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

Case No: 39595/21

REPORTABLE: YES

OF INTEREST TO OTHER JUDGES: NO

REVISED.

13 March 2023

In the matter between:

BACK TO CHRIST ASSEMBLY CHURCH

Applicant

And

BACK TO CHRIST ASSEMBLY

First Respondent

THE REGISTRAR OF DEEDS, PRETORIA

Second Respondent

JUDGMENT

SK HASSIM AJ

INTRODUCTION

1. Section 4(1)(b) of the Deeds Registries Act, Act No 47 of 1937 ("**the Act**") empowers the Registrar of Deeds ("**the Registrar**") to rectify any deed or any other

document registered or filed in the deeds registry where he ¹ is of the opinion that it is necessary to do so.

2. This application stems from an endorsement on a deed of transfer made by the Registrar under section 4(1)(b) of the Act. It engages whether the Registrar acted within the scope of the power conferred on him by section 4(1)(b) of the Act when he made an endorsement on a deed of transfer. The provisions of section 4(1) (b) relevant to this application read as follows:

“4 Powers of registrar

(1) Each registrar shall have power-

(b) whenever it is in his opinion necessary or desirable to rectify in any deed or other document, registered or filed in his registry, an error in the name or the description of any person or property mentioned therein, or in the conditions affecting any such property to rectify the error: Provided that-

(i) every person appearing from the deed or other document to be interested in the rectification has consented thereto in writing;

(ii) if any such person refuse to consent thereto the rectification may be made on the authority of an order of Court;

(iii) if the error is common to two or more deeds or other documents, including any register in his or her registry, the error shall be rectified in all those deeds or other documents, unless the registrar, on good cause shown, directs otherwise;

(iv) no such rectification shall be made if it would have the effect of transferring any right;...”

¹ I use the masculine form for ease of reference only.

3. At the risk of stating the obvious, and in my view, the word “rectification” connotes an error that stands to be corrected in the case of a document through an alteration. The correction of the error would constitute a rectification² thereof. In my opinion, if there is no error, then the change cannot properly be labelled a rectification as contemplated in section 4(1) of the Act, but rather an alteration.

4. It is common cause that the applicant (i) was established as a church named “Back to Christ Assembly Church” under a Constitution, signed and dated 16 January 1985; (ii) On 24 September 1986, the Department of Co-Operation and Development issued to the applicant a certificate of Permission to Occupy the property, Erf [...] Soshanguve-L Township; (iii) On 6 January 2011, the Department of Co-operation and Development registered the applicant as a non-profit organization with registration no. 085-817-NPO in terms of the Non-Profit Organisations Act, Act No 71 of 1997.

5. The first respondent, Back to Christ Assembly (NPC) (“**the respondent**”) was registered on 19 November 2003 under the Companies Act, Act No 61 of 1973. It is a non-profit company envisaged in the Companies Act, Act No 71 of 2008.

6. Erf [...] Soshanguve-L Township (“**the property**”) was registered in the deeds registry on 10 November 2011 under Deed of Transfer [...] (“**the Deed**”). The transferee is Back to Christ Assembly Church (i.e., the applicant). The *causa* for the registration is recorded as a sale on 17 June 1999 from the Gauteng Provincial Department to “Back to Christ Assembly Church” (i.e., the applicant) for a purchase consideration of R912.50.

7. On 9 February 2015, the registration number allocated to the applicant when it was registered as a non-profit organisation on 6 January 2011 was inserted in the Deed in terms of section 4(1)(b) by an endorsement on the Deed.³

² Defined in the Shorter Oxford English Dictionary as “*correction of error; a setting straight or right; amendment, improvement, correction.*”

³ The endorsement appears on page 3 of the Deed which is an annexure to the Deed.

8. On or about 6 November 2018, the respondent applied to the Registrar in terms of section 4(1)(b) of the Act “*for the rectification of the name and registration number of the company Back to Christ Assembly [on the deed of transfer]*” (“**the respondent’s rectification application**”). The application which took the form of an affidavit was signed by Mr Josiah Raphefo Ntswelengwe, in his capacity as a director of the respondent. Mr Ntswelengwe, alleged the following in support of the application:

“1. ... the correct name of the company is Back to Christ Assembly And registration number 2003/029187/08.

2. ...the name of Back to Christ Assembly appears incorrectly as BACK TO CHRIST ASSEMBLY CHURCH on page 2 and 3 of Deed of Transfer Number [...] ... The registration number should read correctly as 2003/029187/08 and not 085–817– MPO as endorsed on page 3 of Deed of Transfer [...].

3. ...the name and registration number of the company should read as Back to Christ Assembly, Registration Number 2003/09187/08 in the said Deed of Transfer.

4. ...we presume the mistake occurred in the preparing of the aforementioned Deeds.

5. This correction will not have the effect of the [sic] transferring of any right...

6. ...”

9. An application appears to simultaneously have been made by the respondent in terms of regulation 68 of the regulations made under the Act for a certified copy of the Deed.

10. On 19 November 2018 the Registrar, presumably in response to the respondent’s rectification application endorsed the Deed by the insertion of a page

numbered “4” which was to constitute an annexure to the Deed. The endorsement is reproduced hereunder:

PAGE 4

ANNEXURE TO [....]

TRANSFeree'S DESCRIPTION	
WYSIG KRAGTENS ART 4(1)(b)	AMENDED IN TERMS
VAN WET 47 VAN 1937 TE LEES ACT 47 OF 1937	SECTION 4(1)(b) OF
TO READ	
BACK TO CHRIST [sic] ASSEMBLY	
Registration Number: 2003/029187/08	
BC 000076888/2018	sgd
DATE 19 11 18	REGISTRATEUR/REGISTRAR

11. The applicant seeks to set aside this endorsement on the Deed which enured the respondent and prejudiced the applicant who held title to the property thereunder.

12. This application is not concerned with whether the applicant church is a faction that broke away from the respondent church or vice versa. Neither their relationship nor their disputes have any bearing on this application.

13. Nor is it about who the owner of the immovable property is, or should be, and *a fortiori* in whose name it should be registered. The issue is narrower. Did the

Registrar exceed the power conferred by section 4(1)(b)(ii) when he altered the name and identification particulars of the transferee by endorsing the Deed. The endorsement was presumably done in the belief that the name of the transferee was incorrectly recorded on the Deed, and it therefore had to be rectified. Stated differently, the issue is whether the prerequisites for the Registrar to exercise the power conferred by section 4(1) (b) (ii) of the Act were met when the Registrar endorsed the Deed.

14. Before delving into the issues for determination it is convenient to refer to the relief claimed. The following prayers are sought in the notice of motion:

“1. Setting aside the endorsement made by the second respondent on 19 November 2019 in terms of section 4(1)(b) of the Deeds Registry Act 47 of 1937 to Deed of Transfer [...] which transferred the Soshanguve property from the name of the applicant to the name of the first respondent (hereinafter referred to as the “endorsement”).

2. Directing the second respondent to remove the endorsement from the title deed [...]

3. The first respondent is ordered to deliver the said Deed of Transfer to the Registrar of Deeds, to note and effect the cancellation of the endorsement in the records of the Deeds Office in Pretoria within 7 days of service of the Court Order on the first respondent or its attorney of record; and

4. The first respondent makes payment of the costs on the scale as between attorney and client.”

15. Mr Mukwevho who appeared on behalf of the respondent, argued that any relief the applicant seeks must be located in the Act. He submitted that the applicant’s remedy was an application contemplated in section 4(1)(b)(ii) of the Act. However, that section, so the argument goes is not available to the applicant because it had failed to request the respondent to concede to the reversion to the

status quo prior to the endorsement on 19 November 2018. I understood the effect of his argument to be that this application is premature because the respondent's consent to the relief had not been sought and refused.

THE ISSUES

16. There are four main issues in this application: (i) should the application have been brought in terms of section 4(1)(b) (ii)? (ii) was there an error in the name or the description of the transferee in the Deed? If there was no error, *cadit questio*; the application must succeed; (iii) If there was an error, whether it appeared from the Deed that there may be a person who may have an interest in the rectification of the error? and (iv) If so, whether that person had consented in writing to the rectification of the error? If the person with an interest had not consented to the rectification of the error or a court had not authorised it, then too, the application must succeed.

The scope of the Registrar's power in terms of section 4(1)(b)

17. The power conferred on the Registrar by section 4(1)(b) can have devastating consequences. It empowers the Registrar to amend or alter a deed to rectify it. This can, and may, have devastating consequences amongst others, depriving the owner of real rights. The Registrar does not have the power to do things which determine the rights of parties. Section 4(1)(b)(iv) makes this clear.

18. Even in cases where there is an error in the name or description of a person or property on a deed, the Registrar is not at large to rectify the error. Section 4(1)(b) of the Act limits the Registrar's power to rectify deeds to those cases where a deed of transfer contains an error in the name, or the description of any person mentioned therein. In my view the Registrar may rectify a deed where there is no dispute that a deed falls to be rectified. Hence, the requirement of written consent which would constitute consensual authority to the Registrar to rectify a deed.

19. If a person interested in the rectification of the deed ("**an interested person**") appears from a deed, the Registrar power to rectify the error in a deed is further circumscribed. The Registrar may exercise his power to rectify an error in the name

or description of the property in a deed if the interested party has consented in writing to the rectification of the error. The written consent of an interested person and, in its absence, a court order is a jurisdictional fact for the exercise of the Registrar's power. If the interested person refuses to consent to the rectification, there is no consensual authority and the Register cannot rectify the deed, unless the court has authorised him to do so. The court order would substitute the written consent.

Is this an application in terms of section 4(1)(b)(ii) of the Act for the Registrar to be authorised to rectify the Deed?

20. The respondent misconstrues the object and import of section 4(1)(ii), and the circumstances under which it applies. Section 4(1)(ii) cannot be read in isolation. Section 4 defines the ambit of the Registrar's powers. One of the powers conferred on the Registrar is to rectify deeds of transfer where there is an error in the name or description of a person or property therein. This power can only be exercised if "every person appearing from the deed or other document to be interested in the rectification has consented thereto in writing". If such person has not consented, the Registrar cannot rectify the error unless he is authorised by a court to do so. The Act does not identify the person who may or must apply to the court for the authorisation. The Registrar can apply ⁴ because he is the person who requires the authority. However, it is highly unlikely that the Registrar would apply for authorisation. The person who wants a deed to be rectified would most likely apply for the rectification to the Registrar. If there appears from the deed to be a person interested in the rectification the applicant would most likely submit the written consent of such person to the rectification. Where the person who appears from a deed to be interested in the rectification, refuses to consent thereto the Registrar cannot rectify the deed. And the person who applied for the rectification would have to obtain an order authorising the Registrar the deed. In my opinion, the court order stands in the stead of the written consent.

⁴ Subject to all interested persons being notified of the application.

21. I cannot find a provision in the Act that an application authorising the Registrar to rectify a deed is subject to consent having been sought and refused. The Act dispenses with the need for an order authorising the Registrar to rectify where consent has been obtained but does not make a request for consent and the refusal thereof a condition to an application to authorise the Registrar to rectify an error on a deed. In my view, it was not necessary for the applicant to have sought consent (and the respondent having refused consent) to the relief claimed before it could bring an application.

22. To summarise the point: the written consent of a person appearing from a deed to be interested in the rectification is a *sine qua non* for the Registrar to rectify a Deed. A request for, and refusal of, consent is not a *sine qua* to an application authorising the Registrar to rectify a deed in the exercise of its powers under section 492) of the Act.

23. There is however a more obvious reason why the applicant did not have to seek the respondent's consent; the applicant is not applying for an order authorising the Registrar to rectify an error on the Deed. The applicant is applying to undo the rectification of the Deed on the basis that there was no *causa* for it because (i) there was no error on the Deed; and (ii) the applicant appeared from the Deed to be interested in the rectification of the Deed and it had not consented to the rectification. I cannot fault the type, or form, of the relief sought by the applicant.

Was there an error in the Deed of the sort contemplated in section 4(1)(b)?

24. The respondent's name is strikingly similar to the applicant's name. The difference lies in the omission of the word "Church" from the respondent's name. While the applicant and respondent have similar names, they are separate entities. The applicant is an unincorporated association and therefore not a juristic person. The respondent on the other hand is a juristic person incorporated under the Companies Act. There was no error in the name or description of the applicant. The applicant's name is "Back to Christ Assembly Church". It has the word "Church" as the last word in its name. Its name is not "Back to Christ Assembly". That is the respondent's name.

25. The form of the respondent's registration number is easily recognisable as a registration number allocated to a company, regardless of whether it was incorporated under the Companies Act, 1973 or the Companies Act, 2008. The form of the applicant's registration number on the other hand is not easily recognisable, it is a number issued to a non-profit organisation in terms of the Non-Profit Organisations Act, Act No 71 of 1997.

26. There was no error in the transferee's name or description which fell to be rectified in terms of section 4(1)(b)(ii). The applicant's name and description were correctly reflected on the Deed; there were simply no errors to rectify, let alone errors that were necessary to rectify.

27. The Registrar could not have invoked his section 4(1)(b) power. This power would only have been activated if there was an error in the name and description of the transferee, namely the applicant *in casu*. And there was none.

If there was an error, was the Registrar empowered to rectify the Deed?

28. Lest I have erred in my finding that there was no error in the applicant's name or description, I consider whether it was competent for the Registrar to have acted in terms of section 4(1)(b).

29. I do not understand the respondent's case to be that the applicant would not constitute an interested person contemplated in section 4(1)(i).

30. It speaks for itself that a transferee of immovable property will be affected by a change on a deed to its name and an identification number such as registration number, or an identity number of a natural person. This stems from firstly, what the registration of a real right in the Registry of Deeds seeks to achieve and secondly, what the legal effect of the registration of a real right is.

31. Hoexter JA found in Frye's (Pty) Ltd v Ries⁵ that (i) registration is intended to protect the real rights of those persons in whose names such rights are registered in

⁵ 1957 (3) SA 575 (A).

the Deeds Office; (ii) the real function of registration is the protection of the persons in whose names real rights have been registered; and (iii) such rights are maintainable against the whole world.⁶ And that registration has by law the same effect as express notification to every person in the world of the owner's ownership of the real right.⁷ In this regard he held:

“As far as the effect of registration is concerned, there is no doubt that the ownership of a real right is adequately protected by its registration in the Deeds Office. Indeed the system of land registration was evolved for the very purpose of ensuring that there should not be any doubt as to the ownership of the persons in whose names real rights are registered. Theoretically no doubt the act of registration is regarded as notice to all the world of the ownership of the real right which is registered. That merely means that the person in whose name a real right is registered can prove his ownership by producing the registered deed. Generally speaking, no person can successfully attack the right of ownership duly and properly registered in the Deeds Office. If the registered owner asserts his right of ownership against a particular person he is entitled to do so, not because that person is deemed to know that he is the owner, but because he is in fact the owner by virtue of the registration of his right of ownership.”⁸

32. A change to a transferee's name on a deed affects the transferee's ownership of the real right. In this case, the correction of a purported error in the name of the transferee on the Deed from the applicant, as transferee, to the respondent, as transferee, would mean that the mere production by the respondent of the Deed after its “rectification” on 19 November 2018 would constitute proof of its ownership of the property and disprove the applicant's ownership. The applicant has been deprived real rights because of the rectification to the Deed by the Registrar. This in my view renders a transferee “a person appearing from the deed to be interested in the rectification” as contemplated in section 4(1)(b) of the Act. Accordingly, the Registrar

⁶ At 583 E-G.

⁷ 584H.

⁸ 582A-C.

could only invoke the power to rectify an error on the Deed if the applicant had consented thereto in writing.

33. It is common cause that not only did the applicant not consent to the rectification of any error; but also, that it was never requested to do so. The applicant came to know of the endorsement two years after it had been made when it was revealed by the respondent in an urgent application brought by it in 2020 against the applicant.

34. It is also common cause that there was no court order authorising the Registrar to rectify the Deed. The jurisdictional requirement to the Registrar's power was therefore lacking. The Registrar accordingly exceeded his powers when he rectified the Deed.

35. There is another reason why the Registrar's power was not activated. What Mr Ntswelengwe sought to do was to alter the identity of the transferee. That falls beyond what section 4(1)(b) empowers the Registrar to do.

36. The Registrar may under no circumstances whatsoever rectify an error in the name, or the description of a person or property mentioned in a deed, if the effect of a rectification under section 4(1)(b) would result in one person losing a right and another acquiring that right. This would have the effect of a right having been transferred. In such circumstances, section 4(1)(b)(iv) withdraws the Registrar's power in its totality to rectify an error in the name, or the description of a person or property mentioned in a deed.

37. According to the Deed, the transferee is a person named "BACK TO CHRIST ASSEMBLY CHURCH", a non-juristic person the applicant in this application. The applicant is a separate legal entity from the defendant, Back to Christ Assembly a non-profit company registered in terms of the Companies Act..

38. The applicant is an unincorporated association while the respondent is an incorporated association incorporated under the Companies Act, 1973.

39. The property was registered in the name of a non-juristic person. The respondent, a juristic person applied for the property to be registered in its name. What the respondent applied for was not a correction of the name of the transferee but rather a change in the identity of the transferee. The effect in my view was the transfer of rights contrary to section 4(1)(b)(iv) of the Act.

40. One would have expected the Registrar to have carefully considered whether the applicant and the respondent were the same entity or person. Section 3(1)(b) of the Act imposes upon the Registrar an obligation to “examine all deeds or other documents submitted to him for execution or registration, and after examination reject any such deed or other document the execution or registration of which is not permitted by this Act...”. It appears to me that the Registrar failed in this duty. Had the Registrar discharged its duty diligently it would have been seen that the applicant and respondent were not the same person or entity.

41. I am also of the view that this is the type of matter where the Registrar should have filed a report in terms of section 97 of the Act.

COSTS

42. The remaining issue is costs. The applicant seeks punitive costs. The respondent’s conduct in the rectification of the Deed by the Registrar is disconcerting to say the least. The respondent knew that the applicant and respondent churches were different. In fact, they both accused the other of being a breakaway faction.

43. There was litigation in which there were accusations of passing off. An order was granted by the learned judge Phatudi J on 6 November 2015⁹ in an action

⁹ It reads as follows:

“1. The Commissioner of Companies and Intellectual Property Commission [sic] (CPRO) to re-register, in accordance with the Laws the name Back to Christ Church Assembly with registration number M2003029187.

2. Mr Z Msipa and/or anyone in possession of the original Title deed of site L745 Soshanguve is ordered to hand the Title deed to the executive council of the church, Back to Christ Assembly.

instituted against the respondent by the applicant and amongst others Mr Z Msipha, who contends that he is the President of the applicant, . The order was rescinded by the learned judge Tolmay J in terms of rule 42 at the instance of the applicant on 26 July 2016. The respondent has brought an application to rescind the order of Tolmay J. The application is pending.

44. During December 2020 the respondent brought an urgent application to interdict the applicant from obtaining transfer of a property identified as the “*Rooidag Property*” to which both parties seemed to have asserted a right of ownership. Though the respondent’s application was struck from the roll for want of urgency the averments therein are relevant to the question of costs.

45. Mr Ntswelengwe deposed to the founding affidavit in the urgent application. He refers there to the endorsement on the Deed of the property which forms the subject of this application. There are two significant averments in that founding affidavit. One acknowledges that the applicant and respondent are separate organisations, but both “*function*” from the property. The other that the respondent (in this application) not does know how it came about that the applicant is reflected as the owner on the endorsement made on 9 February 2015 and the respondent on the endorsement made on 19 November 2018. The averments are the following:

“6.46 ...I annex hereto ... a copy of the Title Deed of the Soshanguve property on which allegedly both organisations function, being the [...] [sic] Block I, Soshanguve, Pretoria, Gauteng Province.

6.47 [Back to Christ Assembly] and [Back to Christ Assembly Church] are alleged owners of [the Soshanguve] property as can be seen with the naked eye on the endorsement pages, with one page showing the present applicant

3. The keys to the church building situated at L745 Soshanguve be held by Mr MP Kgasago and Ms Thandi Sibiya who shall be jointly and severally be responsible for their safe-keeping.

4. Any member of the Back to Christ Assembly be afforded a right to access the church building at any reasonable time with due notice to the key holders and/or the executive.”

[Back to Christ Assembly] as owner with its CIPC registration number and the first respondent [Back to Christ Assembly Church] on another endorsement page with its NGO number

6.48 How the above happened, I have no knowledge of.”

46. The deponent knows how it came about that both the applicant and respondent were reflected as the owner of the property at different times. But more importantly he recognised that the two organisations were separate, both laying claim to immovable property and both operating from the same immovable property, namely the property which is the subject matter of this application.

47. In view of this, the following statements to the Registrar in the affidavit to support the rectification of the Deed, were at best for the respondent, reckless and misleading:

“4. We presume the mistake occurred in the preparing of the aforementioned Deeds.

5. This correction will not have the effect of the [sic] transferring of any right...”.

48. The deponent knew that the so-called error was not inadvertent nor that someone had made an error when preparing the Deed. It appears to me that the description of the transferee was deliberate. If it had been inadvertent, one would have expected it to have been corrected when the first endorsement was made, namely the endorsement on 9 February 2015.

49. I have considered whether the order by Phatudi J, although rescinded, could have formed the basis for the respondent’s application to the Registrar. This considering that the respondent’s case is that it came to know of the order having been rescinded at the time of the urgent application in December 2020.

50. On a benevolent approach, it could be argued that if the respondent came to know of the rescission of Phatudi J’s order only after the endorsement had been

made by the Registrar, then the respondent's conduct may have been excusable even though the order did not authorise the registration of the Property in the respondent's name. The respondent's officials may have believed that the order for the return of the title deed in terms of paragraph 2 of the order by Phatudi J gave the respondent the right to have the Deed registered in its name. However, the affidavit to the Registrar makes no reference to the order. The order was not the reason for seeking rectification. Taking the respondent's aforesaid conduct into account as well as its steadfast opposition to this application, I am of the view that a punitive costs order is warranted in the circumstances.

ORDER

In the result I make the following order:

1. The endorsement by the Registrar of Deeds, Pretoria on 19 November 2019 on Deed of Transfer [...] in terms of section 4(1)(b) of the Deeds Registry Act 47 of 1937 is set aside, and the Registrar of Deeds, Pretoria must do all things necessary to ensure that the applicant is reflected in all relevant deeds and documents as the transferee of Erf [...] Soshanguve-L Township transferred to it by the Gauteng Provincial Department.
2. The Registrar of Deeds, Pretoria must forthwith note the setting aside of the aforementioned endorsement in the relevant records in the Deeds Registry.
3. The first respondent must deliver the Deed of Transfer [...] to the Registrar of Deeds, Pretoria within seven (7) days of the service of this order on the first respondent or its attorney of record.
4. The Registrar of Deeds, Pretoria must within 7 days of the Deed of Transfer being delivered to it, cancel the endorsement (referred to in paragraph 1 above) on Deed of Transfer [...] and on any other document in the Deeds Registry and must additionally do all things necessary to give effect to the order in paragraph 1 above.

5. The first respondent is to pay the costs of this application on the scale as between attorney and client.

S K HASSIM AJ

Acting Judge: Gauteng Division, Pretoria
(electronic signature appended)

13 March 2023

Date of hearing: 6 March 2023

Appearances:

Plaintiff: Adv T Lipshitz

Defendant: Adv V Mukwevho

This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the plaintiff's legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 13 March 2023.