

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case Number: 17373/2021

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
22/07/2024	
DATE	

In the matter between:

KELVIN TWOBOY MASHAZI

Applicant

and

MABALANGANYE PANUEL MUKUMA

First Respondent

FREDDY TSHIKOSI RAKHADANI

Second Respondent

DAKALO PRESCIOUS RAKHADANI

Third Respondent

MINTY PATRICK RAMABALE

Fourth Respondent

THEBA THALITHA TUMEDISO RAMABALE

Fifth Respondent

THE REGISTRAR OF DEEDS

Sixth Respondent

Delivered: 22 July 2024 – This judgement was handed down electronically by circulation to the parties' representatives by email, by being uploaded to CaseLines. The date and time for the hand down is deemed to be 10:00 on 22 July 2024.

Summary: Property – double sales – if transfer is in fact passed to subsequent *bona fide* purchaser he is entitled to retain the property – pre-existing purchaser must claim damages against seller.

JUDGMENT

Aucamp AJ

- [1] The applicant and the first respondent on 30 November 2010 concluded a written agreement of sale in terms of which the first respondent sold the property described as Erf 5870 Cosmo City, Extension Township, Situated at 85 Bangui Crescent, Cosmo City Extension, to the applicant. The purchase price was duly paid by the applicant in instalments with the last payment having been made on 3 November 2011.
- [2] Notwithstanding the conclusion of the sale in 2010, the payment of the purchase price and the applicant having taken occupation on 5 December 2010, transfer of ownership in and to the property never took place. According to the applicant, this was solely due to the failure of the first respondent to have provided his co-operation with the formalities involved in the conveyancing process.
- [3] Instead on 24 January 2021 the applicant was advised by the second to fifth respondents that they had purchased the property from the first respondent on 13 December 2019 and that transfer of ownership had been registered in their names some time thereafter.
- [4] The applicant initiated this application on 9 April 2021 seeking to have the sale and transfer of the property in the names of the second to fifth respondents set

aside and to obtain an order compelling the first respondent to give transfer of ownership to the applicant pursuant to and in terms of the sale agreement dated 30 November 2010.

- [5] The first respondent does not oppose the application and instead an answering affidavit was filed only by and on behalf of the second to fifth respondents. The sixth respondent obviously was suited to this application purely as an interested party and no relief is being sought against the said respondent.
- [6] Only two points have been advanced in opposition to the application namely that the second to fifth respondents acquired the property as *bona fide* purchasers and were wholly unaware of the sale transaction in existence between the applicant and the first respondent. Furthermore, it is alleged that the claim to seek enforcement of the sale transaction with the first respondent had prescribed in terms of the Prescription Act, Act 68 of 1969. As such the respondents seek an order whereby the application is dismissed with cost.
- [7] In Kerr, the Principles of Law of Contract 6th Edition page 673 and in the matter of Gugu and Another v Zongwana & Others¹ it was held that the legal position in respect of a double sale can be summarised as follows:

"In the case of double sales other than those in which one party has an option in a lease, if transfer is in fact passed to C and C is *bona fide*, he is entitled to retain the property and B is left with an action for damages against A, the seller. However, if C knew of B's rights when he bought or when he took transfer, then B can claim against C transfer from C to himself or he can claim against A and see cancellation of the transfer to C and transfer from A to himself."

[emphasis added]

- [8] The critical question accordingly is whether the second to fifth respondents at the time of having concluded the second sale agreement with the first respondent and the subsequent registration of transfer ownership thereof, giving effect to the said sale, were aware of the pre-existing sale between the applicant and the first respondent in 2010.

¹ [2013] JOL31018 (ECN) at para 32

- [9] The second to fifth respondents in their answering affidavit confirms that they were unaware of the dealings between the applicant and the first respondent. The applicant on the other hand attempts to refute the allegation, albeit in argument and not in the founding or replying affidavit that the visit by the fourth respondent to the applicant at the property on 11 November 2019, constituted knowledge on the part of the respondents of the pre-existing sale. Counsel for the applicant referred me to the matter of *Jokozela v Ngece*² in support of the contention that the mere visit of the fourth respondent to the applicant, with no details having been provided of what was discussed, more specifically that the fourth respondent was advised of the pre-existing sale between the applicant and the fourth respondent, would suffice. I considered the matter referred to and fails to identify the relevance thereof to this matter.
- [10] As I am unable to find that the applicant has disclosed a cause of action in support of the relief claimed, the failure in this regard is dispositive of the entire matter and I need not make any findings in relation to the issue of prescription.

ORDER

- [11] Consequently, I make the following order.

- [1] The application is dismissed.
- [2] The applicant is directed to pay the second to fifth respondents' costs, such costs to be taxed on scale B as provided for in terms of Rule 67A of the Uniform Rules of Court.


AUCAMH AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG, JOHANNESBURG

² 2017 JDR 0827 (ECG)

HEARD ON: 21 May 2024
DATE OF JUDGEMENT: 22 July 2024

For the Applicant:

Adv Tungwana F
Instructed by Makinta Attorneys

For the Respondent:

Mr R Katombe
Instructed by Katombe Attorneys