IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No: 43480/2019
(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.
DATE 03 JUNE 2026
SIGNATURE

In the matter between:

JOHN SEJAMERA NGWANE Applicant

and

PHUTI PINKI CHOLO First Respondent

REGISTRAR OF DEEDS Second Respondent

JUDGMENT

LABUSCHAGNE J:

[1] The applicant and the first respondent are reflected on the Title Deed of Erf 1[...], Tswelopele Ext. 5 Registration Division JR Gauteng as joint owners of the property.

[2] The applicant applies for an order that he is the sole owner and that the addition of the first respondent's name to the Title Deed T9964/2015 be declared null and void.

[3] The applicant contends that the first respondent fraudulently caused her name to be added to the Title Deed. The property in question was awarded to the applicant by the Gauteng Department of Housing in terms of an HSS Form and he contends that he should be the sole owner.

[4] The Title Deed contains a restrictive condition in terms of Section 10A of the Housing Act[1] (Housing Act), providing that the property may not be sold or otherwise allocated unless it has been offered to the Gauteng Housing Department within a period of 8 years from the date of registration.

[5] The Title Deed indicates that the conveyancer was Macmillan Dzivakivi of Gcwensa Attorneys in Mondeor. The property was registered in the applicant's and the first respondent's names on 18 February 2015.

[6] The applicant's contentions regarding fraud are flimsy and lack primary facts. To choose motion proceedings in such circumstances is imprudent.

[7] The first respondent provides a version diametrically opposed to that of the applicant. The applicant and the first respondent were in a relationship when they acquired the property and, according to the first respondent, they both signed the Power of Attorney that gave rise to the registration of the property in their names. She contends that she and the applicant thereafter got

[1] 107 of 1997.

married in terms of Customary Law in 2016 and that a lobola letter was exchanged. The applicant disputes that they were married and contends that he merely paid damages for a child that was born out of the relationship between him and the first respondent.

[8] The first respondent contends that they had received copies of the Title Deed in 2015 already. The applicant ended the relationship in 2018.

[9] In an instance where there are conflicting versions in motion proceedings, the applicant for final relief needs to establish his cause of action on the first respondent's version and on common cause facts. In this instance he cannot do so. The first respondent's version indicates that the property in question was the communal property of the parties when they got married and had a family. She confirms that they obtained copies of the Title Deed in 2015 already and that the applicant's allegation that he was surprised at discovering that she was co-owner is simply untrue.

[10] The applicant cannot succeed in these proceedings based on the application of the **Plascon-Evans** rule. Counsel for the applicant sought to persuade the court that the respondent's version falls to be rejected. Even if this were possible, the inclusion of the first respondent as co-owner of the Title Deed would mean that the conveyancer in question was a party to the alleged fraud. The applicant has made no such allegation as far as the conveyancer was concerned. The first respondent could not be included as co-owner if the conveyancer hadd the conveyancer not been involved. This indicates that, even on the applicant's version, he cannot establish fraud.

[11] The aforesaid demonstrates just how difficult it is for a party to establish fraud on paper in motion proceedings. The aforementioned principle finds support in *Badenhorst NO v Manyatta Properties Close Corporation and others*,[2] where the court affirmed that "the trite principle that allegations of fraud ought not to be easily made and are not lightly established," a principle also echoed in *Matjhabeng Local Municipality v Down Touch Investments (Pty) Ltd and another*,[3] where it was held that "allegations of fraud must be supported by particularity. Such allegations should not find its way into an affidavit lightly. It must be backed up by hard evidence, because fraud is not easily found, much less inferred."

[12] From the aforesaid it is apparent that the application cannot succeed. The fact that the applicant contends in these proceedings that the property was allocated other than as indicated in the Title Deed, may very well in itself attract the pre-emptive right of the Gauteng Housing Tribunal. As the property was registered in the names of the applicant and the first respondent in 2015, the 8-year period to which the restrictive conditions pertained expired in 2023. These proceedings were initiated in 2019. The Housing Tribunal has an interest in these proceedings and should have been joined.

[13] However, the non-joinder of the Gauteng Housing Department is not the primary reason why the application should fail. It fails because the applicant

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[2] *Badenhorst NO v Manyatta Properties Close Corporation and others* [2025] JOL 70321 (SCA) at para 64.
[3] *Matjhabeng Local Municipality v Down Touch Investments (Pty) Ltd and another* [2024] 4 All SA 827 (FB) at para 27.

could not establish the alleged fraud either on his own papers or, with the application of the **Plascon-Evans** rule, on the first respondent's version.

[14] Allegations of fraud in motion proceedings carry a high burden. A failure to establish fraud equally carries costs consequences. This is to discourage gratuitous abuse of another in affidavits in court proceedings. It reflects judicial disdain for an unwarranted character assassination on paper in motion proceedings. In this matter the applicant's child with the first respondent was present in court and heard the allegations of fraud repeated against her mother. The applicant will be mulcted in a punitive costs order

[15] In the premises the following order is made:

1. The application is dismissed with costs on an attorney and client scale

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LABUSCHAGNE J
JUDGE OF THE HIGH COURT

COUNSEL FOR APPLICANT: ADV MAAKE

COUNSEL FOR RESPONDENT: ADV SHISINGA