

IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Case No.: 4480/2005

In the case between:

SETSING SHOPPING CENTRE (PTY) LTD

Applicant

and

HAMIDA BIBI KHAN N.O.

1st Respondent

AMOD KHAN N.O. 2nd Respondent
(the trustees of Hamida Family Trust)

JUDGEMENT: HATTINGH, J

HEARD ON: 18 DECEMBER 2005

DELIVERED ON: 18 DECEMBER 2005

[1] This is the return date of a *rule nisi* in terms of which the respondents were called upon to show cause why the following orders should not be made final:

- a. why the respondents should not be interdicted from continuing with any further building activities on erven 12050, 291 and 1077 Puthaditjhaba A, D and

B respectively situated in the district Harrismith,
Free State Province.

- b. why the respondents should not restore applicants possession of the property *ante omnia*.
- c. why the respondents should not immediately be ordered to vacate the premises set out in (a) above.
- d. why the respondents should not be ordered to demolish and remove all fences and/or construction on erven 12050, 291 en 1077 Phuthaditjhaba A, D and B respectively situated in the district Harrismith, Free State Province, as constructed by the respondents within one (1) month of this order, *alternatively* should the respondents fail to comply with this order that the Sheriff of the High Court is authorized to demolish and remove all fences and/or construction in erven 12050, 291 and 1077 Phuthaditjhaba A, D and B respectively, situated in the district Harrismith, Free State Province as constructed by the respondents and restore applicant's free and undisturbed possession of the property.

- e. why the respondents should not be ordered to pay the costs of this application on the scale of attorney and own client, including the fees of the Sheriff of the High Court.

[2] It is common cause that applicant is the registered owner of the property as appears from the Deed of Transfer TG23167/2001.

[3] Registration of land has existed in Holland since the 12th century. This system of land registration was introduced into South Africa 1685. It is trite law that the effect of registration is that the ownership of a real right is adequately protected by its registration in the Deeds Office. The system of land registration was evolved for the very purpose of insuring that there should not be any doubt as to the ownership of the persons in whose names real rights are registered. The act of registration is regarded as notice to all the world of the ownership of the real right which is registered. That means that a person in whose name real right is registered can prove his ownership by producing the registered deed. (cf. **FRYES (PTY) LTD v REIS** 1957

(3) SA (AD) 575 A – 583).

[4] Possession of an owner's property by another is *prima facie* wrongful. The plaintiff does not have to allege all prove that the defendants possession is wrongful or against the wishes of the plaintiff. (**CHETTY v NAIDOO** 1974 (3) SA 13 (A)).

[5] The respondents aver that the said property was bought by the trust from the Makhalaneng Tribe and that it paid R100 000,00 (one hundred thousand rand) for the property apparently on the 19th of September 2005 and that the property is protected in terms of the interim protection of Informal Land Rights 31 of 1996.

[6] Mr. Reinders for the applicant submitted that the respondent misconstrued the application of the act in that:

(a) The respondent is clearly a trust and therefore does not fall within the parameters of a person as described in Section 1 of the Informal Land Rights Act.

(b) That the respondent is not part of a “tribe” as described in Section 1.

(c) The Act does not confer ownership of property on any person or tribe. It merely forbids that a person may be deprived of any formal right to land.

(d) The Act clearly states that the sale or this possession of any land shall be subject to any existing informal rights to that land. The Act has in any case expired in December 2003. By the submissions of Mr. Reinders in this regard is accepted as correctly reflecting the legal position.

[7] I therefore hold that:

- a) The trust is not protected by the Act;
- b) The Act is not applicable any more and has expired;
- c) That even if the so-called tribe, did have any rights to the said property, it in any case did not have any rights in terms of the Act to sell the property in 2005 as alleged by respondents.

[8] The *rule nisi* called upon respondents to pay the costs of

this application on the scale of attorney and own client, including the fees of the Sheriff of the High Court. No acceptable submissions were made to substantiate this order as to cost. Paragraph 2.5 of the *rule nisi* is amended by deleting the following:

“...on the scale of attorney and own client, including the fees of the Sheriff of the High Court.”

[9] So amended the *rule nisi* is confirmed.

G.A. HATTINGH, J

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