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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NUMBER: 2019/32449

REPORTABLE: NO
OF INTEREST TO OTHER JUDGES: NO
REVISED: NO
27 SEPTEMBER 2021

In the matter between:

WESSIE, EMBAIKANGWE BEAUTY

Applicant

and

TWALA ATTORNEYS

First Respondent

GAEGANE, SARAH

Second Respondent

GAEGANE, ERNEST

Third Respondent

THE REGISTRAR OF DEEDS

Fourth Respondent

JUDGMENT

This judgment is handed down electronically by circulation to the parties or their legal representatives via email and by uploading same onto CaseLines. The handing down of this judgment is deemed to be 27 September 2021.

MOOKI AJ:

[1] The applicant seeks relief that a deed of sale be declared void; that the Registrar of Deeds be directed to cancel a title deed and process a new deed of transfer, on different terms. Lastly, the applicant seeks to have the first respondent (“Twala Attorneys”) ordered to incur the transfer costs associated with the new deed of transfer.

[2] Twala Attorneys oppose the application. The remaining respondents did not file affidavits.

[3] This application concerns property situate at Erf [...] Meadowlands Township Registration Division I.R., Province of Gauteng in extent 251 (two hundred and fifty one) square metres (“the property”).

[4] The applicant and the second respondent are sisters. The second and third respondents are married in community of property. Twala Attorneys drew a deed of sale in terms of which one half-share of the property was transferred into the name of the second and third respondents, under Title Deed No. [...] /2018, executed on 24 August 2018.

[5] The applicant says that Twala Attorneys failed to carry out her instructions in transferring one half-share of the property into the name of both the second and third respondents.

[6] The applicant is the registered owner of the property under Deed of Transfer No. [...] /1988. The applicant says she consulted with her sister, the third respondent (the brother-in-law) and Twala Attorneys in August 2017, during which she informed them

that she had resolved to donate one half-share of the property to her sister. The half share was to be excluded from community of property as between her sister and brother-in-law.

[7] Twala Attorneys prepared a deed of sale dated 15 August 2017. The applicant signed as “seller”, with her sister and brother-in-law signing as “purchaser”. The deed of sale records that the applicant sold one half-share in and to the property to her sister and brother-in-law. The property was valued at R290 000.00. Twala Attorneys were to effect transfer of the property.

[8] One half-share of the property was eventually registered in the name of the second and third respondents, under Title Deed No. [...]/2018.

[9] It appears that the applicant later lodged a complaint with the Law Society concerning Twala Attorneys in relation to the property. The Law Society referred the applicant to her attorneys of record.

[10] The applicant took advice from her attorneys of record, who informed her that Twala Attorneys should have prepared a deed of donation instead of a deed of sale regarding the property. The applicant says that the deed of sale does not reflect her true intention; including that she did not instruct that rights and title to the property be transferred to the second and third respondents, that she never received the amount of R290 000.00 that is said to be the purchase price.

[11] The applicant’s attorneys wrote to Twala Attorneys enquiring about the property. They requested proof of payment of the R290 000.00 purchase price mentioned in the deed of sale. They also requested a statement of account.

[12] Twala Attorneys replied on 23 April 2019, stating that the property was transferred at the instruction of the applicant. They continued that “Kindly note that your client fraudulently registered the property belonging to her mother into her own name.

To our knowledge her mother is still alive.” Twala Attorneys further stated that the purchase agreement was a simulated sale and that “It is appalling to receive correspondence requesting proof of payment of the purchase price.”

[13] The new attorneys replied to Twala Attorneys on 24 April 2019, recording that Twala Attorneys admitted that the sale agreement was simulated, “which in essence means that the actual sale never took place and the sale agreement referred to herein was merely a tool (“causa”) used to transfer the property.”

[14] Twala Attorneys deny that the applicant owned the property. They contend that the applicant and her sister advised that the property belonged to their mother, who moved into the property with them sometime in 1956. Their mother died on 27 March 2019. Twala Attorneys also contend that the property was transferred into the name of the applicant following her misrepresentation to the City Council.

[15] Twala Attorneys say that the sale was simulated. This followed a decision reached after consulting with the applicant, her sister, and brother-in-law. The decision was reached in resolving a family dispute in which the property was transferred into the name of the applicant. A simulated sale was entered into because a donation would attract tax; that the applicant never intended to donate her half-share to the second respondent, but intended to remedy her conduct; namely that the property was transferred into the name of the applicant.

[16] The applicant did not file a replying affidavit. The second and third respondents did not file affidavits. The effect then is that this application is a perversion. Attorneys representing the applicant will have been aware of the seriousness of averments by Twala Attorneys about their dealings with the applicant; they appreciated that the property is said to have been transferred into the name of the applicant on her misrepresentation to the city authorities; that the applicant admitted to a simulation, which simulation seemingly was aimed at addressing a family dispute as between the

applicant and her sister concerning the property. The averments by Twala Attorneys begged a response by the applicant.

[17] The Court will not lend its authority to a perversion by granting the relief sought by the applicant. Legal practitioners are officers of the Court. They are critical to the administration of justice. Legal practitioners hold a contract of trust with the public. Twala Attorneys, on the facts of this application, appear to have infringed that trust. They were aware that the transaction concerning the property was simulated. This notwithstanding, they allowed the processes of the courts, including the office of the Registrar of Deeds, to have the Deeds Office record that Title Deed No. [...]/2018 was occasioned by a deed of sale on the terms recorded in that document, including a “purchase price” of R290 000,00 when this was, to their knowledge, false.

[18] I direct that the Registrar bring this judgement, together with the entire record in this application, to the attention of the Legal Practice Council. The Legal Practice Council should consider whether Twala Attorneys (the firm) and any individual legal practitioner at that firm, conducted themselves in a manner befitting a legal practitioner.

[19] The Office of Registrar of Deeds serves an important public function. Its records must give the public confidence that its records reflect bona fide transactions. The Court cannot, for that reason, permit a title deed to remain a public record when such a title deed is a result of a simulated transaction. The integrity of the deeds office needs to be maintained. It is inappropriate that Title Deed No. [...]/2018 remain a public document that might be acted upon in future.

[20] I make the following order:

1. The application is dismissed;

2. The Fourth respondent is ordered to cancel title deed no. [....]/2018 in relation to Erf [....] Meadowlands Township Registration Division I.R., Province of Gauteng in extent 251 (two hundred and fifty one) square metres.

O. MOOKI

*Acting Judge of the High Court
Gauteng Local Division, Johannesburg*

Heard:	20 July 2021
Judgment:	27 September 2021
Applicant's Counsel:	L Matsiela
Instructed by:	Masike Inc. Attorneys
First Respondent's Counsel:	S. Nxumalo (Attorney)
Instructed by:	Twala Attorneys