

REPUBLIC OF SOUTH AFRICA



**GAUTENG LOCAL DIVISION
JOHANNESBURG**

CASE NO. 42116/2013

- (1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

DATE

SIGNATURE

In the matter between:

FILI PHILEMON MEDUPE

First Applicant

MAISO ESME MEDUPE

Second Applicant

**THE DIRECTOR-GENERAL OF THE DEPARTMENT
OF HOUSING, GAUTENG PROVINCE**

Third Applicant

And

EPHRAIM MKHITSHWA SITHOLE

First Respondent

DUDUZILE ELIZABETH SITHOLE

Second Respondent

THE REGISTRAR OF DEEDS

Third Respondent

JUDGMENT

REDMAN AJ

[1] The first and second respondents are the registered title holders of the property described as erf 3..... R..... Extension 2 Township M..... City ("**the property**") which they hold in terms of a title deed registered in their names (being title deed no. T.....).

[2] The applicants seek an order directing the Registrar of Deeds to cancel the aforesaid title deed and re-transfer the property to the Provincial Government of the Province of Gauteng being the original owner thereof.

[3] It is common cause that during December 1997 the first and second applicants took occupation of a portion of the property and erected a shack thereon. At that stage the property was a vacant stand and the first respondent was elderly, unemployed and of ill health. Around the time of taking occupation of the property, the first applicant had made application to the Mogale City Municipality for an RDP house.

[4] Some years later, in 2003, the first and second respondents moved onto a portion of the property. During the period 2003 to 2006, the first and second applicants and the first and second respondents lived alongside each other on the property and it transpires that both the first and second applicants and the first and second respondents had made application to the local authorities to acquire greater rights in the property. Both the first and second respondents and the first and second applicants asserted an entitlement to the property.

[5] From the correspondence addressed by the Mogale City Local Municipality ("**the Municipality**") it emerges that on 3 November 2005 the adjudication committee of the Municipality had resolved the dispute between the parties and allocated the property to the first and second applicants. Upon allocating the property to the first and second applicants, the municipal

authorities directed the first and second respondents to relocate to a property situated in Rietvallei Extension 3A. This direction followed upon an investigation having been conducted and a report having prepared by the municipal authorities in respect of the dispute.

[6] In December 2007, a meeting was held between the first and second applicants, the first and second respondents, a member of the mayoral committee (Housing), the ward councillor and housing officials of the Municipality. At the meeting it was determined that the first and second respondents should vacate the property and relocate to erf 5..... R..... Extension 3A (a property which had purportedly been allocated to the first and second respondents). Pursuant to this meeting a letter was addressed by the Municipality to the first and second respondents requesting them to relocate to the new site. Despite the aforesaid requests, the first and second respondents remained on the property.

[7] On 9 March 2009 the MMC for Housing of the Municipality addressed a letter to the Manager of Housing confirming that the decision to allocate the property to the first and second respondents still stood and directing the Housing Department to implement the allocation as a matter of urgency.

[8] During 2010 the first applicant completed documentation prepared by the Housing Transfer Bureau to facilitate the transfer of the property into his name. In addition, during the course of 2011 and 2012 the applicant lodged further documentation with the Department of Local Government and Housing of the Gauteng Province.

[9] An adjudication process was thereupon commenced by the Department of Housing Gauteng (presumably under section 24A of the

Gauteng Housing Act, 6 of 1998)¹. During the course of the adjudication process it was discovered that the property had already erroneously been transferred to the first and second respondents.

[10] It is the applicants' case that the transfer of the property into the names of the first and second respondents was made in error and prior to the conclusion of the adjudication process. The transfer of the property had taken place without any reference to, or consideration of, the representations and submissions which had been made by the first and second applicants and the decisions which had been made by the Municipality.

[11] The application is brought not only by the first and second applicants but also by the Director-General of the Department of Housing, Gauteng Province who is described as the "officer responsible for housing matters in terms of the Conversion of Certain Rights into Leasehold or Ownership Act, 81 of 1988 or under the Gauteng Housing Act, 6 of 1998".

[12] Sibusiso Raymond Dube, who is described as the Director of the Assets Disposal and Regularisation Directorate of the Department of Housing Gauteng Province, confirms in an affidavit that an error occurred in the registration of the property into the names of the first and second respondents. He confirms that there were two conflicting claims and accordingly the matter should have been referred to adjudication. Dube also

¹ Section 24A of the Gauteng Housing Act provides as follows:

"(1) The Department is authorised to adjudicate on disputed cases that emerge from housing bureaus established for the transfer of residential properties, by Premier's Directive in terms of section 171 of the Local Government Ordinance, 1939 (Ordinance 17 of 1939) and disputed cases that emerged from the transfer of residential properties in terms of the Conversion of Certain Rights in Leasehold or Ownership Act, 1988 (Act 81 of 1988).

(2) The MEC shall ensure that the transfer of residential properties to individuals determined to be lawful beneficiaries in terms of this Act.

(3) The Department shall deal with disputed cases through adjudication and appeal panels established in terms of section 24B. ..."

confirms that the resolution and recommendations of the Municipality should have been taken into account before transfer of the property. The first and second respondents are unable to gainsay the allegations made by Dube and the fact that the transfer was effected in error.

[13] I am satisfied that the applicants have established that the transfer of the property to the first and second respondents was made in error and that the procedure prescribed in section 24A of the Gauteng Housing Act was not followed. I accordingly make an order in the following terms:

1. Title Deed No. T..... in respect of erf 3..... R..... E..... Township Mogale City in the names of Ephraim Mkhitshwa Sithole and Duduzile Elizabeth Sithole is hereby cancelled.
2. The Registrar of Deeds, Johannesburg is directed to cancel Title Deed No. T.....in respect of erf 3.... R..... Extension 2 Township M..... City;
3. The Registrar of Deeds, Johannesburg, after cancellation of the aforesaid Title Deed is directed to transfer the property known as erf 3... R..... E..... 2 T..... M..... City to the Provincial Government of the Province of Gauteng;
4. The first and second respondents are directed to pay the costs of this application.

N P G REDMAN
Acting Judge of the High Court

Heard: 29 August 2014
Judgment delivered: 03 February 2015
Appearances:

For Applicants: Adv L Memela
Attorneys: Gcwensa Attorneys

For Respondents:
Attorneys Langa Incorporated