



**THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case 2023-110621

- (1) REPORTABLE: No
(2) OF INTEREST TO OTHER JUDGES: No
(3) REVISED: Yes

Date: 19 August 2025

In the matter between:

TLHALEFANG JEREMIA MACHELLE

Applicant

and

ELIAS SOYPHE CHAUKE

First Respondent

**APOSTOLIC FAITH MISSION OF PORTLAND
OREGON (SOUTH AFRICAN BRANCH) INC**

Second Respondent

**DIRECTOR GENERAL, DEPARTMENT OF
HOUSING, GAUTENG PROVINCE**

Third Respondent

**CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY**

Fourth Respondent

REGISTRAR OF DEEDS, JOHANNESBURG

Fifth Respondent

**MASTER OF THE HIGH COURT,
JOHANNESBURG**

Sixth Respondent

JUDGMENT

Introduction

[1] The applicant, Mr Machele, occupied the house allocated to his aunt, in terms of a lodger's permit. When his aunt, Ms Mohano,¹ passed away, the house was transferred to the second respondent, the church. In this opposed motion, Mr Machele seeks an order setting aside the transfer of the property and a declaration that his lodger permit be converted into full ownership under the Conversion of Certain Rights into Leasehold or Ownership Act 81 of 1988 ²("Conversion Act").

[2] [2] The second respondent, the church, opposed this application, raising various points in limine, including a lack of standing, prescription, prematurity under the Conversion Act, and that the matter is not suitable for motion proceedings.

[3] On the merits, the respondents contend that the deceased, Ms Mohano, executed a valid will in 1999 in which she bequeathed the property to the church, and that the subsequent transfer in 2005 was lawfully effected pursuant to that will. Mr Machele, however, claims that Ms Mohano died intestate and that his lodger's permit entitles him to claim ownership.

Background

[4] Mr Machele is Ms Mohano's nephew, who moved in with her in 1991 to help her after the passing of her husband. Ms Mohano passed away on 18 April 2000, after which Ms Molefe was appointed as the executor of her estate. In the court papers, the respondents presented a document signed in May 1999, which purports to be a valid will. It leaves the entire estate to the church.

[5] Ms Molefe passed away on 8 May 2001. The property in question was registered in the name of the church on 15 February 2005, and the transfer document indicates that it was done in terms of a valid will. The Deed of Transfer also indicates

¹ There were various spellings of the surname. The surname as appearing on the death certificate is used.

² Act 81 of 1988.

that she purchased the property from the City of Johannesburg, but that she passed on before the transfer of the property.

[6] The property in question was allocated to Ms Mohano from the documents on 4 April 1991, in accordance with Regulation 8, Chapter 2 of the Regulation Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters. A document uploaded indicates that the applicant received a lodger's permit granted under Regulation 20 of Chapter 2 of the same Regulation on the same day. The applicant relies on the lodger's permit issued under Regulation 20 on that day. The church disputes its authenticity.

[7] Various points in limine were raised. However, I do not need to make definite findings on standing, prescription and whether the application was brought prematurely, since the matter hinges on the question of whether Ms Mohano died testate or intestate: a question of fact. If the will was validly executed, then she died testate and the transfer of the property was lawfully done in terms of the last wishes of Ms Mohano. If the document presented to the court is *not* the last will of Ms Mohano, the sequence of events will be different.

[8] Whether the document relied upon by the respondents is the last will of Ms Mohano raises a factual dispute that cannot be resolved on the affidavits and requires oral evidence regarding its execution, authenticity, and the circumstances of its creation. A simple denial by the applicant, accompanied by unparticularised allegations of fraud, is insufficient. In practice, establishing fraud on motion is rarely possible.³

[9] Where a dispute of fact is foreseeable and goes to the core of the relief sought, motion proceedings are unsuitable. The disputes of fact were both foreseeable and significant. In those circumstances, it is not appropriate to allow the applicant to proceed by motion.⁴

³ *Prinsloo NO v Goldex 15 (Pty) Ltd* 2014 (5) SA 297 (SCA) at 304A–C; *N v N* [2022] ZAECHGHC 9 para 31.

⁴ *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* 1949 (3) SA 1155 (T) at 1162 and 1168.

[10] In the result, the application falls to be dismissed,⁵ and costs must follow the result.

Order

[11] The following order is made:

1. The application is dismissed, with costs.

WJ du Plessis

Judge of the High Court
Gauteng Division,
Johannesburg

Date of hearing: 4 August 2025

Date of judgment: 19 August 2025

For the applicant: BB Ntsiname instructed by Shibambo
Attorneys

For the first and second respondents: I Moselana instructed by Nkosi Nkosana
Inc

⁵ *Transnet Ltd t/a Metrorail v Rail Commuters Action Group* 2003 (6) SA 349 (A) at 368C–D and 368G–H.