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

CASE NO: 67238/18

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

Date: 15/2/24

Signature:

In the matter between:

MAITE LYVIA NTAKWANA

APPLICANT

and

**FRANS NHLODI NTAKWANA
AND TWO OTHERS**

RESPONDENTS

Summary: *Rei vindicatio* application. The applicant is the lawful owner of the property unlawfully occupied by the respondents. Occupation of the property is not in dispute. The unlawful occupier(s) asserts that he is the lawful owner of property and seeks a declaratory order to that effect. The applicant as the owner of the property is entitled to a vindication order. The respondent failed to make out a case for a declaratory relief. The requirements of the relevant statute were not met to make the alleged alienation forceful and effective. Held: (1) The draft order “X” as duly amended is made an order of Court. Held: (2) The counter-application for a declaratory relief is dismissed with costs.

JUDGMENT

CORAM: MOSHOANA, J

Introduction

- [1] Before Court served an application seeking to evict the respondents one Mr Frans Nhlodi Ntakwana (Frans) and other unlawful occupiers from Erf 3[...] M[...] Street, Tswelopele Extension 6, Tembisa Township (the property) owned by the applicant, Maite Lyvia Ntakwana (Ntakwana). Additionally, Frans launched a counter-application seeking a declaratory relief to the effect that he is the lawful owner of the property. Both these applications stood opposed. After hearing submission from both parties, Mr Serumula, attorney appearing for Ntakwana favoured this Court with a draft order and implored the Court to adopt it. Barring the amendment to paragraph 6 of the draft order, this Court adopted the draft which is to be annexed to this judgment and marked as “X”. For avoidance of confusion, the amendment to paragraph 6 is simply a deletion the words “*on attorney and own client costs*”.

Background facts and evidence

- [2] A brief summation of the essential facts is necessary; given the view this Court takes at end. Ntakwana acquired ownership of the property around 2001. As proof of ownership, she produced a title deed which depicts her as the owner of the property. Ntakwana is the aunt to Frans. Owing to the fact that she was employed in Pretoria North, she arranged with Frans to look after the property and pay for the municipal utilities bill. As a result of this arrangement, Frans took lawful occupation of the property.
- [3] As the years progressed, Frans indicated to Ntakwana that he is encountering problems with the municipality. As a result, Ntakwana deposed to an affidavit,

effectively confirming that Frans was given permission to look after the property as it is situated in a high crime area. It is not necessary to quote the contents of the said affidavit. It suffices to mention that Frans seeks to use that an affidavit as evidence that Ntakwana alienated the property to him. In the same breath, Frans also alleged that he acquired ownership of the same property after purchasing it from his uncle, the brother to Ntakwana. Some contradictory affidavits were submitted to this Court in support of the alleged sale in order to obtain a declaratory relief.

- [4] Later on, Ntakwana requested Frans to vacate the property after discovering that the municipal utility bill was in arrears. Frans persistently refused to vacate the property. Resultantly, Ntakwana launched the present application in accordance with the provisions of section 4 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE)¹.

Analysis

- [5] At the centre of the present dispute lies the ownership of the property. In terms of the Deeds Registry Act (Deeds)² a title deed serves as proof of ownership. Uncontrovertibly, Ntakwana is the owner of the property. As the owner of the property, she has vindicatory rights over the property. It is undisputed that Frans is currently in occupation of the property. Indeed, the evidence revealed that the occupation was lawful at the beginning, given the arrangements between Ntakwana and Frans. At a point, in view of not paying the municipal utility bill, the arrangements of lawful occupation fell away. Such then turned Frans into an unlawful occupier. Ntakwana is entitled in terms of PIE, subject to its procedural and substantive requirements being met, to seek an eviction order from this Court. There is no dispute that the procedural requirements have been met. Frans is a person who is employed and is capable of acquiring his own property to live with his family. Thus, there are no legal impediments to an order of eviction.

¹ Act 19 of 1998 as amended.

² Act 47 of 1937 as amended

[6] Owing to the fact that Frans was unable to legally justify his occupation of the property, he conjured up, as it were, a declaratory relief. A declaratory relief is a discretionary relief that a Court may order in the event of a dispute and or contingent dispute. However, absent assertion and acquisition of a right, a declaration of rights relief may not be issued. A person would acquire ownership of a thing in a number of ways. For an example through sale, donation, inheritance and so on. In *casu*, Frans alleges on the one hand that he acquired the property through a sale. However, on his own version, he purchased the property from a non-owner, his uncle. At the time of the alleged sale, the property was in lawfully the hands of Ntakwana. Thus, in law, it is only Ntakwana who can sell the property. On the other hand, Frans sought to use the affidavit deposed to by Ntakwana, in an attempt to fend off the problems mentioned to her by Frans, as proof that Ntakwana 'donated' the property to him.

[7] In terms of the Alienation of Land Act (Land Act)³, section 2 (1) thereof provides that no alienation of land⁴ after the commencement of the 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 by their agents acting on their authority. In terms of section 1 (1) (i) of the Land Act, alienate in relation to land means to sell, exchange or donate. In terms of section 1 (1) (iii) of the Land Act, a deed of alienation means a document under which land is alienated. It is without any shadow of doubt that the document which Frans seeks to label as a donation is of no force or effect. It does not bear his signature as the intended 'donatee'. Frans does not and had not acquired any rights over the property. Accordingly, the declaratory relief falls to be dismissed with costs.

Order

[8] In the results, the following order is made:

³ Act 68 of 1981 as amended.

⁴ In terms of section 1 (1) (g) (c) (i) of the Land Act land means any land used or intended to be used mainly for residential purposes. Accordingly, the property is the land.

[1] The draft order marked "X", as duly amended, is hereby made an order of this Court.

[2] The counter-application is dismissed with costs.

GN MOSHOANA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES:

Attorney for the Applicant:	Mr. M T Serumula
Instructed by:	Serumula MT Attorneys, Pretoria
Counsel for the Respondents:	Mr A Moja
Instructed by:	TC Mphela Attorneys, Pretoria
Date of the hearing:	13 February 2024
Date of Reasons:	15 February 2024