

DONATING LAND THAT YOU DO NOT (YET) OWN

Morewane N.O. v Rampoto N.O. and Others (2020/8534) [2022] ZAGPJHC 625 (29 August 2022)

An interesting point arose for adjudication in this matter, namely whether a donation inter vivos of property is valid if the person making the donation is not the owner of the land donated. Here a person enjoying tenure rights donated property in terms of a written deed of donation. Only later did the donor become the registered owner of the property. The court held that such a donation was valid. The judgment illustrates the considerations.

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

FACTS

Ms Rampoto, the grandmother of the deceased P J Rampoto, resided in a property that was registered in the name of the Ekurhuleni Metropolitan Municipality (the Local Authority) until her death in 1989.

In January 1989, and after Ms Rampoto's death, the Local Authority issued a letter in which it stated that the improvements on the property had been transferred to Ms Rampoto's heir, Jacob Rampoto, to be held in trust for his brother Joseph Rampoto.

The two brothers continued to reside in the property. Later they rented out the property so that they could pay for Joseph Rampoto's care. Joseph passed away in November 1999.

In June 2000 Jacob Rampoto entered into a written deed of donation in terms of which he donated the property to M V Ntholi, which reads (in part) as follows:

"WHEREAS THE DONOR is the right full owner of the immovable property situated ... (herein referred to as the property)

WHEREFORE THE DONOR hereby donates the said property to the done who hereby accepts the donation."

At the time of making the donation, Jacob Rampoto had land tenure rights to the property, but was not yet owner. Only in February 2002 did the Local Authority sell the property to Jacob and transfer was effected in June 2002.

Jacob Rampoto passed away in December 2002.

The present matter, nearly seventeen years after Jacob Rampoto's death, deals with an application by the executor in the estate of the Late M V Ntholi. He sought an order, firstly, declaring that the late Jacob Rampoto validly donated the immovable property to the late Ms Ntholi, and, secondly, that the property must be transferred to that estate.

Rampoto, the executor in the estate of the late Jacob Rampoto, defended the matter and argued that the Jacob's estate was the current registered owner of the property.

HELD

Was the donation by Jacob Rampoto of the property valid, even though he was not the owner thereof?

- A donation is an agreement which is induced by pure benevolence whereby a person who has no legal obligation to do so, undertakes to give something to another person, and in respect of which gift the donor

The Big Small Firm

stbb.co.za

Commercial Law | Conveyancing | Development Law | Labour Law | Estates | Family Law | Litigation | Personal Injuries & Third Party Claims

Cape Town
Claremont
Fish Hoek
Helderberg

T: 021 406 9100
T: 021 673 4700
T: 021 784 1580
T: 021 850 6400

Blouberg
Tyger Valley
Illovo
Fourwavs

T: 021 521 4000
T: 021 943 3800
T: 011 219 6200
T: 010 001 2632

Centurion
Bedfordview
East London

T: 012 001 1546
T: 011 453 0577
T: 043 721 1234

receives no consideration.

- It is common cause that when the donation agreement was entered into, the local authority was the registered owner thereof, and Jacob Rampoto only had a spes (a Latin term referring to a person's mere possibility of succeeding in a property after another's death) that he might take ownership at some stage in future.
- From case law and old authorities, it appears that in our law there is no impediment to a person donating something that he does not own at the time of donation. In fact, the same principles apply to the sale of property. It is possible, in South African law, to sell someone else's property. The seller is obliged to acquire the property and to effect transfer of ownership to the purchaser, and if he is unable to do so, he will be liable for damages. The same should apply to a donation agreement.
- There is no authority that a donation is aimed at transferring ownership 'forthwith'. The authorities are to the opposite effect, that one may make a donation which will only take effect far into the future.

CONCLUSION

The donation agreement was accordingly held to be valid and the executor in the estate of the late Mr Rampoto ordered to sign the necessary documentation for transfer to the estate of the late Ms Ntholi.