

Editorial note: Certain information has been redacted from this judgment in compliance with the law.



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

Case No: 37456/2018

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED
DATE	SIGNATURE

In the matter between:

LINDIWE MARIA MANANA

First Applicant

EUPHENIA ZULU

Second Applicant

and

VUSI JOHANNES MANANA

First Respondent

RACHEL PHUMLA MANANA

Second Respondent

THE MASTER OF THE HIGH COURT: JOHANNESBURG

Third Respondent

THE REGISTRAR OF DEEDS: JOHANNESBURG

Fourth Respondent

STANDARD BANK OF SOUTH AFRICA LIMITED

Fifth Respondent

TSIETSI MATJIU MODIKWE

Sixth Respondent

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 26 January 2024.

JUDGMENT

MALINDI J

Introduction

[1] The applicants seek relief in terms of the notice of motion as follows:

1. Cancellation of Title Deed number [...] registered on the 17/03/2015 in the name of the sixth respondent, for ERF number [...] [...] Street, Tsakane.
2. That the fourth respondent is directed and authorized to cancel the deed of transfer [...] mentioned in one above, within ten (10) days upon service of this court order.
3. An order for costs against any of the parties opposing this application.

[2] The sixth respondent who resides at [...] [...] Street, Tsakane, opposes the application on the basis that he is the lawful owner of the property after purchasing the property on 5 December 2014 at an auction conducted by the Sheriff on behalf of Standard Bank, South Africa Limited, the fifth respondent.

[3] The applicants are cousins and stay at [...] [...] Street ("the property"), together with the first applicants, paternal grandmother, her brother who is the first respondent, and three other cousins.

[4] The sixth respondent is an adult male who currently resides at [...] [...] Street, Tsakane. He opposes the application on the grounds that he purchased the property on 5 December 2014 at a sale in execution conducted by the office of

the Sheriff on behalf of the fifth respondent and as a result he holds a title deed showing that the property was transferred into his name on 17 March 2015.

[5] The deed of transfer in favour of the sixth respondent over ERF [...] [...] Township reflects the following:

1. Standard Bank repossessed the house in court proceedings where Vusi Johannes Manana and Rachel Phumla Manana were the defendants', and a warrant of execution was issued as the defendants' were in arrears.
2. The proceedings were on 13 May 2014 and the auction was conducted on 5 December 2014.
3. The property was first transferred by Deed of Transfer [...].
4. The title deed was executed on 17 March 2015.

Locus standi

[6] One of the grounds on which the sixth respondent oppose this application is that the applicants do not have *locus standi*.

[7] The applicants claim residence at the property by virtue of the late Ms Johannah Zulu's permit to reside on the property. That permit was issued by the East Rand Administration Board on 13 February 1981.

[8] The late Ms Zulu obtained title to the property on 29 October 1997 under title did number [...].

[9] The first respondent obtained letters of executorship and secured the transfer of the late Ms Zulu's title to his and second respondent's title on 7 July 2007.

[10] The property was dispossessed by the fifth respondent under the circumstances referred to under the heading "Res judicata" hereunder and sold to the sixth respondent in a sale in execution.

[11] For these reasons I have come to the conclusion that the applicants have no standing in law to prosecute this matter. Ownership had moved from the late Ms Zulu to the first and second respondents.

Res judicata

[12] Even if I am wrong as to the standing of the applicants, they have a problem regarding whether they are attempting to have a second bite at the cherry.

[13] On 18 June 2015 and under case number 45031/15 the two applicants, namely Meshack Ntongolozzi Zulu and Ntobo Petrus Zulu issued proceedings against Standard Bank and the sixth respondent, being the fourth respondent in those proceedings citing further Vusi Johannes Manana, Rachel Phumla Manana and the Registrar of Deeds.

[14] The matter was set down for 4 August 2015, wherein the remedy sought was that the sale in execution of property ERF [...] [..], by the bank, be declared null and void and that the title issued in the name of the sixth respondent (fourth respondent in those proceedings) be declared null and void.

[15] The matter under case number 45031/2015, was eventually heard on 7

February 2017 and the application was dismissed with costs.

[16] It is clear from the above that the lawfulness of the sale in execution of the property and the transfer thereof to the sixth respondent has been ventilated in court before. The matter is therefore *res judicata*. The *res judicata* rule states that a matter that has been finally determined by a court of competent jurisdiction cannot be re-litigated by the same parties or their privies in a later suit. The previous and current litigation involves the same parties, for the same relief or the same cause of action.¹

[17] In *Democratic Alliance v Brummer*² the SCA said the following:

"[13] The first question is to determine whether, as a matter of fact, the same issue of fact or law which was determined by the judgment of the previous court is before another court for determination. This is so, because if the same issue (...) was not determined by the earlier court, and essential requirement for a plea of res judicata in the form of issue estoppel is not met. There is then no scope for upholding the plea. It does not, however, necessarily follow, that once the inquiry establishes that the same issue was determined the plea must be upheld. That is so, because the court considering the plea of issue estoppel is, in every case, concerned with a relaxation of the requirements of res judicata. It must therefore, with reference to the facts of the case and considerations of fairness and equity, decide whether in that case, the defence should be upheld."

[18] The issue of the same proceedings being brought in the Pretoria High Court

and that the application was dismissed is dealt with in paragraphs 13 to 16 of

¹ Smith v Porritt 2008 6 SA 303 SCA at paragraph 10.

² (793/2023) [2022] ZASCA 151 (3 November 2022).

have that sixth respondents answering affidavit.

[19] He states that he is informed that the applicants they in are family members of the current applicants.

[20] The defence of *res judicata* was not argued before me, however, it is a legal point that is conversed in the papers and the court can take regard thereto. The applicants bear the surname of their grandmother who was born Manana and married to a Mr Zulu.

[21] The first applicant was, together with her siblings, brought up by their grandmother, the deceased Mrs Johanna Zulu (born Manana).

[22] The first applicants' brother, Vusi Johannes Manana, caused a letter of executorship to be issued in his name after Mrs Zulu passed away. The first applicant alleges that the letter of executorship was issued fraudulently. The first respondent then caused the grandmother's title deed to be changed to his and his wife's name who is the second respondent.

[23] The siblings are fighting over the property and therefore this constitutes the same parties who have brought proceedings in two separate courts under the Gauteng Provincial Division seeking the same relief under the same cause of action. I conclude therefore, that the matter is *res judicata*.

Conclusion

[24] As stated above, the applicants do not succeed on lack of legal standing to prosecute this matter and on the principle of *res judicata*. There is no reason

why costs should not follow the result.

[25] I therefore make the following order:

1. The application is dismissed.
2. The applicants are to pay their costs jointly and severally, one paying the other to be absolved.

**MALINDI J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG**

APPEARANCES

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DATE OF HEARING:
DATE OF JUDGMENT:

23 January 2024
26 January 2024