



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES ☒ NO

(2) OF INTEREST TO OTHER JUDGES: YES ☒ NO

(3) REVISED,

DATE 23/3/2018

SIGNATURE

23/3/18

Case Number: 30930 /2017

In the matter between:

NGALETSANG MAYET RAMONYAI

First Applicant

MOKGAETSI MEISIE RAMONYAI

Second Applicant

and

EPHRAIM CHAKA MOREROA

First Respondent

THE REGISTRAR OF DEEDS (PRETORIA)

Second Respondent

ZOLISWA DABULA

Third Respondent

JUDGMENT

NOWOSENETZ AJ

[1] This is an application for specific performance arising from a deed of sale of immovable property dated 9 March 2017 (the agreement) signed by the first respondent (the seller) and the first applicant (the buyer). The property was Erf 9475 Extension 36 Olievenhoutbosch, Gauteng upon which a house stood at the address 9475 Extension 36 Makhwefu Street, Olievenhoutbosch. The purchase price was R120 000. It is common cause that the full purchase price was paid to the seller and received by him. The first and third respondent opposed the application. The first applicant is married in community of property to the second applicant and the first respondent is married in community of property to the third respondent.

[2] Clause 5 of the agreement provided that the seller shall hand over the property to the buyer upon proof of payment and shall vacate the premises by the end of April. Of importance in this case is the following provision in the agreement:

'6 TERMINATION OF CONTRACT

This contract shall be deemed terminated by the failure of the Buyer to deposit the deposit amount as stated above or failure by the Seller to vacate the premises on

the date stated above or by any conduct by the Seller to deny the Buyer access to the subject of the sale.'

[3] A letter of cancellation was sent by CR Masilela the attorneys of the seller dated 23 March 2017. This was based on certain allegations of unlawful conduct by the buyer, inter alia, that on 20 March the buyer phoned the seller and demanded that he vacate the property or he will send people to kill the seller. The buyer's attorneys responded in a letter dated 5 April 2017 marked 'without prejudice' which was annexed to his founding affidavit. The letter is to the effect that the buyer accepts the seller's cancellation without prejudice to the purchaser's right to claim damages. The letter further demanded restitution of the purchase price to be paid into the attorney's trust account. It is common cause that the purchase price was not repaid and that the seller has not vacated the property to date hereof.

[4] The buyer in his founding affidavit denied that he was in breach of the agreement and that demand has not been made on him in terms of the Alienation of Land Act 68 of 1981 to remedy the breach as a prerequisite to cancellation by the seller. He further elected to hold the seller to the agreement and to claim transfer of the property to him. It was submitted *in limine* on behalf of the first and third respondent that the amount in dispute was within the jurisdiction of the Magistrates Court and this court did not have jurisdiction. It was further argued that the buyer had elected to accept cancellation in his attorney's

letter dated 5 April 2017 and that his claim for specific performance was unlawful and invalid.

[5] It is not necessary to decide if the cancellation by the seller is valid and whether the election to claim specific performance can be upheld. There is a fundamental point that both parties overlooked which that clause 6 is a resolute condition. By stipulating that the contract shall terminate if the seller does not vacate the premises by the end of April 2017, the contract which was valid up to that point is simply voided. It becomes a nullity purely by occurrence of the event. No notice of breach nor cancellation comes into play. The agreement is regarded as nonexistent and the parties must be restored to their previous positions. Thus as from 1 May 2017 the agreement was terminated.

[6] In *Amoretti v Tuckers Land and Development Corp* 1980 (2) SA 330 at 332 Coetzee J cited with approval from *Wessels on Contract* vol 1 paras 1409 ~ 1411 as follows:

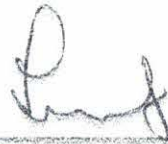
'If the resolute condition is fulfilled, the law regards the whole transaction inter parties as if the absolute contract had never existed and the parties must therefore be restored to their formal position.... The resolute condition therefore has a retrospective effect'

[7] The applicant is therefore entitled to restitution. There is no limitation in this court as to its jurisdiction for a monetary amount in a cause of action in respect of which this

court has jurisdiction. However the applicant ought to have proceeded in the Magistrates Court being a cheaper forum and having jurisdiction over the amount and the cause of action in this case.

The following order is made:

1. The first and third respondents shall jointly and severally pay the amount of R120 000 to the first and second applicants.
2. The first and third respondents shall jointly and severally pay interest on the amount of R120 000 to the first and second applicants at the rate of 10.5 % per annum calculated from 1 May 2017 to date of payment.
3. The first and third respondents shall jointly and severally pay the costs of the first and second applicants to be taxed on the appropriate Magistrates Court scale.



L. NOWOSENETZ

ACTING JUDGE OF THE HIGH COURT

CASE NO: 30930/17

HEARD ON: 19 MARCH 2018

FOR THE PLAINTIFF: MR SS SAMBO

INSTRUCTED BY: SAMBO-MLAHLEKI ATTORNEYS

FOR THE DEFENDANT: ADV SW TJALI

INSTRUCTED BY: C R MASILELA ATTORNEYS

DATE OF JUDGMENT: 23 MARCH 2018