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

CASE NO: 2024-067291

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: YES/NO
- (2) OF INTEREST TO OTHER JUDGES: YES/NO
- (3) REVISED:

.....
DATE

.....
SIGNATURE

In the matter between:

MARTHA MAUMELA

Applicant

and

TINSWALO IRENE MARINGA

Respondent

JUDGMENT

MOGOTSI AJ

Introduction

1. This is an opposed application for the rescission of a court order granted by Barnes AJ on 6 February 2024 under case number 2023-096637. That order compelled the Applicant, in her capacity as the executrix of the deceased estate of the late Mr Andrew Maumela, to transfer immovable property known as Erf 5[...], Diepkloof Extension Township, Soweto ("the property"), to the First Respondent.

Factual Background

2. The background to this dispute is somewhat lengthy but necessary for a proper understanding of the issues. The property at the centre of this dispute was purchased by the First Respondent in 1983. She is the mother of the late Mr Andrew Maumela, to whom the Applicant was married.
3. In 2010, the property was transferred from the First Respondent's name into the name of her son, the deceased. The First Respondent alleges this transfer was fraudulent and accomplished without her knowledge or consent. The Applicant, however, contends that the transfer was a valid donation, effected by a Power of Attorney signed voluntarily by the First Respondent.
4. The deceased passed away on 6 September 2021. The Applicant was appointed as the executrix of his estate by the Master of the High Court on 18 October 2021. The deceased's last will and testament, dated 16 July 2021, names the

couple's minor son, Vhutali Maumela (born in 2013), as the sole heir to the fixed property.

5. The dispute over ownership arose shortly after the deceased's passing. On 28 September 2022, the First Respondent's attorneys, Mbuyisa Moleele Attorneys, addressed a letter of demand (Annexure "TM5") to the Applicant. The letter formally notified the Applicant, as executrix, of the First Respondent's claim that the property was unlawfully transferred and formed part of a pattern of abuse.
6. This letter triggered a detailed exchange between the legal representatives, which is crucial to the present rescission application. On 24 October 2022, the Applicant's erstwhile attorneys, FCN Attorneys Inc., responded to the letter of demand. In this email, Mr F.C. Ndou explicitly confirmed that his firm had been instructed to act on behalf of the Applicant to wind up the estate. He acknowledged the dispute and requested an urgent meeting to address the issue of the immovable property.
7. Thereafter, a series of emails culminated in a virtual meeting held on 28 October 2022. Critically, following this meeting, FCN Attorneys sent an email on the same day (Annexure "TM10") conveying the Applicant's instructions. The email stated, in clear terms:

8. *"We confirm that our client, Mrs Martha Maumela, has agreed to allow Ms Maringa to re-transfer the immovable property to her name."*
9. This agreement was subsequently formalised in a written Redistribution Agreement (Annexure "TM4"), signed by the Applicant on behalf of her minor son and the First Respondent. The agreement unequivocally states that the property *"shall be transferred to Tinswalo Irene Maringa as the sole owner of the immovable property."*
10. On 2 November 2022 (Annexure "TM11"), FCN Attorneys confirmed that they would *"proceed to exclude the immovable property from the deceased's estate."* The correspondence shows that throughout 2023, the Applicant's attorneys continued to engage with the process. On 19 April 2023 (Annexure "TM15"), when asked about the service of court documents required to facilitate the transfer due to the involvement of a minor child, FCN Attorneys responded:

"Please be informed that we do not have any objection to service of documents in terms of Rule 4(1)(aA)."
11. This consent to electronic service is significant. It directly contradicts the Applicant's primary complaint in this rescission application that she was never properly served.

12. On 26 September 2023 (Annexure "TM16"), the First Respondent's attorneys served the application papers on FCN Attorneys. On 24 January 2024 (Annexure "TM18"), they served the Notice of Set Down for the hearing date of 6 February 2024. The Applicant's attorneys took no steps to oppose the matter and, according to the record, filed a Notice to Abide by the decision of the Court. On 9 February 2024, Annexure "TM19", the final court order, was sent to FCN Attorneys.
13. The Applicant seeks to have that order rescinded on two main grounds: first, that the initial application was not properly served upon her, and second, that the estate and her minor child have a *bona fide* defence to the transfer of the property.
14. The First Respondent opposes the rescission, arguing that the Applicant was not only properly served but that she, through her legal representatives, actively consented to the transfer and participated in the proceedings leading up to the order.
15. Having considered the founding and answering affidavits, and crucially, the extensive documentary evidence in the form of email correspondence between the parties' legal representatives, I must determine whether the Applicant has made a case for rescission.

The Legal Framework

16. An applicant for rescission of a default judgment may proceed under either the Uniform Rules of Court or the common law. Rule¹ 42(1)(a) provides that a court may rescind a judgment granted in the absence of a party if it was "*erroneously sought or erroneously granted*." Under the common law, a court may rescind a judgment upon "*good cause shown*."
17. To succeed under the common law, the Applicant must provide: (a) a reasonable and acceptable explanation for her default; (b) proof that the application is made *bona fide*; and (c) a *bona fide* defence on the merits with some prospect of success.²
18. "Generally, a judgment or an order would have been erroneously granted if there existed at the time of its issue a fact which the court was not aware of, which would have precluded the granting of the judgment or order and which would have induced the court, if aware of it, not to grant such a judgment or order."³

¹ Rule 42(1)(a)

² *Chetty v Law Society, Transvaal** 1985 (2) SA 756 (A)

³ *South African Human Rights Commission and Others v Madibeng Local Municipality and Others* (21099/2017) (17 January 2024); *supra*.

Analysis

19. The central question is whether the judgment of 6 February 2024 was erroneously granted or whether the Applicant has shown good cause for its rescission. The email trail, in my view, is dispositive of this application.
20. Regarding Service and Default, the Applicant's claim that she was not properly served is, on the evidence, untenable. The correspondence shows that from October 2022, the Applicant was legally represented by FCN Attorneys Inc. and consented to electronic service in terms of Rule 4(1) (aA).
21. The court application was served on her nominated attorneys. The Notice of Set Down was served on her attorney, who filed a Notice to Abide.
22. Regarding consent and bona fides, the Applicant's explanation for her default that she was suffering from depression, and anxiety is undermined by the fact that she was able to give coherent instructions to her attorneys over a period of more than a year. She instructed them to attend meetings, execute a redistribution agreement, and consent to service. Her medical condition is unfortunate, but it did not prevent her from engaging with the legal process when it suited her purpose.
23. The Applicant did not simply "default." She actively participated, settled the matter, and now wants to change her mind. This is not a case of a party being unaware of proceedings; it is a case of a party regretting a decision made with open eyes.

Conclusion

24. The Applicant has failed to provide a reasonable and acceptable explanation for her default. The extensive email trail demonstrates that she was aware of the proceedings, consented to the transfer, and permitted judgment to be entered by default through the inaction of her chosen legal representatives. In the circumstances, the application cannot succeed.

Costs

25. The First Respondent has asked for costs on an attorney and client scale, arguing that the application is vexatious and an abuse of process. While the application was ultimately dismissed, I am not persuaded that the Applicant's conduct warrants a punitive costs order. She is a layperson, and the matter involves complex family dynamics and the interests of a minor child. In my view, this is not an appropriate matter to make a cost order.

Order

In the premises, I make the following order:

1. The application for rescission of the order granted by this Court on 6 February 2024 under case number 2023-096637 is dismissed.
2. Each party to bear its own costs.

P J MOGOTSI

ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Appearances:

Counsel for the Applicant:

Attorney for the Applicant:

Counsel for the First Respondent:

Attorney for the First Respondent:

Date Heard:

Date of Judgment: