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

APPEAL CASE NO: A203/24

CASE NUMBER: 67238/18

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

(3) REVISED: NO

10/10/2025

In the matter between:

NHLODI FRANS NTEKWANA

Appellant

and

MAITE LYVIA NTEKWANA

Respondent

In re:

MAITE LYVIA NTEKWANA

Applicant

and

FRANS NHLODI NTEKWANA

Respondent

ALL OTHER UNLAWFUL OCCUPANTS

Second Respondent

**CITY OF EKURHULENI METROPOLITAN
MUNICIPALITY**

Third Respondent

JUDGMENT

FRANCIS-SUBBIAH, J (MOLOPA-SETHOSA J and LABUSCHAGNE J
CONCURRING)

- [1] The Respondent herein, Ms M L Ntekwana (“Ms Ntekwana”) had launched an application for the eviction of the Appellant, Mr FN Ntekwana (“Mr Ntekwana”) from House No. 3[...] M[...] Street, Tswelopele Extension 6, Tembisa (“the property”). The Appellant filed a counterclaim seeking a declaratory order that he is the owner of the said property in question. Mr Ntekwana and his family resided on the property from the time of its establishment to date; whereas Ms Ntekwana has never resided at the property in question. The ownership of the property remained in dispute. The court *a quo* ordered the eviction of the Mr Ntekwana and all of those residing in the property and dismissed the declaratory relief.
- [2] It is common cause the Respondent, Ms Ntekwana holds the Title Deed of the property in her name. She relied on this Title Deed in support of the eviction application. According to her the main reason for granting the Appellant occupation of the property was the high crime rate in the area. She further set out in Annexure C of the documents that the electricity, water and rates had not been paid and continued to escalate as the reason for wanting the property. The Appellant stated that the municipality’s billing system is problematic and therefore that he has encountered problems and he accepts that the municipal bill is his responsibility.
- [3] The court *a quo* had inquired why there is a dispute when there is a Title Deed held over the property. The reason for the Title Deed being registered in the name of the Respondent was primarily to secure the allocation of the stand in 1998. The Appellant in his answering affidavit set out the

circumstances that led to his occupation of the property in a much different version to that of the Respondent.

- [4] The Appellant explained that he acquired the property through his uncle, Mr Morongwa Paxton Ntekwana (“Paxton Ntekwana”), who is also the brother of the Respondent. His uncle, Paxton Ntekwana, was allocated two adjacent stands in 2001 by the government. These stands were allocated in the low-income residential area also known as the Reconstruction and Development Programme (RDP) development. It aims to provide affordable housing for low-income individuals and families with limited financial means in line with the Housing Act 107 of 1997.¹
- [5] According to the Appellant his uncle gave him one of the stands to occupy, and he took up residence on the property in question. He occupied Stand 3[...] M[...] Street, Tswelopele Ext 6, Tembisa. The Appellant further pointed out that the Respondent has never stayed at the property at any point in time.
- [6] When the property stand was given to the Appellant, he occupied it by erecting a shack upon it. Later the RDP house was erected, and he made improvements to the property with a retaining wall and paving.
- [7] On or about March 2003, the Appellant and his uncle Paxton Ntekwana came to an agreement regarding the property. They agreed that the Appellant will receive the property from his uncle for an amount of money. Once the money is paid, Paxton Ntekwana will transfer the property into the name of the Appellant. The Appellant paid the amount of R10 000.00 to his uncle Paxton Ntekwana. The Respondent did not pay any sum of money towards the property.

¹ Gauteng Provincial Government ‘Apply for RDP housing subsidy’ <https://www.gauteng.gov.za/Services/GetServices?serviceId=CPM-001389> (Accessed 21 July 2025).

- [8] As the Appellant paid the money to his uncle, the uncle convened a meeting with the Respondent instructing her to effect the transfer of the property to the Appellant. In attendance was his uncle Paxton Ntekwana, the Respondent and his cousin, one Diamond Ntekwana and himself. The confirmatory affidavit of Diamond Ntekwana indicated that he heard and acknowledges that the Appellant had received or purchased the property from his uncle Paxton Ntekwana.
- [9] The Appellant's counsel submitted that the court *a quo* erred in applying the abstract system in ownership. In accordance with this system the transfer of ownership is valid if the formal requirements are met regardless of whether the underlying cause is valid. In contrast, the causal system applies when the validity of the underlying cause affects the transfer of ownership; if the cause is invalid or void, then the transfer of ownership is also invalid, regardless of any formalities.
- [10] The Appellant set out in his affidavit that, over a period of several years, he repeatedly requested the Respondent to accompany him to the relevant authorities to effect the transfer of ownership of the property from her name to his. However, she consistently claimed that she was unavailable due to odd working hours.
- [11] The Respondent in her affidavit explained that the Appellant had informed her that he was unable to participate in matters relating to the property because he was not its registered owner. He therefore requested her to sign an affidavit granting him the authority to act in the matters requiring ownership status. Her affidavit as per Annexure B states:
- "I am above-mentioned black female, swear under oath that I give my brother the shelter that belongs to me (sic). I give him the permission to own that shelter. The owner of the shelter from now is Nhlodi Frans Ntekwana."*

- [12] At that point in time, the structure located at the address in question was a shelter erected on the property by the Appellant and not a formal RDP house. This was the Respondent's explanation of how the Appellant came to occupy the property.
- [13] The Appellant's advocate argued that in determining whether the Appellant should be evicted from the property, consideration should be given not only to the Title Deed but also to the surrounding circumstances relating to the property's ownership. According to the Respondent she gave the Appellant the right to stay on the property and did not transfer ownership to him. Whilst the Appellant submits that Annexure B is evidence indicating that the Respondent relinquished ownership of the property.
- [14] Moreover, the Appellant's uncle Paxton Ntekwana stated that he had instructed the Appellant to remain on the property until further notice. His uncle also declared that he is the lawful owner of the property and decided to sell the stand to the Appellant.
- [15] Section 26 (3) of the Constitution of South Africa² emphasizes that no legislation may permit arbitrary evictions. Section 26(3) provides:
- No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.
- [16] The due process required is that evictions cannot occur without a court order. There is a further requirement that courts must evaluate all relevant circumstances before granting the court order. Practical guidance of how Section 26(3) applies is found in ***Ross v South Peninsula Municipality***,³ where it was emphasised that evictions are not automatic and the court balances the property rights of the owner with the rights and dignity of the

² Act 108 of 1996

³ 2000 (1) SA 589 (C)

occupiers. Courts exercise an active role in protecting vulnerable groups from arbitrary or unjustified eviction.

[17] Sufficient factual information must be provided to enable the court to properly exercise its discretion. Personal circumstance may include the reason for the eviction, length of occupation, vulnerability and any dispute surrounding ownership and RDP house allocation. The Appellant contends that occupation of the property was a form of delivery.

[18] It was argued before the court *a quo* that on a sensible interpretation, if a person holds full ownership of a property, there would be no need to obtain authorization from another person to occupy it. This is a further submission in support of the request to lead evidence and to determine the true ownership of the property.

[19] The RDP programme was introduced after the 1994 elections, to address the structural inequalities created by apartheid. It focused on delivering adequate social services to previously disadvantaged populations aimed to reduce poverty, improve social services and building robust economic foundations.⁴ Despite challenges such as widespread corruption, the RDP programme promises housing to disadvantaged communities. As it stands, there is a substantial waiting list, and the Department of Housing faces a massive backlog when it comes to allocating houses and issuing title deeds.⁵ Malete's illustrations depicts the allocation processes.⁶

[20] Individuals who receive an RDP house are the legal owners, and not tenants. However, to formalize and validate this ownership, a Title Deed must be issued and registered at the Deeds Office. This process can be lengthy and often results in beneficiaries occupying the properties for several years before receiving their Title Deeds. This means that upon receiving the

⁴ Rankin, C "Substantiating Access: Considering when Access to Housing Becomes Enough to Warrant Legal Protection" 2024 *Constitutional Court Review*.

⁵ Department of Human Settlements at 'www.ndd.co.za',

⁶ Malete, R "Allocation process on the delivery of RDP houses: A case study at the City of Johannesburg Municipality" 2014 *University of Witwatersrand* at page 50.

house, beneficiaries do not immediately have full ownership rights. Once ownership is granted, the general upkeep of the house is the responsibility of the owner. While municipalities are responsible for maintaining infrastructure, it is ultimately the homeowner's duty to care for the property and keep it in good condition.⁷

Evaluation

- [21] Courts have corrected title errors, facilitated correction of administrative title mistakes years later and ordered cancellation of incorrectly registered deeds. In ***Mphirime v Pouane and Others***,⁸ the Applicant had occupied an RDP house since 2001. Initially it was a shack-built house and later improved into a proper dwelling. The Applicant entered into a donation agreement to transfer rights of the property to herself. In this regard documentation was submitted to the local council for registration of a Title Deed in her name.
- [22] A hearing before the Housing Adjudication Committee in September 2002 was held to be binding and enforceable. A donation was recorded, and a familial transfer of occupation took place. The Court upheld the donation agreement as valid and binding, ordering the cancellation of the incorrectly registered Title Deed and its realignment in the applicant's name. The court found no justification for eviction or invalidation of the agreement and condemned the Respondent's attempt as unjustified.
- [23] This matter can be distinguished from prohibited sales where this is a familial transfer and not a sale that avoids the pitfalls outlined in ***Dlamini v Chuene and Others***⁹. In this case, it was held that sales without a valid title are void, statutory moratoriums protect RDP housing, as the Housing Department

⁷ Moolla, R *et al* "Housing satisfaction and quality of life in RDP houses in Braamfisherville, Soweto: A South African case study", Dugard, F "Staircase or safety net? Examining the meaning and functioning of RDP house ownership among beneficiaries: a case study of Klapmuts, Stellenbosch" *Law Democracy & Development, Law for All 'The Ultimate Guide to RDP Housing in South Africa'* <https://www.lawforall.co.za/homes-property/rdp-housing/> (Accessed 21 July 2025)

⁸ (59991/2015) [2017] ZAGPPHC 959 (29 March 2017).

⁹ (61528/2021) [2024] ZAGPPHC 332 (15 April 2024)

becomes the owner. An RDP house can only be sold once the owner and buyer have received written consent from the Municipality and have lived in the RDP house for at least 8 years. Owing to it being government subsidiary housing, it is illegal to buy or sell RDP houses without permission.¹⁰ The Appellant submits that he has lived at this property for 24 years.

[24] The Respondent has the Title Deed but has never lived on the property or paid for the municipal rates and taxes. She has signed a statement assigning property rights to the Appellant that bolsters the Appellant's case but textually refers to a structure only. He however advances a history that points to more than the structure, i.e. the property itself having been assigned to the Appellant. These conflicting contentions were not seen as insurmountable disputes of fact in motion proceedings as the Title Deed was upheld by the court *a quo*. In the context of RDP housing this was a misdirection. The factual dispute needs to be resolved. For all the above reasons, I conclude that the court *a quo* erred in evicting the Appellant from the property, notwithstanding the existence of a registered title in the name of the Respondent. The proceedings were instituted in circumstances where a clear dispute existed over ownership of the property. The parties' versions about the reasons for occupation of the property and the alleged ownership are different. The circumstances under which the property was occupied may also be considered by the court hearing the evidence. The Appellant lived at the property for 24 years and the Respondent has never resided on the property. Appellant's counsel raised the question of prescription as another available legal remedy.

[25] It is incumbent that a court should proceed with caution when parties disagree on material facts and the supporting evidence reveals unresolved issues requiring clarification. When it is fitting to refer a matter to evidence

¹⁰ JJR Inc. Attorneys 'Can you sell an RDP house?' <https://jjrinc.co.za/can-you-sell-an-rdp-house/> (Accessed 21 July 2025)

was considered in ***Shoprite Holdings Ltd v Oblowitz and others***,¹¹ where Davis J explained the test as follows:

On the basis of the Wallach test, it would appear that the critical question in this regard is: Is there material which could be placed before the Court which could inform an evaluation of these contentions, the resolution of which is critical to the determination of the main application?¹²

[26] Rule 6(5)(g) of the Uniform Rules further provides when it is appropriate to refer a matter to evidence as follows:

Where an application cannot properly be decided on affidavit the court may dismiss the application or make such order as it deems fit with a view to ensuring a just and expeditious decision. In particular, but without affecting the generality of the foregoing, it may direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact and to that end may order any deponent to appear personally or grant leave for such deponent or any other person to be subpoenaed to appear and be examined and cross-examined as a witness or it may refer the matter to trial with appropriate directions as to pleadings or definition of issues, or otherwise.

[27] A court of appeal has a discretion to refer a matter to oral evidence. It will not apply its own decision solely on the premise that it disagrees with the view exercised by the court *a quo*. The court of appeal will interfere if a discretion was not properly exercised, had been influenced by wrong principles or a misdirection on the facts, or that it had reached a decision which in the result could not reasonably have been made by a court properly.

[28] In ***Ferris and Another v Firstrand Bank Limited and Another***¹³ it was emphasised that:

An appeal court may interfere with the exercise of a discretionary power by a lower court only if that power had not been properly exercised. This would be so if the court has exercised the discretionary power capriciously, was moved by a wrong principle of law or an incorrect appreciation of the facts, had not

¹¹ [2006] 3 ALL SA 491 (C).

¹² *Ibid* at 501.

¹³ (CCT 52/13) [2014 (3) BCLR 321 (CC). at para 28.

brought its unbiased judgment to bear on the issue, or had not acted for substantial reasons.¹⁴

[29] From the above factors considered in the present matter, it points to the fact that oral evidence and cross-examination are required to properly determine the ownership dispute. Only when this is done can the court fulfil its role as the impartial arbiter of the dispute and ensure justice is properly served. It will be in the interest of justice that the evidence be heard by another judge because the court *a quo* already made a determination.

[30] As a result, the following order is made:

1. The appeal is upheld.
2. The order of the court *a quo* is set aside and substituted with the following:
 - 2.1 The matter is referred to oral evidence on the issue of true ownership of the property before a different Judge.
 - 2.2 Appellant and Respondent shall testify at the hearing, and they shall be entitled to call and/or subpoena any witness(es) that may assist the court in determining the true ownership of the immovable property, subject to the following directives:
 - 2.2.1 Should the parties wish to add anything to their testimony as contained in their affidavits, they shall within 60 days from the date of this order deliver a sworn affidavit in this regard to the other side and file the original with the court;
 - 2.2.2 The evidence of any witness to be called or subpoenaed by any of the parties shall be contained in an affidavit and delivered to the other party and filed with the court within 60 days from the date of this order;

¹⁴ *Ibid* para 28.

2.2.3 Insofar as any of the parties intend to rely on further documentary evidence, a list of such documents shall be prepared and confirmed under oath and delivered together with copies of such documents on the other side and filed with the court within 30 days from the date of this order.

3. The costs of the appeal will be costs in the referral to oral evidence.

R FRANCIS-SUBBIAH

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I agree and it is so ordered.

L M MOLOPA-SETHOSA

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I agree and it is so ordered.

E LABUSCHAGNE

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances:

For Appellant: Adv Moja

Instructed by: TC Mphela Attorneys

For Respondent: Adv Mathebula

Instructed by: Serumula MT Attorneys

Date of hearing: 15 April 2025

Date of Judgment: 10 October 2025

This judgment is handed down electronically by circulation to the parties/their legal representatives by email and through uploading same on the electronic file of this matter on Caselines. The date of delivery of this judgment is deemed to be 10 October 2025.