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**IN THE HIGH COURT OF SOUTH AFRICA**  
**FREE STATE DIVISION, BLOEMFONTEIN**

**CASE NO: 2478/2022**

In the matter between:

**IZAK JACOB STEENKAMP N.O in his capacity**  
**As the duly Appointed Master's Representative**  
**In the estate of Late Tsietsi Moses Maloko**  
**with estate number 3[...]**

**1<sup>ST</sup> APPLICANT**

**PALEMA BEAUTY MOHLOUOA**

**2<sup>ND</sup> APPLICANT**

**LINEO JOSEPHINE MALOKO**

**3<sup>RD</sup> APPLICANT**

And

**SELLOANE MONICA RAMPAI**

**1<sup>ST</sup> RESPONDENT**

**PUSELETSO SUSAN MALOKO**

**2<sup>ND</sup> RESPONDENT**

**MMALEHLWA LENA MALOKO**

**3<sup>RD</sup> RESPONDENT**

**STRAMPE DU PLESSIS ATTORNEYS**

**4<sup>TH</sup> RESPONDENT**

**THE REGISTRAR OF DEEDS**

**5<sup>TH</sup> RESPONDENT**

**MASTER OF THE HIGH COURT****6<sup>TH</sup> RESPONDENT**

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**CORAM:** NG Gusha, AJ

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**JUDGMENT BY:** NG Gusha, AJ

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**HEARD ON:** 25 MAY 2023

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**DELIVERED ON:** This judgment was delivered electronically by circulation to the parties' representatives by way of email and by release to SAFLII. The date and time for delivery is deemed to be at 09h00 on 15 JUNE 2023.

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### **JUDGMENT**

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#### **INTRODUCTION**

[1] This is an application for the cancellation of the registration of property, to wit Erf 7[...] M[...] (Letlabika Street) Free State Province (the property).

[2] The 1<sup>st</sup> applicant is an attorney and the duly appointed Master's representative in the estate of the late Mr Tsietsi Moses Maloko (the deceased) who passed away on the 2<sup>nd</sup> January 2020. He is survived by the 2<sup>nd</sup> applicant Ms Mohlouoa who is his granddaughter.

[3] In life the deceased was married to the 3<sup>rd</sup> applicant, Ms Lineo Maloko, which marriage terminated by divorce on the 13<sup>th</sup> September 1979.

[4] The 1<sup>st</sup> to 3<sup>rd</sup> respondents are the deceased's nieces.

[5] The 4<sup>th</sup> to 6<sup>th</sup> respondents are a firm of attorneys, the registrar of deeds and the master of the high court, Free State respectively. No relief is sought from the 4<sup>th</sup> to 6<sup>th</sup> respondents.

[6] In their amended notice of motion the applicants seek the following relief, that;

1.1. The 5<sup>th</sup> respondent, the Registrar of Deeds (Bloemfontein), is ordered to cancel the title deed number T10[...] in respect of Erf 7[..] M[..] (Letlabika Street) Free State Province (the property) and to cancel all the rights accorded to the 1<sup>st</sup> to 3<sup>rd</sup> respondents by virtue of the deed.

1.2. Authorizing the 1<sup>st</sup> applicant to register Erf 7[...] M[...] (Letlabika Street) Free State Province held under title deed number T10[...] in the estate of the late Tsietsi Moses Maloko with estate number 3[...]

1.3. Authorizing the Registrar of the High Court, or the attorneys for the applicant to sign any and all documents related to the above should the 1<sup>st</sup> to 3<sup>rd</sup> respondents refuse to sign.

1.4. Ordering the 1<sup>st</sup> to 3<sup>rd</sup> respondents to pay the costs of this application, the one paying the other to be absolved.

1.5. Ordering the 1<sup>st</sup> to 3<sup>rd</sup> respondents to pay the costs of the transfer and registration of Erf 7[...] M[...] (Letlabika Street) Free State Province held under title deed T10[...] in the estate of the late Tsietsi Moses Maloko with estate number 3[...], the one paying the other to be absolved.

1.6. Further and /or alternative relief.

[7] The facts germane to this application are the following; subsequent to the death of the deceased, the 1<sup>st</sup> respondent reported his death to the Master of the High Court<sup>1</sup>. In the notice of death she indicated that she, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents were the deceased's sisters, when in fact they were his nieces<sup>2</sup>.

[8] They also indicated that the deceased was never married and left no issue and omitted to disclose that he was in fact divorced and that his daughter, Ms. Dipuo Mohlouoa, who pre-deceased him had a daughter the 2<sup>nd</sup> applicant, who by law is the deceased's sole heir<sup>3</sup>.

[9] It is on the strength of the aforesaid information that the 1<sup>st</sup> to 3<sup>rd</sup> respondents were on the 16<sup>th</sup> July 2020 issued with letters of authority<sup>4</sup> duly authorizing them to take control of the assets in the deceased's late estate. In execution of the authority, the 1<sup>st</sup> to 3<sup>rd</sup> respondents caused the property to be registered in their names on the 20<sup>th</sup> October 2020.

[10] Upon receiving a complaint from the 2<sup>nd</sup> and 3<sup>rd</sup> applicants and the 1<sup>st</sup> to 3<sup>rd</sup> respondents' failure to respond thereto, the 6<sup>th</sup> respondent on the 10<sup>th</sup> October 2020 withdrew the letters of authority issued<sup>5</sup>.

[11] The 1<sup>st</sup> to 3<sup>rd</sup> respondents raised, *in limine*, the misjoinder of the 3<sup>rd</sup> applicant. They averred that as the deceased and the 3<sup>rd</sup> applicant were divorced in 1979, long before this dispute arose, no facts were placed before this court supporting the joinder of the 3<sup>rd</sup> applicant, as the terms of their divorce in the form of a deed of settlement were not before the court.

[12] I hold the considered view that nothing turns on this aspect, the property was registered in the deceased's name and as the deceased died intestate, that property

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<sup>1</sup> Death notice; Annexure C, page 30 of the paginated bundle.

<sup>2</sup> The 2<sup>nd</sup> and 3<sup>rd</sup> respondents confirmed same in their respective confirmatory affidavits.

<sup>3</sup> Master's report and section 1 (1) (b) read with section 4(a) of the Intestate Act, Act 81/1987.

<sup>4</sup> Page 41 of the paginated bundle.

<sup>5</sup> Pp 43 to 45 of the paginated bundle.

and indeed all his other earthly possessions must be dealt with in terms of intestate succession. It is in any event apparent from the pleadings that the 3<sup>rd</sup> applicant is joined herein in so far as she may have an interest in the outcome.

[13] The point in limine is thus not upheld.

[14] Against the backdrop of the facts as alluded to *supra*, the question to be answered in this application is whether the transfer of the property into the names of the 1<sup>st</sup> to 3<sup>rd</sup> respondents was valid and based on a lawful *causa*.

[15] The applicants submitted that due to the fraud committed by the 1<sup>st</sup> to 3<sup>rd</sup> respondents, the registration of the property into their names is void *ab initio*.

[16] During submissions the 1<sup>st</sup> to 3<sup>rd</sup> respondents conceded the misrepresentation and acquiesced that the registration was indeed void *ab initio*.

[17] The 1<sup>st</sup> to 3<sup>rd</sup> respondent's acquiescence of the misrepresentation puts paid to their opposition of the relief sought. The principle "fraud unravels all" needs no restating. In **Namasthethu Electrical (Pty) Ltd v City of Cape Town**<sup>6</sup> the court per Mbha JA in restating the law cited with approval the following *dicta* in **Lazarus Estates Ltd v Beasley [1956] 1 QB (CA) at 712**

'No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever . . .'

[18] The aforesaid principle applies in the present case as well. It therefore stands to reason that the registration of the property into the names of the 1<sup>st</sup> to 3<sup>rd</sup> respondent's stands to be set aside and cancelled as same was underpinned by their

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<sup>6</sup> (201/19) [2020] ZASCA 74 (29 June 2020) at par 29.

misrepresentation to the 6<sup>th</sup> respondent. The result of said cancellation would be that the property reverts to the estate of the deceased for the executors thereof to deal therewith in accordance with the law of intestate succession<sup>7</sup>.

[19] With regards to costs, the general rule is trite and there is no reason for me to depart therefrom.

[20] Resultantly, I make the following order:

1. The 5<sup>th</sup> respondent, the Registrar of Deeds (Bloemfontein), is ordered to cancel the title deed number T10[...] in respect of Erf 7[...] M[...] (Letlabika Street) Free State Province and to cancel all the rights accorded to the 1<sup>st</sup> to 3<sup>rd</sup> respondents by virtue of the deed.
  
2. The 1<sup>st</sup> applicant is authorized to register Erf 7[...] M[...] (Letlabika Street) Free State Province held under title deed number T10[...] in the estate of the late Tsietsi Moses Maloko with estate number 3[...].

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<sup>7</sup> Section 6 of the Deeds registries Act, Act 47 of 1937 provides as follows;

- (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 all 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 (my own emphasis), and the registrar shall cancel the relevant endorsement thereon evidencing the registration of the cancelled deed.

3. The Registrar of the High Court, or the attorneys for the Applicant are authorized to sign any and all documents related to the above should the 1<sup>st</sup> to 3<sup>rd</sup> respondents refuse to sign.

4. The 1<sup>st</sup> to 3<sup>rd</sup> respondents shall bear the costs of this application, the one paying the other to be absolved.

5. The 1<sup>st</sup> to 3<sup>rd</sup> respondents shall bear the costs of the transfer and registration of Erf 7[...] M[...] (Letlabika Street) Free State Province held under title deed T10[...] in the estate of the late Tsietsi Moses Maloko with estate number 3[...], the one paying the other to be absolved.

NG Gusha, AJ

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|----------------------------|-------------------------------------------|
| On behalf of the applicant | Adv. SC Steenkamp                         |
| Instructed by:             | Steenkamp and Jansen Inc.<br>BLOEMFONTEIN |

On behalf of the respondent: Mr. K Matee  
Instructed by: MATEE ATTORNEYS  
BLOEMFONTEIN