

**REPUBLIC OF SOUTH AFRICA**



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

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

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DATE  
SIGNATURE

Case no.: **2021/42636**

In the matter between:

**GAUTENG PROVINCIAL GOVERNMENT:  
DEPARTMENT OF HUMAN SETTLEMENTS**

First  
Applicant

**EXECUTOR IN THE ESTATE OF THE LATE  
KOKI CHRISTINA ZIKALALA**

Second Applicant

And

**THABANG SHADRACK MOTASI**

First Respondent

**LUDMILLEA MOTASI**

Second Respondent

**CITY OF JOHANNESBURG METROPOLITAN  
MUNICIPALITY**

Third Respondent

**REGISTRAR OF DEEDS, JOHANNESBURG**

Fourth Respondent

Coram: Dlamini J

Date of hearing: 31 May 2022 – in a ‘virtual Hearing’ during a videoconference on Microsoft Teams digital platform.

Date of delivery of reasons: September 2022

This Judgment is deemed to have been delivered electronically by circulation to the parties’ representatives via email and shall be uploaded onto the caselines system.

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## **JUDGMENT**

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### **DLAMINI J**

[1] This is an application for the cancellation of a Deed of Transfer.

[2] The first applicant is the Gauteng Provincial Government: Department of Human Settlement a Provincial government Department established in terms of Section 26 of the Constitution of the Republic of South Africa and Section 3 of the Housing Act<sup>1</sup>

- [3] The second applicant is the Executor in the Estate of the late Koki Christina Zikalala.
- [4] The first respondent is Thabang Shadrack Motasi is an adult male currently residing at 20128 Mtuli Street, Meadowlands, Soweto.
- [5] The second respondent is Ludmillea Motasi an adult female currently residing at 20128 Mtuli Street, Meadowlands, Soweto.
- [6] The third respondent is the Master of the High Court of South Africa, cited herein on the basis that it serves as a regulatory, supervisory administrative function in the administration of the Deceased Estates. No relief is sought against the third respondent.
- [7] The fourth respondent is the Registrar of Deeds, Johannesburg, which is responsible for the registration, management, and maintenance of the property registry of South Africa.
- [8] The applicant testifies that it is the owner of property number known as Erf 376 Mofolo North, Soweto Gauteng (the disputed property).
- [9] In 1973, the first applicant issued a Certificate of Occupation to the late Koki Christina Zikalala
- [10] The first applicant submit that during the exercise of its administrative and legislative functions it erroneously transferred the disputed property in the name of the second and third respondents.

- [11] As a result of this error, the first applicant launched this application to cancel the transfer and registration of the Deed of Transfer Number TL 33139/1989 which Deed holds the disputed property which was erroneously registered in the names of the second and third respondents.
- [12] The question is whether the first applicant transferred the property to the second and third respondent in error.
- [13] The first applicant submit that the registration of the disputed property into the names of the first and second respondents was a bona fide administrative error occasioned by the first applicant's registration processes.
- [14] The first applicant further submit that the second and third Respondents are unknown to the Zikalala family and that they have their property situated at 20128 Mtuli Street, Meadowlands, Soweto.
- [15] Finally, the first applicant avers that it was brought to its attention when the Zikalala family came to enquire about their family title Deed, that upon its investigation, it discovered the disputed property had been erroneously registered in the names of the second and third respondents.
- [16] The second and third respondents insist that they are the true owners of the disputed property having bought the property on 17 January 1989. That the disputed property was transferred into their names. Accordingly, they submit that the best evidence of ownership of immovable property is the Title Deed.
- [17] The second and third respondents submit that the first applicant failed to give details and explain the nature of the alleged error that led to the first and second respondents being registered as owners of the disputed property.

- [18] There is no dispute that this Court has the authority to order the cancellation of any deed conferring title by the Registrar of Deeds in terms of Section 6(1) of the Deeds Registries Act.<sup>1</sup>
- [19] The brief history of the ownership of land by black people in the urban areas can be traced back to the introduction by the then regime of the 99-year lease over the properties granted to black people. Thereafter the introduction of full ownership rights of black people was granted through the introduction of the Black Community Development of 1984.
- [20] This brings us to the promulgation of the Conversion of Certain Rights into Leasehold or Ownership Act<sup>2</sup> (the Conversion Act). The main purpose of the Act was in the main to cater to the conversion of certain rights of occupation into leasehold or ownership and matters connected thereto.
- [21] The Act devolves the powers of converting the occupational rights into ownership to the provincial administrators. The 1993 amended Conversion Act provides for the procedure to be undertaken by the Director General (DG) of a Province before making the conversion. In terms of Section 2 of the Act, the DG is required to hold an inquiry to determine (a) whether the site in issue falls within the formalized township for which the township register had been open and (b) whether those who claim rights over the property satisfy the conversion requirements.
- [22] At the end of the inquiry, the DG is granted powers to and once satisfied that the person is the holder of a right as envisaged in the Act, to declare that person to be the owner of the said property. Section 3 of the Act allows any person who is dissatisfied with the DGs decision to appeal against that

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<sup>1</sup> Act 47 of 1937

<sup>2</sup> Act 81 of 1988

decision. Once the appeal is finalized the DG is then required to declare ownership of the property to the person to whom the determination has been made. Thereafter transfer of the property to that person is in then effected.

[23] It follows, from the above that any decision to declare a person an owner of the disputed property would be irregular and invalid if such declaration is done without holding of the inquiry in terms of Section 2 of the Act.

[24] In the present case its common cause that the DG has not held an inquiry in terms of Section 2 of the Act. As I have indicated, the holding of this inquiry is peremptory under the Act. The purpose of Section 2 is required precisely to deal with the same issues that have arisen in this application. In the present case, the second and third respondents have no connection whatsoever to the disputed property. They never stayed in the disputed property and are unknown to the Zikalala family.

[25] The fact that no Section 2 was ever held is on its own a mistake as this contravenes the provisions of the Act.

[26] The second and third respondents have not disputed the fact that the first applicant is the statutory owner of the disputed property. That the first applicant is enjoined by the provision of section 2 the Act in dealing with the disputed property. The second and third respondents have not denied the first applicant had issued a Certificate of Occupation to the late Christina Zikalala.

[27] The holding of this inquiry was essential as it would have assisted the first applicant to determine after satisfying itself as to the identity of the persons that resided in the affected property and of the person appearing from the records of the local authority concerned, to be the occupier of that property and after consideration of any relevant claims and or objections, thereafter

determine who it intends to declare to have been granted the right of leasehold in respect of the disputed property. I, accordingly agree with the applicant's submission that the fact that the Section 2 inquiry was not held before the issuing of the title deed held by the first and second respondents, that applicants are vindicated in their assertion that the title deed was issued erroneously.

[28] The above in my view, simply bolstered the applicant's assertion that an administrative error occurred during the transfer of the disputed property to the first and second responses.

[29] In the light of all the above, it is my considered view that the applicants have made out their case.

## **ORDER**

The draft order that I signed dated 31 May 2022 is made an order of this court.

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**DLAMINI J**

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

Date of hearing: 31 May 2022

Delivered: September 2022

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