



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO:094533/2023

(1)	REPORTABLE:
(2)	OF INTEREST TO OTHER JUDGES:
(3)	REVISED,
<u>3/11/2025</u>	
DATE	SIGNATURE

In the matter between:

SIMON CHUENE MESO

Applicant

and

MATSHWENE JOHANNES MESO

First Applicant

STEVEN MATLAKALA PETERSON

Second Respondent

NYAKU SALOME HAJANA

Third Respondent

LERATO MORETSELE

Fourth Respondent

REGISTRAR OF DEEDS

Fifth Respondent

**THE CITY OF EKURHULENI METROPOLITAN
MUNICIPALITY**

Sixth Respondent

JUDGMENT

MBONGWE, J:

INTRODUCTION

- [1] This is an application brought by the Applicant, a co-heir and executor in the estate of the late Simola Margaret Meso, seeking declaratory, interdictory, and ancillary relief in relation to the sale and transfer of immovable property forming part of the deceased's estate. The First to Third Respondents are the Applicant's siblings and co-heirs. The Fourth Respondent is the purchaser of the property, and the Fifth Respondent is the Registrar of Deeds, Pretoria.

Factual Background

- [2] The deceased passed away intestate on [insert date], leaving four children—namely, the Applicant and the First to Third Respondents—as her sole heirs in terms of the Intestate Succession Act 81 of 1987.
- [3] The First Respondent was initially appointed as the representative of the estate by the Magistrate in terms of section 18(3) of the Administration of Estates Act 66 of 1965 ('the Act'). Due to his failure to administer the estate, he was removed and replaced by the Applicant, for whom the Master of the High Court issued letters of executorship.
- [4] On or about [insert date], the heirs concluded a redistribution agreement in terms of section 14(1) of the Act. In terms of the agreement, the Applicant would acquire sole ownership of the immovable property valued at R450 000, subject to payment of R150 000 to each of the three co-heirs by 4 October 2001.

- [5] The Applicant failed to make payment by the stipulated date. A 90-day extension was granted, but he again defaulted. Written notice was issued to him by the co-heirs, demanding compliance.
- [6] Following continued non-performance, the co-heirs, including the Applicant, agreed to sell the property to the Fourth Respondent for R300 000. The Fourth Respondent paid the full purchase price and the property was transferred into his name. The Second and Third Respondents collected their respective shares from the conveyancers. The Applicant did not collect his portion and instead launched this application.

Relief Sought

- [7] The Applicant seeks:
- 7.1 An order setting aside the offer to purchase concluded between the First to Third Respondents and the Fourth Respondent.
 - 7.2 An interdict restraining the Fourth Respondent from taking occupation of the property.
 - 7.3 An order directing the Fifth Respondent to cancel the registration of the property.
 - 7.4 A declaration that the sale was invalid due to the estate's value exceeding R250 000 and the absence of proper authorisation by the Magistrate.
 - 7.5 Alternatively, payment of his share of the proceeds.
 - 7.6 Costs of the application.

Issues for Determination

[8] The issues for determination are:

- Whether the sale of the property to the Fourth Respondent was valid and enforceable.
- Whether the Applicant's non-signature to the offer to purchase invalidates the sale.
- Whether the sale was unlawful due to the estate's value exceeding R250 000 and the absence of authorisation by the Magistrate.
- Whether the Applicant is estopped from challenging the sale or has waived his rights.
- Whether the Applicant, as executor, discharged his fiduciary duties.
- Whether the Applicant is entitled to interdictory relief and cancellation of the transfer.
- Whether the Applicant is entitled to payment of his share of the proceeds.

Legal Framework

[9] The administration of deceased estates is governed by the Administration of Estates Act 66 of 1965. Section 14(1) permits redistribution agreements among heirs, provided they are in writing and signed by all parties.

[10] Section 18(3) of the Act applies only to estates valued at R250 000 or less. Where the estate exceeds that threshold, full administration under letters of executorship is required.¹

¹ Section 18(3), Administration of Estates Act 66 of 1965.

- [11] A co-owner may not unilaterally alienate jointly owned property without the consent of the other co-owners.² However, where a redistribution agreement is concluded and default occurs, the non-defaulting heirs may act to preserve the estate's value, provided they do not act in bad faith.
- [12] Estoppel arises where a party, by conduct or representation, induces another to act to their detriment and is then precluded from rescinding that representation.³
- [13] Waiver is the intentional relinquishment of a known right. It may be expressed or inferred from conduct inconsistent with the enforcement of the right.⁴
- [14] An executor owes fiduciary duties to the estate and its beneficiaries, including the duty to act in good faith, avoid conflicts of interest, and administer the estate diligently and transparently.⁵

Analysis

- [15] The Applicant's challenge of the offer to purchase is premised on the fact that he was not a signatory thereto and did not consent to the reduction of the purchase price of the property. However, the evidence indicates that he was present during the negotiations, but failed to object, and did not take steps to

² *Maluleka N.O. v Mbatha & Another* (2019/63169) [2022] ZAGPPHC 419 (5 June 2022).

³ *Aris Enterprises (Finance) (Pty) Ltd v Waterberg Koelkamers (Pty) Ltd* 1977 (2) SA 425 (A).

⁴ *Lufuno Mphaphuli & Associates (Pty) Ltd v Andrews & Another* (CCT 97/07) [2009] ZACC 6; 2009 (40) SA 529 (CC).

⁵ *Land and Agricultural Bank of South Africa v PARKER and Others* (2005) (2) SA 77 (SCA).

prevent the sale. His conduct amounted to tacit consent and, at the least, acquiescence.

- [16] The Applicant's silence and inaction, despite receiving written notice and being aware of the impending sale, induced the co-heirs and the Fourth Respondent to proceed with the transaction. He is accordingly estopped from now asserting that the sale was unauthorised.⁶
- [17] Moreover, the Applicant's conduct is inconsistent with the enforcement of any right to exclusive acquisition of the property. His failure to perform under the redistribution agreement, coupled with his conduct in the subsequent sale process, constitutes a waiver of any such right.
- [18] As executor, the Applicant bore a fiduciary duty to act in the best interests of the estate and all heirs. His failure to comply with the redistribution agreement, delay in administering the estate, and subsequent attempt to reverse a concluded sale, despite not having objected to it, reflects a dereliction of that duty.⁷
- [19] The Fourth Respondent acted in good faith, paid the full purchase price, and acquired the transfer lawfully. The drastic remedies sought, such as interdicting the Fourth Respondent from taking occupation of the property and cancelling registration of transfer, are not justified on the facts or in law.

⁶ *Estoppel principles as applied in National and Overseas Distributors Corporation (Pty) Ltd v Potato Board* 1958 (2) SA 473 (A) at 479.

⁷ *Gory v Kolver NO and Others* (CCT28/06) [2006] ZACC 20.

- [20] The Applicant's reliance on section 18(3) is misplaced. By the time of the sale, he had been appointed as executor under letters of executorship. The estate was no longer subject to the limited administration regime.

Conclusion

- [21] The Applicant has failed to establish a basis for the relief sought. He is estopped from challenging the sale, he had waived any rights under the original redistribution agreement and failed to discharge his fiduciary duties as executor. The application falls to be dismissed.

ORDER

- [22] Consequent to the findings in this judgment, I make the following order:

1. The application is dismissed.
2. The Applicant is directed to collect his share of the proceeds of the sale held in trust by the conveyancers.
3. The Applicant is ordered to pay the costs of the application.



MPN MBONGWE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES

For the Applicant: Advocate P. Lebea

Instructed by: Komape Attorneys

For the 1st to 3rd Respondents: Mr Phephenyane

Instructed by: Sibuyi Attorneys Inc.