

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No. A33/20

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED:

DATE 1 DECEMBER 2025

SIGNATURE

In the matter between:

JOSEPH MAVABAZA MANGWANE

First Appellant

MARGARETH TINTSWANLO MANGWANE

Second Appellant

and

JANE GOMBA

First Respondent

THE REGISTRAR OF DEEDS, PRETORIA

Second Respondent

EKHURULENI METROPOLITAN MUNICIPALITY

Third Respondent

**DIRECTOR GENERAL IN THE OFFICE OF THE PREMIER,
GAUTENG**

Fourth Respondent

HEAD OF THE DEPARTMENT OF HUMAN SETTLEMENTS

Fifth Respondent

NEUKIRCHER J:

1] This is an appeal in which the appellants seek, *inter alia*, that the registration and transfer of an immovable property described as Erf 4[...] E[...] Section, Tembisa (the Property) held by the first respondent under title deed number T[...], be declared invalid and set aside. The appellants, in effect, seek to restore the property to their possession and ownership. They allege that the first respondent obtained registration of the Property in her name by way of misrepresentation and fraud.

2] There was no appearance by any of the respondents at the hearing of the appeal. However, the first respondent was represented *a quo* and she filed an answering affidavit to the application.

3] The appeal is against the whole of the judgment and order, including the order for costs, and comes before this court with leave of the court *a quo*. I pause to mention that the order of 12 December 2019 in which leave to appeal was granted, does not order that costs shall be costs in the appeal.

4] The appellants are married to each other in community of property. The first appellant has, subsequent to the grant of the leave to appeal, passed away. He has been substituted in this appeal by the executrix of his estate who is the second appellant N.O. However, in this judgment, I will continue to refer to him as the first appellant. As both the founding affidavit and replying affidavit were deposed to by the first appellant in his lifetime, this will avoid any confusion.

5] The first appellant was a former railway police official who subsequently joined the South Africa Police (SAP). In 1981 the appellants applied for, and were granted, a 99-year lease in respect of the Property. Between 1981 and 1986, the appellants and their family occupied the Property. But in 1986, because of the first appellant's work as a police officer – the house was torched by the community during uprisings.

6] Forced to flee their home, the family then sought refuge with relatives.

7] During September 1986, the first appellant found tenants to move into the Property in order to safeguard it from vandals.

8] During approximately 1987, the appellants secured a home loan and moved into a new house at Hospital View.

9] In 1994 the first appellant offered his aunt¹ accommodation at the Property. He states that he extended the offer as his aunt was homeless and unemployed and she could therefore not afford to either buy a property or rent one for herself and her family. His aunt later brought the first respondent to the Property to live there with her. During approximately 1996 the first respondent continued to occupy the property with the appellants' permission.

10] In 2001, the appellants' daughter moved in with the first respondent as she was attending school in the area. The appellants would visit the Property regularly to check on its condition, and the first respondent would also visit the appellants' Hospital View home to fetch groceries.²

11] The appellants state that, to their surprise, in 2004 the first appellant was accused by the police of abusing the first respondent and he was instructed by them to refrain from visiting the Property as he was not the owner and was trespassing.

12] On 21 July 2008, the first appellant went to the Municipality³ to enquire about the ownership of the Property. He was referred to the Gauteng Department of Housing (the Department). In 2010 the Department informed him that notices had been issued to occupants to register for Title Deeds. The first respondent registered herself as the new owner of the Property– she alleged that the original owners were nowhere to be found. This was despite the fact that:

- a) the appellants' daughter was living with her;
- b) she would visit the appellants at their Hospital View home to collect groceries; and

¹ His mother's sister and the first respondent's mother

² The appellants continued to support the first respondent and her mother

³ Who is the third respondent in the appeal

c) the first appellant would visit the Property.

13] The Department also advised the first appellant to seek legal advice, and to go to the Registrar of Deeds⁴ (the Registrar) to obtain proof of ownership of the Property. This the first appellant did on 31 March 2010. He obtained a Deeds Office print-out confirming the first respondent's ownership. It appears that the first respondent acquired ownership of the Property via Title Deed no T[...] after paying an amount of R1 789-39 in 2002.

14] Unfortunately, at the time, the first appellant was unable to afford legal advice as he had been declared unfit for police work due to ill-health in 2007. He was therefore unemployed and lacked the financial means to obtain legal advice and assistance.

15] In approximately August 2011 the appellant's house in Hospital View was auctioned and the family was evicted. The reason for this is not relevant to this appeal, nor was any information put before us regarding this. The family's attempts to move back to the Property were thwarted by the first respondent, who refused to allow them back. She insisted that she was the registered owner of the Property and she threatened police action. As a result, the first and second appellants were forced to find accommodation elsewhere: the first appellant in a shack in Kaalfontein, and the second appellant with a friend in Tembisa.

16] Through their daughter who worked at an attorney's firm, the appellants managed to secure legal assistance in 2015. On 9 March 2016 their attorney visited the Municipality and obtained a copy of the Certificate of Registered Grant of Leasehold T[...] as well as an unsigned and undated Investigation Report.

17] The Investigation Reports reads as follows:

"Complaint:

Joseph Mangwane... residing at a squatter kamp next to Kraalfontein Station at Tembisa came on Monday 21/07/2008 to enquire why his house At 4[...] E[...] not registered in his names.

⁴ The second appellant

Investigation:

Oupa went to the house on Tuesday 22/07/2008

He found Jane Gomba the registered title deed holder ...

She indicated that she is Joseph's sister, and that Joseph sold the House to his Grandmother Maria Gomba.

Maria passed away in 1996 and Joseph started visiting the house to evict them. She indicated that he went to live in his bond house at View Section after selling the house at 4[...] E[...].

Status given:

The house and 4[...] E[...] is registered to Jane Gomba T[...]."

18] What is clear from this "investigation" is that:

- a) the first respondent informed the official (Oupa) that she was the first appellant's sister;
- b) she informed Oupa that the first appellant had sold the property to his grandmother;
- c) that she knew exactly where the appellants were living at the time;
- d) no proof was provided as regards the amount of the alleged purchase price or how it was paid or when it was sold;
- e) Oupa accepted the first respondent's version without further ado.

19] With all the above information, the case made out in the appellants' papers is that:

- a) the first respondent had no authority to register the property into her name;
- b) the invitation by the Municipality to register a property was addressed to "the Occupier" and not the first respondent herself;
- c) the first respondent misrepresented the facts to the Municipality, as is evidenced by the Investigation Report;
- d) the first respondent fraudulently claimed that the owners were nowhere to be found despite knowing their whereabouts; despite having contact with them and despite receiving assistance from them;

- e) no proper investigation or hearing was conducted by the responsible department to verify the true ownership of the Property before the transfer took place;
- f) the appellants (as owners) never consented to the transfer of the Property into the first respondent's name;
- g) the transfer violates s 25(1) of the Constitution which protects against the arbitrary deprivation of property.

20] The first respondent claims that she is the lawful and registered owner of the Property since its transfer into her name on 18 June 2002. She alleges that the Property was her family home and that she resided there – as tenants of the Municipality who was the owner – with her late mother.

21] On 14 April 2000 she received a letter from the Project Manager of the Housing Transfer Bureau inviting her - as a tenant – to claim transfer of ownership of the Property. The letter, addressed to “The Occupant, Stand number 4[...], E[...],” states *inter alia*:

“TRANSFER OF THIS RENTED PROPERTY – FINAL REQUEST TO CLAIM!!

Persons who previously **rented** houses in this township may claim to get ownership transferred to them without having to pay anything more for rent or for a purchase price!

This Bureau has been busy on this discount benefit scheme in your area for a long time, and the great majority of tenants have already made their claims. However, **no claim has yet been made in respect of this house. You are therefore urged to go to the Housing Transfer Bureau at the Council's office in TEMBIA BEFORE THE 15TH OF MAY 2000 BETWEEN 8.30 AND 15.30....**”

22] On 28 April 2000 the first respondent signed the transfer documents and on 23 May 2002 the Property was registered in her name.

23] The first respondent denies that the appellants have *locus standi* to launch the application. Other than her version *supra*, she denied the appellant's version.

24] The court *a quo* found that the appellants lacked *locus standi* as they had failed to prove that the Property was awarded to them and that the document they provided as proof of their ownership was no more than an application to be allocated a family residence. The court stated that the claim that the house was in their name prior to it being transferred to the first respondent was not borne out by the papers.

25] She also found that the print-out from the Deed Registry did not assist the appellants as, although it confirms that the Property was purchased for R1 789, it did not state that it was purchased from the appellants.

26] It is, by now, trite that a court of appeal will only interfere with the findings of the court *a quo* in the event of a material misdirection. In my view, this misdirection exists in respect of the finding that the appellants lacked the necessary *locus standi* and in respect of the findings in the judgment that underscore the fact that the application was dismissed.

27] The appellants' *locus standi* is derived from the allegations that they were the owners of the Property and that the Property was fraudulently transferred into the first respondent's name. The fact that the court eventually dismissed their version, does not derogate from these allegations that are used to substantiate their claim. The application is brought in terms of s6 of the Deeds Registries Act 47 of 1937 (the Act) which provides:

“Save as is otherwise provided in this Act or in any other law no registered deed of grant, deed of transfer, certificate of title or other deed conferring or conveying title to land, or any other real right in land other than a mortgage bond and no cession of any registered bond not made as security, shall be cancelled by a registrar except upon an order of Court.”

28] In my view, it is clear that s6 of the Act has in mind the cancellation of (in this case) a deed of transfer with the authorization of a court. In *Mvududu v Mvududuno and Others* ⁵, the court stated that where there has been a *justus error* in a registered deed and the rights of some interested people have been overlooked and the rights of others misconceived so that a false certificate has been issued, the court must

⁵ 1981 (4) SA 458 (Z)

intervene to cancel the deed. Although the legislation applied was s8 of the Deeds Registries Act Chapter 139 (Z), the above is no less applicable to the matter to hand.

29] Applying the trite principles of *Plascon-Evans*, I find that the version of the first respondent must be rejected – her version is contradictory and sparse. Compared with the appellants' detailed account, her version is so untenable that it cannot be accepted:

- a) it is clear from the documentation provided that the appellants applied for, and appear to have been granted, the leasehold for the Property during 1981: the document attached evidences their names, the Property's details and the stamps of the relevant officials;
- b) the first respondent provided absolutely no details at all about when she and her mother acquired possession of the Property;
- c) the version provided by the first respondent in her answering affidavit, is contradicted by the version she provided to the Bureau's Inspector, as set out supra;
- d) it is very clear from what she told the Inspector, that she knew where the appellants lived and therefore, when she informed the Bureau in 2000 that the owners of the Property were unknown, she was not being truthful;
- e) it is also very clear from the papers that when she received the letter from the Bureau, she did not inform the appellants of its content and instead, took the opportunity to register the Property into her name.

30] In my view, what this points to is that the appellants must succeed in the relief which seeks the cancellation of the Title Deed of the Property in the first respondent's name.

31] However, insofar as the appellants seek the eviction of the first respondent from the Property, this relief cannot be granted. The appellants' representative conceded during argument that any eviction would require proper procedures to be followed under the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1999 (PIE Act). As there has yet to be compliance with any of the

procedures set out in the PIE Act, the relief sought in paragraphs 6, 7 and 8 of the Notice of Motion⁶ is not legally competent at this stage.

32] The appellants furthermore during the argument before us curtailed the relief sought to simply the cancellation of the Title Deed. His argument was that once the Title Deed is set aside, the Department will have to initiate an investigation into who is the rightful owner of the Property in terms of the provisions of the Conversion of Certain Rights into Leasehold or Ownership Act 81 of 1988. This being so, it is unnecessary to discuss the further relief sought as it was not moved.

33] Insofar as costs are concerned, in my view, costs should follow the result. The appeal has been substantially successful and the appellants are therefore entitled to the costs of the appeal. However, insofar as the order granting leave to appeal did not specify that those costs are costs in the appeal, the effect of that is that there is no order as to those specific costs.

34] In the result, the following order is made:

1. The appeal succeeds and the order of the court *a quo* is set aside.
2. The registration of Title Deed No T[...], registered in the name of JANE GOMBA is declared invalid and set aside.
3. The transfer of the property known as Erf 4[...] E[...] Section, Tembisa from the appellants to the first respondent is declared invalid and set aside.
4. The first respondent is ordered to pay the costs of the appeal, excluding the costs of the leave to appeal.

NEUKIRCHER J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

⁶ Which seeks the eviction of the first respondent and authorises the Sheriff and the SAP to assist in enforcing the order

I agree

SWANEPOEL J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I agree

MOOKI J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

This judgment was prepared and authored by the judges whose names are reflected, and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 1 December 2025.

Appearances

For the applicant	:	Mr Mafuyeka
Instructed by	:	
For the first to third respondents	:	No appearance
Matter heard on	:	5 November 2025
Judgment date	:	1 December 2025