

REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE Number: 44131/2023

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

(3) REVISED: YES/~~NO~~

30/07/2024

In the matters between: -

JOHANNES MISHACK VICTOR MASONTE

APPLICANT

And

MAKOTA TSAKANE GERTRUDE

FIRST RESPONDENT

THE REGISTRAR OF DEEDS OFFICE(PTA)

SECOND RESPONDENT

MASTER OF THE HIGH COURT

THIRD RESPONDENT

JUDGMENT

BAQWA J.

Introduction

[1] The applicant seeks an order declaring the title deed issued in favour of Mokgadi Mashika Esther in respect of property described as Erf 4[...] A[...] Township Pretoria (the property), null and void.

[2] He further seeks an order authorising the Master of the High Court of Pretoria, to

set aside the liquidation and distribution of the property in the Estate late Mokgadi Mashika Esther (The Estate)

- [3] He also seeks an order authorising The Registrar of deeds to register the property in the names of the applicant and that the costs of this application be paid by the first respondent in the event that she opposes it.

The facts

- [4] The Property was owned by the late grandparents of the applicant. The late Johannes Ratshego and Anna Mokgadi who were the parents of the applicant's mother.

- [5] The grandparents had two children, Mutere Hilda Masonte and Ephraim Mokgadi.

- [6] The property was held under a permit which listed the grandparents' names, Ephraim and the applicant's older brothers. The applicants mother's name does not appear on the permit as she was already married into the Masonte family, when it was issued.

- [7] Ephraim Mokgadi, applicant's uncle married Esther Mashika Mokgadi in 1972 and they resided on the property. When the second permit was issued only the applicants grandparents, uncle and wife were reflected on it as applicant's older brothers had moved out of the house.

- [8] The permit stated that the uncle would be responsible for payment of the expenses relating to the property.

- [9] In 1979 the applicant's grandfather made a Will in which he appointed the applicant's mother as the executrix of his estate and appointing her as the sole and heir to his estate. This act was in line with the grandfathers wish to bequeath the property to the applicant's mother as the applicant's uncle did not have progeny.

- [10] Applicants uncle fell sick in 1989. He was admitted to hospital and passed away.

The uncle's wife did not move out of the house after her husband's death as it was custom that she had to look after his ailing and aging father-in-law.

[11] The applicant's grandfather passed away on 28 August 1991 and the uncle's wife was the only person residing on the property. Even though applicant's mother was the remaining heir, she did not evict her sister-in-law considering the fact that she was her late brother's widow and had been residing at the property from the time of her marriage.

[12] Applicant's mother became aware in 2011 that she had to register the applicant's grandfathers' estate with the Master of the High Court. She was also not aware that she had to have the property transferred into her name. She laboured under the impression that if she was in possession of a letter of authority she was now the owner of the property.

[13] Applicant's mother passed away on 21 April 2014 but the applicant also did not report her estate to the Master explaining it as an oversight on his part.

[14] Mashika Esther Mokgadi, the uncle's wife's passed away on 8 November 2021 and applicant tried to arrange a meeting with her family who were residing on the property. The meeting was intended to discuss the way forward after the passing of the uncle's wife.

[15] He was however advised by the uncle's wife's niece, the first respondent, that since she was taking care of her aunt till her death she was entitled to inherit the property and applied for a protection order in order to keep the applicant at bay.

[16] The applicant then came to know that his uncle's wife had secretly registered the property into her name without consulting the applicant's mother and also applied for a title deed for the property. This effectively excluded the applicant's mother even though she was the only remaining heir.

Respondent's case

[17] The background facts are common cause between the parties herein more particularly because the respondent currently resides on the property where she previously lived with her aunt, the late Esther Mashika Mokgadi (Ephraim's wife).

[18] The respondent's case is interwoven with points which she has raised as points in *limine* in her heads of argument where she submits that the applicant *lacks locus standi*. She elaborates:

"18.1 Applicant's mother never had any ownership of the property in question.

18.2 No proven executorships in custodianship representative of his late mother's estate. He is self-appointed with no supporting affidavit.

18.3 No proof of ownership by the applicant.

18.4 No single supporting and complementary affidavit to support the claim.

18.5 Applicant disputing and alleging on the validity of the Will without any shred of evidence to prove. The allegation, applicant was supposed to have challenged the Will in terms of the Administration of Estates Act 66 of 1985.

18.6 The claim is launched only after the death of all important and this after the period of about fifty years of occupation by Esther Mokgadi and her husband.

18.7 The claim has prescribed in terms of the prescription Act 68 of 1969, particularly after thirty years of lawful possession by Esther Mokgadi and her husband.

18.8 No claims were made to lifetime of the previous owners.

18.9 The case law, namely *Shanang and Motsoe NO* dealt with a completely different state of facts. Put differently the case was dealing with a family house and therefore does not apply in these circumstances and set of facts.

18.10 There is no documentation proof of fraud in the founding papers of the applicant.

18.11 The Letter of Executorship issued to the respondent by the Master of The High Court cannot be declared null and void with first challenging same with them in terms of the dictates of the Administration of Estates Act, for the same reason they were supposed to be cited as the first respondents.

18.12 The application is premature to due to the reasons advanced in the previous paragraphs, "The Verbatim quote in paragraph 18 above in essence summarises the respondent's case in this application

The law

[19] The Wills Act 7 of 1953 provides that a Will, much is completed and regular on the face of it, is presumed to be valid until its invalidity has been established, and the onus is on the person alleging the invalidity to prove such invalidity.

[20] A Wil is invalid if the requirements regarding formalities and capacity to make and to witness are not met or if the testator does not have the necessary *animus testandi* (intention to make a will).

[21] In *Botha NO vs Leboka-Radebe and Others*¹ the court considered whether fraud should result in the cancellation of a title deed relating to immovable property.

¹ (16835/2021) (2022) ZAGPJHC 724.

[22] In that case, the first respondent had through fraudulent means and by misrepresenting to the third respondent (the Master) that she was the surviving spouse of the deceased, first obtained Letters of Authority, entitling her to take control of the assets of the deceased and causing the property to be transferred into her name by having the deed of transfer relating to the property endorsed to that effect by the fifth respondent (The Registrar of deeds).

[23] The court followed the decision in *Namasthethu Electrical (Pty) Ltd vs City of Cape Town and another*² where it was held that fraud is conduct which violates every transaction known to the law. The court also affirmed that fraud unravels everything and that the first respondent committed fraud in that she misrepresented to the office of the Master that she was the surviving spouse of the deceased, when in fact and in truth they had divorced many years before his death.

[24] The court also outlined the requirements for transfer which are twofold:

- (a) Delivery effected by registration of transfer in the Deeds Office and,
- (b) The existence of a real agreement, the essential elements of which are an intention on the part of the transferor to transfer the property and an intention on the part of the transferee to acquire ownership of the property.

Analysis

[25] Just to recapitulate, Johannes Ratsego Mokgadi and Anna Mokgadi are the deceased parents of applicant's mother (also deceased). Johannes passed away on 28 August 1991.

[26] The late grandparents were the rightful owners of the property in question and they had two children, Mutere Hilda Masonte and applicant's uncle Ephraim Mokgadi.

² (201/19) 2020 ZASCA74 (29 June 2020).

[27] Ephraim married Esther Mashika Mokgadi and they had no children. They therefore continued living with their parents on the property as they had no children.

[28] In 1979 the grandfather, Johannes made a Will in which he appointed applicant's mother as the executor of his estate and appointing her as the sole and universal heir to his estate and effects, movable and immovable whether the same to be in possession, reversion, reminder or expectancy, nothing excepted.

[29] In 1989 Ephraim passed away and was subsequently followed by the passing of the grandparents.

[30] Esther Mokgadi, the daughter-in-law of Johannes was left as the sole occupier of the property. Hilda Masonte who obtained Letters of Authority as the sole heiress of Johannes's estate did not complete the winding up of that estate and she decided not to evict her sister-in-law Esther from the property.

[31] Unbeknown to Hilda and behind her back, Esther misrepresented herself as the rightful person to inherit Johannes property, to the Master. She succeeded in her fraudulent act to the extent that the property was transferred into her name. She committed this fraud despite Hilda having registered her father's estate in 2011 and obtained Letters of Executorship.

[32] Applicant's mother passed away on 21 April 2014 and Esther passed on in November 2021. It was only after the father's death that applicant discovered the fraud.

[33] The following facts stand out. The applicant is the sole surviving heir of Hilda Masonte. Secondly the Will of Johannes has never been disputed or contested.

[34] The first respondent, who is a niece of Esther is claiming ownership of the property on the basis of a Will made by Esther in her favour.

[35] Evidently, due to the fraud that Esther had committed and her misrepresentations to the Master all her subsequent acts have to unravel due to her fraudulent acts.

[36] In the circumstances I have come to the conclusion that the applicant has made out a case for the relief sought.

Conclusion

[37] The first respondent has filed a counterclaim against the applicant regarding the improvement effected to the property to the value of R350 000.00.

[38] In that regard, I find that applicant would be unduly enriched if this court finds in his favour without compensating the first respondent for the said improvement, to the value of R198 663.17 it as the total costs of the improvement

[39] I however find that the first respondent has failed to prove improvements to the value of R350 000-00. She has however succeeded to prove improvements, to the value of R198 663.17 as the total costs of the improvements.

[42] In the result, I make the following order:

1. The title deed issued in favour of Mokgadi Mashika Esther in respect of the property situated at Erf 4[...] A[...] Township, Pretoria is declared null and void.
2. The Master of the High Court, Pretoria is directed and authorized to set aside the distribution of the property situated in Erf 4[...] A[...] Township, Pretoria pending the finalization of this Application.
3. The Registrar of Deeds is ordered to register the property described as Erf 4[...] A[...] Township, Pretoria, into the names of the Applicant.
4. The first Respondent to pay the costs of this application.

Counterclaim

5. The applicant is ordered to pay the first respondent the sum of R 198 663.17 in respect of improvement to the property.

6. Each party to pay its own costs.

SELBY BAQWA

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of hearing: 03 June 2024

Date of judgment: 24 July 2024

Appearance

On behalf of the Applicants

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