In the matter between:

SEBATANA, GORDON	**APPLICANT**
and	
MANGENA, MICHAEL	**FIRST RESPONDENT**
MANGENA, BRENDA JABULILE	**SECOND RESPONDENT**
CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY	**THIRD RESPONDENT**
THE DIRECTOR-GENERAL FOR THE DEPARTMENT OF LOCAL GOVERNMENT AND HOUSING, PROVINCE OF GAUTENG	**FOURTH RESPONDENT**
THE MEC FOR THE DEPARTMENT OF LOCAL GOVERNMENT AND HOUSING, PROVIDENCE OF GAUTENG	**FIFTH RESPONDENT**
REGISTRAR OF DEEDS (JOHANNESBURG)	**SIXTH RESPONDENT**

SUMMARY

SNYCKERS AJ

The applicant's late mother ("the mother") had been issued with a residential permit, with respect to an erf in Naledi, Soweto, under Regulation 7 of the Regulations Governing the Control and Supervision of an Urban Bantu Residential Area and Relevant Matters GN1036 of 1968. The mother passed away in 1991. The applicant, an intestate heir of the mother, who had been living on the erf since childhood, discovered in 2013 that his nephew (the first respondent) had procured the certification of ownership in the erf in his name and that of his wife in community of property, the second respondent, in 1993, and formal registration of transfer of title into their names in 2001. The applicant alleged this to have occurred unlawfully and without his knowledge, and sought an order cancelling the Title Deed, and directing an inquiry to be held in terms of section 2 of the Conversion of Certain Rights into Leasehold or Ownership Act

81 of 1988 (“the Conversion Act”), to determine title to the erf. The first and second respondents contended that title had passed to them pursuant to an inquiry held under section 2 of the Conversion Act and that, although it was conceded that the applicant ought to have been part of such inquiry, it was now too late for the applicant to challenge the outcome, and he had not pursued the relevant statutory rights of appeal. The respondents also contended that the applicant ought to have been aware of the facts and would have become so aware had steps been taken to wind up the mother’s deceased estate.

The Court held that the common cause premise, that section 2 of the Conversion Act applied to the residential permit issued to the mother, was misconceived. Unlike rights granted in respect of so-called “affected sites”, residential permits granted under Regulation 7 were not subject to being converted into leasehold and ownership pursuant to inquiries under section 2 of the Conversion Act. Instead, these permits became statutory leases with the relevant municipality pursuant to section 6 of the Conversion Act, and this occurred *ex lege* – not pursuant to, or as determined by, an inquiry. In light of the assignment of the Conversion Act to the provinces, the interaction between these provisions and the relevant Gauteng legislation was considered, in particular the interaction between the statutory leasehold created *ex lege* and the adjudication process under the Conversion Act as regulated in Gauteng. The interaction between the statutory lease right and the provisions of the Upgrading of Land Tenure Rights Act 112 of 1991 was also considered.

On a review of the relevant authorities, the issue not having been decided before, the court held that the statutory lease created by section 6 fell into the mother’s deceased estate. The applicant, as intestate heir, had *locus standi* to challenge the transfer of ownership in the erf, despite the fact that he was not asserting an entitlement to ownership in the erf, nor would the statutory lease confer such ownership.

It was held that on the papers the transfer occurred without lawful basis. It could not be held that there had indeed been an inquiry, and in any event there could not have been a lawful basis for any such inquiry under section 2.

The question arose whether the applicant could seek the cancellation of the Title Deed without first reviewing any underlying administrative action in terms of which the transfer was effected. There was support for the view that there was no relevant underlying administrative action, but in any event the challenge could in the circumstances be treated as in essence a review of any such underlying administrative action.

The question of delay was considered both from the point of view of prescription and from the point of view of unreasonable delay in setting aside official acts on review. As for prescription, it was doubted whether prescription under the Prescription Act 68 of 1969 was the correct rubric, but held in any event that Prescription had not been raised properly in the papers, and had it been, the papers supported the application of exceptions under the Prescription Act. As for unreasonable delay in a review, although an extremely long period of time had passed, this by itself was not in the circumstances sufficient to preclude reasonable ignorance from excusing such delay, especially since there was no suggestion that the official act in question had entrenched consequences beyond the immediate private interests of the parties involved.

In the circumstances the Court granted an order cancelling the Deed and declaring the statutory lease rights to have fallen into the mother's deceased estate, to be administered in accordance with the provisions of the Intestate Succession Act 81 of 1987.