IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NUMBER: 10484/2011

DATE: 31 JANUARY 2012

In the matter between:

CHARLTON COLLEN CORNELIUS Applicant

and

REGISTRAR OF DEEDS 1st Respondent

DENNIS ADAMS 2nd Respondent

JOHANNA ADAMS 3rd Respondent

J U D G M E N T

SMIT, AJ:

The applicant, Mr Cornelius, has brought an application for the following relief:

a. An order setting aside the reallocation of erf 1409 Blanco District George.

b. An order setting aside the sale to second and third respondents dated 2 March 1992.

c. An order setting aside the registration of the property on 3 December 2003.

d. An order directing first respondent to transfer the property in the name of the applicant by virtue of the will of Mabell Booysen, Annexure CCC1A (this is a Will dated 9 February 2009).

e. An order directing second and third respondents to surrender Deed of Transfer number T113278/2003 to the court; applicant's attorney or first respondent for due cancellation.

f. An order that second and third respondents have a right of recourse for the purchase price of the property against the relevant department from which they bought the property.

g. An order directing respondents to pay the costs of the application.

It is applicant's case that the relevant erf was allocated by the Department of Local Government Housing and Agriculture (which will hereinafter be referred to as "the

Department"), to his late grandmother (hereinafter referred to as "the deceased"), on 22 December 1989. It is alleged that the property was thereafter reallocated to third respondent on the strength of a will of the deceased dated 9 May 1991 in terms of which she bequeathed the property to her daughter, the third respondent.

It is alleged that pursuant to this reallocation, the property was sold to second respondent on 2 March 1992 for a sum of R9 269,00. According to the power of attorney annexed to the founding papers the property was sold to the second and third respondents married in community of property. It is common cause that second and third respondents had been married in community of property but that they were divorced on 29 May 1986. Transfer of the property was effected in the names of second and third respondents on 3 December 2003 in terms of deed of transfer number 2113278/2003 which is annexed to the founding papers.

Applicant's case, as I understand it, is based upon the allegation that second respondent defrauded The Department by:

a. Representing to them that the will referred to above, that is annexure CCC1, was the valid will of the

deceased while she was still alive.

b. Representing to The Department that he was still married in community of property to the legatee in terms of the Will, namely second respondent.

Applicant is the sole heir of the deceased in terms of her Will dated 9 February 2009, Annexure CCC1A to the papers, and it is applicant's case that he became entitled to the property in terms of the latter Will.

Second respondent in his opposing affidavit denied any fraud on his part and annexed the deed of sale in terms of which he purchased the property as aforesaid. He states that the deceased arranged with The Department to reallocate the property to him and that he purchased the property pursuant to such reallocation. He states that the transfer of the property into the names of second and third respondents was due to a mistake by the transferring attorneys as he was not married to third respondent at the time of the sale or the transfer. He states that he only recently discovered the error, and is in a process of having the situation rectified.

Applicant in his replying affidavit referred to and annexed an affidavit by second respondent dated 4 August 1994 in which

he declared that he was married in community of property to third respondent. Applicant furthermore attached certain correspondence between The Department and the State attorney from which it appears that the validity of the transaction has been questioned. In his duplication second respondent raised an objection to the introduction of the new matter and asked for the striking out of the new matter. Second respondent furthermore raised special defences of lack of *locus standi* and prescription.

I am of the view that the application it fatally defective for lack of *locus standi* on the part of applicant. Section 14(4) of the Deeds Registries Act 47 of 1937 provides that transfer of land and cession of real rights therein shall follow the sequence of the successive transactions in pursuance of which they are made and if made in pursuance of a testamentary dispossession, they shall follow the sequence in which the right to ownership in the land accrued to the persons successively becoming vested with such right.

It follows from the a foregoing that only the executor in the estate of the deceased would have *locus standi* to claim transfer of the property in the name of the deceased estate. If this could somehow be achieved, applicant will have *locus standi* to claim transfer from the deceased estate into his

name. When the Court raised the issue of lack of *locus standi* and pointed out that the executor of the deceased estate should have brought the application, Mr Godla applied for postponement of the matter in order to join the executrix in the estate of the late Mrs Booysen.

Ms Barnard opposed the application for postponement on the basis that the second respondent will be prejudiced to such an extent that he may not have the financial resources to mount a defence against what in reality will be a new application. She pointed out that the respondent raised the defences of lack of *locus standi* and prescription when the last set of papers was filed but that the applicant nevertheless proceeded without heeding the warning that the said defences would be raised.

I am in any event of the view that there will be little merit in the new application in view of the fact that the claim of the executrix appears to have become prescribed. The Court in any event does not know whether the executrix will be prepared to be joined as an applicant in view of the prescription issue which has been raised. The legal position with regard to postponement has been formulated as follows in Greyvenstein v Neethling and quoted with approval in Herbstein and Van Winsen, 5th Edition, Volume 1 at page 755:

"Where an application is made for the postponement of a trial it must firstly be made timeously; secondly, it will not be granted to a plaintiff in circumstances where the postponement is caused or occasioned by a happening or circumstance which the plaintiff at the time of set-down of the matter could have, and should have, foreseen; and thirdly, it will not be granted to a plaintiff where defendant will suffer by such postponement prejudice which cannot be met by an order as to costs entrenched by such safeguards as to payment and the further hearing of the matter as the circumstances may warrant."

In view of the aforegoing, the application for postponement is refused and the application is dismissed with costs.

SMIT, J