

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : 1133/2014

In the matter between:-

MANGAUNG METROPOLITAN MUNICIPALITY

Applicant

and

MZIWANDILE GOODMAN NOMVALO

1st Respondent

TSHADI BLANDINAH MOKGADI

2nd Respondent

MALEHO JOHN MOKGADI

3rd Respondent

REGISTRAR OF DEEDS, BLOEMFONTEIN

4th Respondent

HEARD ON: 22 MAY 2014

JUDGMENT BY: KRUGER, J

DELIVERED ON: 29 MAY 2014

- [1] In the notice of motion the applicant sought an order directing the second respondent to suspend building activities on a certain erf and that the applicant be authorised to demolish structures erected on the property, and that the Registrar of Deeds (the fourth respondent) be prohibited from registering the property in the name of the first respondent or any other person who may claim to be the purchaser

thereof. In the alternative the applicant seeks an order suspending building work on the property pending the finalisation of applicant's investigation into the dispute surrounding the ownership of the property (which has to be concluded within 45 days) and any proceedings instituted pursuant thereto. At the hearing Mr Johnson, for applicant, proceeded only with the alternative prayer.

- [2] The first respondent resides on the property in question, being 26275 Jonga street, Phahameng, Mangaung, Bloemfontein (the property). The founding affidavit alleges that the second and third respondents, being Tshadi Blandinah Mokgadi and Maleho John Mokgadi, are registered co-owners of the property and reside on the property, but no relief is sought against them. In the answering affidavit the first respondent says that the third respondent is the spouse of the second respondent but left Bloemfontein during 2009 and has not been residing at the property for the last five years and neither the first nor the second respondent have any idea where he is currently staying. The sheriff's return states that service of the application on the third respondent took place by handing it to a person on the property. In the replying affidavit, in cavalier fashion, the deponent says that the second respondent "could and should" have advised the third respondent of the application.

- [3] The application is opposed by the first and second respondents. They raise as points *in limine* that the Provincial Department of Local Government and Housing and the Master of the Supreme Court and the unidentified complainants have not been joined. The first

respondent says he is building in terms of plans approved by the applicant, which approval has not been withdrawn, and which the applicant apparently does not intend to withdraw.

- [4] This application followed upon a complaint lodged with the applicant on 8 October 2012 by unidentified relatives of the second respondent, stating that the property was wrongly transferred to the second and third respondents by the Provincial Government in 2009, because the Master's Letters of Authority dated 17 July 2002 stated that the property had to be transferred to three persons. The relatives of the second respondent stated that the property had not been transferred to the correct beneficiaries. The applicant does not disclose who the complaint came from. An investigation was opened.
- [5] The applicant attaches Letters of Authority issued by the Master of the Supreme Court on 17 July 2002 stating that the second respondent has been authorised to take control of the assets of the estate of the late William Reid who died on 6 December 1963. The deponent to the founding affidavit says that Reid was the owner of the property. The Master's Letters of Authority state that the property must be registered into the name of (1) Mathlodi Annah Reid, (2) Phimdiwe Christinah Reid and (3) Tshadi Blandinah Reid. Such registration never took place.
- [6] The Deed of Transfer dated 4 March 2009 reflects that transfer of the property from the applicant is given to the second and third respondents. The Deed of Transfer transfers the property to the

second and third respondents in terms of section 4(1)(b) of the Conversion of Certain Rights into Leasehold or Ownership Act 81 of 1988, on behalf of the Member of the Executive Council responsible for Housing in the Free State Provincial Government.

- [7] The applicant says the official from the Provincial Government who authorised the transfer acted contrary to the Master's Letters of Authority, in terms whereof the property had to be transferred to the above-named three persons (the second respondent and two others who are not before court).
- [8] In the answering affidavit the first respondent says that the applicant was involved in the transfer of the house, and consented to the transfer to the second and third respondent, and that the applicant should explain its role in this transfer. These allegations elicit the response in the replying affidavit that an explanation of the processes under Act 81 of 1988 would be superfluous and irrelevant, and "Even to the extent that the applicant was/may have been involved in the process, the allegations hold true". The applicant says the uncertainties need to be investigated fully.
- [9] The first respondent says the Master had no authority to decide to whom the leasehold should be transferred in terms of Act 81 of 1988. In the replying affidavit the applicant does not give a direct response to this allegation. The first respondent also points out that the complaint was made three years after the transfer of the property to

the second and third respondents. The applicant has had 17 months plus 50 days to investigate this complaint.

[10] As to the building activities of the first respondent, the following are the relevant facts:

- (1) On 20 April 2013 he applied to the applicant for approval of building plans. In the application in the section dealing with Status of Ownership of the Property (p 53) first respondent stated that he is the Erf Permit Holder of the premises. The space allows for three possibilities for an applicant for the approval of building plans, namely (i) residential permit holder, or (ii) Erf Permit holder, or (iii) title holder.
- (2) On page 54 there is a “Declaration by Owner”. That is completed by the first respondent. On the previous page the first respondent stated that he is not the owner (title holder) but the Erf Permit holder. The first respondent never tried to mislead anyone. He *bona fide* completed the form.
- (3) The applicant says in terms of section 4(3) of the National Building Regulations and Building Standards Act 103 of 1977 the first respondent was obliged to provide details of the owner. If one looks at the application, the first respondent did not therein say he was the owner (title holder); he said he was the erf permit holder. Where he gave details of the owner in the declaration, he gave his own particulars. The plans were approved by the applicant, and the first respondent commenced building.

(4) On 12 November 2013 the applicant addressed a letter to the first respondent giving him notice to immediately suspend building activities on the site because he had not stated who the owner of the property was.

(5) On 28 January 2013 an agreement of sale was entered into in terms whereof the second respondent sold the property to the first applicant for R10 000, which has been paid in full.

[11] In the answering affidavit the first respondent says he has obtained permission from the applicant's relevant department for the building, and does not fall within the purview of section 21 of Act 103 of 1977. In terms of section 21 of the Act the magistrates' court can direct that building operations stop if the court is satisfied that such erection is contrary to or does not comply with the provisions of Act 103 of 1977 or any approval or authorisation granted thereunder. Section 21 gives no power to the High Court. If section 21 is the basis the applicant is coming to court on, it has failed to satisfy the court that the building is contrary to the provisions of the Act. Mr Johnson, for applicant invoked the common law. In a situation like the present where statutes govern the rights of the parties, it is not justified to ignore the statutes and rely only on the common law. The first respondent made a *bona fide* error in stating that he was the owner. The plans have been approved. The fact as to who the correct registered owners should be is, on the applicant's case, under dispute. Even if the first respondent had correctly stated that the owners are the persons named in the title deed, namely the second

and third respondents, the complaint which the applicant is investigating would have remained, because the complainants say that the registration in the deeds office is not correct.

- [12] Mr Roux pointed out that the applicant now requires 45 days for its investigation. Yet, it has had 50 days since the notice of motion was launched. The applicant does not say what the nature of the investigation is it intends to make. It does not say why 17 months was not enough or what action it intends to institute.
- [13] The requirements for a temporary interdict are (1) a prima facie right, though open to some doubt (2) well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted (3) balance of convenience in favour of granting interim relief (4) absence of any other satisfactory remedy (**Setlogetlo v Setlogetlo** 1914 AD 221, **Webster v Mitchell** 1948 (1) SA 1186 (W) at 1189; Herbstein and Van Winsen, **The Civil Practice of the High Courts of South Africa** 5th Ed vol II (2009) 1456 - 1457).
- [14] The applicant fails on all the requirements for an interim interdict. There are conflicting statements in the letters of authority issued by the Master and the Deed of transfer, done at the behest of the Provincial Government. The actions of the Provincial Government are not merely mechanical (**Nzimande v Nzimande and Another** 2005 (1) SA 83 (W) par [56], [67]). The Provincial Government has not been joined. The first respondent has approved plans. There is a procedure under Act 103 of 1977 for the setting aside of approved

plans by way of an appeal under section 9 of Act 103 of 1977. The applicant has decided not to follow that course, which would have been far less complicated and less expensive. In this application the applicant has clothed the issue as a dispute about the approval of building plans. But the dispute is about who the true owner of the property is.

[15] As to the alleged irreparable harm, the one who is going to suffer harm is the first respondent who has put in R300 000 of improvements. If the complainants believe they have a case and are entitled to the property, they should have instituted action against the first respondent.

[16] The first respondent has contracted builders, they may suffer damages if the work is stopped. The applicant does not say why 45 days would be crucial after such a long delay. The alternative relief open to the applicant lies in an appeal under section 9 of the Act. The balance of convenience favours the respondents.

[17] The applicant has failed to make out a case for any relief

ORDER

1. The application is dismissed with costs.

A. KRUGER, J

On behalf of applicant:

Adv J.M.C. Johnson
Instructed by:
Phatshoane Henney Inc.
BLOEMFONTEIN

On behalf of 1st respondent:

Adv L.A. Roux
Instructed by:
Kramer, Weihmann & Joubert Inc.
BLOEMFONTEIN