

**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, PIETERMARITZBURG**

CASE NUMBER: AR195/2024

In the matter between:

ANTHONY ZWELEBANZI MNCADI

FIRST APPELLANT

SUSAN MNCADI

SECOND APPELLANT

And

MKHUNJULWA OBED LANGA

RESPONDENT

JUDGMENT

P C BEZUIDENHOUT J:

[1] Respondent brought an application in terms of section (1) of the Prescription Act no. 68 of 1969 to be declared the registered owner of a property known as Erf 7[...] N[...], Registration Division GU, Province of KwaZulu-Natal. The matter was opposed by Appellants and was heard by Khuzwayo AJ. Appellants now appeal against the order granted by the court *a quo* that Applicant (Respondent herein) be declared to be the owner of the property described as Erf 7[...] N[...], Registration Division Gu, Province of KwaZulu-Natal and that First and Second Respondents (Appellants herein) are directed to pay the costs of the application. The appeal is brought with leave of the court *a quo*.

[2] The facts in this matter are mainly common cause and not complicated. It is common cause that Respondent has resided in the said property since 1981. It is also

not disputed that during his occupation he made various alterations to the said property and has paid all the municipal accounts which were in his name. From 1981 until 2018 Appellants showed no interest in the property and Respondent and his family openly resided therein and were in peaceful possession of the property. Their possession of the said property only came to be disputed during 2018 when on 25 September 2018 an eviction application was brought by Appellants. An order to vacate the said premises was granted in the Ngwelezana Magistrate Court on 19 February 2019 when there was no appearance on behalf of Respondent. Respondent, when he became aware of the said order, brought an application for the rescission thereof which was heard in the Ngwelezana Magistrate Court and was opposed by Appellants. In his application for rescission of the eviction order he raised the issue of acquisitive prescription in that he had undisturbed possession of the property for over 30 years from 1981 until 2018 when the application for eviction was brought.

[3] First Appellant in his affidavit filed in the magistrates' court contended that the said property was allocated to him in 1969 and he lived there until 1977. The property was leased to one Xulu during 1977 and that the deed of grant dated 5 March 1981 was then granted to them.

[4] It however appears that this was cancelled by the Registrar of Deeds Ulundi on 5 March 1984 and that on 8 March 2019 it was changed to ownership. On 8 March 2019 the surname on the Deed of grant in respect of ownership unit for residential purposes was amended in terms of section 41(b) of Act 47 of 1973 by the G in the surname Mngadi being changed to C as is spelt by Appellants.

[5] On 15 November 2019, in a lengthy judgment, the learned magistrate in Empangeni rescinded the eviction order that had been granted and set out various time limits for filing of affidavits. This appears to have not been done.

[6] The application papers relating to the eviction application in the magistrates' court were attached to the founding affidavit filed by Respondent in the High Court

application brought by him for an order to acquire the property by way of acquisitive prescription. In the said application at page 90 an annexure “ML4” was attached which indicated that the said property was transferred from First Appellant to Respondent on 9 October 1981. This was disputed by Appellants who also contended that they had never signed the said declaration of transfer. From what is set out in paragraph 4 above it appears no transfer of the property took place.

[7] Respondent based his application on the fact that he has resided in the property for 37 years from 1981 to 2018 before the application for eviction was brought. That he still resides therein; that it is his primary residence since 1981 and accordingly in terms of the Prescription Act 68 of 1969 he acquired the said property by means of prescription. He also referred to annexure “NL4” which sets out a declaration of transfer of ownership on 9 October 1981.

[8] In the answering affidavit, Appellants contended that Respondent did not have the necessary intention to possess the property. First Appellant also denies that the document annexure “NL4” was signed and completed by him transferring the said property. It is contended that Applicant was relying on a contractual obligation for his application to acquire ownership of the property. It is admitted that certain alterations were made to the property and it is denied that he is entitled to acquire the said property.

[9] No replying affidavit was filed by Respondent and it also appears that no heads of argument were filed by Respondent.

[10] The judgment by the court *a quo* dealt with the arguments raised that the matter be referred for oral evidence, the manner in which Respondent took occupation of the property and the allegation that such was without the consent of First Respondent. It also dealt with the answering affidavit of Respondent relating to annexure “NL4” which was the transfer of ownership. The law of prescription was dealt with and set out that the possession need not be *bona fide*. It would also not have assisted by referring the

matter for oral evidence as the 30 years occupation was not in dispute. There was nothing to substantiate that Respondent forcefully took occupation of the said property. It was further found that there was no need to file a replying affidavit and that the non filing of heads of argument is no reason to dismiss the application. It is common cause that the property was occupied by Respondent for over 30 years and that it was openly and without force. That the sale agreement was denied and thus did not apply.

[11] During argument it was submitted on behalf of Appellants that Respondent did not have the intention to occupy the said property. Further, that he relied upon a sale agreement and that he did not occupy the property himself.

[12] It was submitted on behalf of Respondent that there was no agreement to occupy the said property, that it was a blank form, that there was no misdirection by the court *a quo* and that it had been set out clearly that he occupied the property for over 30 years and accordingly was entitled to the relief which he claimed and which was granted.

[13] Section 1 of the Prescription Act 68 of 1969 provides as follows:

“Subject to the provisions of this chapter and of chapter IV, a person shall by prescription become the owner of the thing which he possessed openly and as if he were the owner thereof for an uninterrupted period of thirty years or for a period which, together with any period for which such thing was so possessed by his predecessors in title, constitutes an uninterrupted period of 30 years.”

[14] To succeed with an application for acquisitive prescription an applicant must allege and prove:

- (a) Civil possession, possession with the intention to possess and control as owner. This Respondent did by occupying it openly and by making alterations to the property.

In *Joles Eiendom Pty Ltd v Kruger and Another* 2007 (5) SA 222 (C) paragraph 28 it held:

“In order to establish ownership of land through acquisitive prescription the plaintiff had to prove that it had possessed such land openly and as if he were the owner thereof for an uninterrupted period of 30 years. The possession required for the purposes of prescription is *possession civilis*, being the physical control of the property accompanied by the intention of the owner, the *animus domini*.”

This interpretation was confirmed by the Supreme Court of Appeal in *Kruger v Joles Eeindom & Another* 2009 (3) SA 5 (SCA) at paragraph 13 of the judgment and that the making of improvements to the said property is the conduct of someone who holds the land in in question as if he were the owner thereof.

- (b) Possession openly for an uninterrupted period of 30 years. This is undisputed as a period of 37 years had already elapsed when the application for eviction was brought.

There is nothing in the papers that during this period while occupying the property openly and freely Respondents occupation was challenged in any way. *Barker N.O. v Chadwick* 1974 (1) SA 461 (D) and *Bischoff v Stafford* 1974 (3) SA 1 (A)

[15] It is therefore apparent from the papers that Respondent proved that he had occupied the said property openly for a period of over 30 years before there was any intervention by Appellants challenging his possession of the said property. He accordingly occupied the property openly, freely and without any force from 1981 until 2018 and thus for a period of 37 years.

[16] In granting leave to appeal it was held that another court could come to a different decision as a result of Respondent's occupation of the property for over 30 years and therefore qualify to obtain the property by acquisitive prescription but that the alleged purchase of the property and the sale document that was part of the court papers could affect it even though the sale agreement was not persisted with.

[17] The said sale agreement was challenged by Appellants who denied that they had ever signed it or agreed to it. This in my view does not assist Appellants. The fact remains Respondent has resided in the said property for over 30 years without any interference from Appellants and made alterations to the property. It is also not explained at all in the affidavit filed by Appellants why they never contacted Respondent about the said property during this period, only indicating that they let out the property until 1977 and then gives no explanation further as to why they never did anything further in relation to the property thereafter. The alleged sale of the property was also not persisted with as set out above.

[18] Respondent, in my view, had proved the requirements for acquisitive prescription. The judgment of the court *a quo* dealt with all the factors in detail and there was no misdirection or error in the said judgment. Respondent is accordingly entitled to the relief which was granted by the court *a quo*.

Order

The appeal is dismissed with costs.

P C BEZUIDENHOUT J.

I agree.

MOSSOP J.

It is so ordered.

RADEBE J.

JUDGMENT RESERVED:

6 JUNE 2025

JUDGMENT HANDED DOWN:

1 August 2025

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