

12/1/2010

IN THE HIGH COURT OF SOUTH AFRICA
NORTH GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO.	☒ YES
(2) OF INTEREST TO OTHER JUDGES: YES/NO.	☒ YES
DATE	SIGNATURE
5/1/10	<i>[Signature]</i>
Case Number: 57331/2007	

In the matter between:

VIOLET MOETJI MOESEI

Applicant

And

THE SHERIFF, PRETORIA NORTH
CITY OF TSHWANE METROPOLITAN
MUNICIPALITY

First Respondent

Second Respondent

MATLAKALA MARIA MKHIZE

Third Respondent

REASONS FOR JUDGMENT

1. On the 22nd September 2009 this Court issued an order in terms of which:
 - a) The transfer of an immovable property described as Stand number 4172, Extension 4, Soshanguve South from the second respondent to the third respondent was declared null and void;
 - b) The first respondent was ordered to transfer the said property to the second respondent and to sign all necessary documents to effect this transfer;
 - c) The second respondent was, (by agreement), ordered to pay the applicant's costs; and

- d) The third respondent was ordered to pay the applicant's costs jointly and severally with the second respondent, the one to pay, the other to be absolved; and to pay the second respondent's costs.
2. The third respondent has now applied for reasons for this judgment and order.
 3. The application for reasons was filed significantly out of time and no application for condonation has been made.
 4. As the matter has already taken far too much time to be finalized, the Court will supply its reasons in order to bring finality to this matter as soon as possible.
 5. On the papers, it is common cause, or it could not be disputed, that the applicant has occupied the said stand since May 1997 in terms of a written lease entered into between the applicant and her late husband on the one hand and the second respondent's predecessor in title, the Northern Pretoria Metropolitan Substructure.
 6. The lease was effective from the 1st April 1998, but records that the applicant and her late husband occupied the stand since the earlier date.
 7. The stand is much larger than the average residential property.
 8. The lease clearly contemplated the possibility that a township might be declared in respect of the leased stand (which was apparently an agricultural plot at the time the lease was entered into).
 9. Clause 21 of the lease agreement granted the lessee the option to purchase the dwelling on the stand in the event of a township being proclaimed on certain conditions that have been fulfilled, alternatively have never been relied upon to cancel the lease by the lessor.
 10. The stand was, unbeknown to the applicant, transferred to the third respondent in 1999 by the Northern Pretoria Metropolitan Substructure after it was allegedly allocated to the third respondent by an Area Committee as part of an RDP housing project.

11. This allocation was made in error as the stand is about twelve times the size of an RDP stand.
12. The allocation was made without any reference to the applicant's then existing rights arising from the lease agreement and her occupation of the stand.
13. The second respondent realized that the stand was transferred to the third respondent in error and obtained and obtained the third respondent's written consent to the cancellation of this transaction in 2001.
14. The intended re-transfer was not effected. The applicant continued in occupation until the third respondent launched eviction proceedings against her in the Magistrate's Court, which granted an order on the strength of the fact that the third respondent was still the registered owner. This order was made during 2004.
15. This order is dependent upon the validity of the third respondent's claim to ownership of the stand.
16. The fact that this transfer occurred in error is confirmed by the second respondent, which undertook to pay the applicant's costs in these proceedings.
17. The third respondent is unable to deny the correctness of the applicant's version and cannot dispute the fact that the stand was transferred in error to her for a price that was a fraction of the real value of the stand. The fact that a price that was calculated for a 300 square meter RDP stand was determined for this stand, which is more than twelve times the size, is further proof of the fact that transfer to the third respondent occurred in error.
18. The Northern Pretoria Metropolitan Substructure and its development agents had no mandate and no power to transfer the stand to the third respondent.
19. The third respondent was clearly snatching at a bargain in opposing the applicant's claim. It was for these reasons that the cancellation of

the transfer was ordered and the third respondent was ordered to pay the costs as set out above.

Signed at Pretoria on this 5th January 2010

A handwritten signature in black ink, appearing to read 'E. Berelmann', followed by a horizontal line.

E BERELSMANN
Judge of the High Court