

IN THE NORTH GAUTENG HIGH COURT, PRETORIA

DELETE FOR CASE FILED IN (REPUBLIC OF SOUTH AFRICA)

(1) REPORTABLE: YES/NO.

(2) OF INTEREST TO OTHER JUDGES: YES/NO.

(3) REVISED. ✓

29/07/11
DATE

SIGNATURE

29/7/2011

CASE NUMBER: 77410/09

In the application between:

CROWN HILL PROPERTIES 134 CC
(REGISTRATION NO. 2004/078171/230

Applicant

In re:

CASE NUMBER: 77410/09

In the application between:

CROWN HILL PROPERTIES 134 CC
(REGISTRATION NO. 2004/078171/230

Applicant

and

THE REGISTRAR OF DEEDS, PRETORIA

1st Respondent

THE SURVEYOR-GENERAL, PRETORIA

2nd Respondent

GLORIA KGANYAGO N.O. (as executor of the Estate
of the Late Madimetja Sekhotla Ledwaba)
(formerly known as Mdibetja Johan Kganyago)

3rd Respondent

THE GOVERNMENT EMPLOYEES PENSION FUND

4th Respondent

THE MASTER OF THE HIGH COURT, PRETORIA

5th Respondent

CASE NUMBER: 5248/11

In the matter between:

THE GOVERNMENT EMPLOYEES PENSION FUND Applicant

and

**GLORIA KGANYAGO N.O. (In her capacity as
Executrix in the Estate of the Late Madimetja
Sekhotla Ledwaba)
(formerly known as Mdibetja Johan Kganyago)** 1st Respondent

**CROWN HILL PROPERTIES 134 CC
[Registration No. 2004/078171]** 2nd Respondent

**THE REGISTRAR OF DEEDS FOR THE PRETORIA
DEEDS REGISTRY** 3rd Respondent

THE SURVEYOR-GENERAL, PRETORIA 4th Respondent
2nd Respondent

**THE GOVERNMENT OF THE REPUBLIC OF
SOUTH AFRICA** 5th Respondent
2nd Respondent

**THE MEC OF LOCAL GOVERNMENT, HOUSING,
PLANNING AND DEVELOPMENT, NORTH-WEST
PROVINCE** 6th Respondent

**THE MASTER OF THE NORTH GAUTENG DIVISION
OF THE HIGH COURT OF SOUTH AFRICA** 7th Respondent

JUDGMENT

GOODEY AJ:

[1] INTRODUCTION:

- (1.1) This is an application for consolidation.
- (1.2) It is an application that the applications in case numbers 77410/09 and 5248/11 be consolidated.
- (1.3) In essence two points *in limine* have been raised by the First / Third Respondent who opposes this consolidation.
- (1.4) For the sake of convenience reference will be made to the Applicant as "Crown Hill Properties", to the Applicant under case number 5248/11 as "GEPF", and to the First and Third Respondents in the respective applications as "Gloria Kganyago".

[2] BACKGROUND:

- (2.1) Crown Hill Properties bought the immovable property described as Erf 8408 in the Mabopane Township from GEPF.
- (2.2) Under case number 77410/09 Crown Hill Properties brought an application for the setting aside of the registration of Erf 5219. Under case number 5248/2011 GEPF brought an application for substantively the same relief.
- (2.3) The Respondent says that the GEPF has undertaken in the 2009 proceedings to abide by the order of the Court. Despite this (so the averment goes) GEPF in an opportunistic move instituted an application under case number 5248/11 seeking an order declaring the GEPF to be the owner of Erf 8404 Unit M, Mabopane-M Township, Registration Division JR, North-West Province, measuring 4.0704 hectares held under Deed of transfer T079761/2008 ("Erf 8404").
- (2.4) It is common cause that it is evident that in both applications the interests of Crown Hill Properties and GEPF are substantially the same, and the interest of Gloria Kganyago in both applications is identical

3] THE GIST OF THE APPLICANT'S CASE:

(3.1) The Applicant says in paragraph 4 of its heads:

"4. The interests of Crown Hill Properties and GEPF coincide. The interest of Crown Hill Properties is to have Erf 8408 transferred to it, and GEPF is desirable of having such transfer passed. The interest of Gloria Kganyago is to have the deceased estate retain ownership in Erf 5219."

(3.2) In view of the aforesaid, the Applicant submits that the balance of convenience overwhelmingly favours the consolidation of the two applications.

(3.3) The Applicant also submits that there is no prejudice in respect of the merits of the two applications and that the two points *in limine* raised by the Respondent hold no water.

[4] **THE GIST OF RESPONDENT'S CASE (GLORIA KGANYAGO):**

(4.1) The Respondent has raised nothing or very little on the merits. What has primarily being raised are dilatory points *in limine*.

(4.2) The one being that Crown Hill Properties has no *locus standi*, and the other that the application under case number 77410/09 serves as a ground for the defence of *lis alibi pendens* in application number 4248/2011.

(4.3) ***Ad locus standi* point:**

4.3.1 The Respondent says that the deponent to the founding affidavits of Crown Hill has not attached to his founding affidavit any resolution duly authorising him to institute this application and depose to the founding affidavit on behalf of Crown Hill.

4.3.2 Therefore, the Respondent submits, the Applicant has no *locus standi*.

(4.4) Ad lis alibi pendens:

4.4.1 In this regard the Respondent submits as follows in paragraphs 6.1 and 6.2 of her heads:

"6.1 It is clear from the foregoing and the papers filed that the two cases are basically the same. Crown Hills also confirms that:

The issues in the two applications are substantially the same, if not identical".

The GEPF does not dispute this averment.

*6.2 The upshot of the foregoing is that both Crown Hill and GEPF concede that the defence of **lis pendens** raised by Kganyago in case no 5248/11 is good."*

(4.5) Lastly the Respondent raised an objection as to the fact (so she alleges) that there is a dispute of fact.

5. DISCUSSION:

- (5.1) It is trite law that the Court has a very wide discretion to grant or refuse such an application and convenience is a paramount consideration.
- (5.2) Furthermore, it was held in New Zealand Insurance Co Ltd v Stone and Others 1963 (3) SA 63 (C) it was held that the basic requirement in an application to consolidate is where the balance of convenience lies, as opposed to any prejudice to an affected party. As to the latter, the following was said:
"By prejudice in the context it seems to me is meant substantial prejudice sufficient to cause the Court to refuse a consolidation of actions, even though the balance of convenience would favour it". (See p69A – C).
- (5.3) Substantially, the same approach was adopted in Nel v Silicon Smelters (Edms) Bpk en 'n Ander 1981 (4) SA 792 (AD) at pp 801B – E, and 802B – D.
- (5.4) As far as the objection raised that there is a dispute of facts, it is clearly not relevant to the question of consolidation.

- (5.5) Pertaining to the first point *in limine* as to *locus standi* (no resolution annexed) it is trite law that it is a well established principle that it is not necessary to annex a resolution where the sole member of a CC lodges and application.
- (5.6) As to the second point *in limine*, it is clearly two different Applicants in the two applications and this objection can therefore not stand. In any way, the requirements as to *lis pendens* have not been met and the Respondent bearing the onus of proof in this regard has not convinced me otherwise.
- (5.7) Under the circumstances, the application must succeed and I therefore make the following order.

"Prayers 1 to 4 of the notice of motion are granted."


GOODEY-AJ

Date heard: 28 July 2011
Date of Judgment: 29 July 2011

On behalf of the Applicant:

ADV SJ MARITZ SC
ATTORNEY PDS GOOSEN
WILSENACH VAN WYK ATTORNEYS, PRETORIA

On behalf of the Respondent

ADV NOTSHE SC
ATTORNEYS MPOYANA LEDWABA, PRETORIA