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REPUBLIC OF SOUTH AFRICA

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

CASE NUMBER: 2021/26962

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED NO

21/02/2022

In the matter between:

POLO ALETTA HADEBE

APPLICANT

And

KHATHUTSHELO CECILIA RAMBAU

1ST RESPONDENT

NDILENI JOSEPH MUNYAI

2ND RESPONDENT

FIRST NATIONAL BANK LIMITED

3RD RESPONDENT

DIRECTOR GENERAL: HOUSING: GAUTENG

4TH RESPONDENT

CITY OF JOHANNESBURG

5TH RESPONDENT

REGISTRAR OF DEEDS

6TH RESPONDENT

JUDGMENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand-down is deemed to be 10h00 on the 21st of February 2022.

DIPPENAAR J:

[1] The applicant seeks orders: (i) cancelling a title deed T [...], registered on 22 July 2010 in the name of the first and second respondents; (ii) directing the fourth respondent to cancel the said title deed and (iii) an order directing the sixth respondent to thereafter transfer the property [...], ("the property") into the late estate of Lieketseng Alida Tlisane ("the deceased"), together with ancillary relief. The first and second respondents oppose the application. None of the other respondents participated in the proceedings.

[2] The application concerns the applicant's claim to the property as last surviving child of the deceased, the erstwhile permit holder of the property, granted in July 1979. The deceased passed away on 24 August 1990. The facts span a period in excess of 40 years with many relevant events remaining unclear. The application involves certain Apartheid regulations pertaining to residential permits¹ and the Conversion of Certain Rights into Leasehold or Ownership Act² 81 of 1988 which empowers the Director General of the Department of Housing, the fourth respondent, to issue the right of ownership to permit holders to the land in townships. It also involves the Upgrading of Land Tenure Rights Act³ and the Gauteng Housing Act⁴.

[3] In summary, the applicant's case is that the property was, unbeknownst to her and without her consent, transferred into the name of her deceased brother, Mr Thabo

¹ Regulations governing the Controlled Supervision of an Urban Bantu Residential Area and Relevant Matters

² 81 of 1988

³ 112 of 1991

⁴ 6 of 1998

Hendrik Tlisane, who thereafter unlawfully disposed of the property without her consent in circumstances where they both held equal undivided shares in the property as beneficiaries of the deceased. On this basis, it is contended that the sale of the property was null and void and that the applicant is entitled to an order transferring the property into the estate of the deceased. Mr Thabo Hendrik Tlisane passed away on 12 December 2018. He had two sons who are not named and are not joined to these proceedings.

[4] It appears that the property was transferred under T [...] to Mr Thabo Hendrik Tsilane by the City of Johannesburg, the fifth respondent. The circumstances under which such transfer occurred are unclear. The property is presently registered in the name of the first and second respondents under title deed number T [...]. The first and second respondents purchased the property on 22 July 2010 from a Mr Amos Stephen Maluleke, who in turn purchased the property from Mr Thabo Hendrik Tlisane a day earlier on 21 July 2010. From the title deeds it appears that these transfers under T [...] and T [...] were effected simultaneously.

[5] The first and second respondents' case is that they are bona fide purchasers with unassailable title who purchased the property from Mr Maluleke pursuant to a valid contract of purchase with the assistance of an estate agent from Sethebi Realty and have lawfully owned and occupied the property since September 2010. A bond is registered over the property in an amount of R290 000 in favour of First National Bank Ltd, the third respondent. The sale agreements were not produced in evidence.

[6] The first and second respondents in addition: (i) challenged the applicant's *locus standi* as she failed to attach any documentary proof confirming her claim to be the daughter of the deceased and did not provide any proof that she is the executor to their respective estates; (ii) contended for material non joinders of Mr Maluleke and the sons of Hendrik Tlisane who have a material interest in the proceedings; (iii) characterise the application as a procedural and substantive folly, justifying the granting of a punitive costs order; (iv) claim the applicant's delay is inordinate, unreasonable and prejudicial and that her claim has prescribed.

[7] There are numerous factual disputes on the papers. For present purposes, it is only necessary to address one of these issues being the non- joinder of certain parties. There is merit in the contention that not all relevant parties have been joined to these proceedings. These include Mr Maluleke and the sons of Mr Thabo Hendrik Tlisane. In my view, the Master of the High Court should also be joined as a party as the estate of the deceased is involved. All these parties have a direct and substantial interest in these proceedings. It would be appropriate to direct the joinder of these parties⁵. Insofar as the identities of the sons of Mr Hendrik Tlisane are not disclosed on the papers, it would be appropriate to direct the applicant to take the necessary steps to effect their joinder.

[8] In considering the papers, considerable time was spent trying to piece together the available information presented by the parties which spans over a period from 1979 to the present. Neither the applicant nor the first and second respondents can be blamed for not having all the relevant facts at their disposal. This exercise left more questions than answers as there are many important and unexplained issues which were not addressed by the parties.

[9] The first and second respondents urged me to dismiss the application on the basis that no proper case for relief was made out. Considering all the relevant facts, I do not think that it would be in the interests of justice to do so.

[10] The application raises important constitutional issues pertaining to the right to ownership, succession, administration of estates and the interests of justice. It also raises important issues pertaining to application of the relevant principles pertaining to the transfer of ownership of immovable property.⁶

[11] In my view, it is apposite to follow the approach adopted by Mothle J in *Shai v Makena Family*⁷. The interests of justice demands that reports be obtained from the relevant government institutions which have access to the relevant records to fill in the

⁵ Matjhabeng Local Municipality v Eskom Holdings Ltd 2018 (1) SA 1 (CC) at 33D-E

⁶ Quartermark Investments (Pty) Ltd v Mkhwanazi and Another 2014 (3) SA 96 (SCA); Legator McKenna Inc v Shea [2008] ZASCA 144 (27 November 2008)

⁷ 2013 JDR 0608

blank spots before the issues between the parties can be properly ventilated and determined and the factual disputes determined.

[12] There is no clarity regarding the transfer of the property to Mr Hendrik Tlisane and the subsequent transfer thereof to Mr Amos Maluleke, which constitute vital components of the proper adjudication of the issues and to determine whether the first and second respondents are innocent purchasers of the property⁸. There is also no clarity regarding the administration of the estate of the deceased or her beneficiaries. In my view, this is a matter which in the interests of justice requires oral evidence to resolve the factual disputes between the parties and obtain clarity on all the relevant facts.

[13] During the hearing, the applicant requested a referral if the application could not be determined on the papers, whereas the first and second respondents opposed it. I conclude that considering the particular circumstances of this matter it would be in the interests of justice and a convenient way⁹ to deal with the ownership disputes between the parties to refer the application to oral evidence rather than to trial as the ambit of the ownership disputes between the parties falls within a narrow compass and a referral to trial would result in a process which is disproportionately costly and cumbersome¹⁰.

[14] It would be appropriate to reserve the issue of costs at this stage.

[15] I grant the following order:

[1] The application is referred to oral evidence on the issue of ownership of [...], Soweto, Gauteng, ("the property") to specifically to determine the following issues:

[1.1] Whether the applicant is the executrix of and/or a beneficiary of the late Lieketseng Alida Tlisane;

⁸ Mvusi v Mvusi and Others 1995 (4) SA 994 (Tks)

⁹ Standard Bank of SA Ltd v Neugarten 1987 (3) SA 695 (W) 698G-699E

¹⁰ Neugarten supra 699B-D

[1.2] Who were the beneficiaries of the late Lieketseng Alida Tlisane;

[1.3] The circumstances under which the property was registered in the name of the late Thabo Hendrick Tlisane;

[1.4] The circumstances under which the property was transferred by Thabo Hendrik Tlisane to Amos Stephen Maluleke;

[1.5] The circumstances under which the property was transferred by Amos Stephen Maluleke to the first and second respondents;

[1.6] Whether the first and second respondents are bona fide purchasers of the property.

[2] The witnesses who may testify in the proceedings are the deponents to the respective affidavits filed of record, Mr Maluleke and the sons of Mr Thabo Hendrik Tlisane.

[3] If any of the parties desire the evidence of any other witness to be led, consent must be sought from the other parties, together with a summary of the evidence of such witness. If no consent is provided, leave must be sought from the court by way of written application on reasonable notice to the parties.

[4] The fourth respondent, the Director General, Department of Housing, Gauteng, is directed to provide a report, including documentary evidence if available, regarding the history of occupation rights and ownership of the property from the period 1979 to date within ninety calendar days from date of service of this order;

[5] The fifth respondent, the City of Johannesburg Metropolitan Municipality, is directed to provide a report, including documentary evidence if available, regarding the history of occupation rights and ownership of the property from

the period 1979 to date within ninety calendar days from date of service of this order;

[6] The sixth respondent, the Registrar of Deeds, Johannesburg, is directed to provide a report, including documentary evidence if available, regarding the history of occupation rights and ownership of the property from the period 1979 to date within ninety calendar days from date of service of this order;

[7] The Master of the High Court, Johannesburg, is joined as seventh respondent to the application;

[8] The seventh respondent, the Master of the High Court, Johannesburg, is directed to provide a report regarding the administration of the deceased estate of Lieketseng Alida Tlisane within ninety calendar days from date of service of this order;

[9] The applicant is directed to forthwith provide a copy of the identity number of Lieketseng Alida Tlisane and a copy of her death certificate to the Master of the High Court, Johannesburg to be provided together with a copy of this order;

[10] Mr Amos Stephen Maluleke is joined as eighth respondent in this application;

[11] The applicant is directed to take the necessary steps within 15 days of date of this order to join the two sons of Mr Thabo Hendrik Tlisane as ninth and tenth respondents respectively;

[12] Copies of this order and full copies of the application papers are to be served on the third, fourth, fifth and sixth respondents and on the seventh respondent, the Master of the High Court, Johannesburg, forthwith and within five days of granting of this order.

[13] Full copies of the application papers are to be served by the applicant on Mr Maluleke and the parties referred to in [11];

[14] The costs are reserved.

EF DIPPENAAR
JUDGE OF THE HIGH COURT JOHANNESBURG

APPEARANCES

DATE OF HEARING : 10 February 2022

DATE OF JUDGMENT : 21 February 2022

APPLICANT'S COUNSEL : Adv. BB Ntsimane

APPLICANT'S ATTORNEYS : Baloyi Ntsako Attorneys

1ST AND 2ND RESPONDENT'S COUNSEL : Adv. I. Mureriwa.

1ST AND 2ND RESPONDENT'S ATTORNEYS : FH Munyai Inc.