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

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.

SIGNATURE	DATE: 8 September 2024
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Case No. 2022/059691

In the matter between:

LAWRENCE MASHAMAITE

Applicant

and

THOBEDI COLLINS MOHLALA

First Respondent

EKURHULENI METROPOLITAN MUNICIPALITY

Second Respondent

REGISTRAR OF DEEDS, JOHANNESBURG

Third Respondent

MEC FOR HUMAN SETTLEMENTS (GAUTENG)

Fourth Respondent

JUDGMENT

WILSON J:

1 The applicant, Mr. Mashamaite, seeks leave to appeal against my order of
14 August 2024, in which I declared the first respondent, Mr. Mohlala, to have
purchased the land at ERF 6[...] W[...] M[...], Zone [...], T[...], Gauteng Province
("the property") pursuant to a valid sale agreement.

2 In oral argument Mr. Maphutha, who appeared for Mr. Mashamaite, reduced
the grounds of appeal to three distinct propositions, which I shall address in turn.

3 The first proposition is that I incorrectly rejected Mr. Mashamaite's denial that
he entered into the sale agreement Mr. Mohlala alleged. It was said that I should not
have accepted the documents alleged to constitute the deed of alienation as
authentic, because Mr. Mashamaite had issued a bare denial that he had signed
them.

4 There is no prospect of this proposition being sustained on appeal. The deed
of alienation was embodied in three affidavits and an annexure commissioned by
three different police officers on three different occasions across a number of months
at the Tembisa Police Station. To attack their authenticity, Mr. Mashamaite plainly
had to do more than insist that he did not sign them.

5 Like a sheriff's return, the statement of a commissioner of oaths that a
person has signed a document and understands its contents constitutes *prima facie*
proof of those facts. It will not lightly be impeached. Evidence must be adduced that
the commissioner's statement is false.

6 There is no such evidence on the papers. In argument, Mr. Maphutha asked
rhetorically what sort of evidence that might be, but it seems to me that evidence of
any fact inconsistent with the proposition that Mr. Mashamaite signed the documents
before a commissioner – such as evidence that he was somewhere other than
Tembisa Police Station on the date the affidavit was commissioned – would have
been enough. There was no such evidence, and the bare denial issued in place of it
was plainly insufficient (see *Wightman t/a JW Construction v Headfour (Pty) Ltd*
2008 (3) SA 371 (SCA), paragraph 13).

7 The second proposition is that I had no evidence before me that Mr Mashamaite was in fact the owner of the property at the time that he sold it to Mr. Mohlala. It follows, so Mr. Maphutha argued, that the sale could not have passed ownership to Mr. Mohlala. However, it was common cause on the papers before me that Mr. Mashamaite was the owner of the property at the relevant time.

8 There is presently no title deed available for the property. The property was allocated to Mr. Mashamaite by the fourth respondent, the MEC. Accordingly, I gave the MEC, together with the second respondent, the Municipality, and the third respondent, the Registrar, the opportunity to adduce evidence that the property belonged to someone other than Mr. Mashamaite at the time it was sold. They all declined that opportunity.

9 There is accordingly no factual basis for the proposition that Mr. Mashamaite did not own the property when he sold it, and no prospect of a court of appeal accepting that proposition.

10 The third proposition is that the sale of the property was void for non-compliance with section 10A of the National Housing Act 107 of 1997, which states that it is a condition of every housing subsidy that a "dwelling or serviced site" acquired under the subsidy will not be alienated within eight years of its acquisition, unless the property has first been offered for sale back to the relevant provincial housing department that allocated the site or dwelling to the subsidy beneficiary.

11 Neither party canvassed the potential application of section 10A to the facts of this case on the papers *a quo*. The issue became relevant because I asked the parties to address the question of whether section 10A in fact applied. Although the parties argued the case *a quo* on the basis that the property had not been offered to the MEC under section 10A, there are no facts dealing with that issue on the papers. Nor have the parties adduced any other facts which would bring this case within the ambit of section 10A.

12 Moreover, the MEC, in whose favour section 10A operates, has declined to adduce evidence or present argument on the point.

13 In these circumstances, the proposition that the sale was void for non-compliance with section 10A lacks any discernible factual substrate on the papers. There is accordingly no prospect of it being accepted on appeal.

14 I ordered each party to pay their own costs *a quo*. There is no reason to depart from that approach in the application for leave to appeal.

15 The application for leave to appeal is dismissed, with each party paying their own costs.

S D J WILSON

Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 8 September 2024.

HEARD ON: 6 September 2024

DECIDED ON: 8 September 2024

For the Applicant: MR Maphutha
(Heads of argument drawn by MR Maphutha and
K Kabinde)
Sithi and Thabela Attorneys

For the First Respondent: MV Sehunane
Instructed by Sehunane Attorneys Inc