



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

Case No: 64117/15

In the matter between:

ANNAH BETTY RANGWATO Nee NGUBENI

First Applicant

MIRRIAM BUSISIWE NGUBENI

Second Applicant

OSCAR RANGWATO

Third Applicant

and

VICTOR MANUEL FERREIRA GRAVATO N.O.

First Respondent

POGISO TUMISANG TIMOTHY MFOLOE N.O.

Second Respondent

THE REGISTRAR OF DEEDS

Third Respondent

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
4 July 2018	
DATE	SIGNATURE

JUDGMENT

ELLIS, AJ:

- (1) On 12 August 2015, applicants served a Rule nisi on respondents, calling upon them to show cause why an order should not be issued to

interdict and restrain the first and second respondents from selling property with the following description; Erf 1125 Saulsville JR, City of Tshwane Metropolitan Municipality, Gauteng Province registered in the name of Ngubeni George Hlophekile, Title Deed TE40751/1994, pending the outcome of a review application in respect of the award of ownership of the described property to Ngubeni George Hlophekile by the Gauteng Provincial Housing Department in terms of the Conversion of Certain Rights into Leasehold or Ownership Act¹ (*the Conversion Act*).

(2) Applicants on 29 September 2015 served a notice of intention to amend their notice of motion and effected the amendment on 15 October 2015. The said amendment of applicant's notice of motion did away with the rule nisi, and applicants only claimed the interim relief as referred to above.

(3) First and second applicants are George Hlophekani Ngubeni's ("George") siblings, who are all children of the late Tsatsawane Sannie Ngubeni (*"Tsatsawane"*).² Third applicant, the deponent to applicants' affidavits filed herein is first applicant's son.

(4) Before her death, Tsatsawane was the holder of a Residential Permit issued to her by the City Council of Pretoria in terms of GN R1036 of 14 June 1968, in respect of a Municipal dwelling described therein as No. 227 Ramokgopa Street, Erf 1125 Atteridgeville/Saulsville in the district of Pretoria.

(5) After Tsatsawane's death, a Residential Permit for the aforesaid property was issued to George for continued occupation of the said dwelling. The contents of the Residential Permit, issued to George on 11 August 1983,³ are as follows:

"RESIDENTIAL PERMIT

NOT TRANSFERABLE

Issued in terms of G.N. No R.1036, dated 14th June, 1968.

Permission is hereby granted by the Community Council to the undermentioned persons to occupy in accordance with and subject to the terms and conditions of the regulations mentioned above the municipal dwelling at 227 Ramokgopa Str 227 on residential site No. 1125 **ATTERIDGEVILLE/SAULSVILLE**, in the district of **PRETORIA**, of which George is the permit/certificate holder.

No.	Surname	Names	Date of Birth	Relationship to holder	Identity No.	Ethnic GR.
1.	Ngubeni	George H.	13.11.63	Holder of permit	6807016	Shangaan
2.	Ngubeni	Martha	12.8.59	Suster	5948033	Shangaan
3.	Ngubeni	Anna Betty	23.2.62	Suster	6139507	Shangaan
4.	Ngubeni	Miriam B.	1.5.67	Suster	-	Shangaan
5.	Ngubeni	Samuel	30.3.76	Seun V2	-	Shangaan
6.	Ngubeni	Oscar M.	1.4.80	Seun V3	-	Shangaan

(Signed by George)
Signature or left thumb print
of person to whom permit has
been granted

(Signed by Superintendent)
Superintendent
1983 - 08-11
Date"

(6) Applicants specifically submit that they are all listed in the Residential Permit referred to above and accordingly had equal rights of occupation and stay at Erf 1125, Saulsville, as that of George. According to applicants the dwelling house has been used and considered as a family house for the siblings of the late Tsatsawane.

(7) However, during the morning of 18 March 2015, third applicant observed people with boards, from Barco Auctioneers, advertising the house for auction. He immediately informed first applicant, who rushed to the scene where they enquired the people why they were auctioning the house.

(8) First and third applicants were informed that George had too many debts, hence the house was taken by the creditors. Upon further enquiries they were told that George was the owner of the house, which took them completely by surprise, for they were under the firm impression that George was only a permit holder and not a titleholder of their family home.

(9) The applicants thereupon attended the Deeds office to find out what was going on with the property in question, where they were only informed that the dwelling is registered in George's name and that he has sole ownership of the property.

(10) It was only after they approached their attorney of record, that the applicants were informed that George in all probability obtained ownership of the property sometime in 1993, in terms of the Conversion Act.

(11) They were further advised that in terms of section 2 of the Conversion Act, the Director-General was required to carry out an inquiry into the suitability of a particular permit holder to become an owner or co-owner.

(12) Section 2 of the Conversion Act reads as follows:

"2. Inquiry as to the rights of leasehold

- (1) The Director-General shall conduct an inquiry in the prescribed manner in respect of affected sites within his province in order to determine who shall be declared to have been granted a right of leasehold or, in the case where the affected sites are situated 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 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,⁴ 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) For the purposes of the declaration under subsection (1) the Director-General may:
 - (a) give effect to any agreement or transaction in relation to the rights of a holder contemplated in subsection (4)(a) or (b) in respect of the site concerned, between such holder and any other person;
 - (b) give effect to any such agreement or transaction, or to any settlement or testamentary disposition in respect of such rights, entered into or made before the death of the last such holder;
 - (c) consider any interstate heir of the last such holder to have been granted the right of leasehold or, in the case where that site is situated in a formalized township for which a township register has been opened, ownership in respect of the site concerned;
 - (d) give effect to any court order or sale in execution in relation to the site concerned,

notwithstanding that such agreement, transaction, settlement, testamentary disposition or interstate succession could not by virtue only of the provisions of the regulations have been entered into or made or was entered into or made without the approval of any person whose approval would have been required under the regulations, and notwithstanding that the site permit, certificate or trading site permit concerned had collapsed upon the death of such holder.
- (4) At the conclusion of the inquiry and after having considered any relevant claim or objection, the Director-General shall, if he is satisfied that the person concerned is, subject to the provisions of subsection (3), in respect of the site concerned:
 - (a) the holder of a site permit, certificate or trading site permit; or
 - (b) the holder of rights which in the opinion, of the Director-General are similar to the rights of the holder of a site permit, certificate or trading site permit,

determine whom he intends to declare to have been granted a right of leasehold or, in the case where the site is situated in a formalized township for which a township register has been opened, ownership in respect of the site concerned.

(5) Whenever he has made a determination as contemplated in subsection (4), the Director-General shall publish a notice stating:

- (a) that such a determination has been made in respect of the site stated in the notice;
- (b) that the prescribed particulars of that determination are open to inspection for a period of 14 days as from the date of the publication of the notice at the prescribed place;
- (c) that that determination shall be subject to appeal to the Administrator concerned in the prescribed manner; and
- (d) that, subject to any decision of the Administrator concerned on appeal, the person concerned shall be declared to have been granted a right of leasehold or, in the case where that site is situated in a formalized township for which a township register has been opened, ownership in respect of the site concerned."

(13) Applicants then proceed to state the following in their founding affidavit regarding the provisions of section 2 of the Conversion Act, namely:

- "33. ... that none of the processes referred in section 2 of [the Conversion Act] were carried out in relation to property Erf 1125 Saulsville. No inquiry was ever done. First and second applicants were never consulted.
- 34. Applicants are in shock that George obtained ownership of the family house without the right processes being followed.
- 35. No inquiry was made whatsoever, and no wonder George kept titleship to the house a closely guarded secret, that only came out because of the sequestration of his estate in March 2015.
- 36. None of the applicants was aware that George had manipulated the system and managed to secure sole ownership of the family property.
- 37. As family we feel that we were conned by George hence we need a review of the whole process relating to the conversion of rights and registration of Erf 1125, Saulsville into George Hluphekani Ngubeni alone, to the exclusion of the other siblings of Tsatsawani Sannie Ngubeni."

(14) Applicants were apparently later informed that the house sold for R315 000.00 and if they wanted to buy it themselves, they should pay an amount of R350 000.00. However, in a WinDeed Search performed by applicants' attorney of record on 7 August 2015,⁵ it appeared that the property was still registered in George's name, wherefore transfer has not yet taken place.

(15) To this end, applicants in describing the purpose of their application, state that the intended review application will investigate the manner and correctness of the decision of the Director-General of his officials to award sole ownership of the property to George, to the exclusion of the applicants.

(16) It is against the aforesaid that applicants requested the interim relief against respondents.

(17) The application is only opposed by first and second respondents, who are the appointed trustees of the insolvent estate of George and Mmatsetla Jerryline Masuku.⁶ For the sake of convenience, I will hereinafter refer to the first and second respondents as "*the trustees*". In answer to applicants' case, the trustees only raised points *in limine*, which during the hearing hereof was confined to the following:

(17.1) That applicants have no *prima facie* right;

(17.2) That applicants' claim has become prescribed in terms of the provisions of section 12 of the Prescription Act⁷ ("*the Prescription Act*"); and

(17.3) That the balance of convenience clearly favours the trustees and not the applicants.

(18) I will deal with the trustees' preliminary points referred to in paragraphs (17.1) and (17.3) hereinbelow when I discuss the merits of applicants' case. Regarding the issue of prescription raised by the trustees, counsel for applicants and Mr van Heerden, who acted for the trustees, after being prompted to do so, conceded during the hearing hereof that the provisions of the Promotion of Administrative Justice Act⁸ ("PAJA") apply in this instance and not the provisions of the Prescription Act. In my view the concessions were rightly made, more particularly in view of the fact that applicants *prima facie* right, if any, does not constitute a debt under the Prescription Act. Moreover, on applications' own version, they only discovered during March 2015 that a decision under the Conversion Act resulted in the property being registered solely in George's name, which in my view attracts the provisions of PAJA⁹ in the event that applicants intend to review this decision. I therefore find no merit in this preliminary issue raised by the trustees.

REQUIREMENTS FOR INTERIM RELIEF:

(19) The requirements for interim relief are as follows:

- (19.1) a *prima facie* right;
- (19.2) a well-grounded apprehension of irreparable harm if the interim relief is not granted, and the ultimate relief is eventually granted;
- (19.3) the balance of convenience in favour of the granting of the interim relief; and

(19.4) the absence of any other satisfactory remedy.¹⁰

(20) It is trite that the aforesaid requirements should not be considered separately or in isolation but in conjunction with one another in order to determine whether the court should exercise its discretion in favour of the grant of the interim relief sought.¹¹

Prima facie right:

(21) Temporary relief will normally be granted if the court is satisfied that the applicant has a right established upon a balance of probabilities and that the respondent has invaded it or threatens to do so.¹² The onus is on the applicant to prove its *prima facie* right, and a possibility or a slight degree of probability will not suffice.¹³ Accordingly, the approach to be adopted in determining whether a *prima facie* right has been established is as follows:

"[T]he right to be set up by an applicant for a temporary interdict need not be shown by a balance of probabilities. If it is "*prima facie* established though open to some doubt" that is enough. ...

The proper manner of approach I consider is to take the facts as set out by the applicant, together with any facts set out by the respondent which the applicant cannot dispute, and to consider whether, having regard to the inherent probabilities, the applicant could on those facts obtain final relief at the trial.¹⁴ The facts set up in contradiction by the respondent should then be considered. If serious doubt is thrown upon the case of the applicant he could not succeed in obtaining temporary relief, for his right, *prima facie* established, may only be open to "some doubt". But if there is mere contradiction, or unconvincing explanation, the matter should be left to trial and the right be protected in the meanwhile, subject of course to the respective prejudice in the grant or refusal of interim relief."¹⁵

(22) In *Gool v Minister of Justice*¹⁶ Ogilvie Thompson J commented as follows on the above passage:

"With the greatest respect, I am of the opinion that the criterion prescribed in the statement for the first branch of the enquiry thus outlined is somewhat too favourably expressed towards the applicant for an interdict. In my view the criterion on an applicant's own averred or admitted facts is: should (not could) the applicant on those facts obtain final relief at the trial.¹⁷ Subject to that qualification, I respectfully agreed that the approach outlined in *Webster v Mitchell* ... is the correct approach for ordinary interdict applications."¹⁸

(23) In this regard, applicants merely contend that they were co-occupiers of Erf 1125 Saulsville and siblings of the late Tsatsawane; they had the right to be considered for ownership of the said property at the time of conversion of the holdship to ownership in terms of section 2 of the Conversion Act; they have a right to apply for a review of the decision that awarded sole ownership of the house to George; they have a right to co-ownership of the house and to retain the house as a family house, wherefore applicants concluded that it is clear that a *prima facie* right exist and that this court should justifiably protect the applicants by granting the interim interdict. However, in argument counsel for applicants went even further and submitted that applicants right *in casu* is not merely *prima facie*, but rather a clear right to ownership.

(24) The trustees on the other hand deny that applicants have indicated that a *prima facie* right exists, for the following reasons:

- (24.1) applicants have failed to demonstrate any reasonable grounds upon which the intended review application may succeed;
- (24.2) applicants averment that the review application "will investigate" whether the Director-General followed the right procedure is a clear indication that applicants do not know whether the Director-General adhered to the provisions of the Conversion Act or not and that applicants did not investigate the manner in which the Director-General's determination occurred, wherefore applicants cannot forward any reason or ground which will allow them to bring a review application;
- (24.3) applicants contention that the Director-General failed to conduct an inquiry, in that applicants were never consulted or notified in terms of section 2 of the Conversion Act, lose sight of the fact that both section 2 of the Conversion Act and the relevant Regulations,¹⁹ provides for notification by way of publishing a list in the *Government Gazette*, calling for written objections or claims, which the Director-General considered before making a determination, wherefore there was no formal inquiry.

(25) In considering all of the aforesaid, I am of the firm view that the applicants have failed to satisfy the requisite of establishing a *prima facie* right in this instance. I say so for the following reasons:

(25.1) Notwithstanding the fact that applicants have launched this application on 12 August 2015, nearly 3 years before the hearing thereof on 20 March 2018,²⁰ the applicants have not yet instituted their review application from which they will apparently seek final relief. In this regard, a court may exercise its discretion to grant interim relief against an applicant, where there is an undue delay in launching the interim proceedings or the main proceedings in which final relief is sought.²¹

(25.2) Moreover, applicants have also failed to employ any of the provisions of PAJA, in order to indicate an earnest attempt to institute the main proceedings. To this end, applicants have not requested any reasons for the Director-General's decision to award sole ownership to George (section 5(1) of PAJA), nor did applicants proffered any of the grounds in section 6 of PAJA upon which the Director-General's decision may possibly be reviewable.

(25.3) However and more importantly, the provisions of section 7 of PAJA are also applicable to applicants' intended review application, which specifically provides that judicial review must be instituted without any reasonable delay and not later than 180 days after, *inter alia*, having exhausted any internal remedies, Section 2(5) of the Conversion Act specifically provides for an internal appeal of the Director-General's decision.

(25.4) Applicants have failed to adduce any evidence upon which I may hold that they should (not could) obtain final relief in the review. Instead, I consider applicants' alleged right not even a possibility or a slight degree of probability under the circumstances described above.

(26) In view of the fact that I have found that applicants have failed to prove their *prima facie* right, I have no discretion to exercise²² in this regard and must decline applicants' interim relief as sought. Accordingly, I will not deal with the remainder of the requirements for interim relief.

ORDER:

1. In the result I make the following order:

1.1 The application is dismissed with costs, on a party and

party scale.



I. ELLIS
ACTING JUDGE OF THE HIGH COURT

APPEARANCES:

ON BEHALF OF APPLICANTS: Adv K. Toma

APPLICANTS' ATTORNEYS: MPYANE ATTORNEYS

ON BEHALF OF 1ST AND 2ND RESPONDENTS: Johan van Heerden (Att.)

**1ST AND 2ND RESPONDENTS ATTORNEYS: JOHAN VAN HEERDEN
ATTORNEYS**

Date of hearing: 20 March 2018

Date of judgment: 4 July 2018

¹ 81 of 1988.

² Tsatsawane Sannie Ngubeni passed away on 13 March 1983.

³ Annexure "FA2" to applicants' founding affidavit.

⁴ Principal Act means the Black Communities Development Act 4 of 1984, as defined in section 1 of the Conversion Act.

⁵ Annexure "FA3" to applicants' founding affidavit.

⁶ As per the Master's certificate of appointment, annexed to the answering affidavit as Annexure "VG1".

⁷ 68 of 1969.

⁸ 3 of 2000.

⁹ Sections 5(1) and 7(1) of PAJA apply in this instance.

¹⁰ *Eriksen Motors (Welkom) Ltd v Protea Motors, Warrenton and Another* 1973 (3) SA 685 (A) at 691C-E.

¹¹ *Camps Bay Residents and Ratepayers Association v Augoustides* 2009 (6) SA 190 (WCC) at 196H-I.

¹² *Msunduzi Municipality v Natal Joint Municipal Pension/Provident Fund* 2007 (1) SA 142 (N) at 152E-F.

¹³ *Molteno Bros v SAR* 1936 AD 321 at 333.

¹⁴ My own emphasis added.

¹⁵ *Webster v Mitchell* 1948 (1) SA 1186 (W) at 1189.

¹⁶ 1955 (2) SA 682 (C).

¹⁷ My emphasis added.

¹⁸ *Gool v Minister of Justice* 1955 (2) SA 682 (C) at 688D-E.

¹⁹ More particularly the Conversion of Certain Rights to Leasehold Regulations, published under GN R1109 in Government Gazette 12484 of 25 May 1990.

²⁰ It is quite apparent from the face of the court file that the matter has been enrolled and then removed on numerous occasions since 2017, without any orders being made.

²¹ *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw* 2008 (5) SA 339 (SCA).

²² A court has no discretion to grant an interim interdict if the requirements have not been established: *Contact Electrical Maintenance (Pty) Ltd v Sanlam Ltd* 1996 (2) SA 440 (B).