

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

Case 45850/17

- (1) REPORTABLE: Yes ☐ / No ☒
(2) OF INTEREST TO OTHER JUDGES: Yes ☐ / No ☒
(3) REVISED: Yes ☒ / No ☐

Date: 19 May 2026

In the matter between:

MABASO FRANCES

Applicant

and

MABASO MASECHABA MATILDA

First Respondent

MABASO MIRRIAM MANANA

Second Respondent

MABASO KEDIBONE ANDREW

Third Respondent

REGISTRAR OF DEEDS, JOHANNESBURG

Fourth Respondent

**THE DIRECTOR GENERAL OF THE
DEPARTMENT OF HOUSING, GAUTENG
PROVINCE**

Fifth Respondent

**MEC FOR THE DEPARTMENT OF HUMAN
SETTLEMENTS**

Sixth Respondent

**THE DEPARTMENT OF HUMAN
SETTLEMENTS**

Seventh Respondent

JUDGMENT

DU PLESSIS J

Introduction

- [1] This matter concerns an application in terms of section 6 of the Deeds Registries Act¹ for an order setting aside the transfer of a family house from the second and third respondents to the first respondent, to enable the applicant to enforce a court order he obtained in 2015.
- [2] The root of the dispute centres on an adjudication under housing legislation, in which the Housing Transfer Bureau (“HTB”) awarded the second and third respondents the family home; that adjudication was later reviewed and set aside. During that process, however, the property was transferred to another family member, the first respondent and niece to the parties involved.
- [3] To deal with the issues, it is necessary to understand the history of the family home.

Background

- [4] It starts with Dlangamandla Mabaso and Kate Tamara Mabaso, who were married around 1947. Mr Mabaso was the original permit holder (in terms of regulation 8) of the property. Around 1986, after the passing of Mr Mabaso, Ms Mabaso obtained a new permit and listed all her children living in the house at the time. The applicant says that the persons listed on the last valid permit were: himself, Lydia, Christinah, Albert, Neria, and the second and third respondents.
- [5] Ms Mabaso passed away in 1997, before having converted her occupational rights into ownership.
- [6] Most of the people on the list have left the property over the years and now live elsewhere. The parties to these proceedings, however, have a different relationship to the property. The second respondent left the property while Mr Mabaso was still alive, but returned to the property after his death in

¹ 47 of 1937.

1987. The third respondent does not have his own property and, until recently, was coming and going between the property and elsewhere. The first respondent, the applicant's niece, was born in the house but moved out in or around 1977.

[7] The applicant, the son of Mr and Ms Mabaso and a sibling of the second and third respondents, was the first child to be born in the house. He does not have his own house and has always lived on the property.

[8] The property consists of a main house and several additional rooms rented to tenants. The proceeds of the rent are used to pay for household expenses. At the time of Ms Mabaso's passing, the second respondent took over the duty of collecting rent and maintaining the property.

[9] Around 1998, the relationship between the applicant and the third respondent began to sour when the applicant suspected the third respondent of mismanaging the rental income. During this period, the second and third respondents applied to the HTB to convert the occupational rights into rights of ownership under the Conversion of Certain Rights into Leasehold or Ownership Act² in their names alone. The applicant says they did so without informing him or any of the family members, including those in occupation of the property at the time.

[10] In 2003, the HTB made a decision, and the second and third respondents obtained ownership of the property by virtue of a Certificate of Registered Grant of Leasehold. The applicant was not informed, and other interested parties were not involved.

[11] On 19 August 2014, the applicant, represented by the Soweto Justice Centre, brought an application requesting that the HTB decision be reviewed and set aside, and that the matter be referred back to the HTB for adjudication. This application was served on the second and third

² 81 of 1988.

respondents on 11 September 2014 and was granted on 25 November 2015, in the presence of the second and third respondents.

[12] Despite having knowledge of the application, on 3 November 2015, the second and third respondents sold and transferred the property to their niece, the first respondent. The applicant alleges that this was done to deprive him and the other siblings of the right to claim the property at the HTB.

[13] Thereafter, to give effect to the court order, the applicant attempted to have the HTB schedule an adjudication hearing. On 14 September 2017, the applicant received a letter from the Department of Human Settlements stating that it was not possible to adjudicate the matter as the property had already been transferred to the first respondent.

[14] The first respondent then instituted eviction proceedings on 21 August 2017 against the third respondent, who no longer lives on the property. The eviction proceedings were postponed to enable the applicant to issue this application to challenge and set aside the sale and transfer of the property, and to enforce the order granted in 2015.

[15] The first respondent is the only respondent opposing the matter and filed an answering affidavit 48 months late after the matter was enrolled on the unopposed roll, due to a lack of funds. The applicant replied. Given the importance of adjudication³ on a full factual basis and the fact that the applicant had an opportunity to reply and is therefore not prejudiced,⁴ I condone the late filing and decide the matter on the basis of all the affidavits filed.

³ *Bertie Van Zyl (Pty) Ltd v Minister for Safety and Security* [2009] ZACC 11; 2010 (2) SA 181 (CC) ;2009 (10) BCLR 978 (CC) para 14 refers to it as "in the interest of justice".

⁴ *Melane v Santam Insurance Co Ltd* 1962 (4) SA 531 (A).

Points in limine

Standing

[16] The first respondent raises the issue of the applicant's locus standi to seek cancellation of her title deed under section 6 of the Deeds Registry Act.⁵ The argument is that, because the applicant does not hold any vested right in the property and is merely a potential claimant whose claim to the property must be weighed against the claims of the other interested parties, he has at most a hope. Since the relief sought impeaches her registered title, it should only be available to a person whose own right to the property has already vested.

[17] The applicant submits that he has standing because the 2015 order cannot be enforced because the property has been transferred into the first respondent's name, even though the respondents were aware of the pending application. He asserts that only he can seek the relief needed to prompt the HTB to review the case.

[18] The applicant's interest is not merely speculative. Even if it were, a person with sufficient interest in the outcome of a fair process has standing to insist that the process be conducted lawfully; in other words, they have a right to a fair adjudication, regardless of the outcome.⁶ The applicant, as the person named on the permit, had a direct entitlement to participate in the conversion process. This is why the 2015 order was granted. He is thus asserting his right to a fair adjudication process, as already ordered by the Court, and that order remains unimplemented solely because of the transfer to the first respondent.

[19] Moreover, the standing inquiry cannot focus narrowly on who has real rights or vested rights in the property, especially having regard to the nature of the property, a family home and the nature of the dispute. It is clear from the papers that this property has long been the Mabaso family

⁵ 47 of 1937.

⁶ For similar reasoning, see *Walele v City of Cape Town* 2008 (6) SA 129 (CC).

home. It is the home where the applicant was born and raised, and still resides. Such a family house can give rise to protectable interests that courts recognise even in the absence of a formal title.⁷ Members of the family to whom the house historically belonged have a direct and substantial interest in the lawfulness of the HTB's decisions.⁸

[20] That is sufficient to confer locus standi to challenge the First Respondent's title under section 6 of the Deeds Registries Act.

Prescription

[21] The first respondent also raises the issue of prescription. She states that any right the applicant might have to challenge the transfer of the property has been prescribed under section 11 of the Prescription Act.⁹ This is because the applicant was aware by 2003 that the property had been transferred into the names of the second and third respondents. That is the only time the cause of action arose from that transfer.

[22] In the alternative, if the cause of action is framed as a right to set aside the 2015 transfer, then that right derives from an underlying entitlement which had already prescribed by that time, or from a procedural right to apply to the HTB that does not constitute a debt capable of interrupting or resetting prescription.

[23] The applicant, however, submits that the relevant moment is when the property was transferred to the first respondent, and the HTB thereafter (in 2017) declined to act because of the transfer of the property to her name. He contends that his earlier steps, including the 2015 review proceedings, were consistent with the continuous assertion rather than the abandonment of his claim.

⁷ See *Shomang v Motsose N.O.* [2022] ZAGPPHC 441; 2022 (5) SA 602 (GP) for an explanation of what this entails.

⁸ *Khwashaba v Ratshitanga* [2016] ZAGPJHC 70.

⁹ 68 of 1969.

[24] The first respondent's prescription point is misconceived. The applicant is not seeking in this application to undo the 2003 transfer, as that was already set aside by the 2015 order. He now asserts the right to give effect to that review order by seeking to remove the obstacle preventing the HTB from considering the review, namely, the transfer to the first respondent. That was in 2015 when the review was granted, and the HTB declined to act. The present application was instituted within three years of the review order. The prescription point thus fails.

The merits

[25] On the merits, the applicant seeks two related forms of relief. First, he asks this Court to cancel and set aside the transfer of the property from the second and third respondents to the first respondent and to direct the Registrar of Deeds to revert ownership to the names of the second and third respondents. Second, he seeks an order confirming that the order granted by this Court on 25 November 2015, which reviewed and set aside the Housing Transfer Bureau's decision to allocate the property to the second and third respondents, be referred the matter back for adjudication.

The defence of estoppel

[26] The first respondent raises the defence of estoppel to this relief. She relies on the applicant's knowledge of the 2003 registration, his failure to interdict the Registrar of Deeds or to prevent the second and third respondents from dealing with the property, and his apparent submission over a lengthy period. She submits that by allowing matters to stand, the applicant represented to the world and to her that the registered owners were entitled to alienate the property, and that he cannot now claim otherwise. This was to her detriment, as she paid R50 000 for the property.

[27] The applicant denies this, pointing to his continuous occupation of the property, his engagement with the HTB and the courts, and the 2015 review order as evidence that he has consistently asserted, rather than abandoned, his interest in the property.

[28] A person may be bound by a representation arising from their conduct where two requirements are met: first, that they ought reasonably to have foreseen that their conduct might mislead another into a mistaken belief; and second, that the other party's construction of that conduct was itself reasonable.¹⁰ Applying these requirements, it is clear that this defence cannot succeed. The alleged factual position of the applicant simply accepting the adjudication outcome is not proven on the facts. He was in continuous occupation of the house, which should at least have signalled a competing interest. He litigated on the issue, which shows that the applicant did not merely accept the adjudication outcome. Even if the first respondent relied on this conduct, there was a visible family dispute regarding the house, and thus, the first respondent could not reasonably rely on any alleged misrepresentation.¹¹ She herself is a family member, born in the house. She purchased the property from relatives; she is not merely a disinterested party entitled to rely on the registry. She had the means to inquire about the situation before purchasing the house, and did not do so. The estoppel defence thus fails.

Alleged cession of rights

[29] The first respondent relies on the 2002 HTB ruling as evidence of a family agreement to cede rights to the second and third respondents. That ruling was set aside by this Court in 2015 and has no legal force. It cannot be a defence in these proceedings. The cession argument accordingly fails

Abstract system

[30] The first respondent also invokes the abstract system of transfer applicable to immovable property, under which ownership may validly pass on registration even if the underlying causa is defective.¹² While that principle is correct in theory, it does not assist the first respondent in this

¹⁰ *Concor Holdings (Pty) Ltd t/a Concor Technicrete v Potgieter* [2004] ZASCA 59; [2004] 4 All SA 589 (SCA); 2004 (6) SA 491 (SCA) para 7.

¹¹ *Curtis v Dowdle* [2023] ZAGPJHC 3 deals with "reasonable" reliance in para 42 onwards.

¹² *Legator McKenna Inc and Another v Shea and Others* 2010 (1) SA 35 (SCA).

instance. The purpose of the system is to safeguard innocent third parties who acquire title in good faith and without knowledge of defects in the chain of title.¹³ The first respondent does not fit that paradigm. She is not an outsider who purchased on the open market after reasonable inquiry, but a family member who bought from close relatives, in respect of a property that had long been the Mabaso family home. The applicant, the only child, had always lived there and owned no other property. Additionally, section 6 of the Deeds Registries Act allows a court to cancel a registered deed when justice demands it, despite the abstract system.¹⁴ If section 6 cannot be applied in circumstances like these, its remedial purpose would be significantly undermined. Therefore, the abstract system does not prevent granting the relief requested in this application.

Section 6

[31] This leaves the question of whether the applicant is entitled to the relief sought. Section 6¹⁵ of the Deeds Registries Act permits a court to order the cancellation of a deed of transfer. The power has been used in similar township-property cases to align the deeds register with the outcome of administrative reviews and with rights recognised under the Conversion Act and related legislation.¹⁶

[32] In this case, the HTB award that conferred title to the second and third respondents has been set aside and remitted for fresh adjudication. As set out above, the only reason why that adjudication has not taken place is because of the subsequent transfer to the first respondent. It should be

¹³ Schutte, P. J. W. (2012). The characteristics of an abstract system for the transfer of property in South African Law as distinguished from a causal system. *Potchefstroom Electronic Law Journal*, 15(3), 120-151.

¹⁴ *Disetsane v Moganedi* [2014] ZAGPPHC 645

¹⁵ 6. Registered deeds not to be cancelled except upon an order of court.

(1) 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 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.

(2) Upon the cancellation of any deed conferring or conveying title to land or any real right in land other than a mortgage bond as provided for in subsection (1), the deed under which the land or such real right in land was held immediately prior to the registration of the deed which is cancelled, shall be revived to the extent of such cancellation, and the registrar shall cancel the relevant endorsement thereon evidencing the registration of the cancelled deed.

¹⁶ See for instance *Kuzwayo v Representative of the Executor in the Estate of the Late Masilela* [2010] ZASCA 167 and *Sethlatlole v Setlhatlole* [2023] ZAGPJHC 962.

noted that, unlike *Hlongwane v Moshotaliba*,¹⁷ the property was not transferred to a bona fide third party, but to a family member who would have been aware of the significance of the house as a family home.

[33] The applicant alleges that the sale and transfer to the first respondent were tainted by fraud. He says that, given his longstanding occupation and the pending or threatened challenge to the HTB decision, the second and third respondents and the first respondent knowingly concluded the transaction with the object of defeating his potential claim to ownership. On this basis, he submits that the first respondent cannot be characterised as an innocent purchaser. The first respondent denies fraud. In my view, it is not necessary to make any definitive finding on the allegations of fraud, and I say no more about them. It is sufficient to note that this was not an arm's-length transaction in the usual commercial sense: the first respondent bought from relatives, in circumstances where the property had long functioned as the family home and was the subject of a known dispute.

[34] The relief sought is not to declare the applicant the owner of the property, but to remove the obstacle to a property HTB reconsideration of the matter in accordance with the statutory scheme and in compliance with the 2015 order. All affected parties will have an opportunity to place their claims during that process. On that basis, the relief sought is competent: it wishes to ensure that the proper court-ordered administrative process takes place. The applicant is thus entitled to the relief he seeks.

The request to confirm the 2015 order

[35] The applicant also sought an order confirming the enforceability of the 2015 review order. No such order is necessary: the 2015 order is valid and has not been set aside. Once the transfer to the first respondent is cancelled, there is nothing to prevent the HTB from proceeding to discharge its remitted function in accordance with that order.

¹⁷ [2018] ZAGPJHC 114.

Costs

[36] As to costs, there is no reason to depart from the ordinary rule. The applicant has been substantially successful, and the relief granted is necessary to give practical effect to the earlier review order. Costs should therefore follow the result.

Order

[37] The following order is made:

1. The sale and transfer by the second and third respondents of the property described as Erf 8[...], O[...] E[...] Township, physically situated at 8[...] A[...] Street, O[...] E[...], Soweto, to the first respondent under Deed of Transfer No. T[...] is hereby cancelled and set aside;
2. The fourth Respondent is directed to cancel the transfer and to revert ownership of the property to the names of the second and third respondents or their estates under Certificate of Registered Grant of Leasehold No. T[...];
3. The first respondent is to pay the cost of this application.

WJ du Plessis

Judge of the High Court, Gauteng Division,
Johannesburg

Date of hearing: 19 February 2026

Date of judgment: 19 May 2026

For the applicant: M Mmbadi from the WITS law clinic

For the first respondent: M Smit instructed by Stabin Gross & Shull