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

CASE NO: 30681/2017
REPORTABLE: NO
OF INTEREST TO OTHER JUDGES:NO
REVISED
Date: 17/10/23
ML TWALA

In the matter between:

RAMOTSOELE LEBELO STEPHEN	FIRST APPLICANT
RAMOTSOELE SOPHIE	SECOND APPLICANT
RAMOTSOELE TSHIDISO ABEDNIGO	THIRD APPLICANT

And

RAMOTSOELE MOLEFE SHADRACK	FIRST RESPONDENT
RAMOTSOELE TROPHY MANCHAKEA	SECOND RESPONDENT
THE DIRECTOR GENERAL, DEPARTMENT OF HOUSING, GAUTENG PROVINCE	THIRD RESPONDENT

JUDGMENT

TWALA, J

[1] In this application, the applicants sought an order in the following terms against the respondents:

> 1.1 An order cancelling the title deed of house number 7[…] Sharpeville, Extension […] presently registered in both the names of the first and second respondents.
>
> 1.2 An order referring the allocation of ownership of the house referred to in 1.1 above to the Director General, Department of Housing, Gauteng Province for an enquiry in terms of section 2 of the Conversion of Certain Rights into Leasehold or Ownership Act.[1]

[2] The application is opposed by the second respondent and she has filed a comprehensive answering affidavit together with its annexures. The third respondent has however filed a notice to abide by the decision of this Court.

[3] It is noteworthy that at the hearing of the matter, the second respondent and her legal representative did not attend the Court proceedings resulting in the applicants seeking an order in terms of the notice of motion. However, having read the papers filed on record, the Court declined to grant the relief as prayed for in terms of the notice of motion. It was therefore necessary for the applicants to argue the matter after the Court indicated its prima facie view of the matter.

[4] For the sake of convenience, in this judgment I propose to refer to the parties as the applicants and respondent since it is only the second respondent who is opposing the matter, and where necessary, I shall refer to each respondent by its number.

[5] It is common cause that the applicants and the first respondent are siblings. The second respondent is the wife of the first respondent to whom she is married in community of property since 1989. House 7[…] Extension […], Sharpeville ("the property") was initially occupied by the parents of the applicants and the first

[1] 81 of 1988 ("the Act").

respondent in terms of the then permit system. Furthermore, it is undisputed that after the death of the father of the siblings in 1993, the property was registered in the names of the first and second respondents in 1998.

[6] The applicants contend that there should have been an enquiry held in terms of section 2 of the Act before the property was transferred and registered in the names of the first and second respondents and that was not done. Therefore, so the argument went, since no enquiry in terms of section 2 of the Act was held by the Director General in compliance with the provision of section 2 of the Act, the transfer of the property into the names of the first and second respondent should not have occurred.

[7] Furthermore, so it was contended, it was not necessary for the applicants to disclose to the Court the existence of the agreement concluded between the applicants and the first respondent whereby the applicants agreed to transfer and register the property in the name of the first respondent. The applicants admit that they signed the agreement but contend that the agreement was signed at a police station and their rights were not explained to them. In terms of section 2 of the Act, the correct authority to determine the occupation and ownership of the property is vested with the Director General and not a police officer. It was contended further by counsel for the applicants that the deponent signed the agreement for the property to be retained by him on behalf of the other siblings and not to transfer it into the names of the first respondent.

[8] As noted above, the second respondent and her legal representative were absent from Court on the hearing of this matter. The Court considered the case on the papers wherein the respondent contended that there was an agreement entered into between the applicants and the first respondent that the property be registered in the name of the first respondent. However, because of the marriage in community of property between the first respondent and herself, the property was registered in both their names. The respondent further stated in her papers that the applicants did not take the Court into confidence by failing to disclose the agreement entered into by the applicants and the first respondent and by so doing, they were misleading the Court.

[9] The respondent further testified in her answering affidavit that the denial by the applicants that they did not know what they were signing, that the deponent signed the agreement believing it was meant for him to hold and retain the property for the other siblings, raises a dispute of fact which cannot be resolved on these papers and requires the matter to be referred to trial. What triggered this litigation is the problem the respondent experienced in her marriage with the first respondent which resulted in her obtaining a protection order against the first respondent. Since the passing of the father of the applicants in 1993, she has been living in the property without any interference from the applicants.

[10] It is noteworthy that the permit which was issued to the father of the applicants, Mr Ramotsoele by the Local Authority on the 2nd of December 1959 can only be a residential permit as contemplated by Regulation 7 of the Regulation Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters[2] and that it was not a site permit as contemplated in Regulation 6, or a Certificate of Occupation as contemplated in Regulation 8 thereof. It is not apparent on the papers whether Mr Ramotsoele renewed his permit over the years.

[11] The question that arises for determination in this case is whether the only process that was available to the first and second respondents to convert the residential permit into a right of ownership and to register the property into their names would have been first for the Director General to hold an inquiry in terms of section 2 of the Act, as contended by the applicants.

[12] It is now opportune to restate the relevant provisions of the Act which provide as follows:

> *"2. Inquiry as to rights of leasehold*
>
> > *(1) The Director General shall conduct an inquiry in the prescribed manner in the respect of affected sides within his province, in order to*

[2] GN R1036, 14 June 1968.

determine who shall be declared to have been granted a right of leasehold or, in the case where the affected sites are situate in a formalized township for which a township register has been opened, ownership with regard to such sites.

(2) Before the commencement of such inquiry the Director General shall, after satisfying himself as to the identity of the affected site, and of the person appearing from the records of the local authority concerned to be the occupier of that site, and, in respect of premises referred to in section 52 (5) of the principal Act, is in possession of an aerial photograph or plan of the premises concerned, certified as provided in section 52 (5) (a) of that Act, publish a notice indicating that such inquiry is to be conducted.

(3) …

6. Certain persons to be lessees

(1) The holder –

(a) of a residential permit or hostel permit referred to in the regulations, or of a permit issued by a local authority allowing the person mentioned therein to occupy a site set apart under those regulations for allotment to a trader for trading, business or professional purposes, the building upon which site is leased to that holder by the local authority, shall from the commencement of this Act;

(b) …

and subject to the provisions of subsection (2), be the lessee, and the local authority concerned shall be the lessor, of the site or accommodation concerned: Provided that nothing in this subsection contained shall be construed as derogating from any right that the holder of a site permit,

certificate, trading site permit or rights contemplated in Section 2 (4) (b) (ii) might have acquired by virtue of the provisions of the regulations."

[13] In *Marule and Others v Marule and Others,*[3] a judgment of this Division, the court was faced with the interpretation of section 2 and section 6 of the Act and quoted with approval the finding in *Toho v Diepmeadow City Council & Another*[4] and held as follows:

"[14] In my view, the first and second respondent's contention is correct. For the reasons set out at length by Stegmann J in Toho v Diepmeadow City Council, there is no scope for a section 2 inquiry in relation to a house occupied by virtue of a residential permit issued under Regulation 7 of the 1968 Regulations. The court concluded that the Conversion Act made "specific provision" in section 6 for such properties, which do not fall within the definition of an "affected site" as defined in section 1 thereof. The court held that:

'With effect from the repeal of the 1968 ... Regulations [by the Conversion Act] on 1 January 1989, the tenure evidenced by the residential permit was converted into an unregistered statutory lease [by virtue of section 6(1)(a) and that this] by implication had the further effect of excluding the residential permit from the category of rights which qualified for consideration by the [Director-General] with a view to forming an opinion for the purposes of the definition of 'affected site' and of s 2(4)(b)(ii) of the Conversion … Act.

In other words, I hold to be correct Mr Navsa's submission that, as a matter of law, the [Director-General] had and has no power to form the opinion that the rights formerly held under such a residential permit were sufficiently similar to the rights held under a site permit, a certificate of occupation or a trading site permit, to warrant the holding of an inquiry under s 2 of Act 81 of 1988 with a

[3] (15082/2020) ZAGPJHC 928 (17 July 2023) ("*Marule*").
[4] 1993 (3) SA 679 (WLD).

view to the conversion of the tenure under such a residential permit to leasehold'."[5]

[14] I propose to assume that the residential permit issued to the late Mr Ramotsoele was renewed over the years for his occupancy of the property and that at the time of his passing in 1993, he was still lawfully occupying the property in terms of the residential permit. Furthermore, my assumption is correct since the applicants' contended that their father occupied the property through the then permit system. Since the property was occupied on the strength of the residential permit, I concur with the authorities quoted above and hold that the Director General had no power to hold an enquiry in terms of section 2 of the Act to form an opinion with a view to the conversion of the tenure under such residential permit to leasehold.

[15] As a matter of course, section 2 of the Act empowers the Director General to hold an enquiry with a view to determine the right of occupancy to the property and whether it is an affected site as defined in the Act. That was not necessary in this case since the occupancy of the property had been through the residential permit and falls within the purview of section 6(1) (a) of the Act. Furthermore, the people who occupied the property had entered into an agreement as to who should succeed the late Mr Ramotsoele as holder of the residential permit, which on conversion resulted in the property being transferred and registered in the names of the first respondent and his wife to whom he is married in community of property.

[16] This brings me to the point that, as contended by the respondent, there is a dispute of fact in this case which cannot be resolved without the matter being referred to trial for oral evidence. I agree that there is such a dispute of fact in this case. However, I disagree that such a dispute is incapable of being resolved on these papers to the extent that it must be referred to oral evidence. I hold the view that the dispute of fact is capable of resolution by applying the *Plascon-Evans*[6] rule by considering the facts alleged by the respondent together with the admitted facts in the applicants' affidavit.

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[5] *Marule* above n 3.
[6] See in this regard *Plascon-Evans Paints (TVL) Ltd v Van Riebeck Paints (Pty) Ltd* [1984] ZASCA 51; [1984] 2 All SA 366 (A); 1984 (3) SA 623.

[17] It is undisputed by the applicants that an agreement was concluded, except to say that they did not know what they were signing as their rights were not explained to them. There is no merit in the argument that since the agreement was drafted in the form of an affidavit and was commissioned at a police station, it should therefore be ignored for want of authority as the issues of permits fall within the purview of the Director General and not a police officer. The applicants and the first respondent converged at the police station to conclude this agreement. The applicants knew exactly what they went to the police station for and the police officer who commissioned the affidavit had no duty whatsoever to explain the rights of the applicants for he did not know their rights and was not in any way interfering with their rights, except to administer the oath. The police officer had nothing to do with the contents of the affidavit.

[18] It does not lie in the mouth of the applicants to say that they did not know what they were signing, and that the deponent was to retain the property on behalf of the other siblings. They signed the document, which is clear and plain in stating that they, (the siblings), agree that, since their father, Salathiel Ramotsoele has died, the property must be registered in the name of Molefe Shadrack Ramotsoele. Molefe Shadrack Ramotsoele is the first respondent, who is the husband of the second respondent to whom he is married in community of property.

[19] It is my respectful view therefore that since the property was occupied through the residential permit system, it did not fall within the purview of section 2 of the Act but under section 6(1)(a) of the Act. Furthermore, as the applicants agreed that the property be registered in the name of the first respondent, it was not necessary for the first respondent to approach the Director General to convene an enquiry with a view for the conversion of the right into leasehold. The ineluctable conclusion is therefore that the applicants' reliance that the title deed must be cancelled for there was non-compliance with section 2 of the Act is misplaced and falls to be dismissed.

[20] In the result, I make the following order:

1. The application is dismissed.

2. The applicants are ordered, jointly and severally, the one paying the other to be absolved, to pay the costs of the second respondent.

TWALA M L
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION

Delivered: This judgment and order were prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to Parties / their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date of the order is deemed to be the 17th October 2023.

Appearance

For the Applicants:	Mr MD Hlatshwayo
Instructed by:	Hlatshwayo - Mhayise Incorporated Tel: 011 333 7303 mdhinfo@lantic.net
For the Respondents:	No Appearance
Instructed by:	Legal Aid SA Tel: 016 421 3527 shaheen@jlaw.co.za
Date of Hearing:	9th of October 2023
Date of Judgment:	17th of October 2023