

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

Case Number: 24530/2019

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| (1) | REPORTABLE: NO |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED: NO |

20 February 2026

DATE

SIGNATURE

In the matter between:

THANDI SIBEKO

FIRST APPLICANT

RICMOND SIBEKO

SECOND APPLICANT

THAMI MBELE

THIRD APPLICANT

NELISIWE DAPHNEY SIBEKO

FOURTH APPLICANT

and

TEBOBO OTTO MODISE

FIRST RESPONDENT

DIPELOANA PAULINA SIBEKO

SECOND RESPONDENT

DIPELOANA PAULINA SIBEKO

(in her capacity as the Representative of the Master

In the Estate Late Bheki Simon Sibeko)

THIRD RESPONDENT

THE REGISTRAR OF DEEDS

FOURTH RESPONDENT

THE MASTER OF THE HIGH COURT

FIFTH RESPONDENT

FIRST RAND BANK LTD

SIXTH RESPONDENT

JUDGMENT

TWALA J

Introduction

[1] This is an application by the applicants for the cancellation of two deeds of transfer pertaining to an immovable property, namely Erf 1[...], Emdeni Township, Johannesburg ("the property"). The applicants seek to set aside the transfer of the property to the late Bheki Simon Sibeko and the second respondent, which property was subsequently transferred to the first respondent by the second respondent. The applicants claim that they are the lawful heirs in the estate of the late Nomasonto Carolina Sibeko ("the deceased"), who was the original owner of the property, who died intestate on 31 December 2009.

[2] The application is vehemently opposed by the first respondent who has filed a comprehensive answering affidavit. It is worth noting that the second to the sixth respondents are not participating in these proceedings – hence going forward in this judgment I shall refer to the parties as the applicants and the respondent.

Factual background

- [3] It is common cause that after the death of the Late Carolina Sibeko who was the owner of the property, her son, the Late Bheki Simon Sibeko was appointed by the Master of the High Court as the estate representative and the sole heir in her estate. The Late Bheki Sibeko then took transfer of the property into his name and that of his spouse who is the second respondent in this case. When the late Bheki Sibeko died on 16 December 2015, his spouse sold the property to the first respondent for the sum of R450 000 which amount was secured by a bond of R396 000 passed by the sixth respondent over the property.

Legal Principles

- [4] It is trite that the rei vindicatio principle is a cornerstone of our property law. It allows the rightful owner of property to reclaim his or her property from anyone who possesses it unlawfully, regardless of whether there is a contractual relationship between them. Put in another way, the rei vindicatio principle entitles only the owner of the property to vindicate his or her property wherever it is. Ownership is the only requirement which the claimant must prove and not contractual rights.

Discussion

- [5] The applicants contend that they are the intestate heirs of the Late Nomasonto Sibeko who is their grandmother since they are the surviving issues of her daughter who predeceased her. The Late Bheki Sibeko is their uncle who misrepresented to the Master that he is the only surviving heir to the estate of the Late Nomasonto Sibeko – thus the Late Bheki Sibeko obtained transfer and ownership of the property through fraudulent means. Since the first transfer was obtained through unlawful means which is fraud, then no transfer that follows would be lawful for on one can transfer more rights than what they have.

[6] I am unable to agree with the applicants. Firstly, the applicants approach this Court relying on the remedy of *rei vindicatio*. *Rei vindicatio* is only available to the owner of a thing which he or she can vindicate wherever it is for he or she is the owner. Ownership is the only requirement to sustain an action under the *rei vindicatio* principle or remedy. The applicants allege that they are intestate heirs, but they were never and are still not the owners of the property and therefore cannot avail themselves of the *rei vindicatio* remedy. On this basis alone the applicants' case falls to be dismissed.

[7] In *Prinsloo v Venter and Others*¹ the court stated the following with regard to the principle of *rei vindication*:

“It is inherent in the nature of ownership that possession of the *res* should normally with the owner and it follows that no other person may withhold it from the owner unless he is vested with some rights enforceable against the owner. The owner in instituting a *res vindicatio* need therefore do no more than allege and prove that he is the owner and that the defendant is holding the *res*. The onus being on the defendant to allege and establish any right to continue to hold against the owner.”²

[8] It is apparent that where an application brings a *rei vindicatio* or vindicatory action, he or she needs to prove that he or she is the owner of the property and that the property is in the possession of the first respondent. It does not matter whether the possession is *bona fide* or not. However, in the present case, the respondent does not possess the property, but he is the owner by virtue of the title deed issued to him by a lawful authority, the Registrar of Deeds. There is no other better and authentic proof of ownership of immovable property other than the title deed issued by the Registrar of Deeds.

[9] I am of the respectful view therefore that the applicants fall short on this point as they claim to be the lawful heirs to a portion of the property and not that they are the own the property. The ineluctable conclusion is therefore that the applicants

¹ 80848/2014, 10 December 2014 [2015] ZAGPPHC, 10 December 2015

² Id para 53

have failed to establish that they are the owners of the property and therefore are not entitled to the remedy of the rei vindicatio action.

[10] In the premises, I make the following order:

1. The application is dismissed;
2. The applicants are liable, jointly and severally, the one paying the other to be absolved, for the costs of the first respondent on the party and party scale B.

TWALA M L
JUDGE OF THE HIGH COURT,
SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Date of Hearing: 16 February 2026

Date of Judgment: 20 February 2026

Appearances

For the Applicants: Advocate J Shivambo

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For the First Respondent: **Advocate Meintjes**
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This judgment and order was prepared and authored by the Judge whose name is 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 of the order is deemed to be the 20 February 2026.