



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

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case number: 3401/2016

In the matter between:

ELIZABETH VERMEULEN NO.

Applicant

and

MPHO MAGDALINE RAMMILE

First Respondent

THE REGISTRAR OF DEED BLOEMFONTEIN

Second Respondent

THE MANGAUNG METROPOLITAN MUNICIPALITY

Third Respondent

**THE MEC FOR CO-OPRATIVE GORVERNANCE
AND TRADITIONAL AFFAIRS, FREE STATE
PROVINCE**

Fourth Respondent

**THE MEC FOR HUMAN SETTLEMENT
FREE STATE PROVINCE**

Fifth Respondent

**THE MASTER OF THE FREE STATE HIGH COURT
BLOEMFONTEIN**

Sixth Respondent

HEARD ON: 23 June 2017

DELIVERED ON: 18 July 2017

MHLAMBI, J

[1] This is an application for leave to appeal against the entire order of my sister Ebrahim J, delivered on 22 September 2016, in terms of which the rule *nisi* was discharged and it was ordered that the costs of the entire application were to be borne by the applicant *de bonis propriis*. Due to Ebrahim J's unavailability, the matter was placed before me for hearing on 23 June 2017. The application is opposed.

[2] On 28 July 2016 a rule *nisi* returnable on 25 August 2016 was issued calling upon the respondents to show cause if any why the following order should not be granted:

"2.1 That the first respondent be prohibited from selling and/or alienating and/or encumbering in any manner the property known as:

***Erf [...] Mangaung (Ext 6), district Bloemfontein, Province Free State
In Extent 457 (Four Hundred and Fifty Seven) square metres
Held by Deed of Transfer T3457/1994***

2.2 That the second respondent be authorised and/or ordered to register a caveat over the property and/or make a note in its records to the effect that

the first respondent is not entitled to sell and/or alienate and/or encumber the property in any manner as referred to in paragraph 1 supra.”

- [3] In her founding affidavit, the applicant stated that she was the duly appointed *testatrix* in the estate of the late Ramosiane Andrew Rammile as per the letters of executorship issued by the Master of the Free State High Court, Bloemfontein, dated 24 October 2013. The deceased and the surviving spouse, Morakane Jeanett Rammile, were married to each other in community of property on 29 October 1983.

- [4] The deceased passed away on 7 July 2001. In his Last Will and Testament he bequeathed the immovable property situated at [...] M. S., Bochabela, Bloemfontein to the daughter and the first respondent, Mpho Magdaline Rammile. At all times the first respondent knew that she was only entitled to inherit the deceased's 50% share of the immovable property. Consequently, on 26 September 2008 a deed of sale was entered into between the first respondent and the surviving spouse in terms of which the latter sold her one half share in the immovable property to the first respondent for the amount of R 90 000.00.

- [5] On 10 September 2008, letters of executorship were issued in terms of which the first respondent was appointed as the executrix in the deceased's estate, replacing Mr Horn, who was since deceased. Due to a shortfall in the estate, the immovable property was sold by public auction and realized the amount of R 284 070.00. The first respondent refused to sign the transfer

documents to enable the new purchasers to have the property transferred into their names. She was removed by the Master as executrix for her failure to adhere to the Master's request to sign the transfer documents. The applicant was appointed by the Master as the executrix on 24 October 2013.

[6] The immovable property, also known as erf No. [...] Mangaung (Extension 6) was at all times owned by the third respondent as it was only allocated to the deceased and the surviving spouse, but never transferred into their names. Having sold the property to the estate and the surviving spouse on 7 August 2014, the third respondent instructed Messers Cooper Majiedt to act as conveyancers and to effect the registration of the property into the name of the estate of the deceased and the surviving spouse. The transfer could not take place as the property had already been transferred onto the first respondent's name during March 2016 at the instance of the fourth respondent. The applicant then caused an application to be filed seeking relief as set out above.

[7] In her answering affidavit the first respondent conceded that, even though her late father bequeathed the immovable property to her, both she and the surviving spouse were entitled to 50% share each of the property.¹ For reasons she did not know, the third respondent transferred the property onto her name only.² She denied that she fraudulently arranged that the property be transferred into her

¹Paragraph 3.3 of the Answering Affidavit

² Paragraph 3.4

name. She was willing to pay the surviving spouse 50% of the value of the estate even before the finalisation of this application, should the surviving spouse be willing to accept such payment.³

[8] A number of grounds were raised in opposition of the application. I shall not deal with all the grounds save for two which were:

8.1 The applicant lacked the necessary *locus standi* to seek the orders in paragraph 2.3 and 2.4 and that no case was made out in the founding affidavit to seek such orders;

8.2 The applicant's case, that there was a shortfall in the estate, was based on conjecture as no facts were advanced in support thereof. However, in oral argument, the ground for lack of *locus standi* was abandoned.

[9] The court *a quo* did not furnish reasons for its ruling; in the absence of which these can be gnawed from the transcribed record. In the transcribed record it is said:⁴ *“what concerns me is the deceased's wishes. His wishes and his(sic) made it very clear that(sic) he wants, this is his right that he is casting onto his family through the first respondent and I am not going to sit here and negate that right just for a few counsel had said, but I want to hear what Mr Mfazi has to say about that matter”*. It is therefore evident that the court was in favour of the idea that the first respondent should keep the “ family ancestral home because her father left it to her in terms of the will” and “ *because I believe that a family home has got to be preserved for the family at all costs..... I know she is has been naughty and I know she is probably sat back and done nothing*

³ Paragraph 3.4

⁴ Line 15-20: Page 10 of the transcribed record

because she is in a position of strength and all of that I am well aware of but that does not concern me"⁵ despite the first respondent not having done anything in the past eight years either to facilitate the finalisation of the administration of the estate or the payment of the surviving spouse's half share of the estate or property.

- [10] The court agreed with the first respondent's counsel that there was no reason for selling the property at an auction as there were no estate creditors. The shortfall was brought about by the auctioneer's commission, and the conveyancers' fees.⁶ Having referred to the liquidation and distribution account, counsel for the first respondent contended that the administration costs were less than R 2 000.00.⁷ This argument is without merit, especially viewed from the point that it was conceded that the only asset in the estate was the immovable property.⁸ There was no suggestion in the papers, and in argument, as to how the estate was expected to raise funds to, *inter alia*, pay for the administration costs, beneficiaries, obvious creditors as suggested in the arguments, Master's and executor's fees. Besides, the testator could not bequeath property or assets he did not own.

- [11] It was contended by the first respondent's counsel, and the court *quo* agreed, that the applicant was, in law, not an executor and therefore, not suited as the Master's decision to appoint the first

⁵ Line 10-15: Page 10 of the transcribed record

⁶ Line 5-15: Page 12 of the transcribed record

⁷ Line 18-22: Page 12 of the transcribed record

⁸ Line 2-6: Page 14 of the transcribed record

respondent had not been set aside and therefore still valid. This argument is also without merit.

[12] In the light of the above mentioned, and the provisions of section 17 of the Superior Courts Act 10 of 2013, I am of the opinion that the appeal would have a prospect of success and I therefore make the following order.

ORDER:

Leave to appeal to the full bench of the Free State Division, Bloemfontein is granted.

JJ MHLAMBI, J

Counsel for Applicant:	Adv. WJ Groenewald
Instructed by:	Kramer Weihmann & Joubert INC. BLOEMFONTEIN

Counsel for Respondents:	Adv Mfazi
Instructed by:	Molefi Thoabala INC BLOEMFONTIEN