



IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

CASE NO: 2478/2022

In the matter between:

IZAK JACOB STEENKAMP N.O in his capacity

As the duly Appointed Master's Representative

In the estate of Late Tsietsi Moses Maloko

with estate number 3851/20201

1ST APPLICANT

PALEMA BEAUTY MOHLOUOA

2ND APPLICANT

LINEO JOSEPHINE MALOKO

3RD APPLICANT

and

SELLOANE MONICA RAMPAI

1ST RESPONDENT

PUSELETSO SUSAN MALOKO

2ND RESPONDENT

MMALEHLWA LENA MALOKO

3RD RESPONDENT

STRAMPE DU PLESSIS ATTORNEYS

4TH RESPONDENT

THE REGISTRAR OF DEEDS

5TH RESPONDENT

MASTER OF THE HIGH COURT

6TH RESPONDENT

CORAM: NG Gusha, AJ

JUDGMENT BY: NG Gusha, AJ

HEARD ON: 25 MAY 2023

DELIVERED ON: This judgment was delivered electronically by circulation to the parties' representatives by way of email and by release to SAFLII. The date and time for delivery is deemed to be at 09h00 on 15 JUNE 2023.

JUDGMENT

INTRODUCTION

- [1] This is an application for the cancellation of the registration of property, to wit Erf 7716 Mangaung (Letlabika Street) Free State Province (the property).
- [2] The 1st applicant is an attorney and the duly appointed Master's representative in the estate of the late Mr Tsietsi Moses Maloko (the deceased) who passed away on the 2nd January 2020. He is survived by the 2nd applicant Ms Mohlouoa who is his granddaughter.
- [3] In life the deceased was married to the 3rd applicant, Ms Lineo Maloko, which marriage terminated by divorce on the 13th September 1979.
- [4] The 1st to 3rd respondents are the deceased's nieces.
- [5] The 4th to 6th respondents are a firm of attorneys, the registrar of deeds and the master of the high court, Free State respectively. No relief is sought from the 4th to 6th respondents.

[6] In their amended notice of motion the applicants seek the following relief, that;

- 1.1. The 5th respondent, the Registrar of Deeds (Bloemfontein), is ordered to cancel the title deed number T10459/2020 in respect of Erf 7716 Mangaung (Letlabika Street) Free State Province (the property) and to cancel all the rights accorded to the 1st to 3rd respondents by virtue of the deed.
- 1.2. Authorizing the 1st applicant to register Erf 7716 Mangaung (Letlabika Street) Free State Province held under title deed number T10459/2020 in the estate of the late Tsietsi Moses Maloko with estate number 3851/2020.
- 1.3. Authorizing the Registrar of the High Court, or the attorneys for the applicant to sign any and all documents related to the above should the 1st to 3rd respondents refuse to sign.
- 1.4. Ordering the 1st to 3rd respondents to pay the costs of this application, the one paying the other to be absolved.
- 1.5. Ordering the 1st to 3rd respondents to pay the costs of the transfer and registration of Erf 7716 Mangaung (Letlabika Street) Free State Province held under title deed T10459/2020 in the estate of the late Tsietsi Moses Maloko with estate number 3851/2020, the one paying the other to be absolved.
- 1.6. Further and /or alternative relief.

[7] The facts germane to this application are the following; subsequent to the death of the deceased, the 1st respondent reported his death to the Master of the High Court¹. In the notice of death she indicated that she, the 2nd and 3rd respondents were the deceased's sisters, when in fact they were his nieces².

¹ Death notice; Annexure C, page 30 of the paginated bundle.

² The 2nd and 3rd respondents confirmed same in their respective confirmatory affidavits.

- [8] They also indicated that the deceased was never married and left no issue and omitted to disclose that he was in fact divorced and that his daughter, Ms. Dipuo Mohlouoa, who pre-deceased him had a daughter the 2nd applicant, who by law is the deceased's sole heir³.
- [9] It is on the strength of the aforesaid information that the 1st to 3rd respondents were on the 16th July 2020 issued with letters of authority⁴ duly authorizing them to take control of the assets in the deceased's late estate. In execution of the authority, the 1st to 3rd respondents caused the property to be registered in their names on the 20th October 2020.
- [10] Upon receiving a complaint from the 2nd and 3rd applicants and the 1st to 3rd respondents' failure to respond thereto, the 6th respondent on the 10th October 2020 withdrew the letters of authority issued⁵.
- [11] The 1st to 3rd respondents raised, *in limine*, the misjoinder of the 3rd applicant. They averred that as the deceased and the 3rd applicant were divorced in 1979, long before this dispute arose, no facts were placed before this court supporting the joinder of the 3rd applicant, as the terms of their divorce in the form of a deed of settlement were not before the court.
- [12] I hold the considered view that nothing turns on this aspect, the property was registered in the deceased's name and as the deceased died intestate, that property and indeed all his other earthly possessions must be dealt with in terms of intestate succession. It is in any event apparent from the pleadings that the 3rd applicant is joined herein in so far as she may have an interest in the outcome.
- [13] The point in limine is thus not upheld.
- [14] Against the backdrop of the facts as alluded to *supra*, the question to be answered in this application is whether the transfer of the property into the names of the 1st to 3rd respondents was valid and based on a lawful *causa*.

³ Master's report and section 1 (1) (b) read with section 4(a) of the Intestate Act, Act 81/1987.

⁴ Page 41 of the paginated bundle.

⁵ Pp 43 to 45 of the paginated bundle.

- [15] The applicants submitted that due to the fraud committed by the 1st to 3rd respondents, the registration of the property into their names is void *ab initio*.
- [16] During submissions the 1st to 3rd respondents conceded the misrepresentation and acquiesced that the registration was indeed void *ab initio*.
- [17] The 1st to 3rd respondent's acquiescence of the misrepresentation puts paid to their opposition of the relief sought. The principle "fraud unravels all" needs no restating. In **Namasthethu Electrical (Pty) Ltd v City of Cape Town**⁶ the court per Mbha JA in restating the law cited with approval the following *dicta* in **Lazarus Estates Ltd v Beasley [1956] 1 QB (CA) at 712**

'No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever . . .'

- [18] The aforesaid principle applies in the present case as well. It therefore stands to reason that the registration of the property into the names of the 1st to 3rd respondent's stands to be set aside and cancelled as same was underpinned by their misrepresentation to the 6th respondent. The result of said cancellation would be that the property reverts to the estate of the deceased for the executors thereof to deal therewith in accordance with the law of intestate succession⁷.

⁶ (201/19) [2020] ZASCA 74 (29 June 2020) at par 29.

⁷ Section 6 of the Deeds registries Act, Act 47 of 1937 provides as follows;

(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 all 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 (my own emphasis), and the registrar shall cancel the

[19] With regards to costs, the general rule is trite and there is no reason for me to depart therefrom.

[20] Resultantly, I make the following order:

1. The 5th respondent, the Registrar of Deeds (Bloemfontein), is ordered to cancel the title deed number T10459/2020 in respect of Erf 7716 Mangaung (Letlabika Street) Free State Province and to cancel all the rights accorded to the 1st to 3rd respondents by virtue of the deed.
2. The 1st applicant is authorized to register Erf 7716 Mangaung (Letlabika Street) Free State Province held under title deed number T10459/2020 in the estate of the late Tsietsi Moses Maloko with estate number 3851/2020.
3. The Registrar of the High Court, or the attorneys for the Applicant are authorized to sign any and all documents related to the above should the 1st to 3rd respondents refuse to sign.
4. The 1st to 3rd respondents shall bear the costs of this application, the one paying the other to be absolved.
5. The 1st to 3rd respondents shall bear the costs of the transfer and registration of Erf 7716 Mangaung (Letlabika Street) Free State Province held under title deed T10459/2020 in the estate of the late Tsietsi Moses Maloko with estate number 3851/2020, the one paying the other to be absolved.

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relevant endorsement thereon evidencing the registration of the cancelled deed.

On behalf of the applicant

Instructed by:

Adv. SC Steenkamp

Steenkamp and Jansen Inc.

BLOEMFONTEIN

On behalf of the respondent:

Instructed by:

Mr. K Matee

MATEE ATTORNEYS

BLOEMFONTEIN