

REPUBLIC OF SOUTH AFRICA



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

Case Number: 20/39470

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED:
11 APRIL 2023	_____
DATE	SIGNATURE

In the matter between:

PELOEAHAE: ELIZABETH NGENGE

Applicant

And

PELOEAHAE: VONANI ALICE

First Respondent

THE REGISTRAR OF DEEDS: JOHANNESBURG
Respondent

Second

JUDGMENT

MIA J

[1] The applicant brings an application for the transfer of immovable property and seeks the following relief:

- 1.1. That the first respondent, in her capacity as the executrix of the estate of the late Elias Simon Peloeahae, sign all documents and do all things necessary in order to effect transfer of the property described as Lot 91 Mngadi, Ekurhuleni held under leasehold number TL34219/1986 into the name of the applicant.
- 1.2. That should the first respondent refuse or fail to do so, that the sheriff of this Court for the district of Ekurhuleni Central, be authorized to sign all such documents as may be necessary to effect transfer of the property into the name of the applicant.
- 1.3. That the first respondent be ordered to pay the costs of the application.

The application is opposed by the first respondent who requests that the application be dismissed with costs.

- [2] The first applicant is and adult pensioner. The first respondent is an adult female teacher residing at 5 Fairy Glen Lane, Klippoortje, in Boksburg. The first respondent, is the executrix in the estate of the late Elias Simon Peloeahae (the deceased). The second respondent is the Registrar of Deeds situated at corner of Von Wielligh and Jeppe Street, Johannesburg and is cited merely as an interested party herein.

Background

- [3] In 1986 the property described as Lot 91 Mngadi, Ekurhuleni held under leasehold number TL34219/1986 was purchased in the name of the deceased from a developer of low cost housing in Katlehong in Ekurhuleni for the purchase price of R40,000. The applicant is not in possession of the purchase agreement. The applicant indicates that she and her husband were already quite elderly and could not qualify for a bond in order to finance the purchase of the property. Consequently, she states that the deceased agreed to purchase the property on her behalf and applied for a mortgage bond in order to finance the purchase of the property. She recalls that she paid an amount of R5,680 towards the purchase price of the property and that the balance was financed by way of a mortgage bond that her son obtained for

the amount of R34,320. The property was then registered in the name of the deceased.

- [4] According to the applicant, the mortgage bond was for the amount of R34,320 in the name of Simon Alias Peloeahae with the leasehold number TL34219/1986. His marriage status was reflected as unmarried. Notwithstanding registration of the property in the deceased's name, she was regarded as the owner of the property and she attended to the monthly payments to Nedcor. The applicant provides no proof of such payments. During 1985, the last payment instalment was made and the bond cancellation was attended to which yielded a refund of R202.69. This overpayment to Nedcor was returned and is reflected in the Annexure 10 attached to the founding papers. The deceased is reflected as the recipient.
- [5] In the interim, the first respondent married the deceased. Upon the deceased's passing, the first respondent was appointed as the executrix of the deceased's estate. The first respondent was assisted by a firm of attorneys, Buhle Jeffrey Eric Buthelezi to attend to the winding up of the estate. The attorneys attended to the winding up and filed a copy of the inventory of the deceased. The immovable property and specifically the property that the applicant seeks to have transferred into her name is not reflected in the inventory. Consequently, the applicant indicates that this is so because the property belongs to her and she requests that this court directs and authorises that the first respondent sign over any documents authorising the registration of the property to enable the first respondent to effect the transfer into her name so that ownership may be given to her, the rightful owner.
- [6] The first respondent has refused to effect transfer of the property to the applicant despite the applicant's request and written demand to do so. The applicant has been residing in the property since 1986 and regards the property as her sole and exclusive property. She states she has been attending to the payment of municipal rates and services in respect of the property since the date of purchase and has been in undisturbed possession

and occupation of the property since she moved into the property after its purchase.

[7] The first respondent disputes that the applicant is the owner of the property. She indicates that the applicant was employed as a domestic helper and could not afford the bond and would not have qualified for the bond and was not in a position to pay for the immovable property. She indicates that the deceased took his mother, the applicant to live in the property at the time as she was being abused by her husband. The applicant was married and had a house of her own. She did not need a home other than to escape the enduring abuse from a husband and the home was afforded to her as a sanctuary to escape from a husband. Therefore, the first respondent maintains that the deceased paid the deposit, applied for the bond and paid for the property from his income as a taxi driver. The property was therefore registered in his name and remained registered in his name after the bond was paid up.

[8] The respondent explains the affidavit which refers to her wish to transfer the property to the applicant as a document she signed in the presence of the applicant's attorney when they were still on good terms and prior to the applicant and the deceased family, accusing her of being responsible for the deceased death. The first respondent indicates moreover, that she has been informed by the Master of the High Court and has been advised and directed that she is not in a position to give effect to the applicant's request to transfer the property which lies in the deceased's estate to the applicant. This so as she will be acting to the detriment of the children who are beneficiaries of the deceased's estate and her actions will be in conflict with the interests of the minor children born of her relationship and marriage to the deceased. She has to consider the interests of the children who are affected.

[9] In view of her decision to consider the interests of the minor children, the applicant and her family have cut off communication with both her and the children born of her relationship with the deceased. She indicates further that this application is the first communication she has received from the applicant after 12 years of silence. Moreover, she indicates that she had no intention of

evicting the applicant and has not taken any action to evict the applicant and there is nothing which warrants this application. The applicant's application is without foundation and is inappropriate and suggests that there is a property dispute within their family over the deceased's property. The applicant's accommodation in the property is safe and is not prejudiced, has not been challenged and she does not intend to remove the applicant from the premises.

Issues for determination

[10] The issues for determination are whether:

1. the nominee oral agreement is valid in the present circumstances?
2. the applicant has provided proof of payment of the deposit, the instalment payments, the payments of the bond to purchase the property?
3. the applicant has made out a case for the transfer of the property?

[11] Having regard to the application before this court, this matter is brought on motion proceedings. The applicant is entitled to relief in motion proceedings where the facts stated by the respondent together with the admitted facts in the applicant's affidavit justify an order. In the present matter, the applicant has no proof of the payments. The version that is placed before the court is contested vigorously by the first respondent.

[12] It is also important to consider that the nominee agreement is denied by the first respondent, which is not supported by the facts in the applicant's papers. Moreover, section 2 of the Alienation of Land Act 68 of 1981 provides:

2) "No alienation of land after the commencement of this section shall, subject to the provisions of section 28, be of any force or effect unless it is contained in a deed of alienation signed by the parties thereto or by their agents acting on their written authority"

[13] The reliance on the decision *J,R v J, M* is misplaced as the facts on which the court recognised beneficial nominee holdings were vastly different from the present facts. The parties were unrelated in the aforementioned matter which was an attempt to circumvent discriminatory racial legislation under apartheid. Whilst in the present matter, the children's interests on intestacy must be balanced with their paternal grandmother's claim to an immovable property where there is no proof of the payment of a deposit, no proof of payment of the bond over a period of time and there was no transfer of the property upon final payment of the bond. Moreover, the deceased did not leave a will ensuring the property would devolve to the applicant whilst it is alleged that he informed the eldest son not to expect the property. The rights of the children prevail as provided in s 28(2)¹ of the Constitution.²

[14] For the reasons given above, I make the following order:

1. The application is dismissed with costs.

S C MIA
JUDGE OF THE HIGH COURT
JOHANNESBURG

¹ (2) A child's best interests are of paramount importance in every matter concerning the child

² Act 108 of 1996

Appearances:

On behalf of the Applicant : Adv K. Potgieter
Instructed by : Klopper Jonker Inc

On behalf of the first Respondent : Mr. Mfana Gwala

Instructed by : MV Gwala Inc

Date of hearing : 21 February 2023

Date of judgment : 11 April 2023