

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

Case 2025-129318

(1) REPORTABLE: No

(2) OF INTEREST TO OTHER JUDGES: No

(3) REVISED: Yes

Date: 23 August 2025

In the matter between:

INNOCENTIA ZABALA
[Identity Number: 7[...]]

Applicant

and

**THE REGISTRAR OF DEEDS,
JOHANNESBURG**

First Respondent

**THE MINISTER OF RURAL
DEVELOPMENT AND LAND REFORM**

Second Respondent

MONDE ZIKI

Third Respondent

PALESA DORAH ZIKI

Fourth Respondent

JUDGMENT

Introduction

[1] The applicant, Ms Zabala, is the owner of a house in Mofolo North (“Mofolo”). The titledeed indicates that she has a “leasehold”, a remnant of the property rights black people were allowed by the apartheid government. The house was bought in 2007.

[2] Ms Zabala has recently sold the house to the third and fourth respondents (“the buyers”), who have since taken occupation of the house despite the house not being registered in their name. Ms Zabala herself has bought a new home (“the Chelsea Village Property”), and has moved in there, although the house is not yet registered in her name. The buyers are paying her occupational rent in the Chelsea property.

[3] The reason for the property not being transferred is that the transfer of the dependent Chelsea Village Property into the name of Ms Zabala is dependent on the transfer of the Mofolo property into the names of the buyers, which transfer is frustrated because the first respondent is of the opinion that the Minister must consent thereto.

[4] Whether such consent is in fact required lies at the heart of this urgent application.

[5] Ms Zabala says that the matter is urgent because, if the house is not transferred to the buyers soon, they may rescind from the contract, and the sale will fall through. Similarly, the seller of the Chelsea Village Property (the house she bought) will also rescind from that contract . If the sale falls through, Ms Zabala and her young child, who recently got a placement in a school close to the Chelsea Village Property, will have to move again at significant cost. Ms Zabala disagrees that the Minister’s signature is needed for the transfer.

[6] Ms Zabala engaged with the Minister’s office in various forms, including going to the Department itself, on 12 June 2025, 9 July 2025, 14 July 2025 and 28 July

2025, trying to resolve the matter. Most times she was told that there is a backlog and it can take up to three months for her application to reach the top of the pile. Ms Zabala is clearly frustrated by this delay.

Urgency

[7] I have considered the papers and applied my mind to the question of urgency and the merits. While the matter may not rise to the level of extreme urgency often encountered in this court, I am satisfied that it is urgent enough to warrant immediate intervention. The applicant will not obtain substantial redress in due course if the matter is deferred, as there is a risk that the interconnected property sales will collapse, triggering a cascading “domino effect” that will prejudice not only the applicant but also third parties who are contractually and financially linked to the transactions.

Merits

[8] This matter deals with a house, held in terms of a leasehold as defined by the apartheid Regulations for the Administration and Control of Townships and Black Areas.¹ As stated in the introduction, the apartheid government created different forms of property rights that black people could have in the urban areas. In the early 1990s, and in anticipation of the end of apartheid, the apartheid government promulgated the Upgrading of Land Tenure Rights Act² (ULTRA) to upgrade certain land tenure rights, such as the leasehold in this case, to ownership.

[9] This is done in terms of section 2(1). Until 2024, section 2(1) stated:

“(1) Any land tenure right mentioned in Schedule 1 and which was granted in respect of—

(a) any erf or any other piece of land in a formalized township for which a township register was already opened at the commencement of this Act, shall at such commencement be converted into ownership;

(b) any erf or any other piece of land in a formalized township for which a township register is opened after the commencement of this Act, shall at the opening of the township register be converted into ownership;

¹ 1962 Proc R293 GG 373 of 16 November 1962.

² 112 of 1991.

(c) any piece of land which is surveyed under a provision of any law and does not form part of a township, shall at the commencement of this Act be converted into ownership,

and as from such conversion the ownership of such erf or piece of land shall vest exclusively in the person who, according to the register of land rights in which that land tenure right was registered in terms of a provision of any law, was the holder of that land tenure right immediately before the conversion.”

[10] This section was declared unconstitutional in *Rahube v Rahube*,³ which declared the provision unconstitutional retrospectively to 27 April 1994. The relevant paragraphs in the order read as follows:

“2 (a) Section 2(1) of the Upgrading of Land Tenure Rights Act 112 of 1991 is declared constitutionally invalid insofar as it automatically converted holders of any deed of grant or any right of leasehold as defined in regulation 1 of Chapter 1 of the Regulations for the Administration and Control of Townships in Black Areas, 1962 Proc R293 GG 373 of 16 November 1962 (Proclamation R293) into holders rights of ownership in violation of women’s rights in terms of section 9(1) of the Constitution.

(b) The order in (a) above is made retrospective to 27 April 1994.

(c) In terms of section 172(1)(b) of the Constitution, the order in paragraph 2(a) and (b) shall not invalidate the transfer of ownership of any property which title was upgraded in terms of section 2(1) of the Upgrading of Land Tenure Rights Act 112 of 1991 through: finalised sales to third parties acting in good faith; inheritance by third parties in terms of finalised estates; and the upgrade to ownership of a land tenure right prior to the date of this order by a woman acting in good faith.

(d) The order in 2(a) above is suspended for a period of 18 months to allow Parliament the opportunity to introduce a constitutionally permissible procedure for the determination of rights of ownership and occupation of land to cure the constitutional invalidity of the provisions of section 2(1) of the Upgrading of Land Tenure Rights Act 112 of 1991.”

³ [2018] ZACC 42.

[11] In other words, all the upgrading of rights that happened in terms of section 2(1) of ULTRA reverted to what they were before the upgrade – in this case, the leasehold.⁴ This order of invalidity was suspended for 18 months from 30 October 2018 (it being 30 May 2020) to allow Parliament to rectify the issue. Parliament did so by amending section 2(1), which came into operation on 1 June 2024.

[12] The section was amended, adding the following requirement:

“2. Application for conversion of land tenure rights mentioned in Schedule 1.—(1) Any person who is the registered holder of a land tenure right mentioned in Schedule 1 according to the register of land rights in which that land tenure right was registered in terms of the provisions of any law, or could have been a holder of that land tenure right had it not been for laws or practices that unfairly discriminated against such person, may apply to the Minister, in the prescribed manner, for the conversion of such land tenure right into ownership in respect of— [...]

[13] The first respondent relies on this amendment to state that the Minister’s approval is required before they can complete the transfer process. Ms Zabala disagrees, stating that consent is not applicable in this instance, as she acquired the property through a commercial transaction. When she acquired the property, the township was not declared a formalised township as contemplated in section 15 of ULTRA.⁵ This only happened in December 2019. If it was proclaimed a formalised township at the time that she purchased the house, she would have obtained full title. Still, she says that her right of leasehold was converted to ownership ex lege in terms of ULTRA in 2019, a proposition that is supported by the Chief Registrar in Circular 5 of 2024.⁶ Moreover, the fact that she bought the property and that she is a

⁴ There were three categories of people excluded from the retrospective working of the declaration of invalidity, namely an upgrade through a finalised sale to third parties acting in good faith, inheritance by third parties in terms of the finalised estate and the upgrade to ownership of Land Tenure Rights prior to the date of the order, by a woman acting in good faith.

⁵ Act 112 of 1991.

⁶ Paragraph 3.1 states:

“3.1.1 Section 2(1) of ULTRA (prior amendment) reads as follows:

2 Conversion of land tenure rights mentioned in Schedule 1 (1) Any land tenure right mentioned in Schedule 1 and which was granted in respect of-

woman for whom the amendment was intended to provide protection excludes her from the consent requirement.

[14] The Registrar of Deeds opposed the application, stating that the amended section 2(1) clearly requires the Minister's approval before the leasehold can be upgraded to ownership, and no such approval was granted. There is also no application for review of the Minister's failure to make a decision. The court making that decision would be violating the principle of the rule of law, as the court cannot make that decision for the Minister.

[15] As for the argument that her tenure right is not affected by the declaration of invalidity, the first respondent submits that at the time the *Rahube* order of invalidity was made (30 October 2018), Mofolo North had not been formalised into a township, which only happened in December 2019. Thus, by the time Mofolo North was formalised as a township, which formalisation would have meant an ex lege upgrade into ownership, section 2(1) was already declared unconstitutional.

[16] However, the first respondent did not take into account that the order of invalidity was suspended for 18 months. On the first respondent's interpretation, there was no section 2(1) at the time of the upgrade of Mofolo North, since the old section 2(1) was declared unconstitutional and the new section had not yet been promulgated. This is not only an incorrect interpretation of the order, it also leaves a legal vacuum.

(a) any erf or any other piece of land in a formalized township for which a township register was already opened at the commencement of this Act, shall at such commencement be converted into ownership;

(b) any erf or any other piece of land in a formalized township for which a township register is opened after the commencement of this Act, shall at the opening of the township register be converted into ownership;

(c) any piece of land which is surveyed under a provision of any law and does not form part of, a township, shall at the commencement of this Act be converted into post ship, and as from such conversion the ownership of such erf or piece of land shall vest excluindo In the person who, according to the register of land rights in which that land tenure right was registered in terms of a provision of any law, was the holder of that land tenure right immediately before the conversion."

3.1.2 Looking at the underlined parts in par. 3.1.1, it is clear that the land tenure rights were converted and ownership vested automatically by operation of law (ex lege) on:

Date of commencement of ULTRA (1 September 1991) - see section 2(1)(a);

Date of opening of the Township Register - see section 2(1)(b).

[17] Instead, when applying this sequence of the declaration to invalidity and the subsequent promulgation of the new section 2(1) to the facts at hand, the following sequence emerges:

- a) Ms Zabala acquired a leasehold property right in the property in 2007;
- b) The *Rahube* judgment declared section 2(1) unconstitutional, but its invalidity was suspended until May 2020. This means that from 30 October 2018 until 30 May 2020, the old section 2(1) was still applicable.
- c) Mofolo North was formalised as a township in December 2019, at a time the unamended section 2(1)(b) was still applicable, which provides that any erf in a formalised township, for which the township register was opened after the commencement of ULTRA, shall at the opening of the register ex lege be converted into ownership.
- d) Since the conversion happened ex lege, the Minister's approval is not required. The requirement of Ministerial approval is only applicable from 1 June 2024.
- e) Ms Zabala thus became the owner of the Mofolo North property on the date that Mofolo North was formalised into a township.
- f) Since the Minister's approval is not required in terms of ULTRA, the first respondent can register the house in the names of the third and fourth respondents, if all the other requirements for the transfer of the property are complied with.

[18] The only concern, and what is not clear from the papers, is whether, but for the approval of the Minister, there are other reasons why the property should not be transferred. For that reason, the order is framed in the form of a rule nisi, to allow an opportunity for the first respondent to place any information before the court should there be any other reason why the property cannot be transferred.

[19] The applicant asked for punitive costs. I see no reason why this is warranted. Costs is to be awarded on scale B, given the complexity of the issue.

Order

[20] The following order is made:

1. The matter is heard as one of urgency in terms of Rule 6(12) of the Uniform Rules of Court, and the ordinary time limits and procedures are abridged to enable the application to be brought as one of urgency.

2. A rule nisi is hereby issued calling upon the First Respondent and all interested parties to show cause to this court on 15 September at 9:00 why the following order should not be made final:

a. The transfer of the property described as Erf 1[...] M[...] N[...], City of Johannesburg, Gauteng Province, situated at 1[...] M[...] Street, M[...] N[...], Soweto, City of Johannesburg, Gauteng Province, from the Applicant to the Third and Fourth Respondents is hereby authorised.

b. The First Respondent is directed to effect transfer of the property described as Erf 1[...] M[...] N[...], City of Johannesburg, Gauteng Province, situated at 1[...] M[...] Street, M[...] N[...], Soweto, City of Johannesburg, Gauteng Province, from the Applicant to the Third and Fourth Respondents within 14 days of the granting of the Order.

c. The First Respondent is to pay the costs on a party and party scale, to be taxed on scale B.

3. Should the First Respondent object to the granting of a rule nisi, they are allowed to supplement their papers five court days before the hearing. The Applicant is also allowed to supplement their papers subsequently, two days before the hearing.

WJ du Plessis

Judge of the High Court

Gauteng Division, Johannesburg

Date of hearing: 20 August 2025

Date of judgment: 23 August 2025

For the applicant: SB Vukeya instructed by M Magome
Incorporated

For the respondent:

V Mtsweni instructed by the office of the
State Attorney