

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

Case No: 40252/19

REPORTABLE: NO
OF INTEREST TO OTHER JUDGES: NO
REVISED.

6 December 2021

In the matter between:

MARIA DIANETSI TSOTETSI

(Identity Number: [...])

Applicant

and

ELIAS MZWAKHE MKHWEBANE

(Identity Number: [...])

First Respondent

SARAH NASINDA MKHWEBANE

(Identity number: [...])

Second Respondent

REGISTRAR OF DEEDS

Third Respondent

EKHURELENI METROPOLITAN MUNICIPALITY

Fourth Respondent

JUDGMENT

SK Hassim AJ

[1] This is an application to declare the sale of erf [...] Tsakane Extension 12 (***“the property”***) to the first and second respondents (collectively referred to as ***the respondents***) void and to set it aside. And consequent thereupon an order in terms of section 6(2) of the Deeds Registries Act, Act No 47 of 1937, directing the third respondent, the Registrar of Deeds (i) to cancel the title deed conferring title of erf [...] Tsakane Extension 12 to the respondents; and (ii) to cancel the endorsement on the title deed held in the applicant's name which reflects the registration of the deed conveying title to the respondents.

[2] It is common cause that at all relevant times, the applicant was the owner of the property and held title thereto under Deed of Transfer T68862/1999. It is also common cause that on or about 20 June 2018, the respondents purchased the property from a person impersonating the applicant for R100 000.00. The respondents paid the purchase price and on 18 August 2018, Deed of Transfer T31544/2018 conveying title to the respondents was registered.

[3]

3.1 The material facts are uncontested.

3.2 The property was acquired by the applicant from the Town Council of Brakpan during 1998 in terms of section 13(1) of the Upgrading of Land Tenure Rights Act, Act No 112 of 1991 and the transfer of title to the applicant was registered on 19 November 1999.

3.3 On or about 15 June 2018, the first respondent came across an advertisement published in a local newspaper on 15 June 2018 for the sale of several residential¹ properties, including the property. The first names of three individuals, together with a mobile number for each, appeared at the foot of the advertisement.

¹ They were identified as “RDP” houses.

3.4 The first respondent telephoned one of the named individuals who referred the first respondent to her colleague Sbu, whose name also appeared on the advertisement.

3.5 Sbu took the first respondent to view the property on 16 June 2018. The first respondent agreed to purchase the property for a consideration of R100 000.00. Sbu suggested a meeting at the office of his attorneys in Nigel on 18 June 2018. The first respondent arrived at the address given to him, but the building was located next to a taxi rank and was dilapidated. The first respondent cancelled the appointment and suggested a meeting two days later at the office of an attorney he knew (***“the respondents’ attorney”***).

3.6 On 20 June 2018, Sbu and the first respondent met with the respondents’ attorney at her offices and a deed of sale was drawn up. Also present was a woman who was introduced to the first respondent as being the seller, Maria Tsotetsi (***“the imposter”***). It is common cause that the woman was impersonating the applicant. The imposter handed her identity document, a copy of the title deed and a copy of the municipal account for the property to the first respondent’s attorney. She claimed that she had lost the original title deed². The imposter and the respondents signed the deed of sale and on the following day the first respondent deposited R106 762.35 into his attorney’s trust account.

3.7 The transfer of title to the respondents was registered on 18 August 2018 and the full purchase consideration was paid to the imposter.

3.8 The applicant had let the property to various tenants from 2006.

3.9 After the property had been transferred, the first respondent visited the premises to inform the tenant that he had purchased the property. The tenant contacted a woman who was referred to as Zanele during the call. While she was called Zanele her name was Maria Dianetsi Tsotetsi, the applicant.

3.10 The parties met at the police station where the applicant produced the original title deed and the first respondent amongst others the copy of the identity document which the imposter gave to the first respondent’s attorney when the deed of sale was signed. The identity document which had been given

²

The title deed reflected an endorsement that an application for a lost title deed had been granted.

to the respondents' attorney was fraudulent. While the identity number was the same as that on the applicant's identity document, the photograph was not of the applicant, the date when the identity document was issued differed, and the second name reflected in the identity document was **Bianetsi** and not **Dianetsi** which is the applicant's second name; the first letter of the applicant's second name was replaced with the letter "B".

3.11 The respondents have brought an eviction application in the Magistrate's court which has been stayed.

3.12 The imposter was Florence Mosela Mbonani and she together with one of the applicant's former tenants was arrested and charged.

[4] The respondents admit in the answering affidavit that the sale was vitiated by fraud however they assert that the applicant knowingly used her property to defraud unsuspecting buyers and that she was part of a larger syndicate. The statements are contradictory.

[5] The statement that the applicant was complicit appears to be based on the following:

5.1 The tenant called her "Zanele". The applicant admits that this was her nickname.

5.2 Sbu's name and mobile number appeared on the foot of a different advertisement ("**the different advertisement**") for the sale of houses in the same local newspaper which advertised the sale of the property in question. The name "Zanele" appeared on the different advertisement. There is no evidence that the person referred to was the applicant. The applicant has denied this.

5.3 The applicant had not laid charges promptly and had not challenged Sbu on the sale of the property.

5.4 The applicant went to the imposter when she discovered that the property had been sold. The applicant denies this. In any event, the first respondent does not appear to have first-hand knowledge of this.

[6] I am not persuaded that the applicant was complicit. The respondents' version is speculative. However, on a conspectus of the evidence the respondents have acknowledged that the applicant did not sell the property to them, the seller unlawfully impersonated the applicant, and they accept that the sale was fraudulent. On 11 October 2018, the respondents' attorney in a letter informed the applicant that the first respondent was amenable to having the sale "reversed by agreement". On the same day the respondents' attorney wrote a letter to Florence Mosela Mbonani demanding repayment of the amount of R106 762.35 based on her fraudulent representation that she was the owner of the property and presenting a fraudulent identity document. The statements in the letters are unequivocal acknowledgements that the transaction was fraudulent. In addition to this, in the answering affidavit, the respondents expressly say that the sale was vitiated by fraud.

[7] I find that the sale was fraudulent, and it must be set aside. It follows that the applicant is entitled to an order in terms of section 6(2) of the Deeds Registries Act. The applicant's attorneys, who act *pro bono*, have agreed to attend to the cancellation of the registration of the deed in the respondents' name.

[8] The applicant seeks costs of the application. I am not inclined to grant costs against any of the parties. The respondents have lost the purchase price and the prospects of recovery are probably naught. In any event the applicant has not incurred any costs since her legal representatives have acted *pro bono*. I must say though that I cannot fathom why the respondents opposed the application in view of the explicit admission that the sale was vitiated by fraud. Had it not been that the respondents were victims my approach to costs may have been different. However, in the present circumstances it will be inequitable to mulct the respondents with costs.

Order

In the result it is ordered that:

1. The sale of erf [...] Tsakane Extension 12 Township (“the property”) to the respondents in terms of a deed of sale signed by the respondents on 20 June 2018 is void and is set aside.
2. The transfer of title to the respondents under Deed of Transfer No. T31544/2018 is declared null and void.
3. The Registrar of Deeds is directed in terms of section 6(2) of the Deeds Registries Act, Act No 47 of 1937 to:
 - 3.1. Cancel Deed of Transfer No. T31544/2018; and
 - 3.2. Cancel the endorsement evidencing the registration of Deed of Transfer No. T31544/2018 on Deed of Transfer T68862/1999, being the deed under which the applicant held title.
4. There shall be no order as to costs.

S K HASSIM AJ

Acting Judge: Gauteng Division, Johannesburg

(electronic signature appended)

6 December 2021

This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties’ legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 7 December 2021.

Date of Hearing: 2 June 2021

Date of Judgment: 6 December 2021

Appearances:

For the applicant: Adv Z Hoosen

For the first and second respondents: Adv MJ Motsusi