

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 28224/2020

DATE: 2022-05-05

REPORTABLE: NO.

OF INTEREST TO OTHER JUDGES: NO.

REVISED.

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In the matter between

PULANE RUTH MONGALE & OTHERS

Applicant

And

TSILI SHAKUNG & OTHERS

Respondent

J U D G M E N T

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VICTOR J:

The applicant in this matter has brought an application for the eviction of the first to third respondents. A court order was issued on 3 August 2021 in terms of Rule 42 of the PAJA Act. The parties are Ms Pulane Ruth Mongale who states that she is the registered owner of the property situated at [....] T [....] Drive, K [....] 2 at Mogale City.

And she also represents the second applicant, her deceased husband who passed away on 10 February 2004 and she is the lawfully appointed representative by the Master and the beneficiary of his estate. Since his demise she applied and received a copy of the Letters of Authority.

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The certificate of leasehold shows and it is undisputed that she is the registered owner of the property and she is entitled to use the aforesaid property for residential purposes in terms of various statutes and regulations.

Attached to the Certificate of Title is a letter from the Mogale City Municipality, the fourth respondent herein and confirms that Mogale City has complied with the conditions referred to in section 50(5) of the Local Government Ordinance number 17 of 1939 and section 118 of Act 32 of 2000 and that a clearance certificate was provided.

- 10 Clearly Ms Mongale is also the person who is legally entitled to deal with the deceased's estate. The deceased's details in the letter of authority reflects the deceased's ID number, as well as the fact that he died on 10 February 2004. This is also confirmed by a death certificate.

Added to that is an abridged marriage certificate which shows that the deceased and the applicant were married. The date of their marriage was 5/5/1973. So they were married for a very long time before his death.

- 20 She describes in her affidavit that the first respondent is Ms Tsili Shakung, an adult female who presently resides on the property is residing there unlawfully. The second respondent is Ms Kiki Shakung, also an adult female whose details are not known to her, save that she too is residing on the property unlawfully.

She states that the first and second respondents are sisters and that they are in unlawful occupation. She also describes that there are other people occupying the premises and she refers to those as the third respondent and she does not know their further particulars.

She also cited the fourth respondent as the Mogale City Local

Municipality and it would seem that there has not been a response from them. She states that prior to 1998 and in particular around 1994 the second applicant and herself applied to the fourth respondent and were awarded the right of occupation.

A note- her affidavit incorrectly refers to the second respondent, what she means is the second applicant, the deceased in respect of whom she has the letter of authority and she says that they applied in 1998 and they were awarded the right of occupation of [....], T [....] Drive, K [....].

- 10 In 1998 they purchased a house in another part of K [....] and the house at T [....] Drive was for a while unoccupied. Much later after the passing of her late husband, she learned that there were unlawful occupiers at the property.

And then to her surprise, a letter was delivered by the then attorney, Mr Mothlalhedi and he indicated that her late husband had sold the property at [....] T [....] Drive and that he had paid an amount of R20 000 for the house which has been sold to him for the full amount of R25 000.

- 20 And that the difference of R5 000 would be paid at the end of February 1998 and that the house now belonged to him and that the house was sold *voetstoots* for that price. The letter is attached to the founding affidavit and it purports to be dated 11/01/1998 and it states as follows.

That the seller is JM Mongale, the deceased and quote the deceased's ID number. It is unclear to me whether that ID number is that of the deceased, but he appears to have been born in 1945 and the marriage certificate reflects his date of birth as 1943.

Be that as it may, it is unclear to whom that ID number relates and

the following is stated:

"I hereby declare that I, James Mongale sold the house to Mr MJ Shakung of [....] R [....] Road, K [....]..."

And he cites the ID number as [....] and that the house stand is number [....] T [....] Drive in K [....] and it is for a price of R25 000. The deposit of R20 000 has been paid and the balance will be paid at the end of February 1998 and that the house will be his house of Mr Jeremiah Shakung, the buyer is MJ Shakung, there are witnesses and then there is a signature on that letter that purports to be that of JM Mongale. It bears mention that right next to that signature is the word 'Mongale' clearly written in a different handwriting.

And whilst the Court is aware that the signature in question is in dispute, that of Mr Mongale and I note the writing, the written manuscript next to what purports to be the signature.

The applicant contends that the signature of her late husband is a forgery and her signature does not appear either as a witness or as a co-seller, because the house belonged to both of them and she points to her marriage certificate which is in community of property.

She submits that her signature should also have been attached as a co-seller and she contends that this letter does not meet the requirements as provided for in the Alienation of Land Act No 68 of 1981 as amended.

She makes the concession that before the passing of her husband, she kept a deposit of R20 000 which was in an envelope and which allegedly was paid to facilitate the sale and that at all material times they expected Mr Shakung to come back to fetch the R20 000 because the sale was not concluded.

They did not know where he was staying, all they knew that he was a businessman and that he was always on the road. She also points out that Mr Motlhahledi was a facilitator of the alleged sale and would often call her to his offices in K [...] to discuss the sale to his client and she states that she refused to agree to the authenticity of the signature when she attended at Mr Motlhahledi's offices.

At the time of her late husband's death in 2004, they had applied for a title deed for the property and it was only issued in the year 2008 when she was granted full title and ownership of the property. I have
10 already referred to the title deed and because it was issued after the death of her husband, it only bears her name on the property.

The respondent's case is that the amount was paid and that he disputes that the signature is a forgery and he contends that the written agreement dated 11 January 1998 shows that he purchased the property and that he is the rightful owner.

The point is also taken that one Mr Mpho Shakung who has a direct and substantial interest in the property was not joined to the proceedings and the respondent submits that that is fatal to the application. The respondent goes on to say that the sum of R20 000
20 was paid and that of course it has not been tendered back and there is still a balance of R5 000 outstanding.

The first to third respondents also confirm that they moved into the property in and around July 1998 after Mr Mpho Shakung had made the necessary repairs. Around 2008, that is 10 years later with the full knowledge of the written sale agreement and that Mr Mpho Shakung had performed his obligations, the applicant went and had the property registered in her name instead of transferring the property to Mr Mpho Shakung.

An issue raised is that the signatory to this purported sale agreement

has not personally taken steps, that is MJ Shakung, to have the property transferred into his name when he realised in 2008 that the property was incorrectly transferred to Ms Mongale, the first applicant. He also did not take steps at that stage to either have the transfer set aside or to demand his R20 000 back.

Mr Selala counsel on behalf of the applicant argued that that letter does not comply with the provisions of the Alienation of Land Act 1981, (the Act) in that the formalities were not complied with. In terms of section 21 thereof:

- 10 "No alienation of land after the commencement of this act shall, subject to the provisions of section 28 be of any force or effect, unless it is contained in the deed of alienation signed by the parties."

And of course in this case there is the clear indication that the applicant herself should have signed that letter. The further noncompliance with the formalities are referred to in section 6(1) of the Alienation of Land Act and in that regard the requirements are stringent.

- 20 The description of the land should be reflected, the names and addresses of the sellers, the date on which the sale was concluded and the conditions on which the purchaser would be entitled to take possession and occupation and what payments are to be made and the transfer of risk of the land passing to the purchaser.

And quite clearly then reliance on s 6(5) of the Act if for whatever reason the seller is unable after the date referred to in subsection 4 to tender transfer of the land against simultaneous payments of the amounts, that the purchaser may cancel the sale in which event the parties shall be entitled to the relief provided for in s 28(1) of the Act.

The applicant's counsel submits that there was noncompliance with many sections and subsections of the Act. In addition, reliance is placed on s13(1) of the Act, that within 30 days after the conclusion of the contract, the seller shall hand to the purchaser or send to him by registered post a copy of the formal sale agreement the seller is entitled to make any change and shall charge for making such copies and for the dispatch thereof.

10 Section 19(1) of the Act makes clear provision that if there is noncompliance by the seller or either party, the sale can then be cancelled. The first and second respondents defence is that they have been staying in the property for a long time, that there has been a non-joinder and they describe in detail what the payment terms were by Mr Mpho Shakung and that he allowed the respondents to reside on the property on a lawful basis.

In this case there are two directly contradicting versions, the Court therefore has to look at the evidence that is placed before it and in particular at any undisputed evidence and the case law is clear on that.

20 In this case the Court sees the certificate of registered title, the marriage certificate, the document of Titel from Mogale City Local Municipality where a clearance certificate was supplied and this must be weighed against the purported sale agreement which does not comply with the Alienation of Land Act.

For that reason then and the fact that the signature is disputed leads to the inevitable conclusion that the agreement was not properly concluded. A further very important legal aspect is that the applicant, having been married in community of property does not sign the purported agreement.

The order that I am going to make is that the first, second and third

respondents must be evicted and they must leave the property by no later than 30 September 2022. I have also been told that the respondents do have family where they can go and reside and in the light of the very lengthy eviction date, it gives the respondents ample opportunity to leave the property.

In addition, any claim that Mr MJ Shakung has for the return of his money, that is something that can be resolved either by agreement or then by way of further legal process that he wishes to institute.

10 I am going to ask Mr Selala to prepare a draft order in Word format for the eviction of the respondents, first, second and third by no later than 30 September 2022. That the respondents must pay the costs of the opposition.

VICTOR, J

JUDGE OF THE HIGH COURT

DATE: Signed 02 August 2022

Date Heard 25 April 2022

Date of Judgment: 05 May 2022

20 **Counsel for the Applicant: Adv D Selala**
Instructed by: Xiviti Attorneys

Counsel for the Respondent: Mr M Suping
Instructed by: Suping Attorneys