

IN THE COURT OF APPEAL OF LESOTHO

HELD AT MASERU

C OF A (CIV) NO. 03/2018

In the matter between -

MATEBELO MOREBOLI

APPELLANT

AND

**THE DEPUTY SHERRIFF
RESPONDENT**

1ST

**FIRST NATIONAL BANK
RESPONDENT**

2ND

MR RAMONE

3RD RESPONDENT

**THESELE MOREBOLI
RESPONDENT**

4TH

CORAM: DR KE MOSITO P
DR J VAN DER WESTHUIZEN AJA
N MTSHIYA AJA

HEARD: 21 APRIL 2021

DELIVERED: 14 MAY 2021

Summary

Civil practice - Appeal against an order of the High Court dismissing an application in 2017 to set aside the attachment of immovable property dismissed, because of mootness - Property having been attached, sold and transferred long before the appeal was heard; and even before the application was heard by the High Court.

JUDGMENT

VAN DER WESTHUIZEN, AJA:

Introduction

[1] The Appellant, Ms Matebello Moreboli, appeals against the dismissal of her application by the late Chaka-Makooane J in the High Court in 2017. At the core of this dispute is immovable property situated at Khubetsoana in the district of Berea. The property was allegedly unlawfully pledged by the fourth Respondent, Mr Thesele Moreboli, the ex-husband of the Appellant, to the second respondent, First National Bank. It belongs to the third Respondent. The second Respondent opposes the appeal.

[2] Condonation for the late filing of the record by the Appellant is granted.

Factual and litigation history

[3] The factual and litigation history of this matter is integrated, also with the submissions of the parties. The narrative hereunder

mainly follows the Appellant's version, for reasons that appear later in this judgment.

[4] The Moreboli marriage was annulled on 23 September 2007. Their property was divided. The Appellant's children stayed on her premises, (which were at the centre of this matter), with the fourth Respondent, while she was living and working in South Africa. He also lived on another property of his, close to the Appellant's property.

[5] According to the Appellant, the fourth Respondent's legal representative in the divorce proceedings erred in the description of the relevant properties in legal documents. Thus confusion set in. When the Appellant became aware of this, she successfully applied to the High Court for a variation in 2017.

[6] However, in the absence and without the knowledge of the Appellant, the fourth Respondent pledged the property in favour of the second Respondent, a commercial bank, as security for his company, Sesotho Power Solution (Pty) Ltd. The bank eventually claimed what was due to it. A writ of attachment was obtained under case CCT/0045/2015.

[7] The Appellant approached the High Court on the basis of urgency. She asked for a *rule nisi*, calling on the respondents to show cause why the first Respondent (the Deputy Sheriff) should not be interdicted from finalizing execution in terms of the writ of attachment. As "ordinary relief" the Appellant asked for the setting aside of the attachment by the first respondent of the

premises; as well as the setting aside of the sale in execution of the premises round about the middle of 2017.

[8] The application was dismissed. According to the Appellant's counsel, the High Court dismissed the application "there and then, even before the Appellant could peruse the answering affidavit that had been served on that same day". The appellant had no opportunity to file a replying affidavit. This is disputed by the second Respondent, who alleges that the Appellant wished to push ahead at that time.

[9] The Appellant noted an appeal against the High Court's dismissal of the application. It is that appeal which is now before this Court. Then the Applicant launched an application for stay of execution, pending the outcome of the appeal.

[10] However, on 11 December 2017 the High Court granted an order in the main action to the effect that the fourth Respondent had to vacate the property immediately. According to the Appellant, the fourth Respondent did so "easily and without any query or effort to save" the property. The Appellant alleges that the fourth Respondent "had nothing to lose" and casts much blame onto him. On 2 February 2018 the property was handed to the third Respondent.

[11] The High Court heard the application for stay pending the appeal on 27 August 2018; and delivered an *ex tempore* ruling on 10 December 2018, dismissing the application. The High Court

never delivered any reasons for the dismissal of the Appellant's applications.

[12] Just after the middle of 2020 the judge passed away.

[13] Due to the lack of a reasoned judgment, the appeal has not proceeded for about three years. The third Respondent was allowed to use the property.

[14] According to the Respondent, the matter is moot. On behalf of the Appellant it was argued that it was not.

Discussion

[15] The factual and litigation history of this matter is not only complicated, but disputed. Much of the lack of clarity results from the fact that no written or recorded reasons are available for the decisions and orders of the High Court. For many months between the orders and the death of the judge these reasons were not forthcoming. Arguments presented to this Court on the correctness or otherwise of the High Court's reasoning, for example whether the judge was of the view that the Appellant had neglected her property, are speculative or based on loose memories. The Appellant might well have been wronged by several events, from the divorce lawyer's alleged bungling with the description of the Moreboli properties to the conduct of the fourth Respondent.

[16] However, the first and foremost question is whether the matter is indeed moot. The hard fact is that the property was

apparently already transferred on 28 September 2017, approximately two months before the Appellant approached the High Court with the application resulting in this appeal.

[17] More than three and a half years have gone by between the transfer of the property and the hearing of this appeal. What can this Court do for the Appellant at this stage? Counsel for the Appellant did not provide a clear answer to this question.

Disposal

[18] The relief sought in the application before the High Court was the setting aside of the writ of attachment and then to stay the sale in execution. These things happened quite some time ago. The High Court was not asked to set aside the transfer and registration of the property. This appeal is against its dismissal by the High Court of the application that was before it. The High Court's reasons will never be forthcoming. This Court cannot cancel the transfer and registration of property.

[19] The Appellant could consider legal steps with regard to the loss she might have suffered as a result of the unlawful intentional or negligent conduct of one or more other parties. This appeal is not the solution to her woes.

[20] Furthermore, the third Respondent is apparently innocent with regard to the Appellant's misfortune. He has been using the property for years.

[21] As far as the appeal is concerned, it is truly a case of the proverbial “water under the bridge”. The matter is moot.

[22] This Court could have refused permission to reinstate the appeal after the long delay, because of a lack of merit. In view of the fact that the delay was to a large extent caused by the Appellant’s futile hope to receive reasons from the High Court, permission to reinstate is however granted. The appeal must fail though.

Order

[23] In view of the above -

- (a) The appeal is reinstated.
- (b) The appeal is dismissed with costs.



DR J VAN DER WESTHUIZEN
ACTING JUSTICE OF APPEAL

I agree



DR KE MOSITO
PRESIDENT OF THE COURT OF APPEAL

I agree



N MTSHIYA
ACTING JUSTICE OF APPEAL

FOR APPELLANT:

MS. M LEPHATSA

FOR SECOND RESPONDENT:

MR. S E PULE