

**IN THE HIGH COURT OF SOUTH AFRICA**

**(GAUTENG DIVISION, PRETORIA)**

CASE NO: A116/2014

DATE: 12 SEPTEMBER 2014

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

**IN THE MATTER BETWEEN:**

**JOHN SELLO LETSOALO**

**FIRST APPELLANT**

**MICHAEL BOBBY LETSOALO**

**SECOND APPELLANT**

**AND**

**MPHO LUCAS LETSOALO**

**FIRST RESPONDENT**

**CITY OF TSHWANE**

**METROPOLITAN MUNICIPALITY**

**SECOND RESPONDENT**

***In re:***

**MPHO LUCAS LETSOALO**

**APPLICANT**

**AND**

**LOLO LETSOALO**

**FIRST RESPONDENT**

**MICHAEL LETSOALO**

**SECOND RESPONDENT**

**OTHER UNLAWFUL OCCUPIERS OF ERF 1023 MAMELOD WEST**

**MAMELODI TOWNSHIP**

**THIRD RESPONDENT**

**JUDGMENT**

1. This is an appeal against the whole of the judgment and order of Acting Magistrate Ms M. Erasmus in the Magistrate's Court for the district of Mamelodi on the 18<sup>th</sup> of December 2013. For the sake of convenience, the parties are referred to as they were in the Court *a quo*.

2. The Court *a quo*, following proceedings launched by the applicant, brought in terms of the Prevention of Illegal Eviction from Unlawful Occupation of Land Act 19 of 1998 ('PIE'), granted an order evicting the respondents from the property known as Erf 1023 Mamelodi West ('the property').

3. The respondents have sought condonation for the late filing of the Notice of Appeal and it appears from the affidavit filed in support thereof, that following judgment in the Court *a quo* on the 18<sup>th</sup> of December 2013, they sought further assistance from the Pretoria Justice Centre, who are their attorneys of record. Their offices, however, were closed for part of December 2013 and January 2014 and they were only able to obtain assistance sometime in mid-January 2014. A consultation was arranged with counsel for early in February 2014 and the Notice of Appeal was filed on the 17 of February 2014.

There was no opposition to the application for condonation and in my view, good cause was shown resulting in the Court, during the hearing of the appeal, granting condonation for the late filing of the Notice of Appeal.

**FACTUAL BACKGROUND**

4. The applicant, in his capacity as executor of the estate of the late Ms Nana Elizabeth Letsoalo (the deceased), brought an application in terms of PIE for the eviction of the respondents from the property.

5. The property was registered in the name of the deceased on 16 March 2005 in the Deeds Office under Deed of Transfer T 05 0311903, transfer having been passed by the fourth respondent.

6. The deceased died on the 28<sup>th</sup> of December 2012. She was survived by her only son, Mr Azana Letsoalo, who in turn has two sons, the applicant and Mr Tinny Letsoalo. The respondents are the sons of Tinny Letsoalo.

7. The respondents have lived on the property in question since childhood and they have continued to do so

even after the death of the deceased in December 2012. The stance of the applicant is that some time in 2010 and following a family meeting concerning the arrears on the water and electricity account of the property, Tinny Letsoalo undertook to pay the monthly water and electricity account. It is alleged that he only made a single payment and the arrears on the account now amount to R137 640-09.

8. The applicant accordingly concluded that given that the respondents occupied the property without his consent as executor, their occupation was unlawful and their eviction was sought on that basis.

9. The respondents' stance in opposing the eviction was that:

i. They became owners by prescription as they had occupied the property since 1982;

ii. The deceased had during 1998 relinquished all her rights in the property in favour of Tinny Letsoalo and accordingly there is a dispute as to whether the property forms part of the deceased's estate.

10. In support of the latter submission they annexed a document generated by the second respondent in 1998 entitled 'House Transfer Form' which purports to record the transfer by the deceased in favour of Tinny Letsoalo, all of her rights regarding the property. The document further purports to record the transfer in the records of the fourth respondent as at the 11 of March 1998.

11. In granting the order of eviction, the Court *a quo* concluded that the applicant had *locus standi* on the basis of his appointment as executor in the intestate estate of the defendant. It rejected the respondent's claim to have acquired ownership in the property by way of prescription and further rejected the submissions of the respondent that a report should have been obtained from the second respondent in terms of Section 4(7) and Section 7 of PIE.

## **EVALUATION**

### **Status of the ownership of the property**

12. On the papers the following emerges:

i. It appears that the deceased relinquished her rights in favour of Tinny Letsoalo in 1998. While the learned Magistrate correctly concluded that the document was not a will, she did not enquire any further about what its status was and what consequences, if any, flowed from it;

ii. Transfer of the property was registered in the name of the deceased on the 16<sup>th</sup> of March 2005. The

certificate with regard to the purchase of the property is dated the 08<sup>th</sup> of October 2003 and is signed by the Director-General of the Gauteng Province. Both the date of transfer as well as the date of 'purchase' recorded on the certificate occurred after the death of the deceased. It is not clear what role, if any, the deceased played in these processes, leading to the transfer of the property in her name;

iii. These steps became relevant in the context of the alleged relinquishment of rights by the deceased in March 1998. It is significant that no steps appear to have been taken by the deceased to effect transfer of the property during her lifetime;

iv. While it may be that the records of the Deeds Office reflect the deceased as the registered owner of the property, in matters of this nature that in itself is not necessarily decisive with regard to the question of ownership.

13. In *QUARTERMARK INVESTMENTS (PTY) LTD v MKHWANAZI AND ANOTHER* 2014 (3) SA 96 (SCA), the Court affirmed the position that ownership will not pass, despite registration of transfer, where the underlying transaction was tainted by fraud, or where the essential requirements of the 'real agreement', viz an intention on the part of the transferor to transfer ownership of the property, and on the part of the transferee to become owner thereof, were not met.

14. From the title deed of the property it appears that the transfer was effected in terms of the Conversion of Certain Rights into Leasehold or Ownership Act 81 of 1988 ('the Act'). To that extent the Act in Section 2 thereof, provides that the Director-General of the provincial administration shall conduct an enquiry in respect of all affected sites within the province in order to determine who shall be declared to have been granted a right of leasehold or ownership. There is the further obligation on the Director-General to publish a notice indicating that such inquiry is to be conducted is.

15. It is not clear if such an inquiry was held and certainly from the stance of the respondents it hardly appears that they were aware of such an inquiry. In my view such an inquiry, beyond being mandatory in terms of the Act, would have been the proper forum for the consideration of whatever rights the deceased, and possibly Tinny Letsoalo, may have held to the property.

16. Under such circumstances the question of the ownership of the property remained in dispute, for good reasons, I may add, and the learned Magistrate could have, and should have, taken steps for the Court to be placed in possession of a report from the Director-General regarding the inquiry contemplated in the Act.

17. My view is that the Learned Magistrate erred by failing to do this and on what was before the Court there was at least a real and substantial dispute relating both to the ownership of the property and whether the

respondents could be said to be in unlawful occupation of the property. It was certainly not possible to have resolved such a dispute without a report from the Director-General.

18. The order of the learned Magistrate accordingly falls to be set aside

19. In addition it is clear from the allegations made by Tinny Letsoalo that he has a direct and substantial interest in these proceedings and that he should have been joined as a party.

20. In the circumstances the interests of justice as well as those of the parties would warrant that the matter be referred back to the Magistrate's Court for trial *de novo* after the joinder of Tinny Letsoalo has been effected and a report obtained from the Director-General of Gauteng Provincial Administration with regard to compliance and / or other steps taken in terms of the Act.

21. Both parties are represented by law clinics, and my view, regard being had to the factual circumstances that present themselves, is that no order as to costs should be made in respect of the appeal.

## **ORDER**

22. In the circumstances I propose the following order:

- i. The appeal is upheld and the order of the learned Magistrate of the 18<sup>th</sup> of December 2013 is set aside;
- ii. The matter is referred back to the Magistrate's Court;
- iii. The applicant shall take all necessary steps to join Tinny Letsoalo as a party to the proceedings;
- iv. The Director-General Gauteng Provincial Government, shall file a report within sixty days of the service of this order on him / her dealing with the compliance with the provisions of the Conversion of Certain Rights into Leasehold or Ownership Act 81 of 1988, and in particular, Section 2 thereof;
- v. The report referred to above shall be filed with the clerk of the Magistrate's Court, Mamelodi and a copy served on the legal representatives of all the parties to the action;
- vi. The applicant shall have the right to supplement his papers within twenty one days of the report being filed and the respondents in turn shall have the same right to do so within twenty one days thereafter;
- vii. No order is made as to costs.

N. KOLLAPEN

JUDGE OF THE HIGH COURT

I AGREE,

A. A. LOUW

JUDGE OF THE HIGH COURT

IT IS SO ORDERED.

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HEARD ON: 28 AUGUST 2014

FOR THE APPELLANT: ADV M. K. STEENEKAMP

INSTRUCTED BY: PRETORIA JUSTICE CENTRE (ref: MKS/m)

FOR THE FIRST RESPONDENT: ADV J. J. GILDENHUYS

INSTRUCTED BY: UNIVERSITY OF PRETORIA LAW CLINIC (ref: V Nkosi/VN0043)