



FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

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

Case number: 2960/2016

In the matter between:

HLORISO JOYCE MOTLATSI

APPLICANT

and

**THE DIRECTOR-GENERAL OF
THE FREE STATE PROVINCE**

FIRST RESPONDENT

**THE ASSISTANT DIRECTOR:
LAND TENURE SUB-DIRECTORATE**

SECOND RESPONDENT

**MEMBER OF THE EXECUTIVE COUNCIL:
LOCAL GOVERNMENT HOUSING**

THIRD RESPONDENT

THE REGISTRAR OF DEEDS

FOURTH RESPONDENT

MASTER FREE STATE HIGH COURT

FIFTH RESPONDENT

LEHLOHONOLO NICOLAS KHOTLE

SIXTH RESPONDENT

CORAM:

MBHELE, J et HEFER, AJ

JUDGMENT:

HEFER, AJ

HEARD ON: 28 AUGUST 2017

DELIVERED ON: 31 AUGUST 2017

- [1] This is a review in terms of Rule 53 of the Uniform Rules of Court.
- [2] The Applicant seeks an order in the following terms:
- (i) That the First Respondent's decision declaring the Sixth Respondent to have been granted ownership in respect of the property known as Erf [...], Mangaung, Extension number : [...], district Bloemfontein, Free State Province appearing from General Plan L136/1984 and held under Certificate of Registered Title : T7588/1994 (herein later referred to as "*the property*"), be reviewed and set aside;
 - (ii) That the First Respondent be ordered to enquire into and determine afresh who shall be declared to have been granted ownership of the property; and
 - (iii) That the Fourth Respondent be ordered to rectify the title deed of the property by cancelling the transfer and registration of the property in the name of the Sixth Respondent.
- [3] According to the Applicant, her parents, Agnes and Elias Khotle, occupied the property in terms of a site permit issued by the Local Authority as contemplated by the 1986 Regulations governing the control and supervision of an urban black residential area and relevant matters promulgated in terms of Section 8 of the Black Consolidation Act, 25 of 1945.

- [4] Both Applicant's parents died intestate.
- [5] Apart from the Applicant, five other children of whom the Applicant and one Isaac Musa are the only surviving siblings, were born from the marriage between Applicant's late parents. The Sixth Respondent is the biological child of one of Applicant's sisters, Yvonne Disebo, who passed away during December 2000.
- [6] According to the Applicant she, together with all her surviving as well as late siblings stayed with their parents in the property at some stage of their lives. The Applicant moved out during 1984. Applicant's brother, Isaac Musa, referred to, is mentally handicapped and have been living in an old age home since December 2007. Save for one sister, Applicant's late siblings passed away whilst they were still living on the property.
- [7] The Sixth Respondent has lived in the property since his birth during 1982 and only left approximately seven years ago.
- [8] During 2015 it came to Applicant's attention that the Sixth Respondent had acquired ownership of the property. With the assistance of Applicant's legal representative, it was ascertained that the property was registered in the Sixth Respondent's name during November 2008. Furthermore it appeared that the First Respondent had, in terms of Section 4(1)(b) of the Conversion of Certain Rights into Leasehold or Ownership Act, 81 of 1988, declared the Sixth Respondent to have been granted ownership in respect of the property.
- [9] According to the Applicant, at no stage relevant to this application:

- (i) was the Sixth Respondent the holder of a site permit, certificate or trading site permit;
- (ii) was the Sixth Respondent the holder of rights which, in the opinion of the First Respondent were or could be construed to be similar to the rights of the holder of a site permit, certificate of trading site permit; or
- (iii) was Applicant nor her brother Isaac ever contacted for purposes of an enquiry to be held in terms of Section 2 of the Conversion of Certain Rights into Leasehold or Ownership Act, 81 of 1988 (*“the Conversion Act”*).

[10] Upon further investigation, it appeared that a letter of authority was issued to the Sixth Respondent in terms of Section 18(3) of the Estates Act, 66 of 1995 in terms of which the Sixth Respondent were authorised to take control of the assets of the late Tana Agnes Khotle, the Applicant’s deceased mother.

[11] It further appeared from copies of Government Gazettes published during February as well as April 2008, that the First Respondent did indeed give notice to the effect that he was to conduct an enquiry concerning the determination and declaration of rights of leasehold or ownership as referred to in Section 2(1) of the Conversion of Certain Rights into Leasehold or Ownership Act, 1988, in respect of the property concerned. These notices only contained the name of the Sixth Respondent in respect of the property which is the subject matter in this review application.

[12] According to the Applicant, there were no facts or evidence contained in the record filed by the First Respondent which underpin or justifies the First Respondent’s decision. This

according to the Applicant, only serves to bolster Applicant's assertion that the First Respondent had not conducted a proper investigation and had made a decision without applying his mind to the critically relevant considerations and/or facts.

- [13] The Conversion Act was promulgated to provide for the conversion of certain rights of occupation into leasehold or ownership and for matters connected therewith. This statute serves to achieve the objective by providing a mechanism *"for the conversion of the previously discretionary permits into more secure rights and the repeal of the regulations promulgated in terms of the Black (Urban Areas) Consolidation Act, 25 of 1945 regulating residential, trading and other occupancies."* (See Satchwell J in **Phasha v Southern Metropolitan Local Council of the Greater Johannesburg Metropolitan Council**, 2000 (2) SA 455 W at 475 E – F.

- [14] In terms of Section 2 of the Conversion Act, the Director-General shall conduct an enquiry in the prescribed manner in respect of affected sites within his province in order to determine who shall be declared to have been granted a right of leasehold or, in the case where the affected sites are situated in a formalised township for which a township register has been opened, ownership with regards to such sites.

- [15] In regards to such enquiry, the purpose is intended to guarantee a fair and impartial enquiry into the contentions of the contending parties as to who would ultimately qualify to acquire ownership of the property. (See Jajbhay J in **Nzimande v Nzimande and Another** 2005 (1) SA 83 (WLD).

- [16] It is implicit that the Director-General conducts an enquiry before a declaration is made that the site permit be converted to full ownership, and before transfer is effected to the occupier.
- [17] In the absence of such an enquiry, transfer to one particular person is not allowed. Therefore this Court is entitled to order the cancellation of the transfer to the Sixth Respondent up until such enquiry had been held. (See **Kuzwayo v Representative of the Executor in the Estate of the Late Masilela** 2011 (2) ALL SA 599 (SCA)).
- [18] Neither one of the Respondents opposed the application. In fact, the First, Second as well as Third Respondents filed a notice, indicating that they will abide the decision of the Court.
- [19] Whereas there is no indication that the First Respondent did in fact hold the enquiry as required by Section 2 of the Conversion Act, the following order is made:

ORDER:

1. The First Respondent's decision declaring the Sixth Respondent to have been granted ownership in respect of the property known as Erf [...], Mangaung, Extension number : [...], district Bloemfontein, Free State Province appearing from General Plan L136/1984 and held under Certificate of Registered Title T7588/1994 is set aside.
2. The First Respondent is ordered to enquire into and determine afresh who shall be declared to have been granted ownership of the property.

3. Fourth Respondent is ordered to rectify the Title Deed of the property by cancelling the transfer and registration of the property in the name of the Sixth Respondent.

J.J.F. HEFER, AJ

I concur.

M.B. MBHELE, J.

On behalf of the Applicant:

Instructed by:

Adv. W.A. van Aswegen

Jacques van der Vyver

Attorney for Applicant

Kramer, Weihmann & Joubert

Attorneys

BLOEMFONTEIN

No appearance on behalf of Respondents.

