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IN THE NORTH GAUTENG HIGH COURT, PRETORIA

[REPUBLIC OF SOUTH AFRICA]

CASE NUMBER: 83902/2014

DATE: 12 May 2016

DIE PINKSTER PROTESTANTE KERK

APPELLANT And

JACOBUS PETRUS REINERS FIRST

RESPONDENT

MOLLIE SUSANNA ELIZABETH REINERS SECOND

RESPONDENT

JEDIDJA COMMUNITY CENTRE (NPC) (PTY) LTD THIRD

RESPONDENT

REGISTRAR OF DEEDS: PRETORIA FOURTH

RESPONDENT

JUDGMENT
MAVUNDLAJ.

[1] The applicant applies for an order that the purported alienation and registration of property, Erf 2..., R....., (hereinafter referred to as "Erf 2....") and Erf 2..., (hereinafter referred to as "Erf 2....") to the first, second and third respectively, be set aside, that the relevant Title Deeds in terms of whereof the aforesaid properties are registered in the names of the respective respondents be cancelled and that the immovable properties be transferred to the applicant.

BACKGROUND FACTS

[2] According to the applicant, at all relevant times the properties known as Erf 2.... and Erf 2... R....., M....., were immovable properties of the applicant held under Title Deed No T 1..... and held by the applicant as his property since 1977. Both these properties, i.e. Erf 2..... and 2... were consolidated by means of the consolidation and subdivision of [Erf 1.... and Erf 1.... R.....], registered in the name of the applicant's Riversdale local congregation, and more specifically in the name of ""Die Pinkster Protestante Kerk, Gemeente Riversdale".

[3] According to the applicant, the first respondent was a pastor for several years, alienated the property belonging to the applicant. The first respondent conducted himself as aligned to the applicant until it came to light in 2013 that he was no longer aligned to the applicant. The first respondent conducted church activities on the premises in accordance with the constitution of

the applicant. During 2013 the congregant in Riversdale dissolved and the church activities of the applicant were no longer conducted by the first respondent.

- [4] During between 2013 and 2014 it came to the attention of the Administrative Bureau, which operates as the head administrative organ of the applicant in terms of Chapter C2 of the Constitution, that the property mentioned herein above, in Particular Erf 2.... R..... was transferred without permission or compensation into the names of the first and second respondent and thereafter to the third respondent. On conducting a deeds search, through its attorneys, it came to the attention of the applicant that the first and second respondents during 2014 transferred the property to themselves, and thereafter transferred Erf 2.... R..... to the third respondent for a consideration of an amount of R750 000. 00. Both the transfer took place without any authorisation and or consent of the applicant.
- [5] According to the applicant, its constitution was approved, accepted and adopted at a duly constituted meeting of all interested parties, including the first respondent who also approved the constitution during 2006, a copy of which is attached as annexure "B". In terms of clause A3 of the constitution, each congregation is a separate legal entity and registered as an autonomous "non-profitable organisation" and "public benefit organisation".
- [6] The applicant further contended that the applicant and its affiliated congregations are registered under the Non- Profit Organisations Act, 1997. In terms of s12 (2)(c) of the said Act, the income and properties of the said organisations are not susceptible for distribution under its members or office bearers , unless reasonable value is paid in respect thereof. *In casu* the properties fall squarely within the provisions of *the* said Act. The applicant further contended that the transfer of the property or properties by the applicant was unlawful as it was transferred for no value and to the advantage of the first applicant. This evidence is not controverted by the respondent at all.
- [7] The first respondent filed an opposing affidavit on his behalf as well as on behalf of the second respondent. According to the first respondent, Riversdale congregation was established in 1967. At that stage it simply operated as a church which held its meetings at congregants' houses. During 1967 the property known as Erf 1....., Riversdale was made available to the Riversdale congregation by the owner, Susan Swart. At that stage there was only a small building on the property which was then used as the actual church. During 1979 the pastor at the Riversdale congregation was Willie Oldwage. At that stage Riversdale congregation was known as Pinkster

Protetsnate Kerk, Gemeente Riversdale. When Sussan Swart passed away she bequeathed the property (Erf 1....., R.....) to the Riversdale congregation.

[8] The following it would seem is common cause: In 1967 the local congregation of the applicant, known as "Die Pinkster Kerk, Gemeente Roversdale" (hereinafter referred to as the "the PPK Riversdale" (was constituted. In 1970 ERF 1..... was registered in the name of the PPK R..... In 1977 ERF 2..... and ERF 2..... were registered in the name of the PPK Riversdale. The first respondent joined the PPK Riversdale as a pastor in 1993. According to the first respondent in 1998 PPK Riversdale changed its name and was no longer a member of the applicant. In February 2006 the first respondent attended the applicant's annual meeting. On 18 January 2013 the new Riversdale Congregation dissolved. On 31 July 2013 the first and second respondent sold ERF 2..... to the third respondent. On 31 March 2014 ERF 2..... is transferred to the first and second responders from PPK Riversdale in terms of Deed of Transfer No T2..... On 31 March 2014 ERF 2.... is transferred to the first and second respondents from the PPK Riversdale in terms of Deed of Transfer No T2..... On the 31 March 2014 ERF 2..... is transferred to the third respondent from the first and second respondents in terms of terms of Deed of Transfer No T2.....

[9] It is instructive to note that clause A3.3 of the constitution of the applicant provides that the administrative execution of all provisions rest with the Administrative Bureau, under the chairmanship of the applicant's Federal President. Clause B4 of the constitution provides that: "B4.1 Property is registered in the name of the local congregation. B4.2 No governing body shall purchase, sell or alienate any immovable property without the written consent of the Administrative Bureau". In my view, absent a written consent of the Administrative Bureau the respondent did not have any authority to alienate any immovable property which belongs to the local congregation. Any purported alienation by the respondent is in my view, null and void."

[10] Clause B1.5 of the constitution expressly provides that at the dissolution of a local congregation, any assets that remain after the liabilities are deducted therefrom shall be transferred to the applicant. In casu the applicant contended that the first respondent ceased to function as a pastor in the Riversdale Congregation, which at all relevant times functioned under the constitution and control of the applicant.

[11] It is apposite to refer to the matter of *Quartermark Investments (Pty) Ltd* 2014 (3) SA 96 (SCA) where the Court held that ownership will not pass -despite registration of transfer where the

underlying transaction is tainted by fraud, or where the essential requirements of 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.

[12] The first respondent contended that the immovable property was donated to him by its erstwhile owner. In the matter of *Daya v Gardee and Gardee* 1934 TPD 31 at 42 it

was held that if a person claims that he is the owner of land, he produces a title deed and need not do more. However section 2 of the Alienation of Land Act No 618 of 1981 provides as follows that: "Formalities in respect of alienation of land:

(1) No alienation of land after the commencement of this section shall, subject to the provisions of section 28, be of any force or effect, unless it is contained in a deed of alienation signed by the parties thereto or their agents acting on their written authority." 1943 AD 331 at 353, donation 1961 4 SA 257 at 260H-261g 1964 1 SA 446 A at 463C-G.

[13] In my view, the alleged donation related to alienation of land and was not in compliance with the provisions of the aforesaid mentioned s28 and therefore invalid. Further, in light of the provisions of the applicant's constitution as pointed out herein above, the respondent could not have had the authority to alienate the property which belonged to the congregation, be it the branch he was a pastor of or the main body being the applicant. I therefore find that transfer of property into the first respondent's names was null and void, and that the subsequent alienation thereof was equally invalid.

[14] In the result the following order is made:

1. That the purported alienation and registration of property, Erf 2....., R....., Riversdale, (hereinafter referred to as "Erf 2.....") and Erf 2....., (hereinafter referred to as "Erf 2...." to the first, second and third respectively, be and is set aside;
2. That the relevant Title Deeds in terms of whereof the aforesaid properties are registered in the names of the respective respondents be and is cancelled and that the immovable properties be transferred to the applicant.
3. That the first, second and third respondents, jointly and severally, the one paying the other/s to be absolved, are ordered to pay the costs of this application.

N.MAVUNDLA

JUDGE OF THE HIGH COURT

HEARD ON THE : 14/01/2016

DATE OF JUDGMENT : 28/01/2016

APPLICANT'S ADV : S. G. GOUS

INSTRUCTED BY : STEYN STEYN LE ROUX INCORPORATED

RESPONDENTS'ADV : ADV.

INSTRUCTED BY : SDU PREEZS ATTORNEYS