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

CASE NO: 44363/2020

REPORTABLE: ***NO***

OF INTEREST TO OTHER JUDGES: ***NO***

REVISED:

30TH SEPTEMBER 2022

In the matter between:

SIKHOSANA (born GULLEY), KELEBOGILE OLGA Applicant

And

SIKHOSANA, THABILE ALVINA First Respondent

MDLALOSE, LUNGI Second Respondent

THE REGISTRAR OF DEEDS, JOHANNESBURG Third Respondent

Coram: Adams J

Heard: 23 May 2022 – The matter was disposed of without an oral hearing in terms of s 19(a) of the Superior Courts Act 10 of 2013.

Delivered: 30 September 2022 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 10:00 on 30 September 2022.

Summary: Opposed application – for variation and correction of title deed relating to immovable property – cancellation of title deed – sections 4, 6(1) and 33 of the Deeds Registries Act – factual disputes and facts decided on the basis of the *Plascon Evans* rule – the applicant's application dismissed.

ORDER

- (1) The applicant's application is dismissed with costs.
- (2) The applicant shall pay the first and second respondents' costs of this opposed application.

JUDGMENT

Adams J:

[1]. In issue in this opposed application is a dispute regarding ownership of immovable property in Phiri Township in Soweto, which is at present registered in the names of one Jan Samuel Sikhosana (who died on 12 November 2004) and the first respondent, who were previously married to each other, but were divorced by order of the Vereeniging Central Divorce Court on 25 September 1998. In addition to granting a decree of divorce, the Divorce Court also ordered that the joint estate should be divided and 'custody of the one minor child born of the marriage' was awarded to the first respondent (who was the plaintiff in the divorce action).

[2]. The *dramatis personae* in the dispute – as is the case almost inevitably in these type of fights about houses – are members of the same family, the first one being the aforementioned Jan Samuel Sikhosana ('Jan'), who, as already indicated, passed away on 12 November 2004. Jan's son, Ali Bafana Sikhosana ('Bafana'), who died some four months later on 23 March 2005, was in a relationship with the applicant until his death. The applicant claims that she was married to Bafana by a customary marriage, which, according to the official marriage certificate, was solemnised on 23 March 2005, which ironically is the same day on which Bafana passed away. What is even more bizarre is the allegation by the applicant in her founding affidavit that she got married to Bafana 'on 14 July 2005', by which date Bafana had been dead for over three months. Then, there is also the first respondent, who was married to Jan until 1998 and who is also the mother of Bafana. The second respondent is the daughter of the first respondent, who avers that her father is Jan. This is disputed by the applicant.

[3]. Simply put, the question for determination in this application is whether the applicant is entitled to have transferred into her name the aforementioned property, the full Deeds Office description of which is Erf [...], Phiri Township, Registration Division IQ, Gauteng Province, in extent 150 (one hundred and fifty) square meters, held under Deed of Transfer number [...]('the property'), which is situate at [...] I [...] Street, Phiri, Soweto. The applicant is presently in occupation of the property and has evidently been in such occupation since at least 2004. The aforesaid question is to be considered in the light of the background facts which, in turn, are to be distilled from the affidavits filed on behalf of the parties and, where necessary, by the application of the *Plascon Evans* rule. The relevant facts are set out in the paragraphs which follow.

[4]. However, before dealing with the facts in the matter, it may be apposite to cite in full the relevant portion of the relief claimed by the applicant as per her notice of motion, which reads in the relevant part as follows: -

'Be pleased to take notice that the applicant intends to make application to the above Honourable Court ... for an order in the following terms: -

(1) That the first and second respondents and/or their agents be hereby interdicted and/or restrained from evaluating and/or alienating and/or selling the property known as [...] Phiri Extension Soweto, Johannesburg.

(2) That the third respondent be hereby directed to rectify and/or remove the name of the first respondent from the title deed number [...], holding property known as [...] Phiri Extension, Soweto, Johannesburg.

(3) An order directing the third respondent to cancel the title deed number [...], which deed holds the property known as [...] Phiri Extension Soweto, Johannesburg;

(4) That the Registrar of Deeds, Johannesburg, be directed to register the transfer of the property known as [...] Phiri Extension Soweto Johannesburg into the name of Kelebogile Olga Sikhosana (born Gulley), within three months from the date of this order.'

[5]. The deceased, Jan, and the first respondent got married to each other at Johannesburg on 2 March 1978, and three children were born of their marriage and the relationship preceding the marriage. Two of these children have since died, including Bafana to whom reference has already been made and who the applicant alleges she was married to as and at the date of his death on 23 March 2005. The second respondent, who was born on 29 January 1987, is the only surviving child of the first respondent and Jan. And on 2 December 2016 she (the second respondent) was issued with Letters of Executorship by the Master of the High Court in respect of the deceased estate of the late Jan.

[6]. During the 1980's, the first respondent and her then husband, Jan, applied, to the *Housing Bureau* of the local government of the day – the predecessor of the City of Johannesburg Metropolitan Municipality – for a 'certificate of occupation' in respect of the property. I think that I can and should take judicial notice of the fact that these type of 'occupancy certificates' issued to families prior to democracy, were the order of the day and the reality of many families in the townships. In that regard, the first respondent avers that the application for a *Certificate of Occupancy* of the

property was made in terms of the provisions contained in the 'Regulations Governing the Control and Supervision of an Urban Bantu Residential Area and Relevant Matters', as contained in government notice GN Number 1036, 14 June 1968. I have no reason not to accept this assertion by the first respondent, because, as I have already indicated, this was the order of the day.

[7]. The first respondent and her family, which consisted of herself, Jan and their children, thereafter occupied and lived at the property until the date of the divorce on 25 September 1998. The foregoing, and especially the fact that the first respondent, together with Jan, were issued with the occupancy certificate, meant that the first respondent was a 'co-owner' of one half undivided share in the property, and this fact would have been recorded on the records of the local authority. This therefore provides an explanation – and a reasonable one at that – for the first respondent's name being included on the Title Deed relating to the property, which came about as a result of the government, after democracy, adopting a policy in terms of which all holders of rights in immovable property would have those rights converted to full rights of ownership.

[8]. As submitted by the first respondent, the Deed of Transfer bearing her name was not done in error but rather, was effected in terms of the provisions of section 5 of the Conversion of Certain Rights into Leasehold or Ownership Act, Act 81 of 1988 ('the Conversion Act'), which came into operation on 1 January 1989, and the implementation of which was fast tracked by the new government after 1994. This Act was an important step towards converting various categories of tenure into more meaningful forms of title, such as ownership. It was later amended by the General Law Amendment Act, Act 108 of 1993 and the effect of the amendment was to provide *inter alia* for the conversion of site permits (or other rights in land, such as use and occupation permits) into ownership where affected sites were situated in a formalised township. This, as correctly contended by the first respondent, explains why the property was registered into the names of Jan and the first respondent on 21 August 2002 after a consideration of R1095 had been paid by the new registered owners, being the first respondent and Jan.

[9]. I therefore conclude that the first respondent and Jan acquired ownership of the property under and in terms of the aforementioned Act and the regulations promulgated thereunder. I reject as far-fetched and fanciful the applicant's explanation that the first respondent acquired co-ownership as a result of an error. This then means that, as and at 21 August 2002, the first respondent rightfully became the registered owner of an undivided one half share in the property, with Jan being the owner of the other undivided one half share. That was also the position as and at the date of the death of Jan during 2004.

[10]. The property should therefore have been dealt with on that basis upon the death of Jan. In other words, it has to be accepted that, at the very least, the first respondent is the owner of 50% of the property and she was and is the only person entitled to deal with that portion of the property. The other half forms part and parcel of the assets in the deceased estate of the late Jan and should be dealt with as such. In that regard, and as things stand at present, the second respondent, as the duly appointed Executrix of the said estate, is the only one entitled to deal with that portion of the property in consultation with the office of the Master of the High Court.

[11]. In light of my aforesaid findings, it is not necessary for me to deal in any way with the claim by the applicant that she is entitled to inherit from Jan via Bafana, who, she alleges, was Jan's sole heir either by virtue of the law of intestate succession or as a result of a last will and testament of Jan.

[12]. In sum, the first respondent and the deceased, Jan Samuel Sikhosana, are the registered owners of the property. They acquired such ownership pursuant to and in terms of legislation in terms of which certain persons, who previously held certain rights in and to immovable property, had those rights converted into full and unqualified ownership rights. This conversion was facilitated by the South African government. The first respondent's ownership of the property and that of Jan Sikhosana, are *bona fide* and valid. Their rights in that regard are unassailable. The Deed of Transfer reflecting the aforegoing and the Deeds Registry are therefore accurate and there is no need for same to be amended or varied.

[13]. For all of these reasons, I am of the view that the applicant's application is ill-conceived and falls to be dismissed.

Costs

[14]. The general rule in matters of costs is that the successful party should be given his costs, and this rule should not be departed from except where there are good grounds for doing so.

[15]. *In casu*, there is, in my view, no reason to deviate from this general rule and the applicant should therefore be ordered to pay the costs of the first and second respondents.

Order

[16]. Accordingly, I make the following order: -

- (1) The applicant's application is dismissed with costs.
- (2) The applicant shall pay the first and second respondents' costs of this opposed application.

L R ADAMS

Judge of the High Court

Gauteng Division, Johannesburg

HEARD ON:

23rd May 2022 – The matter was disposed of without an oral hearing in terms of s 19(a) of the Superior Courts Act 10 of 2013.

JUDGMENT DATE:

30th September 2022 – judgment handed down electronically

FOR THE APPLICANT:

Advocate S Dlali

INSTRUCTED BY:

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FOR THE FIRST AND
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FOR THE SECOND AND
THIRD RESPONDENTS:

No appearance

INSTRUCTED BY:

No appearance