



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Case No: 27945/22

In the matter between:

BELLA THANDEKA NDLOVU

APPLICANT

and

KORINTE SEKUBA

1ST RESPONDENT

ALL UNKNOWN UNLAWFUL OCCUPIERS

2ND RESPONDENT

**CITY OF TSHWANE METROPOLITAN
MUNICIPALITY**

3RD RESPONDENT

DELETE WHICHEVER IS NOT APPLICABLE

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

DATE

SIGNATURE

JUDGMENT

HF JACOBS, AJ:

[1] This is an application for the eviction of Ms Korinte Sekuba¹, a sixty year old female, from the property known as Erf 13148, Mamelodi East,

¹ The first respondent

Mamelodi, Pretoria, measuring 295 square meters in extent on which a residential dwelling is situated in which Ms Sekuba resides.

[2] The applicant is one of the registered owners of Erf 13148. The other owner is the applicant's brother, Mr L M Masango. Mr Masango is not an applicant in these proceedings but deposed to a supporting affidavit.

[3] The applicant and Mr Masango became registered owners of Erf 13148 on 24 January 2018 in terms of Deed of Transfer number T2864/2018. They received registration of transfer of the said property from the representative in the estate of the late Mr Nelson Bekinkosi Nzimande who, according to the title deed, passed away on 7 November 2002 and left no will. The applicant and Mr Masango inherited Erf 13148 in terms of section 1(1)(b) of the Intestate Succession Act, No 81 of 1987. Erf 13418 was first transferred and held under Deed of Transfer number T82661/2003 and General Plan number L563/1984. The Deed of Transfer T82661/2003 does not form part of the record in these proceedings.

[4] The applicant and Mr Masango claim that they are as owners of the property entitled to *vacua possessio* and, therefore, seek the eviction of Ms Sekuba from the property. Prior to the enrolment of this application an order was granted on 30 June 2022 by Mngqibisa-Thusi J authorising service of this application and a notice in terms of section 4 (2) of the Prevention of Illegal Eviction from an Unlawful Occupation of Land Act, 19 of 1998 on all the respondents concerned. Service of the papers took place accordingly

and at the hearing it appeared that Ms Sekuba is the only occupier of Erf 13148.

[5] Ms Sekuba was represented by an attorney when she delivered her answering affidavit which she deposed to on 30 January 2023, but appeared in person at the hearing.

[6] In her answering affidavit Ms Sekuba states that she is sickly and suffer from epilepsy which adversely affects her ability to seek permanent employment. She last had employment during 2000 and is living on a government grant. She admits that she resides on Erf 13148 and explains her presence on the property and her right to occupy the same as follows:

[7] During or about February 2003 Ms Sekuba entered into a written agreement of sale with Mr Chris Nzimande who she knew as the owner of Erf 13148. A copy of the sale agreement is attached to her answering affidavit. She says that in terms of the agreement she purchased Erf 13148 for R20,000.00 from Mr Chris Nzimande and that the purchase price was payable by several instalments. Ms Sekuba then proceeded to pay the full purchase price by way of instalments the last of which was R4,500.00 and were paid to the daughter of Mr Chris Nzimandi, Thembi Jaca, during 2006 as Mr Chris Nzimande had by that time passed away. Ms Sebuka states that she and Mr Chris Nzimande also had an agreement that she would take transfer of Erf 13148 after the purchase price had been paid in full.

[8] Ms Sekuba challenges the statement of the applicant in her founding affidavit that she and Mr Masango inherited Erf 13418 from their late

father Mr Nelson Bekinkosi Nzimande. Ms Sekuba states that Mr Chris Nzimande was the stepfather of Mr Nelson Nzimande and alleges that the applicant and Mr Masango are the step grandchildren of Mr Chris Nzimande. Ms Sekuba states that prior to the purchase of the property it was public knowledge in the area that Erf 13418 belonged to Mr Chris Nzimande and that he at the time resided there prior to selling it to Ms Sekuba. Mr Nelson Nzimande, so Ms Sekuba states, took occupation of the property with his mother who was subsequently either married to or cohabitated with Mr Chris Nzimande and that when Mr Nelson Nzimande and his mother moved into the property, Mr Chris Nzimande had been residing there for some time. When Mr Nelson Nzimande passed on 7 November 2002, so Ms Sekuba alleges, he was survived by his children being the applicant and her brother Mr Masango and his stepfather Mr Chris Nzimande and by his half-sister Thembi Jaca who was his stepfather's only biological child. According to information at the disposal of Ms Sekuba supplied to her by Mr Thembi Jaca, Mr Chris Nzimande never legally adopted, or customarily adopted the applicant and her brother and that Ms Thembi Jaca was aware of the agreement Ms Sekuba had with her father Mr Chris Nzimande and she accepted that she had to and in fact did pay the final instalment towards the purchase price of Erf 13418 to Ms Thembi Jaca. From the answering affidavit of Ms Sekuba, it appears that the final instalment of the purchase price was paid to Ms Thembi Jaca during 2006 (par 10 of the answering affidavit) while Mr Chris Nzimande passed away during 2003.

[9] Ms Sekuba says that it was only around June 2012, about ten years after the death of Mr Nelson Nzimande, that the municipality (the third respondent) addressed a letter to Mr Nzimande to collect the title deed of Erf 13148 from its offices. It is, therefore, necessary, in my view, to know who the registered owner of Erf 13148 was under Deed of Transfer number T82661/2003 as mentioned on the second page of the Deed of Transfer number T2864/2018 under which the applicant and her brother Mr Masango hold title to the said property. Ms Sekuba states that the municipality issued accounts for rates and taxes in respect of the property to Ms Thembi Jaca during 2019 which shows that the municipality had knowledge of occupation of the property by a person other than the applicant and her brother. In paragraphs 26, 27, 28 and 29 of her answering affidavit, Ms Sekuba challenges the rights of the applicant and her brother to have obtained registration of transfer of Erf 13148 and says that she has been residing on the said property for more than nineteen years and during that period she enjoyed undisturbed possession of the property with the knowledge of the applicant and her brother, Mr Masango and during the period of occupation she affixed improvements to the property both in the interior and exterior of the dwelling thereon for an amount of close to R10,000.00 while she was under the firm impression that the property belongs to her and she has the necessary title to reside there.

[10] In reply the applicant challenges the evidence and allegations made by Ms Sekuba. She denies that Mr Chris Nzimande had any title to the property at all and asserts her right and that of her brother as owners of it.

[11] No evidence is presented of alternative accommodation that is available to Ms Sekuba as an elderly individual. No evidence is presented in these proceedings as to the costs of the value of the improvements Ms Sekuba alleges she made to the property. No counter application has been instituted by Ms Sekuba at all to assert her rights and to claim whatever relief she deems appropriate be it transfer of the property into her name or payment of compensation before she vacates it as demanded by the applicant. No evidence of Ms Jaca is offered to address the allegations and evidence pertaining to the alleged ownership of Mr Chris Nzimande and no evidence is offered by the applicants to explain why no rental has been paid to Mr Nelson Nzimande or the applicant during the time Ms Sekuba was in occupation of the property.

[12] I am unable to make a finding on the papers before me. There are numerous disputes of fact concerning the right and title of Ms Sekuba to occupy Erf 13148.

[13] In my view the disputes and the question whether Ms Sekuba should be evicted from the property concerned cannot be resolved in motion proceedings. Under the circumstances I am of the view that the dispute must be referred to trial and that the issue of costs of the motion proceedings should be decided by the trial court.

Under the circumstances I make the following order:

1. The application is referred to trial.
2. The applicants notice of motion shall stand as simple summons.

3. The applicant shall deliver her declaration within one month from the date of this order.
4. Further process to be followed shall be in terms of the Uniform Rules of Court.
5. The costs of the application proceedings shall be decided by the trial court and form part of the costs of the action proceedings.
6. The Registrar of this Court is directed to deliver a copy of this judgment to the Legal Practice Counsel to consider appointing a legal practitioner to assist Ms Sebuka on a *pro bono* basis.

H F JACOBS
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand-down is deemed to be 10h00 on the 30th January 2024.

APPERANCES

Applicants' counsel: Mr MK Mabote

Applicants' attorneys: MK Mabote Incorporated

Respondent:

In person Ms Korinte Sekuba