



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

Case no: 2025-039373

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

Date: 29 August 2025

~~2025-039373~~

In the matter between:

JOSHUA MASUKU

(In his capacity as master's representative of the estate
of the late Samaria Shapo)

First Applicant

MOSES MORRIS MASUKU

(In his capacity as master's representative of the estate
of the late Samaria Shapo)

Second Applicant

JOSHUA MASUKU

Third Applicant

MOSES MORRIS MASUKU

Fourth Applicant

and

THE REGISTRAR OF DEEDS OF JOHANNESBURG

First Respondent

EKURHULENI METROPOLITAN MUNICIPALITY

Second Respondent

**THE MASTER OF THE HIGH COURT
JOHANNESBURG**

Third Respondent

THE SHERIFF OF THE DISTRICT OF BENONI

Fourth Respondent

TLABELLA MOSES SHAPO

Fifth Respondent

JUDGMENT

DU PLESSIS J

Introduction

[1] This application was enrolled on the unopposed roll. Like many others, it concerns disputes arising from family homes, marriages, divorces, and deceased estates.

[2] The applicants are representatives of the estate of the late Samaria Masuku ("the deceased") and heirs to the estate. The fifth respondent is Moses Shapo ("Mr Shapo"), the deceased's former husband, from whom she was divorced in 1987, after he disappeared from her life and the family home.

[3] The documents annexed to the founding affidavit tell the story. The deceased and Mr Shapo got married in 1973, in community of property. In 1981, it was clear that Mr Shapo no longer intended to stay with the deceased; he had left the house in 1977 and stopped paying the rent in 1979. The deceased filed a complaint against Mr Shapo for neglecting her and their home. During that time, the deceased approached the Community Council Ward 5, pleading that Mr Shapo not be considered part of the household and not be entitled to lay claim to the family house that belonged to her father. The Ward Councillor wrote to the commissioner a letter recording the following:

"Samaria Shapo complains that her husband, Moses Shapo left their home June 1980. He does not maintain her, neither pay rentals for their house [...].

Moses Shapo has not respected my calling in notes, neither yours. I appeal, Sir, that he should be fetched from his place of employment so that he states his reasons:[...] House 5891 was originally allocated to Johannes Maseko (late) it was then transferred to him.

The danger now is that Samaria may loose tenancy of her father's home. I plead that this house should remain as it is until Moses is called by your office. If he does not intend living with his wife, the house must be allocated to Samaria Shapo who has 3 dependants:

1. Alfred Maseko (her brother who is ill)
2. Petrus Maseko (her brother a lodger)
3. Daniel Maseko brother a lodger.

Her children:

- i. Morris Masuku
- ii. Joshua Masuku”

[4] Summons for divorce followed in 1982, in which the deceased also sought forfeiture of the benefits of the marriage against Mr Shapo. A divorce decree was granted in the absence of Mr Shapo. The erstwhile Johannesburg Civil Regional Court can no longer provide a record of the divorce decree, due to a flood that damaged many files.

[5] Early in the new constitutional dispensation (1996), the deceased approached the Housing Transfer Bureau to claim the property she lived in, as the sole claimant. She filled in the appropriate form with only her name, and the Housing Transfer Bureau Administration Office in Daveyton soon addressed a letter to her, congratulating her on the allocation of the house. The letter indicates that she needs to verify that the draft title deed contains the correct information, and that she must bring her marriage certificate and her husband’s identity document, and that they both need to sign. Although she applied in her own name, the Bureau requested her marriage certificate and her husband’s identity document, which likely led to his details being included erroneously.

[6] Despite being divorced by this time and having applied for the leasehold in her name only, the leasehold was registered in the names of both her and her ex-husband, who had already been absent from her life for 20 years. This only became evident as a problem after her passing in 2013, when the registrar refused to transfer the property (which the applicants still occupy) into their names only, as the fifth respondent’s name was registered in the title deed and thus remains regarded as a co-owner.

The law

[7] Although not clearly stated in the founding affidavit, the document submitted to the housing bureau requested that the deceased submit her marriage certificate and provide details about herself. A logical inference would be that this is how the name ended up on the title deed – it is difficult to find another explanation of where the deeds office would obtain the information about Mr Shapo, who, by the time the documents were lodged, had left the home 17 years ago. The registration of the title deed into the name of the deceased and Mr Shapo was clearly a mistake, and reflected neither party's intention.

[8] For rights to pass, registration must be accompanied by a real agreement, a meeting of minds between transferor and transferee.¹ On the facts, no such agreement existed, and therefore, no rights passed. The only question is whether this should be done in terms of section 4 or 6.

[9] Section 4 of the Deeds Registry Act 47 of 1937 provides

“4. Powers of registrar.—(1) Each registrar shall have power—

[...]

(b) whenever it is in his opinion necessary or desirable to rectify in any deed or other document, registered or filed in his registry, an error in the name or the description of any person or property mentioned therein, or in the conditions affecting any such property to rectify the error: Provided that—

- (i) every person appearing from the deed or other document to be interested in the rectification has consented thereto in writing;
- (ii) if any such person refuse to consent thereto the rectification may be made on the authority of an order of Court;
- (iii) if the error is common to two or more deeds or other documents, including any register in his or her registry, the error shall be rectified in all those deeds or other documents, unless the registrar, on good cause shown, directs otherwise;
- (iv) no such rectification shall be made if it would have the effect of transferring any right.”

¹ *Air-Kel h/a Merkel Motors v Bodenstein* 1980 (3) SA 917 (A).

[10] In other words, the registrar has the power to rectify the documents mentioned in section 4(1), but with the safeguard that parties must consent in writing, or, in the absence of such consent, by court order, but only if such rectification does not result in the transfer of rights.

[11] Where rectification would transfer rights, section 6 applies. Under s 6(1), read with s 102, a deed of transfer may only be cancelled by order of the High Court, declaring the transfer null and void. This revives the earlier title deed. While section 4 is mentioned in the affidavit, section 6 was relied on in the heads of argument.

[12] In *Bester NO v Schmidt Bou Ontwikkelings CC*,² the SCA confirmed that where no real agreement exists, rectification under s 4(1)(b) is competent. The same applies here: since no agreement existed that Mr Shapo acquire rights, the entry of his name was erroneous. As such, rectification under s 4(1)(b) is appropriate, with this Court's order. Since he obtained no rights, the error can be rectified by the registrar without the need to cancel the title deed, as the rectification will not result in the transfer of any rights. Since Mr Shapo cannot be found and thus cannot agree to such a rectification, the court can order the rectification.

[13] This approach is reinforced by the fact that the house the applicants live in is a "family home", and that Mr Shapo no longer has any rights in the property since he left the house. It was already clear in 1981 that the family's intention was for Mr Shapo, who had left the house, to have no rights to the house. The deceased sought a divorce and a forfeiture of benefits, which decree was granted. He therefore also does not have a legal claim to the property. Moreover, he has not been seen at the property for over 40 years. These facts reinforce that he has no legal or other claim to the house.

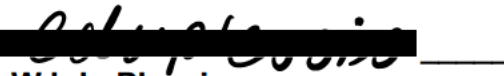
[14] The applicants requested that the second respondent pay the costs of this application. However, on the facts, I am not persuaded that the second respondent acted wilfully or negligently in causing the error.

² [2012] ZASCA 125 para 8.

Order

[15] The following order is made:

1. The first respondent is ordered to rectify the Title Deed No TL13538/1998 in respect of the immovable property described as Erf 5891, situated at 5891 Turton Street, Daveyton, by removing the name of the fifth respondent.
2. No order as to costs.


WJ du Plessis
Judge of the High Court
Gauteng Division,
Johannesburg

Date of hearing:	25 August 2025
Date of judgment:	29 August 2025
For the applicant:	SP Zungu of Zungu Attorneys.