



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

CASE NO: 2024-078213

- (1) REPORTABLE: **NO.**
(2) OF INTEREST TO OTHER JUDGES: **NO.**
(3) JUDGMENT : **27 AUGUST 2025**

Frank Snyckers
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In the matter between –

MAHLANGU, ELIZABETH

Applicant

and

MABANE, DIPUO VICTORIA

First Respondent

THE MASTER OF THE HIGH COURT

Second Respondent

THE DEEDS REGISTRAR

Third Respondent

***By transmission of this judgment by email and uploading on Court Online /
Caselines the judgment is deemed to be delivered***

JUDGMENT

SNYCKERS AJ

INTRODUCTION

[1] The first respondent, Ms Mabane, is the registered owner of immovable property in Soweto. She became the sole registered owner after the death of her husband, the late Dick Mabane. The property duly devolved to her via the estate of Dick Mabane. She had been married in community of property to Dick Mabane, and the property had been registered in their names. The transfer to Mr and Ms Mabane occurred on 28 August 1986. Mr Mabane passed away in 1990. The transfer of his half share to Ms Mabane occurred pursuant to his death.

[2] The applicant, Ms Mahlangu, occupies the property. In September 2023, Ms Mabane brought eviction proceedings against Ms Mahlangu in the Protea Magistrate's Court.

[3] In response to the eviction application in Protea, Ms Mahlangu alleged that the property had been fraudulently transferred to the Mabanés in 1986. She sought a stay of the eviction proceedings pending an application in the High Court (this

application) to set aside the transfer of 1986, and to seek transfer of the property into her name. No stay order has been issued in the Protea Court, but Ms Mabane states that the existence of the High Court application (this application) is employed in the Protea Court to obtain postponements of the stay application and of the eviction proceedings. This is an important dimension to this application and the manner in which it has been prosecuted.

THE CONTENDING VERSIONS

[4] In the founding papers, Ms Mahlangu sets out essentially the following version:

Her late husband, Velly Mahlangu, bought the property at an auction in late 1985. He bought it as their family home. He did so with loan funding from Mr Mabane. The property was transferred to him in 1986. The Mahlangus took occupation in 1986. As security for the loan, Mr Mabane held on to the title deed. Various requests over the years for the title deed came to nought. Mr Mahlangu passed away in 2017. Ms Mabane started threatening Ms Mahlangu with eviction from the property in 2023. When Ms Mabane launched the eviction proceedings, Ms Mahlangu was shocked to see Ms Mabane asserted that she was the owner of the property. She went to the Deeds office and obtained documentation that showed Mr Mahlangu had agreed to transfer the property to the Mabanés in 1986. She had been married in community of property to Mr Mahlangu and had not consented to this. This was a fraud. It should be corrected and the property should now be transferred to Ms Mahlangu.

[5] The version in answer is a completely different version altogether. It is essentially this: Mr Mahlangu was an estate agent who had a business

relationship with Mr Mabane. Mr Mabane bought and sold properties in the Soweto area. He used estate agents like Mr Mahlangu to purchase the properties at auctions and the arrangement was that they would take transfer of the properties into their own names, and then effect transfer into the name of Mr Mabane. The property in question was one of these properties. There never was any loan, and Mr Mahlangu never bought the property for himself. An oral lease was concluded in terms of which the Mahlangus could occupy the property at a monthly rental. After Mr Mabane died, Ms Mabane took over the administration of his properties (and had the property in question duly transferred to her name). The Mahlangus stopped paying rent, but refused to vacate. This was frustrating, and efforts on the part of Ms Mabane's son to negotiate an outcome proved unsuccessful, with Ms Mahlangu threatening to get a powerful connected individual involved in the matter. As Ms Mabane became a pensioner, she now needed the property to yield a return for her and took the decision to seek the eviction of Ms Mahlangu.

[6] Some aspects of the answer bear mention. Of course, on the rules relating to motion proceedings, I must accept Ms Mabane's version, except to the extent that it is far-fetched or capable of being rejected out of hand. Far from this being the case, Ms Mabane sets out several reasons why the version offered by Ms Mahlangu is far-fetched. Some of the most important are these:

(a) The power of attorney document in terms of which title was originally passed to the Mabaness clearly set out that Mr Mahlangu was married in community

of property. The conveyancers would not have proceeded with the transfer without satisfying themselves of the required consent from Ms Mahlangu.

(b) The rates and taxes accounts for the property had been sent to Ms Mabane.

Ms Mahlangu does not explain why, if she thought the title deed still reflected her husband as the owner, they never received any of the accounts, nor ever made any inquiries in this regard.

(c) The eviction proceedings were brought in September 2023. The documents

Ms Mahlangu alleged she obtained *after* learning, from the eviction proceedings, that Ms Mabane claimed ownership, were dated March 2023.

They had clearly been obtained several months before the eviction proceedings were brought. The version in the founding papers therefore could not be true.

(d) On what basis could Ms Mabane have been threatening Ms Mahlangu with

eviction unless Ms Mabane had title to the property? This is not explained at all in the founding papers.

(e) The story relating to the title deed is highly implausible given Mr Mabane

and Mr Mahlangu's knowledge of how security worked in the immovable property sphere, and the absence of any mortgage agreement. Without an endorsement of the title deed, its mere possession would have been of no use to the Mabanés and Mr or Ms Mahlangu could have obtained proof of title from the Deeds Office.

- (f) Documentation was provided (as corrected in a supplementary affidavit) showing Mr Mabane's modus operandi with other estate agents, thereby corroborating Ms Mabane's version.

PROCEDURE

[7] No replying affidavit was delivered to the answering affidavit, that had been delivered in March 2025. Ms Mabane eventually enrolled the matter for hearing, having filed her heads of argument. Ms Mahlangu as applicant was entirely silent and passive in relation to filing heads of argument or co-operating with respect to a practice note.

[8] The matter was allocated to me for my opposed roll of 25 August 2025. I allocated it to be heard on Tuesday 26 August at 14.00 or as soon thereafter as counsel may be heard. This was posted on the public roll, and also set out in a widely shared note I posted on the Caselines file on 17 August 2025. My Caselines note indicated that the matter would be called, with or without heads of argument from the applicant, but that it would be useful to ascertain the position of the applicant before the hearing. I also noted in that note that the notice of set down had been served on the applicant's attorneys on 7 August (having been emailed to them in July).

[9] The matter also appeared on the unopposed roll of the same week.

[10] As I was about to enter court on Tuesday 26 August at 14.00, to have the matter called, I was advised that Ms Mabane's counsel was in court but that

she had been advised that counsel for Ms Mahlangu would be delayed due to transport problems, and that I was to wait for him.

[11] My registrar contacted the attorney whose number had been provided to him as the attorney for Ms Mahlangu. The attorney confirmed that counsel for Ms Mahlangu, Mr Tshivase, was “on his way to court”. He did not say where Mr Tshivase was nor when he was expected to arrive, and when my registrar sought further particularity, the line was cut.

[12] This situation was not acceptable. At around five minutes past two, I had the matter called and Ms Wierzbicka started addressing me on behalf of Ms Mabane.

[13] It then emerged that Ms Mahlangu had in fact taken some procedural steps on Friday 22 August. These comprised the following:

- (a) A replying affidavit dated 21 August was served on Ms Mabane’s attorneys, but not uploaded onto Caselines. It sought condonation for its late filing.
- (b) New attorneys of record, Njozela Attorneys, came on board for Ms Mahlangu by notice dated 21 August 2025.
- (c) An amended notice of motion was served on Ms Mabane’s attorneys, in which the setting aside was now sought via a Rule 53 review, also contemplating the production of ‘the record’.
- (d) Mr Tshivase served an undated practice note (for some reason stating ‘*date of filing: not applicable*’) in which the only information of any significance,

apart from counsel's details, was the assertion under '*status of the matter*' '*matter not ready for hearing*'. This had also not been uploaded on Caselines.

[14] Physical copies of these documents were handed up to me.

[15] At between 14.15 and 14.20, enter stage left Mr Njozela (Ms Mahlangu's new attorney) and Mr Matshidza, another counsel. Mr Matshidza advised me that he was not appearing for Ms Mahlangu, but was acting only as a messenger to advise me that he had been asked by Mr Tshivase to advise the court that he, that is Mr Tshivase, had contacted Mr Matshidza and told him he, Mr Tshivase, would be at court "*in fifteen minutes*". Mr Matshidza could not tell me what was detaining Mr Tshivase, nor where he was, save that he understood him to be travelling "*from Kagiso*". He could not tell me when Mr Tshivase left Kagiso, save that Mr Tshivase had assured Mr Matshidza that he, that is Mr Tshivase, would arrive at court "*within fifteen minutes*".

[16] As Ms Wierzbicka was, understandably, submitting that the applicant's team was apparently seeking to engineer the inability of the application to be heard, and that I should determine the matter, I felt the best was for the matter to stand until 15.00 for me to consider the replying affidavit and to take it from there, affording Mr Tshivase another 40 minutes to arrive.

[17] I considered the replying affidavit in the intervening period.

[18] The reply comprised nothing other than bald denials and references back to the founding affidavit. It failed, in any way, to deal pertinently or at all with any of the allegations in the answer, and in particular to offer explanations for the issues set out in answer that called for explanations (some of which are listed above). One of the issues set out in answer was that Ms Mahlangu failed to establish her *locus standi* and the basis upon which she claimed to be entitled to have the property transferred to her. It was pointed out that on Ms Mahlangu's version, the property had been registered in her husband's name when it was fraudulently transferred. She did not say she was the executrix (or Master's representative) in her late husband's estate. She did not say whether her late husband died intestate or who his heirs were. She did not explain why she would be entitled to have the property transferred into her name. None of this was addressed in any way in the reply.

[19] Be that as it may, when the matter was called again at 15.00, Mr Tshivase was not present. Mr Matshidza had in the meantime received instructions to represent Ms Mahlangu in the application. He would accordingly address me on the application for Ms Mahlangu. But, he said, his laptop needed first to be booted up before he could do so. I entertained some submissions from Ms Wierzbicka while Mr Matshidza's laptop booted up. Once his laptop had been booted up, Mr Matshidza said he needed to be invited to Caselines to be able to address me. Ms Mabane's attorneys there and then duly invited him to Caselines.

[20] Mr Matshidza then addressed me on behalf of Ms Mahlangu. I had in the meantime ruled that I accepted the replying affidavit and would determine the matter on the papers as they stood.

[21] Around half past three or twenty to four, Mr Matshidza advised me that Mr Tshivase had now messaged him to say he, Mr Tshivase, was “*in Pritchard Street*”. The idea was that Mr Tshivase would take over and address me on behalf of Ms Mahlangu. Given the history of the afternoon, I was decidedly uncertain that Mr Tshivase would appear, and if so, when. Mr Matshidza continued to address me.

[22] Enter stage left, at around 15.40, Mr Tshivase. He apologised. He said his son had been in an accident. This was the first anybody mentioned an accident. He also said he had been in chambers from seven o'clock in the morning. I felt further wasting of time on the precise whereabouts of Mr Tshivase at different times of the day was not appropriate at that point in dealing with the matter. Be that as it may, he said the matter was not ready to be heard and had not been properly enrolled.

[23] I told Mr Tshivase he should address me on the application and that I had accepted the replying affidavit. I told him I was not inclined to allow the applicant to use her own default (not having filed heads of argument) as a basis to postpone the finalisation of the matter. I told him we were dealing with the issue that Ms Mahlangu had failed to indicate her locus and why the property should be transferred into her name.

[24] Mr Tshivase then said “his junior”, referring to Mr Matshidza, would address me on the application, instead of Mr Tshivase himself. I was taken aback. I asked Mr Tshivase to confirm that it was his decision that Mr Matshidza, who was not steeped in the matter, should address me, and that he, Mr Tshivase, who was steeped in the matter, would not address me. This Mr Tshivase confirmed. I was not going to debate the appropriateness of that decision with Mr Tshivase at that point.

[25] Back to Mr Matshidza. Mr Matshidza now sought an order postponing the matter and directing Ms Mahlangu to “supplement her papers”. This, I was told, was to allow justice to be done.

[26] I heard the matter until 16.30 and then reserved judgment.

PLASCON-EVANS OR REFERRAL?

[27] It needs no belabouring that on the papers as they stand it is impossible to give relief to Ms Mahlangu.

[28] Not only is the respondent’s version full, credible and substantiated; the reply to it is woeful in setting up any genuine dispute on the papers in respect of the respondent’s version. The reply fails to attempt to address, let alone does address, any of the serious problems with the version in founding set out in the answer.

[29] One of the points taken in answer is that the registrar’s act of registration was not administrative action susceptible of “review” – this is based on good

authority.¹ The amended notice of motion styling the relief as a Rule 53 review simply compounds this problem. Any neutral observer of the events in this application, and its relationship to the pending eviction proceedings in Protea, would be forgiven if he or she were to remark that the obvious purpose of the amended notice of motion was to prolong the finalisation of this application, as now a 'record' would need to be produced before the 'review' could be answered.

[30] In the present circumstances, it would not be appropriate to refer the matter to trial or to allow Ms Mahlangu a further opportunity to supplement her papers, instead of to dismiss the application on the rules applicable to motion proceedings. The events as they unfolded on the day, as set out above, hardly assisted in rendering it fair that the applicant achieve further delay in the matter, to be able to employ such delay in Protea as a reason to contend that this matter is not yet finalised, and to keep contending that the eviction proceedings cannot continue until this matter has been finalised.

[31] Ms Wierzbicka sought a punitive cost order. Although the events leading up to and on 26 August set out above deserve the censure of the court, I have in my discretion declined to visit them upon Ms Mahlangu by way of a punitive order.

ORDER

[32] In the circumstances, the following order is made:

¹ See *Nedbank Ltd v Mendelow and Another* NNO 2013 (6) SA 130 (SCA) and *Kuzwayo v Representative of the Executor in the Estate of the late Masilela* [2010] ZASCA 167; [2011] 2 All SA 599 (SCA).

The application is dismissed, with costs, on scale B

Frank Snyckers

FRANK SNYCKERS
ACTING JUDGE

Heard: 26 August 2025

Judgment: 27 August 2025

For applicant:

Adv Tshivase (at times)
Adv Matshidza

Instructed by: Njozela Attorneys, Johannesburg

For first respondent:

Adv B Wierzbicka

Instructed by: Ningiza Horner Attorneys, Sandton