

**IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG
(REPUBLIC OF SOUTH AFRICA)**

CASE NO: 2229/2011

In the matter between:

LINDIWE NYANDENI MAKHUBO
KENNETH MAHLOKOHLA

First Applicant
Second Applicant

and

GIFT MALULEKE
THE STADARD BANK OF SA LTD
DIRECTOR-GENERAL
GAUTENG PROVINCIAL NO
REGISTRAR OF DEEDS, JOHANNESBURG
SARAH PHETHELAPHI SHIPHILANE

First Respondent
Second Respondent

Third Respondent
Forth Respondent
Fifth Respondent

SUMMARY OF JUDGMENT

NF KGOMO J

- [1]. The first and second applicants brought an application to this Court to set aside the transfer order of immovable property known as or situated at 1428 Key Drive, Jabulani in Soweto. Initially Harriet and Benjamin Dlamini were granted occupation rights to the property and became holders of the land right. A certificate to confirm the above was issued in terms of regulations 8 of the Regulation Governing the Control and Supervision of “Urban Bantu Residential Areas and related Matters on 20 September 1980.

The first applicant (Lindiwe Nyandeni Makhubo) is the grandchild of Benjamin and Harriet. Benjamin passed away in 1970, hence a new certificate depicting Harriet as the holder was issued on 16 June 1971.

Kenneth Mahlokohla the second applicant is the son of Harriet and the uncle of the first applicant. Both have been staying in or occupying the property since their birth to date.

After the death of Benjamin Harriet started over-indulging in the use of intoxicating drinks and became mentally unstable as a result. She was admitted at mental institution (Sterkfontein Mental Hospital) on numerous occasions, which did not make her reduce her misuse of alcohol.

[2]. Sipho Michael Motha was an employee of Soweto City Council as a clerk, during the times material to the happening of deeds that precipitated this application. He passed away on 24 April 2003. Unbeknown to his own wife and executrix of his deceased estate Sarah Shipalane (fifth respondent), Motha had contrived to have a string of properties in Soweto registered in his names, among others this property situated at 1428 Jabulani.

[3]. During 1983 Motha evicted Harriet, Constance, Cynthia, Kenneth and the first applicant from the property without any reasons. The property was still registered in the names of Harriet at the time. They (family) returned to the property through the help of an attorney.

[4]. It later transpired that the property has been transferred to Motha by the Deeds Department on 24 February 1999. In terms of the Conversion of Right to Leasehold or Ownership Act, 1988, more had happened and that property is in the process of being transferred to Gift Maluleke of Manzini attorneys (first respondent). It is clear from the papers filed herein that there was full scale fraud from the beginning as far as alienation of this property is concerned. Motha used his position at his workplace to commit fraud in the Department

which consequently deprived lawful occupiers of property of their rights of occupation.

- [5]. For all intents and purposes the law in this case was circumvented by fraudulent activities which if allowed to remain in place would amount to gross injustice to the applicants. The situation should be normalise.

[6] The next question is whether or not the applicants have shown sufficient reasons to escape the effect of the rules that requires proceedings of this nature to be brought within a reasonable time. The applicants have been in and out of the offices at the Gauteng Department of Housing or Town or City Council trying to have the discrepancies inherent in the transfers corrected but did not get any joy. Instead, officials of Housing Department or City or Town Council went ahead and authorised the controversial transfers and validated non-existent sales to third parties.

[7] It is so that the applicants are entitled to acquire ownership of the property. An inquiry is a pre-requisite in terms of the applicable law.

After pursuing all the papers filed of records herein, listening to the argument and considering the matter, the following was made an order of the Court:

1. The transfer of the immovable property, namely, Erf 1428, Key Drive, Johannesburg, Soweto, from the Province of Gauteng to Sipho Motha and

/or all subsequent transfers is/are hereby set aside and declared null and void and/or cancelled;

2. The Registrar of Deeds, Johannesburg is ordered to cancel the tittle deed or Deed of Transfer T11950/1999 involving Sipho Michael Motha and revert of ownership of the property of the Gauteng Provincial Government;
3. All other subsequent transfers of the above property are also declared null and void and cancelled;
4. The Director General of or for the Department of Housing, Gauteng Province is directed to hold an inquiry in respect of this property i.e. Erf 1428 Key Drive. Jabulani, in terms of section 2 of the Conversion of Certain Rights Act to declare, if need be that the occupiers in respect of the Erf is owner thereof;
5. The second respondent is ordered to pay the costs of the applicant.