

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

CASE NO: 2020/13032

REPORTABLE: /NO

OF INTEREST TO OTHER JUDGES: /NO

REVISED. NO

DATE: 31 MAY 2021

In the matter between:

**TEBELLO PATRICK LANGA N.O.
(IN HIS CAPACITY AS THE ADMINISTRATOR
IN AFFAIRS OF MALOSI MAUREEN LANGA)**

Applicant

and

SEKI ANGELINE LANGA

First Respondent

**THE DIRECTOR-GENERAL OF THE
DEPARTEMENT OF HUMAN SETTLEMENTS,
GAUTENG PROVINCE**

Second Respondent

**THE MEC OF THE DEPARTMENT OF
HUMAN SETTLEMENTS, GAUTENG PROVINCE**

Third Respondent

**THE MASTER OF THE HIGH COURT,
JOHANNESBURG**

Fourth Respondent

**THE CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY**

Fifth Respondent

**THE REGISTRAR OF DEEDS,
JOHANNESBURG**

Sixth Respondent

REASONS

SIWENDU J

Introduction

[1] The applicant, Mr Tebello Langa, first launched this application in his capacity as curator *ad litem* of his sister, Malosi Maureen Langa. He subsequently corrected the capacity in terms of which he acts to reflect that he brings the application in his capacity as the administrator of the property of his sister, in terms of s 63 of the Mental Health Care Act 17 of 2002. He seeks an order—

(a) cancelling Title Deed No: [...], which holds property known as Erf [...], O[...] W[...] Township, Gauteng Province (the ‘property’) currently held in the names of first respondent, Seki Angeline Langa, and her late husband, Joshua Langa;

(b) directing that, after the cancellation of the Title Deed, the property be registered in Malosi Maureen Langa’s name, in accordance with the ‘Deed of Agreement’ made between herself and the late Joel Langa on 16 October 1989.

[2] In the alternative to prayer 1(b), the applicant seeks an order—

(a) that after the cancellation of the Title Deed, the sixth respondent (the Registrar of Deeds, Johannesburg) be directed to revert the ownership of the property to its original owner (the City of Johannesburg Metropolitan Municipality) and register the property in its name, in order for it to facilitate that the second respondent (the Director-General of the Department of Human Settlements) hold an investigation and hearing in terms of s 2 of the Conversion of Certain Rights into

Leasehold or Ownership Act 81 of 1988, as amended (the 'Conversion Act'), to determine the rightful owner of the property.

(b) that a caveat be endorsed over the property and against the Title Deed, in order to prevent the alienation thereof until this matter has been finalised.

[3] I observe, before dealing with the merits of the application, that a Deed of Title can only be cancelled by a court order in terms of s 6 of the Deed Registry Act 47 of 1937.¹ The second to sixth respondents are cited by virtue of their office and statutory obligations. They did not oppose the application.

[4] I note further, that on 23 September 2020 and 10 December 2020, the applicant deposed to two supplementary affidavits, correcting certain information in his founding affidavit in respect of (1) the capacity in which he brings the proceedings, as referred to above; and (2) correcting the information pertaining to the Title Deed at issue. He had issued a Rule 28(1) notice seeking the amendment. Other than the main application, which is opposed by the first respondent, the interlocutory applications were not opposed. Even though I was not addressed by the parties on the admission of the supplementary affidavits, I have, in the exercise of my discretion, admitted them. There is no prejudice to the respondents.

Background

[5] The genesis of the dispute is largely common cause. The disputed property was occupied by the applicant's father (Mr Joel Langa) and mother (Sally) in terms of a residential permit issued to him on 1 September 1966 under the Urban Black Areas Consolidation Act 25 of 1945 (repealed in 1984).

¹ Section 6 of the Deeds Registries Act 47 of 1937 provides:

'Registered deeds not to be cancelled except upon an order of court.

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

[6] Both parties do not dispute that the prevailing legal regime at the time envisaged that on the death of the permit holder, the property would devolve to the of next kin, failing which, to the people listed in the permit. The title to the property remained with the Municipality exercising jurisdiction. The applicant, his sister, (Ms Maureen Langa) and their late brother (Mr Joshua Langa) were initially listed amongst the persons permitted to occupy the property. Mr Joshua Langa is the first respondent's late husband. He died in 2016.

[7] It is a common cause that Mr Joshua Langa left the property in 1978 upon his marriage to the first respondent to start his family in Pimville, where he lived with the first respondent and their children. Accordingly, he was excluded from the revised amended permit re-issued in January 1978.

[8] The applicant claims that with effect from 1984, there was a conversion in the rights of ownership of residential property in the then Black Townships. Residential permit holders could acquire limited rights of ownership by way of a 99-year leasehold in terms of the Black Communities Development Act 4 of 1984. The applicant claims that a Certificate of Grant of Leasehold was issued to Mr Joel Langa in 1989, with the financial assistance of his daughter, Ms Maureen Langa. Mr Joel Langa, in turn, concluded a Deed of Agreement on 16 October 1989 'bequeathing' or selling back the property to his daughter (Ms Maureen Langa) presumably in lieu of the financial assistance she provided.

[9] The applicant conceded (in his papers and during the hearing) that for unexplained reasons, despite the issuing of the Certificate of Grant to Mr Joel Langa, the process of onward transfer of the leasehold envisaged above to Ms Maureen Langa was not completed. The Municipality had issued a Clearance Certificate in his sister's name in terms of s 54(2) of the Black Communities Development Act.

[10] The applicant contends that since his father, Mr Joel Langa, had acquired the right to live on the property in terms of the 99-year leasehold, the property formed part of his assets. In terms of s 2 of the Upgrading of Land Tenure Act 112 of 1991, people who held a 99-year leasehold are regarded as having acquired a 'real right' to

the property and the 99-year leaseholders automatically qualified for a full 'Title Deed'. The rights flowing from the 99-year lease are registered with the Deed Office.

[11] It is common cause that Ms Maureen Langa, who was in the medical pathology field at the time, lived in Randburg, and did not occupy the property with her parents. Both the parents died in 1996, one in succession of the other.

[12] In 1997, Mr Joshua Langa and the first respondent approached Ms Maureen Langa and the applicant for assistance. They had fallen on hard times as both were retrenched and were about to lose their established home in Pimville. It was agreed they could occupy the disputed property. The applicant claims that all of them knew that his sister, Ms Maureen Langa, had the legal rights to the property.

[13] The applicant claims that when Ms Maureen Langa experienced periodic mental health difficulties in 2017, she and the applicant decided to look into all her personal affairs. On attending at the offices of the Municipality and the Department of Human Settlements, the officials informed them that the property was registered in the names of the first respondent and her late husband, Mr Joshua Langa, under the Title Deed which is now the subject of the dispute.

[14] The applicant claims to have sought assistance from the Gauteng Land and Housing Crisis Committee and Pro Bono Assistance without success. Ultimately, a meeting was held at the invitation of the Human Settlements Department in October 2019, where the applicant was advised about the Conversion Act, and that the transfer to the first respondent ought not to have occurred because of a flawed procedure. These assertions, understandably, are not supported by a confirmatory affidavit from the officials of the Department.

[15] The applicant claims that there had been a series of invitations extended to the first respondent to attend at the Department of Human Settlements to resolve the issues. She has consistently failed to do so. The applicant contends the transfer of the property was fraudulent. Curiously, the applicant also places the onus on the first respondent to show how she and her late husband acquired the property.

[16] The first respondent opposed the application. She agrees that she and her husband were permitted to stay in the property until they found something affordable. I deal with the legal arguments later in the judgment. However, on the facts, the first respondent produced a Final Notice issued in 2001 by the Greater Soweto Housing Bureau. The notice invites 'the occupier' to attend at the Municipal Offices as part of what was clearly a broad-based program to ensure the transfer of title to occupiers in the Township. Curiously, the notice asks the occupier to bring, amongst others, the Residential Permit. The first respondent has not attached the permit or any documents leading to their registration of title – other than the claim form completed by her late husband.

[17] The first respondent contends that the transfer of title to her and her husband was not a surprise because on receipt of the notice, her late husband called Ms Maureen Langa (in her presence) to advise her about the notice. She claims further, that Ms Maureen Langa allegedly stated she had no interest in the property. As a result, the first respondent's husband completed the form as 'the occupier' and thereafter claimed the right to purchase the property. She claims that both the applicant and Ms Maureen Langa were informed of the transfer of the property soon thereafter.

[18] The first respondent also disputed that Ms Maureen Langa acquired the right of ownership in terms of the Deed of Agreement relied on by the applicant. She claims that Mr Joel Langa was not the registered leasehold owner when he signed the Deed of Agreement. She contends that in terms of s 53(2) of the Black Communities Development Act 4 of 1984, the right of leasehold had to be registered with the Deeds Office.² She claims that the document relied on was an interim document which expired in May 1990 if not extended by an endorsement. Ms Maureen Langa failed to register the property in her name. She claims that the applicant acts out of an ulterior motive to benefit himself, as Ms Maureen Langa is well-off, has no interest in the property, and has no children.

² Section 53(2) of the Act provides as follows: 'Any person to whom a leasehold has been granted shall be entitled to a certificate in the prescribed form, issued by the registrar at the time of such registration or at any prescribed time thereafter, stating the fact of registration of the leasehold in respect of the leasehold site in question.'

[19] In argument, Mr du Preez (for the first respondent) raised two preliminary points. Firstly, he disputed the applicant's *locus standi* to bring the application. He also argued that the first respondent's adult children are heirs in terms of the Intestate Succession Act 81 of 1987; he claims that the non-joinder of the first respondent's adult children renders the application fatally defective.

[20] Secondly, Mr du Preez argued that the claim had prescribed because the applicant or Ms Maureen Langa knew in 2005 about the property's ownership, but failed to take action timeously. Thirdly, he contended that because the leaseholder or permit holder died intestate, Ms Maureen Langa would not have been the only intestate heir, and it is not clear whether the rights of other heirs were considered.

[21] Whether s 11(d) of the Prescription Act 68 of 1969 applies in the circumstances was placed in issue.³ Other than an assertion that the applicant knew in 2005 of the transfer of the rights (which was disputed in the replying affidavit) Mr du Preez did not place any authority before the Court to support whether a transfer of rights under the prevailing legislation is subject to extinctive prescription.

[22] In so far as I understand the question of *locus standi* and the non-joinder, it is premised on the assertion that the first respondent's children were intestate heirs to the property and have an interest in the dispute. It would seem to me that if the first respondent's children could validly claim a devolution of rights in the property, then, subject to a decision on the merits, the same should argument must apply in respect of Ms Maureen Langa and the applicant. They are direct descendants of the initial permit holder, Mr Joel Langa. They too would have been entitled to their

³ Section 11 of the Prescription Act provides: 'The periods of prescription of debts shall be the following:

- (a) thirty years in respect of—
 - (i) any debt secured by mortgage bond;
 - (ii) any judgment debt;
 - (iii) any debt in respect of any taxation imposed or levied by or under any law;
 - (iv) any debt owed to the State in respect of any share of the profits, royalties or any similar consideration payable in respect of the right to mine minerals or other substances;
- (b) fifteen years in respect of any debt owed to the State and arising out of an advance or loan of money or a sale or lease of land by the State to the debtor, unless a longer period applies in respect of the debt in question in terms of paragraph (a);
- (c) six years in respect of a debt arising from a bill of exchange or other negotiable instrument or from a notarial contract, unless a longer period applies in respect of the debt in question in terms of paragraph (a) or (b);
- (d) save where an Act of Parliament provides otherwise, three years in respect of any other debt.'

proportionate share and devolution of the rights of the permit holder as his descendants. I am not persuaded by Mr du Preez's argument. *Locus standi* cannot be dispositive of the application, having regards to the facts of this case.

[23] I have considered the relevant legislative prescripts submitted by the applicant. I pause to mention that some of the provisions quoted in the Heads of Argument differ from the text of the statutory provisions. Section 2(1) of the Conversion Act provides that:

‘2. Inquiry as to rights of leasehold

(1) The Director-General shall conduct an inquiry in the prescribed manner in respect of affected sites within his province in order to determine who shall be declared to have been granted a right of leasehold or, in the case where the affected sites are situate in a formalized township for which a township register has been opened, ownership with regard to such sites.’

[21] In *Maluleke v Maluleke*,⁴ a judgment of the Full Court of this Division held that a failure by the Director-General of Housing, Gauteng Province (the predecessor to the current Department of Human Settlements) to hold such an inquiry compromises the *audi alteram partem* rule.

[26] Section 2(2) of the same Conversion Act says—

‘Before the commencement of such inquiry the Director-General shall, after satisfying himself as to the identity of the affected site and of the person appearing from the records of the local authority concerned to be the occupier of that site, and, in respect of premises referred to in section 52 (5) of the principal Act, is in possession of an aerial photograph or plan of the premises concerned, certified as provided in section 52 (5) (a) of that Act, publish a notice indicating that such inquiry is to be conducted.’

[27] Curiously, the claim completed by the first respondent's late husband reads:

⁴ *Maluleke v Maluleke and Others* (ZAGPJHC) unreported case no. A5011/2015 (30 July 2018).

‘With benefit of the State's discount. The claim will be investigated in accordance with the procedural summary, copy whereof is attached hereto. If the claim is found to be valid then the Council will complete the agreement of sale, advise the claimant accordingly and proceed with transfer at no cost to him/her.’

[28] The applicant claims that no one from the Department ever spoke to nor consulted with them or his sister, Ms Maureen Langa, despite all the information and records which show that she had rights of ownership over the property. In any event, s 2(5) of the Conversion Act requires a publication of the determination, and s 3 of the Act provides for a right to appeal by any party aggrieved by the determination.

[24] As pointed out above, the applicant also claims that s 2(3)(c) applies. Even though the applicant asserts that the provision is set out in imperative terms,⁵ a correct reading of s 2(3)(c) contradicts that position, providing as follows—

‘For the purposes of the declaration under subsection (1) the Director-General may— (c) consider any intestate heir of the last such holder to have been granted a right of leasehold or, in the case where that site is situate in a formalized township for which a township register has been opened, ownership in respect of the site concerned;’ [Emphasis added]

[25] The contention by Mr du Preez that the conversion of the residential permit into the leasehold was inchoate because of a failure to register, and that it had therefore lapsed, is open to some doubt. As I understand it, and without deciding the issue, in the context of s 2(1) of the Conversion Act, the rights under the statutory leasehold were not terminable or forfeited at will, as suggested. I am nevertheless mindful that a Certificate of Provisional Grant of Leasehold issued to Mr Joel Langa in 1989 purports to expire in May 1990. In any event, Mr du Preez did not provide me with any authority to support this contention.⁶

⁵ ‘The Director-General must consider that intestate heirs can be granted rights of Leasehold.’

⁶ *Toho v Diepmeadow City Council & Another* 1993 (3) SA 679 (W); *Moremi v Moremi* 2000 (1) SA 936 (W).

[26] To the balance of the argument advanced by Mr du Preez, in terms of the Regulations issued under s 38(8)(a) of the Bantu (Urban Areas) Consolidation Act 25 of 1945, Regulation 10(1) prohibited the letting and the transfer of the property without the consent of the 'superintendent'. Equally, the Regulation prohibited the occupation of the first respondent and her late husband. Regulation 10(2) prohibits occupation by any dependent not named in the residential permit or certificate in the first instance.

[27] I observe that the notice received from the Soweto Housing Bureau, offering the transfer of the property, is generic and written to the 'occupiers'. The first respondent claims that the applicant and Ms Maureen Langa were informed after the transfer of the property, and that neither raised an issue in this regard. However, it seems to me that unless the first respondent demonstrated to the Court the right she had to the permit and/or lawful occupation, the validity of both her occupation and the purported consent are in doubt. I pause to mention that, given the known history, it is surprising that the first respondent does not dispute that she refused to participate in discussion with the Department of Human Settlements to explain the circumstances of the transfer of the property into her and her late husband's names'. It is further surprising that outside of the telephonic conversation, the transfer appears not to have been properly discussed with all those who had an interest in the property, including the applicant.

Conclusion

[28] An appropriate order is to have the rights of the parties properly ventilated through a properly constituted inquiry. Given the dispute, it is fitting that a caveat and/or endorsement preventing the alienation or encumbrance of the property is made until the final determination of the issue. It is for these reasons that the order of 30 April 2021 was made.

Therefore, the following order was made:

1. The Registrar of Deeds, Johannesburg, is ordered to endorse and record a caveat of the property described as Erf [...], O[...] W[...], Gauteng Province and

against Title Deed No. [...] (currently registered in the names of Seki Angeline Langa and the late Joshua Langa) to prevent the alienation and/or registration of encumbrance over the property pending the finalisation of the Inquiry in paragraph 2 below.

2. The Director-General of the Department of Human Settlements is ordered to hold an investigation and a hearing in terms of s 2 of the Conversion of Certain Rights into Leasehold or Ownership Act 81 of 1988, to determine the rightful owner(s) and holders of interest to the property.

3. Each party is to pay its own costs.

T SIWENDU

JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

These reasons were handed down electronically by circulation to the parties' and/or parties' representatives by email and by being uploaded to CaseLines. The date and time for hand-down is deemed to be 10h00 on 31 May 2021.

Date of hearing: 28 April 2021

Date of order: 30 April 2021

Date of reasons: 31 May 2021

Appearances:

Counsel for the applicant: Adv. L Memela

Attorney for the applicant: Gcwensa Attorneys

Counsel for the first respondent: Mr A du Preez

Attorney for the first respondent: Du Preez Attorneys