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

CASE NO: 059691/2022

DATE: 08-08-2024

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO. 10

(3) REVISED.

DATE 8 August 2024

SIGNATURE

In the matter between

THOBEDI COLLINS MOHLALA

Applicant

20 and

LAWRENCE MASHAMAITE AND THREE OTHERS

Respondents

JUDGMENT

WILSON, J:

30 On 4 July 2024, I issued a *rule nisi*, recorded in paragraph 20.2 of my judgment handed down on that date. The judgment is reported as *Mohlala v Mashamaite* (2022/059691)

[2024] ZAGPJHC 607 (4 July 2024). The *rule nisi* invited the MEC for Human Settlements in Gauteng, the Ekurhuleni Metropolitan Municipality and the Registrar of Deeds to show cause today, Thursday 8 August 2024 at 10am or as soon as thereafter counsel may be heard, why an order declaring that the applicant purchased the property at erf 6[...], W[...] M[...] zone 2 T[...], Gauteng province, in terms of a valid deed of alienation should not be granted.

10 The MEC for Human Settlements, the municipality and the registrar of deeds have all been served with a copy of my judgment. There is on file an email from the legal adviser to the MEC, acknowledging that the judgment has been brought to the MEC's attention.

 Neither the registrar of deeds nor the municipality nor the MEC have shown any cause why the *rule nisi* should not be made final. When the matter was called this morning, Mr Kabinde appeared again for the first respondent. He started out by
20 advancing a complaint that the *rule nisi* does not specifically invite the first respondent to show cause why the order is contains should not be granted.

 The reason for this is that the *rule nisi* relates exclusively to matters that the first respondent argued fully before me on 30 May 2024, and to which I had due regard in preparing my judgment of 4 July 2024.

 The *rule nisi* was issued in order to invite the second,
30 third and fourth respondents to disclose any facts that may be peculiarly within their knowledge that would have affected the validity of the sale agreement.

 The *rule nisi* was fully motivated in my judgment. Nobody

could be in any reasonable doubt about why I issued the *rule* that I did. Nor could there be any doubt that the first respondent has been heard fully on the matters to which it relates. That notwithstanding, Mr Kabinde continued to assert that the first respondent had been excluded from these proceedings and should be given a further opportunity to advance reasons why the *rule* should not be confirmed

10 I gave Mr Kabinde an opportunity to address me again on behalf of the first respondent. He raised only one point of any substance and that was that paragraph 1 of my *rule nisi* does not track perfectly on to paragraph 1 of the applicant's notice of motion.

20 It is true of course that paragraph 1 of the *rule nisi*, and paragraph 1 of the notice of motion, are not textually identical. They are however materially identical. Paragraph 1 of the notice of motion asked for a declaration that the sale, which I have held valid, in fact took place. Paragraph 1 of the *rule nisi* has the same effect, but it goes further and identifies the documents that I considered amounted to a valid deed of alienation. Whether or not those documents constituted such a deed was the very focus of the dispute between the parties when the matter was argued on 30 May 2024. There was no conceivable prejudice to the first respondent in my granting relief declaring that the documents constitute a valid deed. The first respondent was heard fully on that issue.

30 I am not bound to follow the text of an applicant's notice of motion slavishly. I may grant relief in textually different terms if it is appropriate to do so. I may even grant such relief without hearing the parties unless there is a material difference between the relief claimed and the relief granted that would prejudice either party. Here there is no conceivable prejudice to the manner

in which I recast paragraph 1 of the applicant's notice of motion in paragraph 1 of the *rule nisi*. Paragraph 1 simply identifies the valid deed that was before me and about which the parties argued extensively on 30 May 2024.

Despite my having pointed all of this out, Mr Kabinde continued to assert that his client had been excluded from these proceedings. I was unable to work out why that submission was persisted with. Mr. Kabinde nonetheless requested that the matter
10 be postponed in order for his client to make further submissions in relation to the *rule*.

In circumstances where the first respondent has already been afforded a full hearing before this court on exactly the issues dealt with in the *rule*, that application has to be refused.

For the reasons I have given, the *rule nisi* must be confirmed, I accordingly make the following order –

20 1 It is declared that annexures TCM 1, TCM 2 and TCM 3 to the applicant's founding affidavit constitute a valid deed of alienation for the purposes of section 2 (1) of the Alienation of Land Act 68 of 1981.

2 It is declared that the applicant, Thobedi Collins Mohlala, is the owner of the property situated at ERF 6[...] W[...] M[...], Zone 2, T[...], Gauteng Province ("the property").

30 3 The second respondent, the Ekurhuleni Municipality, is directed forthwith to amend its records to reflect the applicant as the owner of the property.

4 The third respondent, the Registrar of Deeds, is directed forthwith to register the property in the applicant's name.

5 There is no order as to costs.

WILSON, J
JUDGE OF THE HIGH COURT
8 August 2024