

IN THE LAND CLAIMS COURT OF SOUTH AFRICA

Held at **RANDBURG** on 25 October 1999
before **Gildenhuis J, Goldblatt (assessor)**
Decided on: 30 November 1999

CASE NUMBER: LCC116/98

In the case of:

THE FORMER HIGHLANDS RESIDENTS

concerning

**THE AREA FORMERLY KNOWN AS THE HIGHLANDS (NOW
NEWLANDS EXTENSION 2), DISTRICT OF PRETORIA**

In the action between:

SYLVIA NAIDOO (born MULLER)

Plaintiff

and

THE DEPARTMENT OF LAND AFFAIRS

Defendant

JUDGMENT

GILDENHUIS J:

[1] This judgment relates to some fundamental issues that arose in an action which forms part of a group of land restitution claims pending in this Court. The claimants alleged that they or their forebears were dispossessed of their properties in the township formerly known as The Highlands, district of Pretoria, as a result of past racially discriminatory laws. They lodged claims for restitution under the Restitution of Land Rights Act.¹ I will refer to that Act as “the Restitution Act”. The claims were investigated by the Regional Land Claims Commissioner for Gauteng and North West Province. She referred the claims to this Court as a group, under section 14(1) of the Restitution Act. The claimants

¹ Act No 22 of 1994, as amended.

do not claim actual restoration of the dispossessed properties but equitable redress in the form of monetary compensation.

[2] One of the claimants is Sylvia Naidoo, born Muller, the plaintiff in this action. Her mother, Martha Muller, was the registered owner of the property known as Lot 47 in The Highlands. During 1960, the Peri-Urban Areas Health Board was the plaintiff in litigation against Martha Muller in the Magistrate's Court for the district of Pretoria. A judgment in favour of the Peri-Urban Areas Health Board was obtained against Martha Muller. The cause of action on which the judgment was obtained, is not known. A warrant of execution was issued for the execution of the judgment and the property was attached under that warrant. Pursuant to the attachment, the messenger of the magistrate's court sold the property on 17 July 1961 to the City Council of Pretoria.

[3] After the sale, the messenger transferred the property to the City Council of Pretoria. The relevant portion of the Deed of Transfer ² reads as follows:

“BE it hereby made known:

THAT RICHARD DOUGLAS KNEEN

appeared before me, Assistant Registrar of Deeds of the Transvaal, at Pretoria he, the Appearer, being duly authorised thereto by a Power of Attorney dated the first day of AUGUST 1961, and signed at PRETORIA, granted to him by LINUS URBANUS VORSTER in his capacity as the Messenger of the Magistrate's Court for the district of Pretoria:

And the said Appearer declared that his principal in his aforesaid capacity on the 17th July 1961 truly and legally sold the hereinaftermentioned property to the City Council of Pretoria, such sale being pursuant to an attachment under a Warrant of Execution issued out of the Magistrate's Court for the district of PRETORIA, on the 28th day of JULY, 1960, and subsequently re-issued on the 28th MAY 1961, for the execution of a judgment of the said Court in a matter wherein PERI-URBAN AREAS HEALTH BOARD was the Plaintiff and MARTHA MULLER (major spinster) a member of the Coloured Group as defined in Act No. 77 of 1957, was the Defendant; the said the CITY COUNCIL OF PRETORIA having acquired the hereinaftermentioned property in terms of Section 12(1)(c)(i) of Act No. 69 of 1955 under the powers delegated to it in terms of Section 13 of the said Act (as will more fully appear from Government Notice No. 754 of 19 May, 1961) and that he, in his capacity aforesaid did by these present, cede and transfer, in full and free property, to and on behalf of . . .”

[4] The Deed of Transfer refers to Act No 69 of 1955, which is the Group Areas Development Act. At the time, The Highlands was situated within a group area proclaimed under the Group Areas Act

2 Deed of Transfer No 17973/1961 dated 11 August 1961.

for occupation and ownership by persons of the so-called white group.³ Martha Muller was a member of the so-called coloured group. Both the Group Areas Development Act and the Group Areas Act are past racially discriminatory laws as contemplated in section 2(1)(a) of the Restitution Act.⁴

[5] It is stated in the Deed of Transfer that the City Council acquired the property in terms of section 12(1)(c)(i) of the Group Areas Development Act. The Group Areas Development Act established the Group Areas Development Board. One of the objects of the Board was to assist with and to control the disposal of affected properties in group areas.⁵ Section 12(1) furthermore set out the general powers of the Board. Under section 12(1)(c)(i), the Board had the power, with the approval of the Minister -

“(c)(i) to acquire by purchase, exchange or otherwise any immovable property situate in a group area.”

Section 13 of the Group Areas Development Act, which is also referred to in the Deed of Transfer, allows the Board to delegate its power to acquire immovable property to a local authority. According to the recital in the title deed, such power was delegated to the City Council of Pretoria. The delegation was notified in Government Notice No 754 of 19 May 1961, a copy of which was made available to the Court.

[6] Because The Highlands was situated within a white group area, the Group Areas Development Board and therefore the City Council of Pretoria, as its delegate, had a pre-emptive right in respect of every lot which belonged to a “non-white” person in the township.⁶ The effect of this was that the City Council of Pretoria could have intervened and could have bought the property from the messenger of the Court at the same price as that offered by a third party.

3 Section 20 of Act 77 of 1957.

4 Section 2(1)(a) is quoted in para [8] below. See also *Minister of Land Affairs and Another v Slamdien and Others* [1999] 1 All SA 608 (LCC) at 624g-h.

5 Section 12(1) of Act 69 of 1955.

6 Under s 16 of the Group Areas Development Act.

[7] Martha Muller has passed away. Her daughter, the plaintiff, and the Department of Land Affairs submitted a statement of agreed facts to the Court, to enable the Court to adjudicate on certain fundamental issues on which her claim is based. The agreed facts are as set out above. The parties also agreed that the Deed of Transfer in terms of which the property was transferred to the City Council of Pretoria would constitute proof of the correctness of all facts recorded therein, and that those facts are the only facts of the alleged dispossession which are available for proof thereof.

[8] In terms of section 2(1) of the Restitution Act, a person is entitled to restitution of a right in land if -

- “(a) he or she is a person dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices; or
- (b); or
- (c) he or she is the direct descendant of a person referred to in paragraph (a) who has died without lodging a claim and has no ascendant who -
 - (i) is a direct descendant of a person referred to in paragraph (a); and
 - (ii) has lodged a claim for the restitution of a right in land; or
- (d); and
- (e) the claim for such restitution was lodged not later than 31 December 1998.”

It is not disputed that the plaintiff is a person who is entitled to claim restitution in terms of section 2(1)(c) read with section 2(1)(a) and that a claim for such restitution was timeously lodged by her, as required under section 2(1)(e). It is, however, disputed that Martha Muller was dispossessed of her property as a result of past racially discriminatory laws or practices.

[9] The defendant pointed out that the City Council of Pretoria bought the property pursuant to the execution of a civil judgment given against Martha Muller. There is no suggestion that the judgment debt had anything to do with a racially discriminatory law or practice. Was there then a dispossession resulting from a past racially discriminatory law or practice? At first blush it might be said that the power given to the City Council of Pretoria to purchase the property is a power given under the Group Areas Development Act, and if it had not been for such power, the City Council of Pretoria would not have been in a position to buy the property. Such a conclusion would, however, not end the enquiry into the

cause of plaintiff's loss of ownership of the property. Dodson J pointed out in the case of *Minister of Land Affairs and Another v Slamdien and Others* that the enquiry has two stages:

“The first involves an enquiry into what has been termed ‘factual causation’. Generally, this involves the application of the ‘*conditio sine qua non*’ or ‘but for’ test. In other words, but for the act or omission identified as a potential cause, would the result have followed. If this test identifies the act or omission as a necessary condition for the result to have occurred, there is a second enquiry into ‘legal causation’. It is at this stage of the enquiry that the court must isolate that event or condition which was sufficiently determinative of the result to be treated not just as a necessary condition, but as a legally recognised cause of the particular result.”⁷

[10] Martha Muller lost ownership of the property because it was attached and eventually sold pursuant to a judgment debt. This, in my view, is the determinative or legal cause of the loss.⁸ By attaching and selling the property, the Messenger of the Court was acting under a statutory duty in terms of the Magistrates’ Courts Act.⁹ The purpose of the sale, on the facts before me, was the satisfaction of a judgment debt and not the furtherance of the objects of a racially discriminatory law.

[11] Mr Moshwana, for the plaintiff, submitted in his heads of argument that:

- “* The property could have been sold on public auction and ownership thereof could have passed to another person or body and not to specifically the City Council of Pretoria.
- * As no impediments in law existed at the time for the execution debtor to negotiate settlement of the debt with the execution creditor, the execution debtor may have ventured into that.
- * Taking into consideration that neither the plaintiffs or the defendant seem to have knowledge of the extent of the debt due to Peri Urban and the market value of the property at the time, it may be correct to assume that the balance from the proceeds of the sale should have been payable to Martha Muller.
- * Martha Muller may as well have been advised to rescind the judgment of the court on one or more of the permissible grounds.”

[12] Assuming these submissions to be correct, I fail to see how they assist the plaintiff in her case. If the Group Areas Development Act had not empowered the City Council of Pretoria to buy the property, some other person would have bought it. Neither the attachment nor the consequent duty

7 *Minister of Land Affairs and Another v Slamdien and Others*, above n 4 at 628g-629d.

8 Compare the reasoning of Meer J in *Local Trustees of the Brownlee Congregational Church and Another v Goldacre and Another*, LCC21/97, 24 June 1998, [1998] JOL 2749 (LCC), paras [27] to [35].

9 S 66 and 68(5) of Act 32 of 1944. See also Erasmus and Van Loggerenberg *Jones and Buckle: Civil Practice of the Magistrates’ Courts in South Africa* 9 ed, Vol 1 (Juta, Cape Town 1996) at 295.

upon the Messenger of the Court to sell the property has any connection with discriminatory laws or practices. I also fail to understand how the Groups Areas Act, the Group Areas Development Act or any other discriminatory law or practice would have prevented Martha Muller from negotiating a settlement with the execution creditor, or from receiving any balance of the proceeds of the sale after the execution debt was satisfied, or from applying for rescission of the judgment. It must be remembered that the execution creditor is the Peri-Urban Areas Health Board and not the City Council of Pretoria.

[13] On the facts before me, I am driven to the conclusion that the sale and transfer of the property to the City Council of Pretoria, as recorded in Deed of Transfer No 17973/1961, is not a dispossession of a right in land as a result of past racially discriminatory laws or practices. Consequently, I must give affect to an agreement between the parties, which reads as follows:

“Should the honourable court find on the abovementioned facts that the said sale as evidenced by Deed of Transfer no. 17973/1961 did not amount to a dispossession of the right in land which the said Martha Muller had in Lot 47 in the township of Highlands, as contemplated in section 2(1) of Act 22 of 1994, the defendant will be entitled to have the plaintiff’s claim dismissed.”

[14] For the above reasons, the plaintiff’s claim is hereby dismissed.

JUDGE A GILDENHUYS

I agree

S GOLDBLATT
***ASSESSOR**

*(Assessor appointed in terms of section 28(5) of the Restitution of Land Rights Act No 22 of 1994).

For the Claimants:

Mr G N Moshoana, of Mohlaba and Moshoana Inc, Pretoria.

For the Department of Land Affairs:

Mr G L Grobler SC, with him Ms S K Hassim, instructed by the State Attorney, Pretoria.