

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: 005597-2024

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED:

DATE **8 September 2025**

SIGNATURE

In the matter between:

IRENE JOHANNA SHABALALA

Applicant

and

THE REGISTRAR OF DEEDS, PRETORIA

First Respondent

MASTER OF THE HIGH COURT, PRETORIA

Second Respondent

DUDU EMMA MANANA

Third Respondent

JUDGMENT

MINNAAR AJ:

[1] It is imperative to state that, despite an attack on the *locus standi* of the applicant, and prescription being raised, the applicant did not deliver a replying affidavit. When the application was heard, I directed the applicant's

counsel to obtain instructions on the absence of a replying affidavit. The application then stood down for the applicant to consider the position. When the application was recalled, the applicant's counsel indicated that the application could proceed without a replying affidavit. It is trite that in the absence of a replying affidavit, the respondent's version, as it stands in the answering affidavit, stands to be accepted as uncontested on those allegations that have challenged the content of the founding affidavit.¹

[2] In her application, the applicant seeks the following relief:

- a. The first respondent to cancel the Deed of Transfer dated 23 March 2016, over Erf 1[...] M[...] Township ('the property'). In terms of this deed of transfer, the property was transferred to the third respondent and her deceased husband.
- b. The first respondent to revive the Deed of Grant under which the property was held immediately before the Deed of Transfer.
- c. The second respondent to nullify the Letters of Authority Number 14322/2016 issued in the estate of the late Mbobo Lettie Mtakwende ('Me Mtakwende').
- d. A declarator be issued that the late Nomakula Christina Mdingwende ('Me Mdingwende') had no authority in law to sell and sign the transfer documents on behalf of the estate of Me Mtakwende.
- e. Further and/or alternative relief.

[3] The effective date of the transfer was 31 October 2016 and not 23 March 2016 as alluded to by the applicant. 23 March 2016 relates to the applicable power of attorney that was issued to the conveyancer to attend to the transfer of the property with the first respondent.

[4] The third respondent was the only respondent to oppose the application. Apart from the merits, the third respondent also attacks the applicant's *locus standi* and raises a point *in limine* on prescription.

¹ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A)

The applicant's *locus standi*:

- [5] The applicant alleges that she has the necessary *locus standi* to bring the application as she is the daughter-in-law of Me Mtwakwende.
- [6] The third respondent attacks the applicant's *locus standi* on the following grounds:
- a. The applicant fails to establish a material aspect of how she acquires *locus standi* through the late Mr. Shabalala, and she fails to prove her alleged marriage to Mr. Shabalala by way of an annexure.
 - b. Mr. Shabalala's death certificate does not refer to the applicant as married, nor does the applicant establish the type of marriage she had with Mr. Shabalala.
 - c. The applicant failed to submit a document by way of Letter of Authority or Letter of Executorship that authorises her to claim any relief for the estate of Mr. Shabalala.
 - d. The applicant cannot provide a legal basis for her to claim any relief in this application, and she lacks *locus standi*.
- [7] The applicant failed to counter any of these allegations in a replying affidavit.
- [8] The applicant is attempting to, on her understanding, protect the interests of the intestate heirs of Me Mtakwende. Mr. Shabalala passed away on 11 October 1970. That was 23 years before the passing of his mother, Me Mtakwende. It is incomprehensible that the applicant still wants to rely on her marriage to Mr. Shabalala to claim *locus standi*. Apart from her marriage to Mr. Shabalala, there is no other evidence that would clothe the applicant with any entitlement to act herein.
- [9] On the facts before me, I am not convinced that the applicant has the required *locus standi* to have instituted this application or represent the apparent intestate heirs of Me Mtakwende. If they so wished, they could have represented themselves in any litigation. On this point, the application stands to be dismissed.

Prescription:

[10] The third respondent delivered a supplementary affidavit in which a point *in limine* on prescription is raised.

[11] Transfer of the property into the names of the third respondent and her deceased husband took place on 31 October 2016. According to the applicant, a week before 11 March 2019, she became aware that the third respondent and her deceased husband purchased the property.

[12] The applicant thus knew of the transfer of the property since the first week of March 2019, and as such, she had to enforce any claim within a period of three years from such date.

[13] The applicant deposed to the founding affidavit on 8 December 2023. The application was served on the third respondent on 1 February 2024. More than three years have elapsed since the applicant became aware of any purported claim, and as such, it follows that the claim has prescribed.

Merits:

[14] Although the aspects of *locus standi* and prescription are dispositive of the application, I deem it appropriate, for the sake of the applicant's understanding, to also deal with the merits of the application.

[15] The application has a long history dating back to the 1950s when Me Mtakwende and her husband, Mr. Johannes Ndakwende ('Mr Ndakwende') was granted occupation of Erf 1[...], M[...] Township ('the property'). Mr. Ndakwende passed away in June 1970. On 20 January 1993, and in terms of section 52(1) of the Black Communities Development Act, Act 4 of 1984, read with sections 4 and 5 of the Conversion of Certain Rights to Leasehold Act, Act 81 of 1988, the property was transferred to Me Mtakwende and Certificate of Registered Right of Leasehold 4075/93 was issued.

[16] Me Mtakwende and Mr. Ndakwende were the parents of Bosman Moses Shabalala ('Mr Shabalala'), Petros Shain Mdakwende ('Mr Mdakwende') and Hlahlane Sarah Mothapi ('Me Mothapi'). All three children have passed away.

[17] The applicant was married to Mr. Shabalala, and they had six children, of whom only one is still alive. As already stated, Mr. Shabalala passed away on 11 October 1970.

[18] Mr. Mdakwende were married but had no children. Me Mothapi was married and had four children, of whom two are still alive. One of the deceased children was Nomakula Christina Mdangwende ('Me Mdangwende'). It is unclear from the founding affidavit when Me Mdangwende passed away.

[19] On 7 October 1993, Me Mtakwende passed away. The founding affidavit is silent as to whether Me Mtakwende left a last will and testament. On a consideration of the evidence before this court, it is, however, accepted that Me Mtakwende passed away intestate.

[20] At the time, the Black Administration Act 38 of 1927 ('the Act'), read with Regulations framed in terms of section 23(10), contains provisions that deal exclusively with intestate deceased estates of Africans. Estates governed by section 23 were specifically excluded from the application of the Intestate Succession Act, Act 81 of 1987.

[21] The Act was declared unconstitutional and invalid in *Bhe and Others v Magistrate, Khayelitsha, and Others (Commission for Gender Equality as Amicus Curiae); Sibi v Sithole and Others; South African Human Rights Commission and Another v President of the Republic of South Africa and Another* 2005 (1) SA 580 (CC). The declaration of invalidity was retrospective to 27 April 1994. In paragraph 129 of the judgment, it was found:

*"To sum up, the declaration of invalidity must be made retrospective to 27 April 1994. It must however **not apply to any completed transfer of***

ownership to an heir who had no notice of a challenge to the legal validity of the statutory provisions and the customary-law rule in question. Furthermore, anything done pursuant to the winding-up of an estate in terms of the Act, other than the identification of heirs in a manner inconsistent with this judgment, shall not be invalidated by the order of invalidity in respect of s 23 of the Act and its regulations.”

[22] According to the applicant, the family appointed Me Mdangwende as caretaker of the property in 1996. According to her, Me Mdangwende and the late Mr William Mnyamane Mashaba, the brother of Me Mtakwende, informed the Council Offices of the decision to keep the property as a family house and the nomination of Me Mdangwende as caretaker of the property.

[23] In support of the contention of caretaker status of Me Mdangwende, the applicant relies on a document issued by the Magistrate of Pretoria North on 8 January 1996. In terms of this document, Me Mdangwende was appointed as the sole heir in the estate of Me Mtakwende. No mention is made that she was appointed as caretaker of the property.

[24] If regard is had to this document, then this appointment could only have been in terms of section 23 of the Act. I pause to state that, typical of the discriminative and oppressive nature at the time, this letter was drafted and distributed in Afrikaans.

[25] In terms of section 23(7) of the Act, it was not necessary to obtain Letters of Administration from the Master of the Supreme Court. The Master did not even have any powers in connection with the administration and distribution of the intestate estate of any deceased African.

[26] Fast forward to 23 March 2016, when the representatives of the estate of the late Me Mtakwende sold the property to the third respondent and her deceased husband for an amount of R240 000.00. This is evident from the Deed of Transfer attached to the founding affidavit. According to this Deed of Transfer, the transfer was done and executed on 31 October 2016.

[27] The authority of 'the representatives of the estate of the late Me Mtakwende' stems from a Letter of Authority 14322/2016 issued by the Master on 22 September 2016. In terms of this Letter of Authority, Me Mdangwende was appointed to deal with the estate of Me Mtakwende.

[28] The applicant took issue with the contents of the J192 affidavit in terms of which Me Mdangwende stated that she was the only child of Me Mtakwende at the time Me Mtakwende passed away and that she had failed to include the names of predeceased children and their dates of death. In taking this approach, the applicant is attempting to ascertain the intestate rights of inheritance of her children and the children of Me Mdangwende. I will express myself on the applicant's entitlement to represent these children later in this judgment.

[29] If regard is had to the history of the application, and the invalidity of the Act, I am of the view that the following is relevant on 12 October 2016, when Me Mdangwende made the declaration in the J192 affidavit:

- a. On 8 January 1996, Me Mdangwende was declared the sole heir to the intestate estate of Me Mtakwende.
- b. At that time, the Act applied, and there was no need to approach the Master for an appointment to enable the administration and distribution of the intestate estate.
- c. On 15 October 2004, the Constitutional Court declared the Act to be inconsistent with the Constitution and invalid. The applicable Regulations are also declared invalid. The invalidity dates to 27 April 1994. According to me, the invalidity does not affect the declaration of Me Mdangwende as the sole heir in the estate of Me Mtakwende.
- d. The provisions of the Intestate Succession Act 81 of 1987 apply to the intestate deceased estates that would formerly have been governed by section 23 of the Act.
- e. Section 23(7) of the Act no longer applies. In terms of section 13(1) of the Administration of Estates Act, Act 66 of 1965, no person shall liquidate or distribute the estate of any deceased person, except under

letters of executorship granted or signed and sealed under the Administration of Estates Act.

- f. As sole heir, and to sell the property, Me Mdangwende was obliged to obtain the Letters of Executorship, as without it, she would not have been in a position to deal with the property in the estate.
- g. Since she was the sole heir, there was no obligation on her to disclose the names of predeceased children and their dates of death.
- h. The J192 does not provide for a situation where the Act applied, an heir was appointed, and the Act was subsequently declared invalid.

[30] I am satisfied that Me Mdangwende is indeed the sole heir in the estate of Me Mtakwende. She had the authority and could have dealt with the property as she wanted. I am further satisfied that, as sole heir, there was no obligation on her to record the names of her predeceased siblings and their dates of death. Accordingly, the applicant's attack on the appointment of Me Mdangwende and the sale of the property to the third respondent and her deceased husband is rejected, and it follows that the application stands to be dismissed.

Costs:

[31] In her answering affidavit, the third respondent seeks costs of the application.

[32] Counsel for the third respondent moved for costs on the scale as between attorney and client.

[33] There is no basis to deviate from the general principle that costs should follow the outcome. I can see no justification for punitive costs. Costs will be awarded on Scale B.

ORDER:

The following order is made:

1. The application is dismissed.
2. The applicant is to pay the costs of this application, such costs to be taxed on Scale B.

MINNAAR AJ
ACTING JUDGE OF THE HIGH COURT
PRETORIA

For the Applicant:

Adv D M Matlhabegoane instructed by
Mokoene Attorneys

For the First and Second

Adv P E Mmutle instructed by M N

Date of Hearing:

2 June 2025

Date of Judgment:

8 September 2025

Respondents:

Moabi Attorneys