

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NUMBER: A910/12

DATE: 27 August 2014

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

THABO MICHAEL DISETSANE

First Appellant

MASILO EVEL LETOAO

Second Appellant

MONAHENG LETOAO

Third Appellant

V

THANDI ELIZABETH MOGANEDI

First Respondent

(nee MQUTHENI)

THE DIRECTOR - GENERAL OF HOUSING,

GAUTENG PROVINCE

Second Respondent

THE MEC OF HOUSING, GAUTENG PROVINCE

Third Respondent

THE REGISTRAR OF DEEDS

(PRETORIA)

Fourth Respondent

JUDGMENT

MABUSE J:

[1] The appellants appeal with leave of the Supreme Court of Appeal granted on 19 November 2012 against the order of this Court (Vorster AJ) which was delivered on 24 May 2014 and in which he dismissed the appellants' application for certain relief in an unopposed motion court.

[2] On 24 May 2012 the appellant had sought the following relief as set out in their notice of motion:

- “ 1. An order cancelling Title Deed No. T[...] which deed holds property known as Erf [...] P[...] Township in the first respondent, Moganedi (nee Mqutheni) THANDI ELIZABETH;*
- 2. An order directing the fourth Respondent, The Registrar of Deeds (Johannesburg), to cancel Title No. T[...] which deed holds property known as Erf [...] P[...] Township in the name of the first respondent, MOGANEDI (nee MQUTHENI) THANDI ELIZABETH;*
- 3. An order directing the Fourth Respondent; The Registrar of Deeds (Pretoria), transfer the property, Erf [...] P[...] Township, to the Applicants; alternatively to this order;*
- 4 An order directing the Second Respondent, The Director General of the Department of Housing, Province of Gauteng, to hold a hearing in terms of the provisions of Section 2 of The Conversion of Certain Rights into the Leasehold or Ownership Act 81 of 1988 for the purpose of determining who the rightful claimant in respect of Erf [...] P[...] Township is;*
- 5. Further and/or alternative relief”*

[3] Copies of the afore mentioned application were served upon all interested parties who were also invited to indicate, within fifteen (15) days of service of a copy of the application upon each one of them their respective intentions to oppose the granting of the relief sought. In addition they were invited to file their answering affidavits within a further period of fifteen (15) days after indicating their intention to oppose the application.

[4] Despite service of a copy of the application on him, the Third Respondent did not respond at all to the aforementioned invitation notwithstanding the fact that the property in dispute is registered in her names in terms of Deed of Transfer number T[...], dated 27 June 2007.

[5] No one of the other respondents accepted the invitation to file their notice to oppose the application and to file their answering affidavits. Instead the Second Respondent filed an affidavit, not an answering affidavit though, while the fourth respondent filed a report. In the aforementioned affidavit the Second Respondent had stated, among others that Title Deed No. T[...] issued in the name of Thandi Elizabeth Mqutheni (the first

respondent) over property known as erf [...] P[...] Township ('the property') was incorrectly registered; that the Second Respondent had an adjudication hearing in 2006 to determine the deserving claimant in a dispute between the then permit-holder, Mahao Albert Letao (now deceased) and the First Respondent over the property; that the property was awarded to the late mother of the First, Second and Third applicants, Aleta Disetsane, who was the widow of the permit-holder, Albert Letao; that despite the fact that the property had been awarded to the said Aleta Disetsane, the said property was registered in the names of the Second Respondent on the instructions of the Second Respondent's officials; that the First Respondent refuses to co-operate with the Second Respondent in order to rectify the error and finally that the Second Respondent was unable to rectify the error without first having the title deed cancelled.

[6] In his report, the fourth respondent had admonished the Applicants that if they obtained an order in terms of which the relevant title deed was cancelled in terms of s 6 of the Deeds Registries Act 47 of 1937 ('the Act'), as they had sought in prayers 1 and 2 of their notice of motion, ownership in the said property would revert to the City of Johannesburg Metropolitan Municipality. He indicated in the report furthermore that in the event of ownership in the property reverting to it, the City of Johannesburg Metropolitan Municipality would be able to transfer the property to the beneficiary entitled to it failing which the Sheriff of the Court may do so after being so authorised and empowered by an order of Court. The said report further advised that in the event of the Applicants failing to obtain the order they seek in prayers 1 and 2 of their notice of motion, they could obtain an order compelling the First Respondent to transfer the property to the beneficiary who was entitled to receive ownership of the property and that if she failed to co-operate the Sheriff of Court may be authorised and empowered to do so. The Registrar indicated that he would have no objection if the court granted the Applicants prayers 1, 2 and 4 of their notice of motion.

[7] On 24 May 2012 at the hearing of the matter, counsel for the Appellants moved the application for the relief they sought. He submitted that the court had the powers to cancel the Deed of Transfer in terms of section 6 of the Act. The said section 6 provides as follows:

"Registered deeds not to be canceled except upon an order of court.

(1) Save as is otherwise provided in this Act or 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 to security, shall be cancelled by 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."

After accepting the submission by counsel for the appellants that it had the powers to order cancellation of the relevant Deed of Transfer, the court then referred counsel for the applicants to what the Fourth Respondent had stated in his report. A debate developed between the court and the appellant's counsel. At the end of the said debate the Court then remarked as follows before it made an order.

"Court: Believe me there is nothing automatic if Johannesburg Municipality is the owner they can do with the property as they like because there is no commitment There is nothing before me to say yes, we will undertake to do this or that or the other it is nothing. This application assumes that if I cancel the title deed then the 1st respondent, the Registrar of Deeds will transfer the property in the name of the applicant which it cannot do if it says so in its report and I fully agree with you. So this is a comedy of errors. This application is dismissed."

[8] It is the above order that the appellants are challenging. The grounds upon which they challenge the order so made are fully set out in their application for leave to appeal. They are, among others, that the court *a quo* erred in not making the finding that the registration of the title deed into the names of the first respondent was made erroneously; that s. 6 of the Deeds Registries Act NO. 47 of 1937 provides that a registered deed cannot be cancelled except upon an order of court; that the first respondent had already made a decision in terms of the statutory powers granted to them, which was that the property be transferred into the names of the mother of the applicants and that the report by the Registrar of Deeds, Pretoria clearly stated what the end effect of each prayer sought in the notice of motion be and that on those grounds he had no objection to the granting of the orders.

(9) Suffice to mention that when the appellants applied to the court *a quo* for leave to appeal on 24 August 2013, it was refused, resulting in the appellants having to ask the court to furnish reasons for its decision. These were furnished on 22 October 2012. The reason for refusing the application appears in paragraph 5 on page 65. It is stated in that paragraph that;

"The fourth respondent (Registrar of Deeds) filed a report to be found on paginated papers 36 and 37 of the record. In that report the fourth respondent correctly remarked that, if prayer 1 of the notice of motion is granted the effect would be that the property would be reverted to erstwhile owner, being the Johannesburg Metropolitan Municipality in terms of Section 6 of the Deeds registries Act, 47 of 1937. The fourth respondent also correctly remarked that transfer of the property into the name of the applicant could only be effected by means of a deed of transfer by the Johannesburg Metropolitan Municipality in favour of the applicants. The applicant could only be effected by means of a deed of

transfer by the Johannesburg Metropolitan Municipality in favour of the applicants. The court cannot make an order as is prayed for in the prayers 3 of the notice of motion. ”

[10] We are unanimous in our view that the court *a quo* did not fully understand the report of the fourth respondent. It is clear as crystal that according to the Fourth Respondent's report there are two ways of skinning the cat. Both these ways have been clearly explained in the report. If the appellants chose the procedure set out in prayers 1 and 2 of their notice of motion and the said prayers were granted the effect of such an order would be that ownership in the said property would revert to the City of Johannesburg Metropolitan Municipality. This reversion of the property to the City of Johannesburg Metropolitan Municipality carries no risk or problems. The second respondent would then, as owner, transfer the property to the appellants, failing which the Sheriff of this court may be empowered and authorised to do so by order of this court. This procedure can be followed without the intervention of the First Respondent and while she refuses to let the Second and Fourth Respondents have the relevant deed of transfer. This is the first way of skinning the cat and it is the one referred to in paragraph 3.1 and paragraph 3.2 of the Fourth Respondent's report.

[11] The second way is set out in paragraph 3.3 of the report. In this route the court may grant an order in terms whereof the First Respondent is of this court may similarly be empowered and authorised by the court to do so.

[12] The purpose of the Fourth Respondent's report was to explain the two procedures and not to put any hurdles in the way of the transfer. It should have been understood that way. It is clear that s. 6 of the Act empowers the Court to order cancellation of a registered deed of grant, deed of transfer, certificate of title or other deed conferring or conveying title to land. See also *Ex Parte Raulstone* NO 1959 4 SA 606 (N).

[13] In the absence of any opposition we see no reason why the applicants should not be granted the relief they seek. Section 6 grants the Court power to correct errors. The Applicants have claimed that transfer of the property to the First Respondent was an error and the Second Respondent has acknowledged this error in paragraph 3.4 of the affidavit of Mr. Sibusiso Raymond Dube.

[14] We are unanimous in our view that the appeal should succeed. Accordingly we make the following order:

1. The appeal is upheld.
2. The order of the Court *a quo* dismissing the application is hereby set aside and in its place is substituted the following:

2.1 In terms of sec. 6 of the Deeds Registries Act 47 of 1937, the Fourth Respondent is hereby ordered to cancel Deed of Transfer number T[...] in respect of Erf [...] P[...] Township, Registration Division IQ the Province of (Gauteng, measuring 210m² (two hundred and ten) square meters registered on 27 June 2007 and held by Thandi Elizabeth Moganedi, ID number [...].

P.M. MABUSE

JUDGE OF THE HIGH COURT

I agree, and it is so ordered

T.J. RAUUNGA

JUDGE OF THE HIGH COURT

I agree

D.S. FOURIE

JUDGE OF THE HIGH COURT

Appearances:

Appearances:

Counsel for the appellants: Adv. L Memela

Instructed by: Gcwensa Attorneys

Counsel for the respondent: No appearance

On behalf of respondents: No appearance

Date Heard: 6 August 2014

Date of Judgment: 27 August 2014