

IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

DATE: 29/04/2005

REPORTABLE

In the matter between:

BOTILENG LEGOALE & EIGHT OTHERS

APPLICANTS

and

MAMMULE ESTHER LEGOALE

FIRST RESPONDENT

PRETORIA REGISTRAR OF DEEDS

SECOND RESPONDENT

CO-OCCUPIERS OF ERF 2495 ATTERIDGEVILLE

THIRD RESPONDENT

Will – in conflict with registered ownership of one of the children of the deceased - registered ownership shown by expert testimony not to have been based on a forgery of the deceased's signature.

Van Rooyen AJ

[1] This is a dispute between members of the same family about the ownership of a house in Atteridgeville, Tshwane, (formally known as Erf 2495). The dispute has its roots in Apartheid South Africa, where ownership of land was strictly regulated to exclude ownership by Black people, inter alia, in so-called locations, also known as townships. Atteridgeville was such a township.

[2] Mrs Roseline Elizabeth Legoale was born in March 1912. She was granted a site permit to Erf 2495 in July 1964. She signed the permit above the words "Signature or left thumb print of person

to whom certificate is granted". She had developed the property by way of the profits made from the making of clothes. On the 8th October 1985 she made a will in which she bequeathed her entire estate to her daughter Esther Legoale, a medical doctor. She was also appointed as executrix. It was common cause that Esther Legoale ("Dr Mammule") is the First Respondent.

[3] Since Mrs Roseline Legoale was concerned that as a pensioner and widow she might lose her

site permit, a family meeting was held and it was decided that the property be transferred to Dr Mammule. On 1 September 1987 one of the daughters of Mrs Roseline Legoale, Mrs Monica Letsholo, confirmed by way of affidavit that her mother wished to transfer the site permit to Dr Mammule. This handwritten statement bears the stamp of the Town Council of Atteridgeville and is dated 1 September 1987. It was signed by the said daughter and attested to by two witnesses. Mrs Letsholo now states in an affidavit that she was manipulated by Dr Mammule to sign the document and promised that the transfer would not take effect before their mother signed the document as well. A further handwritten document states that Mrs Roseline Legoale transfers the site permit to Dr Mammule. Mrs Roseline Legoale signed and it was also sworn to by her.

[4] When the new democratic dispensation was in the air after Nelson Mandela had been released from prison in February 1990, ownership for Black individuals became a reality. In terms of the Upgrading of Land Tenure Rights Act 1991, Act no 112 of 1991, the City Council of Atteridgeville transferred the ownership of Erf 2495, measuring 300 square meters, to Dr Mammule on the 23rd December 1992. This transfer was effected by the Registrar of Deeds.

[5] On the 17th of August 2000, Mrs Roseline Legoale again made a will at the age of 87 years.

She bequeathed her estate equally to the nine applicants in this matter as well as Dr Mammule .

She signed the will, but it was only attested to by one witness. The following names were mentioned: Elizabeth Peto, Monica Letsholo, Magdeline Malomane, Rebecca Mabele, John

Legoale, Dorcas Maninja, Esther Legoale, Dorcas Maninja, Grace Legoale, Botileng

Legoale(grandson) and Naomi Lekwane. Five of Dr Mammule's six sisters and her only brother are amongst the applicants in this matter.

[5] On the 22nd May 2002 Mrs Roseline Legoale passed away. She was aged ninety. Dr

Mammule was appointed as her executrix by the Master of the High Court.

[6] When the 17th August 2000 will and testament of Mrs Rosaline Legoale was read it appeared to be in conflict with the ownership of Dr Mammule's ownership of the house on Erf 2495. The house was explicitly included in the will and was also, as were her other assets, to go to the said 10 Legoale children. With prudence and wisdom she provided that "no one amongst them must claim entitlement on my properties. My properties must belong to all of them". She also added

that "should any of the above mentioned names become unhappy and against my last will, the remaining names should gather and buy her/him out of the property."

[7] The notice of motion requests this Court to restrain Dr Mammule from transferring the property and to issue a declaratory order that the applicants and Dr Mammule are co-owners of the property with the concomitant order to register the property in the names of the applicants and Dr Mammule Esther Legoale.

[8] During argument before me the main issue was whether the signature of Mrs Roseline

Legoale had not been forged, inter alia, in the September 1987 certificate which confirmed that the site permit would be transferred to Dr Mammule. I afforded the applicants the opportunity to obtain the opinion of a handwriting expert. The opinion of Frederick Fourie was handed up to me at the last hearing of this application. He is a qualified forensic handwriting expert. After comparing several of the signatures of the late Mrs Rosaline Legoale, he came to the conclusion that "in taking all the corresponding writing characteristics into account and in the absence of fundamental differences I could come to no other conclusion as that the signatures signed R and RE Legoale were most probably written by the same person." I could find no reason to doubt the expert opinion and *adv Kruger*, for the Applicants, conceded the authenticity of the handwriting.

[9] All that is left is the vague suspicion that Mrs Legoale did not fully understand the legal intricacies of her signing over the site permit to Dr Mammule. Yet, judged by the answering affidavit of Dr Mammule, whose affidavit should win the day when there is difference between the founding affidavit and the answering affidavit unless it is far-fetched or clearly untenable,¹ there was a good and reasonable explanation for the fact that the deceased had transferred the site permit to her. Legislation then settled the matter when the site permit holders' rights were upgraded to ownership, There is no way in which the will of 2000, even if it be accepted as valid, could alter that unless fraud could be proved. As indicated above, the expert confirmed that it was Mrs Rosaline Mogale who had signed the documents. Mrs Letsholo stated in her affidavit that she was told by Dr Mammule that the document would not become effective before Mrs Rosaline Mogale had signed the document. Expert opinion now confirms that she did in fact do so.

¹ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 635A-B.

Whether she understood what she was signing away is, in the absence of other cogent evidence, impossible to determine now that she has passed away. Her last will might be regarded as such evidence, but it is simply not sufficient to gainsay the verified signed document of 1987. The *prima facie* evidence of ownership in the Deeds Registry must therefore be confirmed as valid.

[10] The application which, in essence amounted to an application that the Court declare Dr Mammule to be a co-owner, is dismissed.

[11] In so far as costs are concerned, I believe that the present application was a matter of common interest between the applicants and the first respondent and that it served such interest to clarify the legal position. I accordingly make no order as to costs. I might mention that this costs order would also seem to accord with the last expression of intent of Mrs Rosaline Leguale in her will : share and share alike.

[12] In so far as the application for eviction of the first applicant from Erf 2495 is concerned, the application is acceded to. It follows from the above reasons that he must vacate the premises which belong to Dr Mammule. He must vacate the property within a reasonable time: in this case I hold such time to be 31 May 2005. He knew about the possibility that the Court might dismiss the application in which he was the first applicant and it would not be reasonable to expect Dr Mammule to wait longer than 31 May 2005 to take possession of her property. The Sheriff is authorized and ordered to execute the eviction order so granted at any time following the date mentioned in the event of the first applicant not vacating the property on or before the said date.

Once again no costs order is made.

JCW van Rooyen
Acting Judge of the High Court

For the Respondent: adv GLM Bokaba
For the Applicant: adv J Kruger