

NOT REPORTABLE



11/6/2010

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

DELETED WHERE NEITHER IS NOT APPLICABLE

(1) REPORTABLE ☒

(2) OF INTEREST ☒

(3) REVISED ☐

11 June 2010

DATE

Patm

CASE NO: 12230/2010

In the matter between:

EXECUTOR IN THE ESTATE OF THE
LATE BRAIN JAPIE MNGUNI

First Applicant

LYDIA KEDIBONE MNGUNI

Second Applicant

and

OLIVIA M. MAHLABA

First Respondent

BRIAN RADEBE

Second Respondent

SIZWE RADEBE

Third Respondent

ALEXANDER RADEBE

Fourth Respondent

VUSI MNGUNI

Fifth Respondent

ANY OTHER UNLAWFUL OCCUPIERS OF
ERF 761 MAMELODI TOWNSHIP, PRETORIA

Sixth Respondent

THE CITY OF TSHWANE METROPOLITAN
MUNICIPALITY

Seventh Respondent

J U D G M E N T

MAKGOKA, J:

[1] This is an application wherein the applicant, in her capacity as the surviving spouse of her deceased husband, as well as the duly appointed executrix in the estate of her deceased husband, seeks an order evicting the first to sixth respondents from immovable property situated at erf 761 Mamelodi Township, Tshwane.

[2] Although a notice of intention to oppose was delivered on behalf of the first to sixth respondents, only the second respondent has delivered an opposing affidavit.

[3] The applicant is the surviving spouse of the late Brian Japi Mnguni (the deceased) who passed away on 28 July 2008. The applicant also acts in this application as the duly appointed executrix in the deceased's estate as per letters of executorship No. 1917/08, issued to her by the Master of this Court on 22 September 2008.

[4] Of the six respondents, it appears that the first respondent does not reside at the property. It is not clear from the papers what her interest in the matter is, or why

she has been joined as a respondent, save for a bald assertion that she is "cited herein for the purpose of completeness of the matter under case no. 53189/2008 and relief sought and order sought (sic) in the Notice of Motion will apply to her."

[5] It appears the opposing parties are somewhat related, though how, does not appear from papers.

[6] In his very short opposing affidavit, the second respondent denies that the second applicant was married to the deceased, and seems also to question the validity of the letters of executorship. A further aspect seemingly placed in issue by the second respondent, is the ownership of the property. I shall immediately consider these aspects.

[7] In the absence of any counter-application to declare the second applicant's marriage to the deceased invalid, I must accept, on the facts before me, that they were valid married. I cannot question that on a mere valiant *ipse dixit* of the second respondent. The second aspect relating to the validity of the letters of executorship issued to the applicant, suffers the same criticism. Such remains valid and of force, until duly withdrawn by the Master or the issuing thereof is set aside by this Court. Neither of the two scenarios obtain in the present application.

[8] I turn now to the issue of ownership of the property. In this regard, the applicant has attached to her affidavit, a copy of the Deed of Grant T17329/2000, in terms of which the City Council of Pretoria, on 31 October 1999, ceded and

transferred all rights and title in full and free property, to one Delphine Pontsho Skosana, ID No: 430815034085.

[9] It appears to be common cause that the said individual is the late mother of the deceased. It is not clear from the papers as to when the deceased's mother passed away. However, on 9 June 2008, the Master, in terms of section 39 (3) of the Administration of Estates Act 66 of 1965, directed that the property was inherited by the deceased.

[10] The deceased having inherited the said property, it then became an asset in the joint estate of the deceased and the applicant on their marriage, assuming they were married to each other in community of property.

[11] In his assertion that the applicant is not the owner of the property, the second respondent attached to his affidavit, an affidavit deposed to on 24 March 2010 by one Masesi Elizabeth Zulu. I quote in full the contents of the said affidavit as is, without alteration to grammar or spelling.

"I sold my house which is No: 761 Section C in Mamelodi West on 1975 to Anna Mnguni who was married. Radebe and Anna bought the house for his great children whos mother passed away. The children is Brain Radebe and Themba Radebe. The house was registered to Morgan Radebe who was Anna elders son on that time. Due to my understanding I know that the house as a family house belongs to his great children."

[12] The second respondent further states that the property was originally acquired from the deponent of the affidavit referred to above, who sold it to Anna Mnguni, who was married to Mr. Radebe and later registered in the name of Morgan Radebe, who apparently is the deceased father of the first respondent. It is significant that all these allegations are not supported by any documentation such as Deed of Grant or Title Deed.

[13] The above is the high water mark of the second respondent's case. The second respondent, and any of the other respondents for that matter, can claim no superior right to the property than that established by the applicant. The applicant is the surviving spouse of the deceased, who in turn inherited the property from his late mother, after the latter had purchased the property from the City Council of Pretoria.

[14] I am therefore satisfied that the second to sixth respondents are in unlawful occupation of the property, and that the applicant has established a proper case for their eviction.

[15] The procedural and technical requirements of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 have been complied. There is no suggestion that I am dealing here with the elderly, young children, the disabled or a woman-headed household.

[16] I am therefore disposed to order the eviction of the second to sixth respondents. I must do so in an orderly manner, by affording the respondents sufficient time to vacate the property.

[17] I therefore make the following order:

1. The second, third, fourth, fifth and sixth respondents are ordered to vacate the property known as erf 761 Mamelodi Township, Tshwane, within 1 (one) calendar month of this order;
2. Should the said respondents not comply with the order to vacate as set out in the preceding paragraph, the Sheriff Wonderboom and members of the South African Police Service (SAPS) are hereby authorized to assist in the eviction of the said respondents to give effect to this order.
3. Each party shall pay its own costs.


T M MAKGOKA
 JUDGE OF THE HIGH COURT

DATE HEARD	: 3 JUNE 2010
JUDGMENT DELIVERED	: 11 JUNE 2010
FOR THE APPLICANTS	: MS RR MABUSELA (ATTORNEY)
FIRM OF ATTORNEYS	: MOHUBE SETSOALO MABUSELA INC, PRETORIA
FOR THE SECOND RESPONDENT	: MR L MUZWAYINE (ATTORNEY)
FIRM OF ATTORNEYS	: L MUZWAYINE ATTORNEYS, PRETORIA
NO APPEARANCE FOR THE FIRST, THIRD, FOURTH, FIFTH SIXTH AND SEVENTH RESPONDENTS.	