

REPUBLIC OF SOUTH AFRICA



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

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

05 July 2022

DATE

A handwritten signature in black ink, appearing to be "EJ", is written over a dotted line.

SIGNATURE

Case no. 2020/05024

In the matter between:

FRIDA TLADI (NEE SEOME)
(ID NO: 540830 0830 080)

1st Applicant

EPHRAIM SEOME
(ID NO: 520407 5304 082)

2nd Applicant

MARTHA JOHANNA KEDISALETSI MOFUBE
(NEE SEOME) ID NO: 560424 0802 086)

3RD Applicant

OFNIEL PETER MODISE
(580202 5687 082)

4th Applicant

And

CITY JOHANNESBURG METROPPOLITAN MUNICIPALITY

1ST Respondent

EXECUTORS (RAMOERANE ABIZETTE SEOMA)

2nd Respondent

**MAAJE CHRISTINA SEOMA
THE DIRECTOR GENERAL**

3rd Respondent

FOR HUMAN SETTLEMENT(PRETORIA)

4th Respondent

**THE MEC FOR HUMAN SETTLEMENT
(GAUTENG PROVINCE)**

5th Respondent

**THE REGISTRAR OF DEEDS
(JOHANNESBURG)**

6th Respondent

THE MASTER OF THE SOUTH GAUTENG HIGH COURT

7th Respondent

Coram: Dlamini J

Date of hearing: 11 April 2022 – in a ‘virtual Hearing’ during a videoconference on Microsoft Teams digital platform.

Date of Judgment: 05 July 2022

This judgment is deemed to have been handed down electronically by circulation to the parties’ representatives via email and shall be uploaded onto the caselines system.

JUDGMENT

DLAMINI J

- [1] This is an application wherein the Applicants seek an order reviewing and setting aside the decision of the Housing Appeal Tribunal Judgment in respect of property number 4361 Adams Street Orlando East Soweto(the disputed property).

[2] In their notice of motion, the Applicants seek the following orders;

- 2.1 That the Agreement of Sale made and entered into by and between the West Rand Administration Board, predecessor of the City of Johannesburg Metropolitan Municipality and the second Respondent in respect of property known as Erf 4361 Adams Street Orlando East Soweto be declared invalid, and same be reviewed and set aside
- 2.2 That the Deed of Sale made and entered into by and between the City Council of Soweto and Ramoerane Abizett Seoama be declared invalid and same be reviewed and set aside
- 2.3 An Order directing that the judgment of the pre appeal adjudicator Mr I. Vally of the Housing Department dated 20 February 2018 in respect of property 4361 Adams Street Orlando East be upheld.
- 2.4. An Order directing that the judgment of the Appeal Housing Tribunal dated 28 January 2020 in respect of property 4361 Adams Street Orlando East be set aside.

[3] The disputed property was owned by the erstwhile Soweto City Council. On 12 July 1961, in terms of its regulations the Council issued a residential permit to the biological mother of the Applicants, Catherine Matlakala Ramogari. Mrs Ramoogari, subsequently passed away in 1966. After the death of the Applicant's mother, the Council cancelled their late mother residential permit. Due to the fact that the Applicants were at that time minors, the Council could not as per its regulation issue a residential permit in their name. Instead the Council issued a new residential permit in the name of the second Respondent, an uncle to the Applicants.

- [4] In June 1982 the second Respondent entered into a purchase and sale agreement of the disputed with the West Rand Administration Board. The second Respondent passed away in April 1993. In July 1994 the third Respondent (wife to the second Respondent) concluded a deed of sale in respect of the disputed property with the Soweto City Council. The property was then transferred into the name of the third Respondent.
- [5] On 11 March 1997 the fourth Respondent issued a notice of enquiry in terms of Section 2 Conversion of Certain Rights into Leasehold or Ownership Act¹, (the Conversion Act), to be held on the 26 March 1997. It is important to note that despite proper service of this notice of enquiry on the fourth Applicant, the fourth Applicant did not attend this enquiry.
- [6] On 8 December 2015 the Applicants launched an application in this Court to set aside the transfer of the disputed property to the third Respondent. This application was successful, the Court set aside the transfer and referred the matter back to the Housing Department for determination in terms of Section 2 of the Conversion Act. This new enquiry was held on the 20 February 2018. This enquiry chaired by Adjudicator I.Vally, ruled in favour of the Applicants. The third Respondent passed away in August 2017. The beneficiary of the estate of the late third Respondent launched an appeal against this decision.
- [7] On 29 January 2020, upon hearing the matter, the Appeal Tribunal upheld the appeal and awarded the disputed property to the estate late second and the third Respondents. At the core of its decision, the Appeal Tribunal held that “ *the Respondents (Applicants herein) should have sought an order setting aside the certificate and or the agreement leading to the issue thereof in order for their claim to be sustainable*”. The Appeal Tribunal sought reliance for this proposition based upon the decision of the court in **Oudekraal Estate (Pty) Limited v City of Cape Town**², where the court essentially held that, where any legal act depends for its validity upon some official or administrative prior

¹ Act no 81 of 1988 as amended.

² 2004 (6) SA 222 (CSA)

act, such as a certification or adjudication. Then, if one wishes to attack the legal act itself for having been unlawfully procured or committed, one is obliged first to have the administrative act upon which its validity depends, set aside on review and one cannot simply ask the court to declare the legal act void or invalid without reviewing and setting aside the underlying administrative act.

- [8] The nub of the issue here is whether the certificate of occupation issued to the second Respondent is valid and whether the subsequent agreement of sale entered into between the third Respondent and the City Council of Soweto in 1994 is valid. Finally whether the decision of the Appeal Tribunal should be set aside.
- [9] The Applicants testified that when their mother passed away in 1966, all of them were still minors. A meeting was held between the Council and social workers, where it was agreed that the third Respondent (their uncle) be appointed their guardian and that he be issued with the residential permit and to hold same on their behalf until the eldest of them Ephraim Seome became of age and was able to take over the property. In sum the Applicants submit that based on the above agreement they approached the second and third Respondents and requested them to hand back the property to them without success. That the first, fourth and fifth Respondents have also failed and refused to issue Applicants with the residential permit over the property. Further that the sale of the disputed property to the second and third Respondent is unlawful and should be set aside. The Applicants finally avers that the Housing Appeal Tribunal did not acquaint itself with the facts of the matter and its decision should accordingly be dismissed.
- [10] For these submissions, the Applicants rely upon the decision of the court in **Moloi vs Moloi and Others**³. In my view reliance by the Applicants on Moloi is misplaced in that the facts therein differs from those in the present case. In **Moloi**, there was a formal minuted family meeting with the then Soweto City Council, wherein the Housing Committee of the Council resolved to transfer

³ (20175/2010, ZAGPJHC 275 (26 October 2012))

tenancy to Mr Henry Moloi. This resolution was in line with with the agreement and recommendations that was made by all the members of the Moloi family. In the present case however there are no minutes filled of the meeting between the applicants and the Soweto Ctiy Council. There is no resolution of the Housing Committee of the Sewoto Ctiy Council attached to the applicants pleadings in support of their allegation. The established facts are that the Soweto City Council was the owner of the property. In terms of the Black Administration Act⁴, it had the right to issue or cancel a certificate of occupation, to persons who were fit and proper , heading a family and had income. In the present case the City Council on merit decided to issue the certificate of occupation to the second Respondent. I agree with the second and third Responded submission that there is no evidence adduced before this court that City Council acted unlawfully or illegally in issuing the certificate. Further there are no affidavits attached to this application by the Applicants from anyone present at that meeting to support their claim.

[11] The Applicants avers that the disputed property was transferred to the second and third Respondents by misrepresentation and default and it was an error on the side of the City of Johannesburg Metropolitan Council to transfer the property to second and third Respondents as the whole process was fundamentally flawed.

[12] Here, the Applicants do not submit a shred of evidence to support these allegation. This court is not advised who committed the alleged misrepresentation. The alleged default is not explained by the Applicants. Also, there is no explanation on the nature and extent of this error that occurred on the side of the City of Johannesburg. These are just bald and unsubstantiated allegations and they fall to be dismissed.

[13] Furthermore, it is common cause that at the time the Second Respondent entered into the sale agreement with the West Rand Administration Board in 1982, all the Applicants were majors. The second and third Respondents

⁴ Black administration act 38 of 1927

correctly point out that no action was taken by them to challenge this Agreement of Sale. In fact, the Applicants are merely trying to cure their previous application , wherein they did not challenge the validity of the agreement of sale as held by the Appeal Panel upholding the ***Oudekraal decision***. This application also falls to be dismissed on the basis that there is no application for condonation explaining why this application was only launched now.

[14] In the light of all these circumstances , I make the following order.

(i) The Application is dismissed with costs.



DLAMINI J

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

Date of hearing: 11 April 2022

handed down on: 05 July 2022

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