REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

(1) REPORTABLE: ***NO***
(2) OF INTEREST TO OTHER JUDGES: ***NO***
(3) REVISED:

Date: ***20th July 2021*** Signature: _____

CASE NO: 25416/2019

DATE: 20TH JULY 2021

In the matter between:

ZWANE, TOBI ASLITA	First Applicant
MALOME, THEMBIKILE ESELINAH	Second Applicant
ZULU, JABULILE MINIE	Third Applicant
ZULU, MOSES	Fourth Applicant

and

DONGO, THABO WALTER	First Respondent
DONGO, THABO WALTER N O, **In his official capacity as duly appointed** **Executor in the Deceased Estate:** **DONGO, ANDILE**	Second Respondent
THE DIRECTOR-GENERAL OF THE **DEPARTMENT OF HOUSING, GAUTENG PROVINCE**	Third Respondent
REGISTRAR OF DEEDS, JOHANNESBURG	Fourth Respondent

Coram: Adams J

Heard: 19 July 2021 – The 'virtual hearing' of the application was conducted as a videoconference on the *Microsoft Teams* digital platform.

Delivered: 20 July 2021 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GLD and by release to SAFLII. The date and time for hand-down is deemed to be 10h00 on 20 July 2021.

Summary: Opposed application – final mandatory interdictory relief – section 6 of the Deeds Registries Act, Act 47 of 1937 – no legal basis for the relief claimed – applicants' cause of action not supported by the provisions of the said section – applicants' application refused –

ORDER

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(1) The first, second, third and fourth applicants' application against the first and second respondents is dismissed, with costs.

(2) The first, second, third and fourth applicants, jointly and severely, the one paying the other to be absolved, shall pay the first and second respondents' costs of this opposed application.

JUDGMENT

Adams J:

[1]. This is an opposed application by the first, second, third and fourth applicants for vindicatory relief in relation to their alleged ownership of immovable property in Diepkloof, Soweto ('the property'). The first and second respondents are the registered owners of the property, they having purchased same at a Sale

in Execution on 26 October 2017, pursuant to a Warrant of Execution issued by the Gauteng Division of the High Court, Pretoria, on 2 August 2017.

[2]. The property is four transfers removed from the applicants in that it has been registered in the names of no less than four persons since they last had an interest in the property, as a 'family home', in terms of and pursuant to a Residential Permit issued by the Government of the day on 6 September 1978. The applicants claim – rather belatedly and some thirteen years after the fact – that the transfer of the property on 28 February 2008 from the fourth applicant to Florence and Theophilu Bekinkosi Zulu was unlawful. The property was initially registered in the name of the fourth applicant, so the applicants claim, on the understanding that he would 'hold' the property as a 'family home' on behalf of the children of their late mother and father. He was supposedly not to treat the property as his own as he apparently did by selling the property to Mr and Ms Zulu during 2008.

[3]. The property was apparently on-sold from Mr and Ms Zulu to a Dumisani Cyril Mntambo after a foreclosure of the property, which was then registered in his name on 9 March 2012. Mr Mntambo thereafter sold the property to Mr Mfula Wonga, who took transfer of the property, in a transfer on the same day simultaneous with the registration of the transfer in the name of Mr Mntambo. It is against Mr Wonga whom Standard Bank obtained a judgment, together with an Order to specially execute against the property, whereafter the first and second respondents purchased the property at the subsequent Sale in Execution.

[4]. The applicants therefore apply for the vindication of the property. In their notice of motion, the applicants request that the title deed under which the property is held by the first and second respondents be cancelled and also for an order directing the Registrar of Deeds to re-register the property into their names.

[5]. The application is based on the provisions of section 6 of the Deeds Registries Act, Act 47 of 1937 ('the Act') for the cancellation of Deed of Transfer number T40835/2017 in favour of the first and second respondents in respect of Erf 13835 Diepkloof Township ('the property'). In terms of the said Deed of

Transfer, the transfer of the property into the names of Mr and Mrs Dongo was registered on the 14th of November 2017.

[6]. Section 6 of the Act provides as follows:

'6 **Registered deeds not to be cancelled except upon an order of court –**

(1) Save as is otherwise provided in this Act or in any other law no registered deed of grant, deed of transfer, certificate of title or other deed conferring or conveying title to land, or any real right in land other than a mortgage bond, and no cession of any registered bond not made as security, shall be cancelled by a registrar except upon an order of Court.

(2) Upon the cancellation of any deed conferring or conveying title to land or any real right in land other than a mortgage bond as provided for in subsection (1), the deed under which the land or such real right in land was held immediately prior to the registration of the deed which is cancelled, shall be revived to the extent of such cancellation, and the registrar shall cancel the relevant endorsement thereon evidencing the registration of the cancelled deed.'

[7]. The main difficulty with the application of the applicants is that it lacks a legal basis. Section 6 (2) of the Act expressly provides that, in the event of the cancellation of a deed, the previous deed shall be revived, which means that ownership of the property is to revert back to Wonga. What then would be the point of cancelling the Title Deed in question? The point simply is that there is no legal basis for the mandatory order prayed for by the applicants that the property be registered in their name. A further difficulty is that the property was sold to and transferred into the names of the first and second respondents pursuant to a court order, which has to date hereof not been rescinded and which therefore remains extant. The rhetorical question to be asked is how this court can grant an order at variance with another order of the High Court.

[8]. For these reasons alone, the applicants' application stands to be dismissed.

[9]. It is, in view of this conclusion reached by me, not necessary to deal with any of the other grounds of opposition raised by the first and second respondents. Suffice to say that, at first blush, there appears to be merit in a number of these defences, including the points *in limine*. In that regard, I have no doubt that the

applicants ought to have joined in these proceedings the likes of Standard Bank and Mr Wonga, as well as all of the previous registered owners of property, who clearly have a vested interest in this matter.

[10]. Moreover, as submitted by the first and second respondents, immovable property validly sold at a judicial sale in execution cannot, as a general rule, after registration of the property, be vindicated in terms of the *rei vindicatio* from a *bona fide* purchaser. In that regards see: *Oriental Products (Pty) Limited v Pegma 178 Investment Trading*[1], in which Shongwe JA at para 12 held as follows:

'[12] It is trite that our law has adopted the abstract system of transfer as opposed to the causal system of transfer. Under the causal system of transfer, a valid cause (*iusta causa*) giving rise to the transfer is a *sine qua non* for the transfer of ownership. In other words, if the cause is invalid, e g non-compliance with formal requirements, the transfer of ownership will also be void — … … Under the abstract system the most important point is that there is no need for a formally valid underlying transaction, provided that the parties are *ad idem* regarding the passing of ownership: *Meintjies NO v Coetzer and Others* 2010 (5) SA 186 (SCA).

[11]. The point is that the applicants do not even begin to address this issue in their application. I reiterate that there is no legal basis for the relief claimed by the applicants in this application.

[12]. In sum, there is no legal foundation for the applicants' application. It stands to be dismissed.

Costs

[13]. The general rule in matters of costs is that the successful party should be given her or his costs, and this rule should not be departed from except where there are good grounds for doing so.

[14]. *In casu*, I can think of no reason why I should deviate from this general rule and I therefore intend granting costs in favour of the first and second respondents against the first to fourth applicants.

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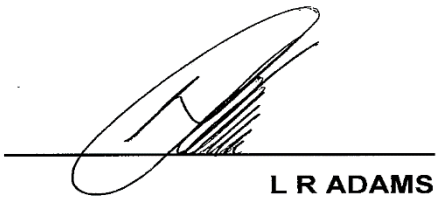
[1] *Oriental Products (Pty) Limited v Pegma 178 Investment Trading CC* 2011 (2) SA 508 (SCA)

Order

[15]. Accordingly, I make the following order: -

(1) The first, second, third and fourth applicants' application against the first and second respondents is dismissed, with costs.

(2) The first, second, third and fourth applicants, jointly and severely, the one paying the other to be absolved, shall pay the first and second respondents' costs of this opposed application.



L R ADAMS

Judge of the High Court
Gauteng Local Division, Johannesburg

HEARD ON:	19th July 2021 – in a 'virtual hearing' during a videoconference on the *Microsoft Teams* digital platform
JUDGMENT DATE:	20th July 2021 – judgment handed down electronically
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FOR THE THIRD AND FOURTH RESPONDENTS:	No appearance
INSTRUCTED BY:	No appearance