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REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO DIVISION, POLOKWANE)**

CASE NO: HCA 44/2023

(Court a quo: 153/20180)

(1) REPORTABLE: YES / NO

(2) OF INTEREST TO THE JUDGES: YES / NO

(3) REVISED.

Signature:

Date: 04/12/2024

In the matter between:

COLLEN MAITJA

APPELLANT

And

MANARE ALBERTINA MOLAPO

1ST RESPONDENT

BLOUBERG MUNICIPALITY.

2ND RESPONDENT

JUDGMENT

MONENE AJ

INTRODUCTION

[1] This appeal has its genesis in a dispute between the appellant and the first respondent about ownership of a residential property, to wit Stand No 2[...], Desmond Park, Extension 5, Bochum (“the property”) located within the geographic jurisdiction of the second respondent. Both parties at loggerheads averred before the court a quo, as indeed they did also before this court of appeal, without submission of any conclusive evidence beyond their verbal say so, that they had at separate occasions purchased the property from its erstwhile owner, one Mr Matome Ratjomane. They argued in that manner in an eviction application before Magistrate Netshiozwi of the Blouberg District Court held at Senwabarwana. The Learned Magistrate had, in the main, gone on to grant an order evicting the appellant from the property and making no order as to costs. This so the appellant, aggrieved at being evicted to prosecute this appeal, which beyond being opposed by the first respondent, saw the latter cross appealing the costs order made by the Learned Magistrate.

[2] Beyond the smoke and mirrors haplessly raised by both parties before this court the appeal raised in essence the crisp question of whether the Learned magistrate had erred in not referring the matter to oral evidence in the light of the stated dispute over ownership of the property which dispute clearly predicates the eviction application. Indeed, whether the eviction order is one capable of being interfered with or not depends on who the owner of the property was proven to be in the court a quo.

[3] In both his notice of appeal and his heads of argument the appellant made stormy weather of a plethora of points preliminary to the merits of the eviction order sought to be appealed, all of which fell by the wayside before us either out of being abandoned by the appellant or being clearly misadvised or unavailable in law. In that regard the point that the court a quo did not have jurisdiction to make a declaratory order was unsustainable in the

light of the Learned Magistrate having not ordered any declarator where in fact none was prayed for in the first place. It was well-advised of the appellant to abandon this point when the matter was argued before us. Equally well advised was the decision by the appellant to abandon the incongruent point that the Learned Magistrate had, prior to hearing the application, erred in conducting judicial case management. Thirdly, the point that the filing of a supplementary affidavit of the first respondent, as applicant in the court a quo, was irregular because it was not filed with leave of the court was an unhelpful and clearly dismissible self-contradiction point where the record showed that the court a quo had in its discretion allowed the supplementary affidavit into record. The latter point had to and is dismissed by this court.

[4] Not to be outdone by the appellant in the teacup storms contest was the first respondent who hoisted her own scarecrows arguing that the appeal was not ripe to be heard on account of absence of a power of attorney in the file and failure of the appellant to provide security for costs. These points cried out for dismissal upon proof of the existence of a power of attorney as well as proof of security for costs having been provided. They were thus frowned upon by this court and are accordingly dismissed.

BRIEF BACKGROUND INFORMATION

[5] It is common cause that the property at the center of the dispute in casu was at least up to 2012 when it apparently was put up for sale, belonging to Mr Matome Ratjomane.

[6] The first respondent's daughter Thelma Molapo("Thelma") had a love or romantic relationship with the appellant and the two at some point started staying together at the property.

[7] It would appear that when, at some time the two lovers' relationship hit the rocks in around 2014 Thelma stopped staying at the property and joined her mother in seeking to have the appellant removed or evicted from the property.

[8] This saw the first respondent bringing the eviction application in the court a quo which application was opposed by the applicant.

AD DISPUTE OF FACT

[9] As already alluded to above the key issue in this appeal is the ownership of the property. In this regard the main ground of appeal worthy of being entertained by this court is whether the court a quo erred in not referring the matter for oral evidence on the issue of who the owner of the property is as both appellant and first respondent claimed to own the property on account of both having purchased it from Matome Ratjomane, the appellant claiming to have purchased it pursuant to an oral contract in 2012 and the first respondent contending to have bought it in 2016 as evidenced by a deed of sale dated 15 April 2016 but not signed by Matome Ratjomane.

[10] In the proceedings before the Learned Magistrate the purported seller of the property, Matome Ratjomane, deposed to a confirmatory affidavit supporting the appellant's version. However, and more curiously, the first respondent as applicant in the court a quo attached an affidavit of the same Matome Ratjomane to her replying affidavit, in which he confirmed the first respondent's version.

[11] It seems to me that, faced with the two mutually destructive versions of Matome Ratjomane, the Learned merely chose to believe the first respondent's version and reject that of the appellant without any reasoned or rational basis. Evidence analysis and consequent determination of issues in our law is not a mere matter of picking a side informed merely by the prejudices of human preference. It is a reasoned substantiated and rational exercise. That correct approach as is trite was not applied by the court a quo on the question of who had better title over the property.

[12] In ***Wrightman t/a JW Construction v Headfour (Pty) Ltd and Another 2008 (3) SA 371 (SCA) at para 13*** the Supreme Court of Appeal counselled us as follows what constitutes a dispute of fact:

“A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has, in his affidavit, seriously and unambiguously addressed the fact said to be disputed...”

[13] In my view, the fact that both parties rely, for contradicting propositions, on the same witness, Matome Ratjomane, posits a real and genuine dispute of fact. Associated to that is the unsigned deed of sale as well as proofs of purchase on which Matome Ratjomane, Thelma and both the appellant and the first respondent ought to have been ordered to testify orally and must be so ordered. There is just no way these dispute points could have been determined on paper. The correct approach by the court a quo ought then to have been a referral to oral evidence or trial instead of ordering an eviction.

[14] Accordingly, the appeal must succeed on the point of the court a quo's failure to properly determine the dispute of fact question. That has an impact on the cross appeal too as the Learned Magistrate's costs order must suffer the same fate as his orders in toto and cannot remain standing.

ORDER

[15] In the backdrop of all the foregoing, I make the following order:

[15.1] The appeal succeeds.

[15.2] The judgement and orders made by the Learned Magistrate Netshiozwi on 30 August 2023 under case number 153/2018 are set aside and replaced with the following order:

“The matter is remitted back to the Magistrate Court for the District of Bochum held at Senwabarwana for the leading of oral evidence on the ownership of the property and hearing denovo of the application before a magistrate other than the Learned Magistrate Netsiozwi.”

[15.3] The first respondent is ordered to pay the appellants costs.

MALOSE S MONENE
ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE

I agree

KGANYAGO J
JUDGE OF THE HIGH COURT
LIMPOPO DIVISION, POLOKWANE

APPEARANCES

Heard on : 23 August 2024

Judgment delivered on : 04 December 2024

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