

# SUMMARY OF THE JUDGMENT

## PROPER ENQUIRY OF LEASEHOLD RIGHTS CLAIM VITAL

### **Ntshalintshali and Others v Sekano and Others (2014/31317) [2015] ZAGPJHC 123 (12 June 2015)**

*This judgment is one of a few that deals with and provides insight into the application of the Conversion of Certain Rights into Leasehold or Ownership Act. The Act provides for the conversion of certain rights of occupation to leasehold or full ownership, which process requires a proper investigation of all claims in respect of a piece of land. Where such investigation is not properly performed, the granting of leasehold rights as well as the transfer thereof in the deeds office, can be reversed, as this judgment shows.*

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

### FACTS

Ms Dineo Ntshalintshali (Dineo) was married to her husband in community of property and together they were named the leasehold title holders to a property, in terms of the Conversion of Certain Rights into Leasehold or Ownership Act 81 of 1988 (the Conversion Act). When her husband died, she sold and transferred the property to Sekano.

When the deceased's brother learned of this, he instituted the present action to request the court to cancel the deed of transfer to Sekano and also to cancel the certificate of registered grant of leasehold in terms of which Dineo and the late Mr Ntshalintshali were shown to be title holders.

He argued that:

- Dineo's husband held the property merely as a custodian for the family and that Dineo had no right (both in her capacity as spouse married in community of property to Ntshalintshali's brother and in her capacity as the executor of his estate) to sell the property to any third party. The property at all times vested in the family, held by the custodian for the benefit of the entire family.
- The Department of Housing had to be ordered to investigate and to hold a hearing in terms of section 2 of the Conversion Act in order to determine who the rightful claimant to the property was.
- For this purpose, the terms of the family house rights agreement which the members of the family had concluded in respect of the property, including Dineo

and the late Mr Ntshalintshali, had to be considered.

Dineo opposed the application. She argued that both she and her late husband were recorded on the certificate of leasehold and that this certificate bore no endorsement of any nature that might have limited their rights to deal with the property. Despite the fact that she had signed the family house rights agreement, she says that she did so without knowledge of the content thereof and that she signed it simply because her husband asked her to.

The evidence before the court showed that Dineo's husband was, at the time the family entered into the agreement, the eldest surviving son and it was on this basis that he was nominated by the others as the custodian of the property on behalf of the family. The inclusion of Dineo as co-custodian came into being by operation of the civil marriage in community of property.

According to an affidavit presented to court by the Deputy Director in the Asset Disposal and Regularization Directorate, it was affirmed that Dineo and her husband were custodians of the property on behalf of the family and that when the title deed was registered, the Housing Department should have, simultaneously with such registration, endorsed the family rights agreement against the title deed. According to the affidavit, the administrative error on the part of the Housing Department was the cause of the current dispute between the family members.

**HELD:**

- The Conversion Act permits the conversion of certain rights of occupation to leasehold or full ownership. In general, an enquiry must be held in which the history of, and documentation pertaining to, each affected site or property is considered, along with competing claims (and objections to claims) for the conferral of title. After enquiring into the facts, considering the claims and objections and applying the criteria in sections 2(3)(a) to (d) and 2(4)(a) and (b) of the Conversion Act, the adjudicator "determines whom he [or she] intends to declare to have been granted a right of leasehold or ... ownership". A notice is thereafter published announcing the determination, stating that it is open for inspection and that it is subject to appeal in the prescribed manner of appeal.
- In the present matter, the Conversion Act required the Director General for the Department of Housing to conduct an enquiry into the affected site and to identify the occupier of the relevant site. Such an enquiry did not take place, thus implying that the historical facts of how it came to be that the property was registered in the name of Dineo and her husband was never investigated.

- It appeared that the error in the offices of the Housing Department gave Dineo an opportunity to sell a property that she was not entitled to sell. Had the agreement been endorsed against the relevant deed, there would have been a restriction on the rights of the persons appearing on the deed to further deal with the property. Dineo undoubtedly was fully aware of the existence of the family rights agreement and took advantage of the error and sold the property.
- Since a proper investigation was not conducted, the transfer of rights was null and void.

The court accordingly ordered that the transfer to Sekano be cancelled and that the property revert to its original owner, The City of Johannesburg Metropolitan Municipality. A hearing then had to be held in terms of the Conversion Act to determine who the rightful claimant in respect of the property was.

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