

NO WRITTEN AGREEMENT, NO TRANSFER OF PROPERTY

Huma v Kruger N.O. and Others (39164/2020) [2022] ZAGPJHC 70 (16 February 2022)

Often, whether between ex-spouses, family members or business partners, persons make deals regarding their property outside of the usual framework where an estate agent or attorney is involved. They are then not advised of the requirement that the transaction must be recorded in a written agreement, and signed, to be valid. The judgment discussed here is just such a scenario where ex-spouses (apparently) agreed orally on a “hand-over” of the home, the receiving ex-spouse also taking over the bond payments. When the one passes away, can the other claim that he is owner of the home?

The Judgment can be viewed [here](#).

FACTS

Mr Huma owned a property in Zakariyya Park at the time of entering into a marriage in community of property. When, in later years, the marriage ended in divorce, the divorce order stated that the home would go to Mrs Huma.

Transfer to Mrs Huma never took place. She passed away in 2018 and an executor was appointed in her estate. The executor sought to sell the home and this prompted Mr Huma to approach the Court for an interdict against the sale of the property by the executor. Huma alleged that: (i) pursuant to an oral agreement between him and his ex-wife, shortly before her death, his wife had handed the property back to him and agreed that he would take over all responsibilities relating to the property, including the payment of the monthly instalments on the mortgage bond, which he had done; and that (ii) a written agreement was not necessary, as the property was still registered in his name. (This was because, as from the time it was first registered in his name while he was still unmarried, the fact of his subsequent marriage in community of property and later divorce, was not noted against the title deed).

HELD

- It was common cause that up until her death 2018, Mrs Huma (the deceased) was the sole owner of the property by virtue of the 2008 divorce order. Transfer was however never procured.
- Section 2(1) of the Alienation of Land Act, Act 68 of 1981 prescribes that the alienation of land shall only have force and effect if it is contained in a deed of alienation signed by the parties thereto (or by their agents acting on their written authority). The oral agreement, on which Mr Huma relied, was therefore of no force or effect. This applied even if technically the property was still registered in his name.
- The simple fact was that the deceased was the true owner of the property and could at any time insist on transfer of same into her name. The fact that the property was not presently registered in her name was irrelevant.

CONCLUSION

The interdict that Huma applied for was therefore refused.