

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

- | | |
|-----|---------------------------------------|
| (1) | REPORTABLE: N |
| (2) | OF INTEREST TO OTHER JUDGES: N |
| (3) | REVISED: Y |
| (4) | Signature:_____ Date: <u>06/03/26</u> |

CASE NO.:74483/2018

In the matter between:

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

Plaintiff

and

SHELL SOUTH AFRICA REFINING (PTY) LTD

First Defendant

NORTHWEST PROVINCIAL GOVERNMENT

Second Defendant

ENGEN PETROLEUM LIMITED

Third Defendant

VALAMBYA ENERGY SERVICES AND PROJECTS (PTY)LTD

Fourth Defendant

NORTHWEST HOUSING CORPORATION

Fifth Defendant

THE REGISTRAR OF DEEDS

Sixth Defendant

JUDGMENT

Kumalo J

INTRODUCTION

[1]. The action in these proceedings concerns a dispute about the ownership of four immovable properties known as-

1.1 ERF 5[...] Ga-Rankuwa Unit 4 Township, Registration Division JR;

1.2 ERF 8[...] Ga-Rankuwa Unit 5 Township, Registration Division JR;

1.3 ERF 4[...] Mabopane Unit B, on Portion of the Farm Mabopane 702 JR; and

1.4 ERF 4[...]2 Kudube Unit 2.

[2]. The City of Tshwane, the plaintiff (the “City”), contends that it is the lawful owner of these properties. In contrast, the Fourth Defendant (“Valambya”) contends that it is the rightful owner of the two properties, which have already been transferred to it, and is entitled to have the remaining two properties transferred to it, having fully paid for them.

[3]. The First Defendant is Shell South Africa Refining (Pty) Ltd (“Shell”). It operates a fuel service station from the properties, all situated within the boundaries of the Northwest Provincial Government, the Second Defendant.

- [4]. The Third Defendant is Engen Petroleum Ltd, which holds a registered mortgage bond over one of the two properties that were transferred to the Fourth Defendant, Valambya Energy Services and Projects (Pty) Ltd.
- [5]. The Fifth Defendant is the Northwest Housing Corporation (“NWHC”), which played a very active role and function in the dealings with the properties in question.
- [6]. The Sixth Defendant is the Registrar of Deeds. The Registrar did not file any pleadings or participate in the proceedings.
- [7]. In its summons, the City seeks the following orders:
- 7.1 that the transfer of Portion 7 of the farm Mabopane JR702 identified on Surveyor General Diagram Y67/19826 to the NWHC be declared unlawful and invalid.
- 7.2 that the transfer of Erf 5[...] Ga-Rankuwa Unit 4, as identified on Surveyor General Diagram Y67/19827, to Valambya be declared unlawful and invalid.
- 7.3 that the transfer of Erf 8[...] Ga-Rankuwa Unit 5, as identified on Surveyor General Diagram SG3829/20008, to Valambya be declared unlawful and invalid;
- 7.4 that it be declared that Erf 4[...]2 Kudube Unit 2, as identified on General Plan SG 5762/20019, is owned by the City.

- [8]. The City contends that the transfers and alienation of these properties conflicted with legislative prescripts, namely, the Municipal Finance Management Act, 56 of 2003 (the “MFMA”), Municipal Asset Transfer Regulations, 2008 (the “MATR”), the Municipal Supply chain Management Regulations, and the Transvaal Local Government Ordinance, 17 of 1939 (the “Ordinance”).
- [9]. In short, the City contends that the transfer of the subject properties from the City to the NWHC and Valambya was unlawful and invalid. It contends that the transfers contravened the MFMA, particularly section 14. The City further contends that the properties in question are capital assets as provided for in the MFMA. Accordingly, the assets can be disposed of lawfully only if the sale or alienation thereof complies with the provisions of the MFMA.
- [10]. The argument went as follows: there was no resolution authorising the transfer of ownership by the City to any third parties as required by the MFMA; There was no publication of the proposed sales or leases as required by the MATR; There was no Council meeting open to the public or public participation before the disposal of the said properties; and there was no determination of a fair market value of the asset and other factors such as the economic and community value which will be received in exchange for the asset.
- [11]. Valambya, the Fourth Defendant, opposed the relief sought by the City and instituted a claim in reconvention. It seeks a declaratory order that it is the owner of all the ERFs that are the subject of these proceedings. It further

seeks that the City be ordered to take all necessary steps to secure the transfers of the two remaining properties, i.e., Mabopane Unit B and Kudube Unit 2, respectively.

[12]. The First Defendant, Shell, although it filed papers to defend, did not take an active role during the proceedings and did not lead any witnesses. In fact, it closed its case without presenting any evidence.

[13]. Shell admitted that it concluded a written lease agreement with the Fifth Defendant in respect of stand number 4[...] situated in Block B of Mabopane Township, Mabopane. It pleaded that the Plaintiff failed to plead or aver the manner in which the provisions of the MATR published in terms of the MFMA, which would render the sale of portion 7 by the Plaintiff to the Fifth Defendant null and void, and consequently, the Plaintiff's particulars of claim lack the necessary averments to sustain a cause of action.

[14]. The Third Defendant pleaded that the Plaintiff's action should be dismissed on the basis that the plaintiff seeks to review and set aside its own administrative action contrary to the uniform rules of this court and/or PAJA.

[15]. The Fifth Defendant also filed a plea but did not appear or participate in the proceedings.

[16]. The Plaintiff led the evidence of its expert, Ms. Zania Lambert ("Lambert"), a professional and property consultant. Valambya, on the other hand, called two witnesses, namely Mr. Chris Moller ("Moller"), a non-practicing advocate and erstwhile Acting Chief Executive Officer ("CEO") of the NWHC, and Mr.

Happy Ntsako Godi (“Godi”), an admitted attorney and conveyancer who was involved in the transfer of these properties.

[17]. Moller filed his witness statement summarising his testimony. Godi, in turn, filed his expert summary, setting out, inter alia, his involvement in the Task Team established during 2012 by the NWHC, and his role as the conveyancer responsible for the transfers of the properties owned by the NWHC to the respective beneficiaries.

[18]. It is common cause that the properties that form part of the dispute in the matter once belonged to the Bophuthatswana Homeland Government. After the demise of the homeland system and the advent of the “new” South Africa, these properties were transferred to the Northwest Provincial Government.

[19]. Portion 7 of the farm Mabopane 702J was then transferred to the Mabopane Transitional Representative Council. The City in this matter, is the successor-in-law to the Mabopane Transitional Representative Council, which, according to the Plaintiff, became the legal owner. Ms. Lambert testified that when she conducted a subsequent search at the deeds office, she found that the said property, NWHC, was now the registered owner.

[20]. Ms. Lambert testified that she was an employee of the City for approximately 10 years. Whilst in the employ of the City, she inter alia was responsible for the management of the City’s assets, working with developers to identify properties, advising and assisting with the establishment and formalisation of townships, and the sale and alienation of municipal immovable assets.

- [21]. She testified that she was involved in the alienation and transfer of many immovable properties owned by the City. She stated that the alienation and transfer of immovable assets owned by the City were regulated and subject to the peremptory provisions of various applicable statutory prescripts.
- [22]. She told this court the requirements for the disposal and alienation of immovable property owned by the City, explaining the procedures and processes set out in the applicable legislative prescripts.
- [23]. She testified that she researched and analysed the ownership history and transfer procedures relevant to the properties in question and provided her opinion on the processes followed in the transfers of the said subject properties.
- [24]. Lambert testified that the MFMA, the MATR, the Municipal Supply Chain Management Regulations, and old order municipal law together constituted the legislative framework governing the alienation of local government property.
- [25]. Lambert explained the processes applicable to the transfer or alienation of high-value and low-value assets owned by the City. She explained that low-value assets related to low-cost housing and high-value assets pertained to commercial or industrial properties. She testified that the decision to dispose of both types of properties required, inter alia, a Council resolution.
- [26]. Lambert testified that, before the MATR, a Municipal Council had to make two clear and narrow determinations under section 14(2) of the MFMA

before approving the transfer or disposal of a property asset. She testified that, first, a factual enquiry was made into whether the property asset was required to provide a minimum level of basic services. This was an objective determination that a municipal Council could make upon receiving comments from its service delivery departments regarding the future need for a specific property asset. Secondly, the municipal Council had to consider the fair market value of the asset and the economic and community value to be received upon the transfer or disposal of the property.

[27]. Lambert further testified that the MATR expanded the narrow criteria set out in section 14 of the MFMA. She testified that the regulations further required, inter alia, that the Council consider whether the asset may later be required for the municipality's own use, while also reflecting on the wider strategic, legal, and economic interests of both the municipality and the local community.

[28]. She further testified that the Municipal Council was obliged to consider several financial economic factors which include the expected loss or gain from the transfer or disposal, any significant economic or financial costs or benefit to the municipality, any severe effect that the proposed transfer or disposal will have on the current and future financial position of the municipality, the cost associated with the proposed transfer or disposal and the possible transfer of any liabilities and reserve funds associated with the property asset.

[29]. Lambert testified that according to the Surveyor General, Mabopane is laid out on Portion 7 of the farm Mabopane 702JR as per SG Diagram

7439/199937 and the small-scale diagram SG7438/199938. She testified that a township search within the Deeds Office data does not reflect a township owner or township title for Mabopane Unit B. Lambert testified that Mabopane Unit B township has not been proclaimed, that a township register has not been opened, and that a separate township Title Deed for Unit B Mabopane does not exist.

[30]. She testified that the deeds office data search for Unit B, Mabopane, records that the City is the initial registered owner of the underlying property on which portion 7 is laid, as set out on T[...]. The North-West Province Provincial Government initially owned the complete farm Mabopane 702JR under Title Deed T[...].

[31]. Lambert testified that on 14 November 2000, it was transferred to the Mabopane Transitional Representative Council under Title Deed T[...]. The City of Tshwane, as the successor in law to the Mabopane Transitional Representative Council, became the legal owner of the complete farm Mabopane 702JR, and the title deed T[...] was endorsed accordingly.

[32]. Lambert testified that a subsequent search into the ownership of Portion 7 of the farm Mabopane 702JR, where Mabopane Unit B is located, indicates that the North-West Housing Corporation is now reflected as the registered owner in accordance with T[...].

[33]. She testified that the transfer conflicts with the established chain of title. The complete farm Mabopane 702JR was originally vested in the City of Tshwane as the successor to the Mabopane Transitional Representative

Council, and thereafter, the City became the rightful owner of portion 7 of the Farm Mabopane 702JR. If ownership indeed passed to the North-West Housing Corporation, such a transfer should be in accordance with the prescribed legislative framework as set out in the MFMA and MATR.

[34]. She testified that she reviewed the report dated 29 September 2005, prepared by the Municipality's SEO: Housing, City Planning, and Environmental Management, and approved by the Municipal Council on the same date.

[35]. In her view, the report's overall intention appears to be the finalization of the transfer of properties to current tenants in various areas of the northwestern part of Tshwane. The report identified the targeted properties as "old and new housing stock"—either developed by the South African Government in the former Bophuthatswana area or by the North-West Housing Corporation and the erstwhile Mabopane Transitional Representative Council.

[36]. The report sought approval to transfer these housing units to the rightful beneficiaries. She further testified that the essence of the resolution relates to the transfer of the identified old and new stock housing units to verified beneficiaries and the granting of a power of attorney to the NWHC to open township registers for the R293 townships and facilitate the transfer of affected housing stock to current occupants. When asked what the above-mentioned Council resolution authorised, she testified that the Council resolution by the City did not authorise the transfer of Portion 7 of the farm Mabopane Unit B to the NWHC as required by the provisions of the MFMA and MATR.

[37]. Lambert further testified that no record or evidence could be located, demonstrating the publication of the transfer of Portion 7 of the farm Mabopane Unit B as required by the Local Government Ordinance 17 of 1939, which establishes publication as a peremptory requirement for the alienation or transfer of municipal immovable assets.

[38]. She testified that a certain Mr Hendrik Stephanus Viljoen representing the City in his capacity as Acting Manager: Sales Administration and Housing Transfer attended to the signature of the power of attorney on 31 March 2009, to pass transfer of Portion 7 of Farm Mabopane 702JR to North-West Housing Corporation, that the Council resolution referred to above, clearly only authorises the: *“SEO: Housing, City Planning and Environmental Management be authorized to sign all documentation with regard to the process of the transferring of the said properties as elucidated in the report”* to sign all documentation with regard to the process of the transferring of the said housing properties as was clarified. She testified that Mr Viljoen further states within the power of attorney that the City has agreed on 31 March 2009 to transfer the said property (being portion 7 of the farm Mabopane 702JR) for housing purposes and then continued to sign the power of attorney to effect transfer under the same date of 31 March 2009. Importantly, what was transferred was an entire proclaimed township, consisting of residential properties, municipal infrastructure, various commercial and retail properties, and public amenities.

- [39]. She further testified that a certificate purported to be a section 118 clearance exemption certificate in T[...], stamped and issued by Mr Viljoen on 31 March 2009, is attached to the transfer document bundle. The clearance certificate does not represent an official clearance certificate format issued by the Department of Finance within the City of Tshwane Municipality.
- [40]. Unlawfulness of Section 118(1) of the Municipal Systems Act (Act 32 of 2000) mandates that a Registrar of Deeds cannot register the transfer of property unless a clearance certificate is provided by the relevant municipality.
- [41]. The certificate confirms that all municipal debts related to service fees, property rates, and other municipal taxes incurred during the two years preceding the application have been fully paid. She explained that a clearance exemption certificate can be issued in the instance of Subsection (4). Subsection (1) does not apply to- (a) a transfer from the national government, a provincial government or a municipality of a residential property which was financed with funds or loans made available by the national government, a provincial government or a municipality; and (b) the vesting of ownership as a result of a conversion of land tenure rights into ownership in terms of Chapter 1 of the Upgrading of Land Tenure Rights Act, 1991 (Act 112 of 1991).
- [42]. Lambert testified and opined that the transfer of ownership of Portion 7 of the Farm Mabopane 702JR from the City to the NWHC does not comply with the provisions of the MFMA and the MATR. Furthermore, she testified that given the discrepancies highlighted in the preceding paragraphs, the transfer

documentation lacked credibility and may have been fraudulently drafted and issued.

[43]. She concluded that the transfer of Portion 7 of the Farm Mabopane was invalid, resulting in the NWHC then having no established ownership or legal authority to enter into any agreements, be it sales or lease agreements, with third parties for conducting a business on an unregistered erf within the township known as Mabopane Unit B.

[44]. Lambert testified that a deed search on Erf 5[...], as identified on SG Diagram Y67/198249. Valambya is registered as the owner of the erf in accordance with T[...].

[45]. Lambert testified that on 19 December 2008, Ga-Rankuwa Unit 4 was proclaimed and formalized as a township in terms of the ULTRA and the requirements in terms of section 15 of the said Act having been complied with.

[46]. She further testified that on 28 July 2009, the Title Deed T[...], for the farm Sjambok Kraal 723JR was endorsed in terms of section 46(3) of the Deeds Registries Act.

[47]. She further testified that, following the endorsement of the Title Deed, the City, by legal implication, became the registered owner of the erven listed in the Title Deed T[...]. She further testified that Erf 5[...] Ga-Rankuwa Unit 4 is included in this endorsement as being owned by the City of Tshwane Metropolitan Municipality by virtue of this Township Title Deed.

[48]. With a subsequent transfer, Erf 5[...] Ga-Rankuwa Unit 4 was transferred directly from this township title deed to Valambya as reflected under Title Deeds T[...]. She testified that during October 2012, the NWHC purported to conclude an agreement of sale with Valambya in respect of erf 5[...]. She testified that at the time of the sale the deed office search recorded the City as the registered owner of the farm Sjambokraal 723JR under registration number 84800/2000. She testified that erf 5[...] was transferred out of GA Rankuwa 4 to Valambya in terms of Deed of Transfer T[...]. Lambert testified that erf 5[...] Ga-Rankuwa Unit 4 was transferred directly from the township title deed to Valambya as reflected under Title Deeds T[...]. She told the court that she scrutinised the process followed in the transfer of erf 5[...] to verify the validity of the transfer of ownership and identify potential irregularities in the transfer process.

[49]. The starting point for testing the validity of the transfer process was to verify the existence of a MFMA Section 14(2) Council report. She testified that its presence was a key factor in ensuring compliance with the ownership transfer requirements. She further testified that her request to the relevant Municipal Departments failed to yield such a Council resolution. She stated that the absence of the Council resolution raised serious concerns about the legality and compliance of the transfer process.

[50]. She stated that without the MFMA Section 14(2) Council report, the transfer of municipal assets cannot be considered valid or compliant with the Act. When asked if a Council resolution from the City's Council authorising the transfer of erf 5[...] GA Rankuwa existed, she testified that no such resolution

existed. When asked if there were any records of the publication and initiation of the public participation process in the transfer of erf 5[...], she testified that no evidence existed to confirm that a publication of the transfer of erf 5[...] was done and that no evidence exists proving adherence with the public participation process.

[51]. She testified that the lack of any documented proof of publication strongly suggests that the transaction did not comply with legislative provisions, rendering it legally flawed and unenforceable. She concluded that her review of the ownership and transfer process of Erf 5[...] Ga-Rankuwa Unit 4 highlighted critical legal and procedural concerns. The property was originally owned by the City following the formalization of Ga-Rankuwa Unit 4.

[52]. She stated that the transfer to Valambya lacked key compliance elements, most notably the absence of an MFMA Section 14(2) Council resolution, a requirement for the lawful disposal of municipal property assets. Additionally, she testified that there is no evidence that the required public notification procedures mandated by the Local Government Ordinance were followed.

[53]. The agreement of sale was concluded between Valambya and NWHC, who was not the registered owner of the township property, and by necessary implication, the unregistered erf.

[54]. In respect of the transfer process of Erf 8[...] GA Rankuwa Unit 5, Lambert testified that an ownership search in the Deeds Office database for Erf 8[...] Ga-Rankuwa Unit 5, as identified on SG diagram SG3829/200058 and

Y62/198559 records VALAMBYA as the owner of the erf in accordance with T[...].

[55]. She testified that, according to Surveyor General data, Ga-Rankuwa Unit 5 is laid out on portion 25 (a portion of portion 2) of the farm Sjambok Zijn Oudekraal 258JR, as per small-scale diagram SG 5476/2000.62 74. Lambert further testified that this information enables a Deeds Office data search to determine the registered owners of portion 25 (a portion of portion 2) of the farm Sjambok Zijn Oude Kraal 258JR.

[56]. She further stated that the farm owner initially effectively holds ownership of Ga-Rankuwa Unit 5 and all erven within the township Ga-Rankuwa Unit 5. She testified that the City is recorded as the registered owner of portion 25 of the farm Sjambok Zijn Oude Kraal 258JR under registered title T[...].

[57]. She further testified that on 19 December 2008, Ga-Rankuwa Unit 5 was proclaimed as a formalized township in terms of the ULTRA and the requirements in terms of section 15 of the said Act had been complied with. Subsequently, on 28 July 2009, the Title Deed T[...] for portion 25 of the farm Sjambok Zijn Oude Kraal 258JR was endorsed on the Title Deed in terms of section 46(3) of the Deeds Registries Act 47 of 1937.

[58]. She further testified that, following the endorsement of the Title Deed, the City, by implication, became the registered owner of the erven listed on page 4 of Title Deed T[...]. She further testified that erf 8[...] Ga-Rankuwa Unit 5 was not included in the list of erven under the township endorsement;

however, erf 8[...] was included in the General Plan SG 3829/2000 captured in the very same endorsement.

[59]. By virtue of the Township Title Deed, Erf 8[...] Ga-Rankuwa Unit 5 was initially owned by the City. With a subsequent transfer, erf 8[...] GaRankuwa Unit 5 was transferred directly from the township title deed to Valambya as reflected under Title Deeds T[...].

[60]. Lambert testified that she scrutinised the process of transfer to verify the validity of the transfer of ownership and identified potential irregularities in the current registered ownership of Erf 8[...] Ga Rankuwa Unit 5 to Valambya Energy Services & Projects Pty Ltd.

[61]. She again repeated what she told the court above when she was dealing with the other transfer. The starting point for testing the validity of the transfer process was to verify the existence of an MFMA Section 14(2) Council report. She further testified that a request to the relevant Municipal Departments failed to yield such a Council resolution. She concluded her testimony by stating that the investigation into the ownership and transfer of Erf 8[...] Ga-Rankuwa Unit 5 had revealed significant anomalies. She testified that, while the City was initially the rightful owner, the subsequent transfer to Valambya lacked an MFMA Section 14(2) Council resolution, the prerequisite for its validity.

[62]. She opined that discrepancies in the erf's zoning and intended use suggest potential misrepresentation in the transfer process. She concluded that these

findings indicated the current ownership status of Erf 8[...] was noncompliant with the law.

[63]. The agreement of sale was concluded between Valambya and NWHC, who was not the registered owner of the township property, and by necessary implication, the unregistered erf.

[64]. In respect of the transfer process in the disposal of Kudube Unit 2, erf 4[...]2, Lambert testified that it was identified on General Plan SG 5762/200168 and amended general plan Y1/1979, returns no ownership details, with the message: 'There is no information available that matches your search criteria'. These results indicated that Erf 4[...]3 is unregistered in the Deeds Office and lacks its own title deed.

[65]. She further testified that she verified whether Kudube Unit 2 was listed as a registered township in the Deeds Office records – specifically, whether a township register has been opened with a registered township title. She stated that if a township title exists, it identifies the township owner. By implication, the township owner retains legal ownership of all erven within the township until individual erven are transferred to new owners through separate title deeds.

[66]. She further testified that a township search within the Deeds Office data does not reflect a township owner or township title for Kudube Unit 2. When asked about the ownership history of Kudube Unit 2, she testified that similar to the history of Mabopane Unit B, Kudube or Temba as it was previously known, is situated in the erstwhile Bophuthatswana, which also fell under

legislation such as The Black Administration Act, Act 38 of 1927, and Proclamation R293 of 196271.

[67]. She testified that this framework enabled the establishment of townships in former territories, with less formal processes than those within municipal boundaries in South Africa. She testified that post-1994, these informal townships posed challenges to the integrated Deeds Office systems.

[68]. She testified that ULTRA introduced a process to formally recognize townships in territories such as Bophuthatswana. The tenure upgrade process was aimed at aligning these townships with the formal Deeds Registry system, recognizing previously surveyed townships and pre-existing occupation rights granted under the former legislative framework.

[69]. Lambert further testified that the township of Kudube was also established through a less formal process than that within municipal boundaries in South Africa. She testified that, subsequently, with ULTRA, which took effect on 28 September 1998 in the former Republic of Bophuthatswana territory, which now forms part of the Northwest Province, it was possible to formalize the township of Kudube Unit 2.

[70]. Lambert testified that on 14 August 2009, Kudube Unit 2 was proclaimed as formalized as a township in terms of the ULTRA, and the requirements in terms of section 15 of the said Act had been complied with. However, no township title was registered in the Deeds Office, and consequently, the underlying farm portion owner retained ownership of the land on which the township was laid out, pending formal opening of the township title.

- [71]. She testified that according to the Surveyor General data, Kudube Unit 2 is laid out on Portion 45 of the farm Leeuwkraal 92JR, as per diagram SG5767/200174.
- [72]. She testified that an ownership search for portion 45 of the farm Leeuwkraal 92 J returns no ownership details, with the message: “ There is no information available that matches your search criteria.”⁷⁵ The next step in tracing ownership involves the identification of the underlying farm portion/s that form portion 45 of the farm Leeuwkraal JR, as the SG diagram 55/2002 indicated that portion 45 of the farm Leeuwkraal 92JR was a consolidated farm portion.
- [73]. She testified that according to the deeds office search, portions 1 and 4 (parent portions) of the farm Leeuwkraal JR are owned by the City in terms of tittle deed T[...], that these portions were transferred to the City by the Provincial Government of the North-West Province on 21 August 2001. She concluded that, based on ownership research incorporating data from both the Surveyor-General and the Deeds Office, the underlying portions on which the Kudube Unit 2 township has been laid out are owned by the City. Lambert further testified that any form of property alienation—whether by transfer or lease—must strictly comply with the legislative requirements governing municipal property transactions.
- [74]. She had not been provided with any evidence, such as an approved Municipal Council report, granting authority for the issuance of a power of attorney to any Provincial Government entity or the North-West Housing

Corporation to alienate either the identified farm portions or even within the unregistered township of Kudube Unit 2.

[75]. The long and short of Lambert testimony is that all transfers of the subject properties were undertaken without a Council resolution, no publication of the said transfers was made, and that no public participation was initiated. Her conclusion is that the transfer of the subject properties to Valambya and the NWHC was unlawful and invalid.

[76]. Adv. Moller testified on behalf of the Fourth Defendant. He testified that he was appointed as the Acting Chief Executive Officer of the NWHC from 13 September 2012 to approximately March 2016. His task was to proceed with the NWHC's winding down. To do this, he had to determine the NWHC's assets and liabilities, compile its asset register and financial statements, and account for all assets and liabilities to the Provincial Government.

[77]. As part of his responsibilities as the Acting CEO, he was required to attend the task team meetings with the Plaintiff.

[78]. Moller described the task team's constituency as comprising key members of the Plaintiff, the Gauteng Department of Housing, the NWHC, and the Provincial Department of Northwest Housing. There were also various key administrators to support the NWHC process and the transfer of the properties. SCIP Engineering was mentioned as part of the team, as well as Falkia JV, of which Godi, the conveyancer, was also a member.

[79]. Moller testified that the Plaintiff's key role in the process was to open township registers for purposes of effecting the transfer of the properties and

confirmed that the function of the task team was to fast-track the disposal of cross-border assets. They dealt with both old and new stock, and the property management division also dealt with vacant stands forming part of the properties in question.

[80]. Lambert was the head of the Plaintiff's property management department and assisted the legal department of the Plaintiff and the Gauteng Provincial Government in the process.

[81]. The witness testified that he was actively involved in drafting the asset register for the North West Housing Corporation and, as part of that involvement; Godi assisted him with the SG Diagrams and the identification of land forming part of the NWHC.

[82]. He further stated that this was not limited to residential property, but in fact involved all property which form part of the townships.

[83]. To ascertain which properties had title deeds and the situation regarding ownership, the properties' records were properly reconstructed and verified using historical records and archives of the NWHC and the North West Provincial Government. All those documents and information were shared with the Plaintiff.

[84]. He further confirmed that the two erven that were already transferred to Valambya, the Fourth Defendant, were included in the NWHC asset register, and this is so with the two erven which have not been transferred to Valambya i.e. ERF 4[...]2 Kudube and ERF 4[...] Mabopane. The asset register was shared with the Plaintiff.

- [85]. Moller stated that there was no distinction between residential and commercial properties as far as the task team was concerned at any stage. All immovable assets were included, whether it be residential, commercial, industrial, or vacant stands. He testified that the Plaintiff had specific representatives who would check and verify the transfers before the necessary steps were taken to effect the transfers. He added that various properties of different natures were transferred in this manner and that the Plaintiff never objected to these types of transfers.
- [86]. He further testified that the Kudube and Mabopane properties were specifically discussed at the task team meetings and that the Plaintiff was acutely aware that these were commercial properties. Lambert specifically reviewed those transfers and had no objections.
- [87]. He confirmed that the Kudube properties could not be transferred because the township register had not yet been opened. The City of Tshwane had to attend to that to assist the buyer and the NWHC in effecting the transfer of the properties.
- [88]. Moller further confirmed that the North West MEC for Housing was aware that both commercial and residential properties were being transferred, as he had personally discussed this with him during their weekly meetings.
- [89]. He drew the court's attention to the fact that the North West Department of Human Settlement reported directly to the National Department of Human Settlement every quarter by attending meetings with the standing committee in Parliament on the issue. If there were any objections from the National

Department of Human Settlements, they would have been raised in the standing committee meetings.

[90]. Moller further noted in his evidence that the Plaintiff did not at any point demand a purchase price for any of the properties in question because it was common knowledge that the properties were those of the NWHC. NWHC retained ownership and responsibility for transferring the properties to the rightful beneficiaries, and no distinction was made between residential and commercial properties.

[91]. Moller conceded during cross-examination that *prima facie* proof of ownership of immovable property is through the Title Deed of that property. He, however, submitted that these were not normal circumstances. The court will address this in due course.

[92]. Another issue raised during cross-examination is that the lease agreements of the First Defendant, which constitute long-term leases, were never notarised. It is a common cause, though, that the First Defendant performed in terms of the lease agreement.

[93]. Asked how the ownership of the various properties could have been transferred and verified, Moller confirmed that there were other documents in the NWHC asset register that could prove the transfer of ownership.

[94]. He also confirmed that the Ga-Rankuwa erven were sold to Valambya, despite the NWHC's knowledge that the City is by title the owner. He, however, insisted that this was part of the common knowledge between the

parties that NWHC must transfer ownership to the rightful beneficiaries of the properties, as was the arrangement all along.

[95]. Moller confirmed that the NWHC became the owner of the relevant properties following the demarcation after the Bophuthatswana Government was dissolved, because these properties were included in the NWHC asset register, and because the investigation that preceded that confirmed that it is the owner.

[96]. He was also adamant that there is no evidence proving that ERF 4[...] Mabopane was ever included in the City of Tshwane asset register and, as such, cannot be regarded as an asset of the Plaintiff.

[97]. He further testified that it was confirmed that the properties in question were never capital assets of the City and that this issue was properly investigated, and the task team was satisfied that the properties are not the City's capital assets, but rather a capital asset of the NWHC. He again reiterated that the task team was satisfied that commercial properties could be transferred in the manner proposed and that there was no restriction on their transfer. He explained that the City never evaluated the properties, nor was it required to do so.

[98]. The next witness was Godi, who was called as the expert conveyancer. He was called on behalf of Valambya. He was admitted as an attorney, notary public, and conveyancer in 2008, 2009, and 2010, respectively. He stated that he has attended to more than 15 000 property transfers during his career.

- [99]. HE was employed at Kaikanyang Incorporated from September 2011. He was also involved in the Faikia Joint Venture and in the joint venture to wind down the NWHC. He explained that his involvement in the task team to the extent that he was part of at least nine such teams all over South Africa who attended to the transfer of properties in the manner in which the properties in question were transferred to the beneficiaries.
- [100]. He testified that his involvement with the task team to transfer the current properties began in late 2011 or early 2012 and that his role ended in 2016. He personally interacted with many of the beneficiaries of the transactions with the NWHC, and he is the only person who can testify to these types of dealings.
- [101]. He confirmed that many stakeholders were involved in the task team, including the CEO and Chairman of the NWHC, representatives of the Plaintiff, the Northwest Provincial Department of Human Settlement, the Gauteng Provincial Department of Human Settlement, and various other consultants. The task team met monthly, and a sub-committee was established that reported directly to the task team.
- [102]. He confirmed that every township affected by the transfer of properties in this manner was checked individually, and where the properties had unknown owners, this was duly investigated to determine the type of property, what was on the property, and what should happen with such property.

- [103]. According to Godi, two task team members were required to sign off on the transfers: Moira Marima, who signed off on residential properties, and Morutsi Mphahlele, who signed off on commercial properties. Both persons were employed by the Plaintiff.
- [104]. He confirmed that Valambya's claim to ownership of the properties in question was duly investigated, and the NWHC was satisfied that the properties should be transferred to it. At least 800 properties were investigated and verified in the manner before transfer was effected. He personally attended to the transfer of these properties, and testified that these transfers were not limited to residential units but included various commercial properties, to about 300 commercial properties.
- [105]. He stated that the necessary documentation had been submitted to the Deeds Office and that the transfers had been effected in terms of section 13 of ULTRA. Further, the Plaintiff's representatives were satisfied that the paperwork was in order and that they signed the necessary transfer documentation.
- [106]. He confirmed that Valambya paid the purchase price for all four properties in question and that the payment was made through Koikanyang Incorporated. The transfer of the properties situated at Mabopane and Kudube was precluded because the townships had not yet opened.
- [107]. When asked why the townships were not opened during the Bophuthatswana Homeland era, he testified that section 46 of the Deeds Registries Act, 47 of 1937, did not require their opening. In 2000, the

properties were conditionally transferred from NWHC to the Mabopane Traditional Council, which later became part of the Plaintiff. Once a township was registered, the properties were required to be transferred to the NWHC, and it was always understood that the transfer was conditional for the purpose of opening a township register.

[108]. He stated that these types of conditional transfers were not unique to the parties in these proceedings but were also conducted in various other municipalities in the same way he was involved.

[109]. He testified that he had personally interacted with the Late Mr. Ngobeni during 2011 and early 2012. The Late Mr. Ngobeni was the director of Valambya. Ngobeni had a meeting with the CEO of NWHC during that time, and Godi personally attended. Ngobeni explained that he dealt with the Bophuthatswana Government and followed up with the Plaintiff and the NWHC to no avail.

[110]. The apparent reason was that the documentation for the transfer of the properties to Valambya was lost, and the then attorneys, Sechele Attorneys, were aware that the properties needed to be transferred to Valambya the transfers were never concluded. Apparently, Sechele was struck off the roll, and the Law Society had to take over the practice.

[111]. Godi was mandated to investigate Ngobeni's claim, and he consulted extensively with various stakeholders. Ngobeni's claim was verified and confirmed, reported to his superiors, and recommended for acceptance.

[112]. He further testified that the NWHC was the agent of the then Bophuthatswana Government and now the Northwest Provincial Government to deal with the properties in this manner. The Plaintiff was at all times aware that the transfer of the properties was conditional and purely for the purpose of opening a township register. The Plaintiff was best suited to open township registers in respect of these properties.

[113]. He explained further that the Deed of Transfer in respect ERF 8[...] Ge-Rankuwa contained a condition to the following effect:

“B. Except with the approval of the MEC, the ownership unit hereby transferred shall not-

(a) Be used for any purpose other than for residential purposes.

[114]. Godi testified that it is common knowledge that transfer documents are strictly scrutinized by the representatives employed at the Deeds Office. If they contained any errors, the examiners at the Deeds Office will immediately reject those transfer documents and either roll them back to a previous stage in the transfer process to allow rectification or outright reject the documents and request a resubmission *de novo*.

[115]. Godi testified that the four properties concerned could never be considered the capital assets of the Plaintiff because of the arrangement between the Plaintiff, the NWHC, and the North West Provincial Government. He rejected the Plaintiff's version and confirmed that no one from the Plaintiff advised any member of the task team or himself that the properties in question may

not be transferred. In fact, no such issue was ever raised in the task team meetings.

[116]. It became clear during cross-examination that the township of Mabopane was developed by the NWHC. NWHC took over the properties in that area from the then Bophuthatswana Housing Corporation.

[117]. With reference to the task team's mandate, Godi explained that its mandate was not directly or solely dependent on the Plaintiff, but rather on a collective team of representatives. He further opined that this did not matter because the Plaintiff duly mandated Mr. Viljoen to sign the Power of Attorney for the transfer of the properties in question on behalf of the Plaintiff, and therefore the Plaintiff duly performed and acquiesced with the process to transfer the properties.

[118]. It is this court's view that this matter cannot be decided fairly without taking into consideration the relevant history.

[119]. All the properties at issue in this dispute originally belonged to the Bophuthatswana Homeland Government. It was only after the advent of democracy and the subsequent demarcation that their status became somewhat of an issue.

[120]. Naturally, the Northwest Provincial Government would have succeeded the Bophuthatswana Homeland Government and inherited the said properties.

[121]. The NWHC inherited the same and was tasked to transfer the said properties to their rightful beneficiaries. This could only be done upon the

proclamation of townships and the opening of township registers. The Plaintiff was the appropriate vehicle for opening township registers.

[122]. I therefore accept that the erven were transferred to the Plaintiff for that purpose only and were never intended to be the Plaintiff's permanent assets.

[123]. Both parties led expert evidence: Ms Lambert for and on behalf of the Plaintiff, whose expertise apparently lies in her knowledge of the applicable legislation, namely the MFMA, the MATR, the ULTRA, and the older applicable ordinances. She is not a qualified conveyancer.

[124]. Her evidence was largely based on what she could not find in her research into the history of the transfers of these properties. This was the absence of a council resolution.

[125]. I must at this juncture state that on 2 June 2025, I directed the expert witnesses to draft a joint minute. The experts were unable to agree on several issues. They discussed the task team's affairs and mandate, which were established to handle the transfer of the properties in question. They, however, could not agree on a concrete mandate.

[126]. Lambert held the view that the task team's focus was mainly on housing properties, and Godi disagreed, submitting that the mandate of the task team concerned all properties belonging to the North West Housing Corporation, through the North West Provincial Government, in whom the Bophuthatswana properties vested after 1994.

[127]. He was also of the view that “old stock” referred to housing units with a zero Rand value owned by it, whereas “new stock” referred to housing, vacant land, industrial, and commercial sites.

[128]. The Plaintiff’s case appears to be what it termed non-compliance with the legislative framework for the disposal of Municipal Immovable Assets. The MFMA and the MATR and the Municipal Supply Chain Management Regulations, embody the legislative framework for local government property alienation, however old order municipal 78 Municipal Supply Chain Management Regulation law is still relevant in so far as it remains in force and effect in certain instances.

[129]. It is perhaps appropriate at this juncture to revisit the provisions of section 14 of the MFMA -

“14. Disposal of capital assets.

(1) A municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a capital asset needed to provide the minimum level of basic municipal services.

(2) A municipality may transfer ownership or otherwise dispose of a capital asset other than one contemplated in subsection (1), but only after the municipal Council, in a meeting open to the public—

(a) has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services; and

(b) has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset.

(3) A decision by a municipal Council that a specific capital asset is not needed to provide the minimum level of basic municipal services, may not be reversed by the municipality after that asset has been sold, transferred or otherwise disposed of.

(4) A municipal Council may delegate to the accounting officer of the municipality its power to make the determinations referred to in subsection (2) (a) and (b) in respect of movable capital assets below a value determined by the Council.

(5) Any transfer of ownership of a capital asset in terms of subsection (2) or (4) must be fair, equitable, transparent, competitive and consistent with the supply chain management policy which the municipality must have and maintain in terms of section 111.

(6) This section does not apply to the transfer of a capital asset to another municipality or to a municipal entity or to a national or provincial organ of state in circumstances and in respect of categories of assets approved by the National Treasury, provided that such transfers are in accordance with a prescribed framework.”

[130]. The above must be read *in tandem* with the provisions of regulation 4(1) of Chapter 2 of the MATR. This regulation describes its purpose being to regulate the transfer and permanent disposal of non-exempt capital assets by municipalities and municipal entities in order to facilitate the enforcement and administration of sections 14(2) and 90(2) of the MFMA. Section 90(2) is a replica of section 14(2).

- [131]. The City argues that the municipality's power to dispose of property assets is restricted by the peremptory provisions of section 14(2) of the MFMA referred to above. It further argues that section 14 aids in the objectives of the MFMA by creating a barrier for potential abuse of property assets and the consequences of ill-considered property dissemination.
- [132]. The Plaintiff further argues that the evidence presented demonstrates that there was no Council resolution authorising the transfer of ownership of Mabopane Unit B. Furthermore, it demonstrated that there was no inter alia publication, public participation, valuation and determination of any economic or community benefit when the property was transferred. This argument is based on the provisions of Municipal Ordinances referred to in its argument.
- [133]. I have stated earlier that justice would not be done if we are to ignore the history and what happened prior to the transfers of these properties particularly the ERFs situated in Ga-Rankuwa Unit 4 and 5.
- [134]. Much of the Plaintiff's submissions is based on the evidence and opinion of Ms. Lambert. Ms. Lambert was presented as an expert in the subject of transfers of municipal's immovable properties. She is an attorney with considerable years of experience and had spent a great deal of time as an employee of the City.
- [135]. Her testimony is based largely on the research she was tasked with and her analysis of the ownership history and transfer procedures she considered relevant to the properties in question. This court is, however, of the view that her expert opinion is with respect inadmissible.

- [136]. She conceded that she was not a conveyancer. She at no stage provided expert evidence about the transfer of properties and or the conveyancing process. She gave opinion on legal and general merits of the case, which I am of the view that is exactly what this court is tasked to do.
- [137]. This court could not shake the view that she testified in a manner which sought to advance the case of the City.
- [138]. To compound issues, her evidence did not address the obvious history of the properties in question.
- [139]. The issue facing this court is not an ordinary transfer of the Municipal properties. This had its own history and background dating back to the times of the homeland system.
- [140]. The properties in question once fell under the Bophuthatswana Government. The Northwest Government became the successor in title after the demise of the Homeland system. The NWHC became the owner under the Northwest Provincial Government.
- [141]. Moller and Godi testified that the transfer of these properties to the City was not intended to be permanent but was for the purposes of opening a township register so that the properties could be transferred to their rightful beneficiaries.
- [142]. There is no evidence provided by the City to gainsay that.

[143]. I am unable to agree with the City's submissions. It is clear from the evidence that the City was never intended to be the permanent owner of these properties, and this was the common understanding of every person concerned, including the Plaintiff's representatives. A task team was established to deal with these transfers which consisted of members of the City, the NWHC, the Gauteng Provincial Government, and the Northwest Provincial Government.

[144]. The above makes it more probable the version that there was never a real intention to transfer ownership to the City, and that the transfers were conditional and for the purpose of establishing township registers whereafter the properties would be transferred back to the NWHC and they would attend to the transfers to the correct beneficiaries.

[145]. Lambert was part of the Task team referred to above. Surely if she held the view that she espoused during these proceedings, she would have raised the same during the meetings of the task team or at least had the duty to advise accordingly.

[146]. Lambert, in her summary of her expert evidence referred a report dated 29 September 2005 prepared by the City's SEO: housing, City Planning, and Environmental Management and approved by the Municipal Council on the same day.

[147]. It is clear from that document what the intention was, namely to obtain approval for the transfer of all properties within the jurisdiction of the City that had been developed by Northwest Housing Corporation. IT also targeted

properties developed by the South African Government in the former Bophuthatswana area or by the NWHC and the erstwhile Mabopane Transitional Representative Council.

[148]. Council took cognizance of the report and approved the writing off the rates and taxes and arrears as determined by the Chief Financial Officer. Power of Attorney was granted to the NWHC to effecting the opening of the township registers to transfer the said properties at its cost to the qualifying beneficiaries.

[149]. There is documentation proving that the City participated fully in the process. A certain Mr. Viljoen signed on the power of attorney to the transfers. Ms. Lambert vainly suggested that this could have been fraudulent, but no evidence was produced to sustain the suggestion.

[150]. Importantly, the City did not provide a register of its capital assets, which I believe could have gone a long way to establish its claim that the properties in question formed part of its capital assets.

[151]. Godi on the other hand had provided evidence of how the properties were dealt with, how the transfers and registrations were done. He was the conveyancer and dealt with them personally. He explained that if there was anything untoward, the registration would not have gone through in at the Deeds office. This assertion was not challenged.

[152]. Godi and Moller testified that these were not the only commercial assets transferred in this manner. It then begs the question of why only these ones are challenged.

[153]. The Plaintiff, through its representatives in the Task Team, participated in these transfers and it could therefore be accepted that the transfers were done with the City's knowledge and approval.

[154]. If indeed the City now has second thoughts, it ought then to have reviewed itself and brought a review application rather than a *rei vindicatio*. The allegation that it has done so was to avoid the lengthy delay and opted for the *rei vindication* since it does not have prescription has merit.

[155]. This court is of the view that in these circumstances, the transaction cannot be declared invalid.

[156]. Even if this court may be wrong in this regard, Valambya purchased the properties in question, and this was not challenged. There is no evidence suggesting fraudulent conduct or impropriety in the underlying transactions.

[157]. The court further agrees with the sentiments expressed by Valambya that the residents and businessmen of Mabopane, Ge-Rankuwa acquired the properties with the legitimate expectation of a return on their investments in the properties. The same goes for the First and Third Defendants.

[158]. In the circumstances the following order is made:

1. The Plaintiff's case is dismissed,
2. Valambya is declared the owner of the immovable properties known as:

- 2.1 erf 5[...] Ga-Rankuwa Unit 4 Township, Registration Division JR;
 - 2.2 erf 8[...] Ga-Rankuwa Unit 5 Township, Registration Division JR;
 - 2.3 erf 4[...] Mabopane Unit B, on portion 7 of the farm Mabopane 702 JR; and
 - 2.4 erf 4[...]2 Kudube Unit 2.
- 3. The Plaintiff is ordered to do whatever is necessary to be done, including signature of all documents that need to be signed to secure the transfer of the Mabopane and Kudube erven to Valambya, within 120 calendar days from date of this order;
 - 4. It is declared that Valmbya is entitled to all accumulated rental held by or on behalf of the First Defendant in the trust account of it attorneys and the First Defendant is directed to pay all the accumulated rental and future rental in respect of the relevant properties to the Fourth Defendant;
 - 5. This order must be served upon the MEC for Treasury and the MEC responsible for housing in Gauteng and Northwest Provinces; and
 - 6. The Plaintiff is ordered to pay the Costs of the Fourth Defendant, including the costs of senior counsel on Scale C and junior counsel on scale B.

MP Kumalo

Judge of the High Court, Pretoria

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines.

Appearances:

For the plaintiff: Adv A Vorster & Adv K Bokaba

Instructed by: MB Mabunda Incorporated

For the first defendant: Adv S Reynecke SC & Adv T Pillay

Instructed by: Cliffe Dekker Hofmeyer Inc

For the fourth defendant: Adv MP van der Merwe SC & Adv R Lotter

Instructed by: Murray Kotze & Associates