [...] street, Daveyton Township. The second respondent is the current registered owner of the property, it appears from the deed search that the second respondent purchased the property from the first respondent and the “property” was registered in her name on the 15th of November 2021

- 6) The third respondent is GAUNTENG DEPARTMENT OF HUMAN SETTLEMENT, a Government department that derives its mandate and responsibilities from Section 26 of the constitution of the Republic of South Africa Act 108 of 1996 and section 3 of the Housing act 107 of 1997, read with approved policies and Chapter 8 of the National Development Plan 2030: "Our future make it work" of 15 August 2012 on sustainable human settlement, with its principal place of business situate and No:37 Pixley Ka-Seme Street, Marshalltown, Johannesburg
- 7) The fourth respondent is the REGISTRAR OF DEEDS, Johannesburg Gauteng, a juristic person registered in terms of the laws of the Republic of South Africa, an authority for the registration in terms of the laws of the Republic South Africa, an authority for the registration, management and maintenance of property registry in the Republic of South Africa, with its principal place of business situate at 208-212 Marble Towers, Corner Jeepe and Von Weiligh Streets, Johannesburg. Gauteng Province
- 8) The first, second applicants and first respondent are siblings whose parents are Emily and Caiphus Kwababa. In 1979 Caiphus Kwababa passed on and Emily Kwababa married Stephen Khumalo. Thus, Stephen Khumalo became a stepfather to both the applicants and the first responders.
- 9) Stephen Khumalo was allocated a house no: [...] Z [...] street, Daveyton Township by the east Rand Bantu Affairs Administration Board the three sisters and their mother moved in with their stepfather namely Mr. Stephen Khumalo
- 10) The first applicant got married and Mr Stephen Khumalo (stepfather) granted the 1st applicant and her husband a lodger's permit. First applicant her husband Mr Twala resided with the 2nd applicant, 1st respondent and their mother and stepfather Mr Khumalo at no: [...] Z [...] street.
- 11) During 1991 Emily Khumalo their mother passed on. In 1992 Mr Khumalo their stepfather also passed on. The 1st applicant and her family moved out and settled in Etwatwa Daveyton. The 2nd applicant and the 1st respondent remained in their stepfather's house.
- 12) The 1st applicant then discovered that the 1st respondent had sold the stepfather's house to the 2nd respondent and the house was registered into the 2nd respondent's name on the 10 September 2021
- 13) It is common cause that the property known as Erf [...] Z [...] Street, Daveyton Township which was occupied by Stephen Khumalo and his wife have since been sold by the 1st respondent to the 2nd respondent.
- 14) The issue is whether the sales agreement was entered into erroneously or fraudulently, if that is the case, the sale agreement should be cancelled and set aside.

- 15) The applicant submits that all three siblings were listed as dependants under their stepfathers permit (Mr Khumalo). However, this permit can't be located. The exclusion of the applicants by the 1st respondents in dealing with the property, violated the 1st and the 2nd Constitutional Rights to housing in terms of section 27 of the constitutional Act 108 of 1996 and the provisions of Gauteng Housing Act 6 of 1998 in particular section 24A and 24B.
- 16) The applicants further submit that the property in question is the parental house and not the property of the 1st respondent. The relief Sought is opposed by the 1st respondent on the following ground.
 - 16.1 she was granted a lease of the house by the municipality therefore the applicants do not have *lucus standi*
 - 16.2 Stephen Khumalo did not formally adopt his stepdaughters namely the first second and first respondent. The only beneficiaries of Stephen Khumalo's estate are his biological children.
 - 16.3 The applicants do not reside in the said house they are both married and stay in their respective houses.
- 17) It is common causes that the house was owned by the then east Rand Buntu affairs administration board which was responsible for the issuing of various occupational and residential permits to individual and their families.
- 18) The right to such properties is known governed by the conversions of certain rights into leasehold or ownership act 81 of 1988 amended in 1993.
- 19) Regulation 17 (2) (a) of the act reads as follows.

"if a holder of a site or residential permit dies after the application of these regulations the site or residential permit lapse ipso facto"
- 20) The applicants cannot dispute that house number: [...] Z [...] Daveyton Township was a property of the municipality and after the death of Stephen Khumalo the house was leased to the first respondent.
- 21) It is again common cause that the house was on 4th March 2002 sold to the first respondent by the Ekurhuleni Metropolitan municipality.
- 22) Since the applicants and first respondents were not legally adopted by Mr Stephen Khumalo therefore they have no rights to inherit from his estate. When Mr Khumalo died his rights to the property lapsed ipso facto and the first respondent had all the right to occupy the property
- 23) In my view the house number: [...] Z [...] St. Daveyton Township was properly and rightly sold to the second respondent.
- 24) Again, it is my view that the applicants failed to make out a case for the relief they are seeking.

25) I make the following order:

25.1 The application is dismissed with costs.

D. MAKHOBHA

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

APPEARANCES

For the Plaintiff: Adv EM Tshole

Instruction:

Thulisile P Maimela Attorneys

For the Defendant: Adv N Zwane

Instructed by:

Thabang Mashigo Attorneys Inc

Date heard:

27/02/2023

Date delivered: 08/03/23

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