



LESOTHO
IN THE COURT OF APPEAL OF LESOTHO

HELD IN MASERU

C OF A (CIV) 02/2024

In the matter between:

MONAHENG CASWELL RATŠIU

APPELLANT

AND

STANDARD LESOTHO BANK LTD

1ST RESPONDENT

LESOTHO BANK (LIQUIDATION)

2ND RESPONDENT

THE ESTATE OF LATE KEBITSA JULIUS RATSIU

3RD RESPONDENT

ESTATE OF THE LATE MASELLO ADEL RATSIU

4TH RESPONDENT

THE MASTER OF THE HIGH COURT

5TH RESPONDENT

DEPUTY SHERIFF (Mr. V. Masenyetse)

6TH

RESPONDENT

MICHAEL PHALO PHATELA

7TH RESPONDENT

LAND ADMINISTRATION AUTHORITY

(COMMISSIONER OF LANDS)

8TH

RESPONDENT

REGISTRAR OF DEEDS

9TH RESPONDENT

MASERU CITY COUNCIL

10TH RESPONDENT

ATTORNEY GENERAL

11TH RESPONDENT

CORAM: SAKOANE CJ
DAMASEB AJA
DR P. MUSONDA AJA

HEARD: 15 APRIL 2024

DELIVERED: 3 MAY 2024

SUMMARY

Sale in execution - sale not challenged by judgment debtor during her lifetime - property transferred and registered in names of buyer - whether an heir has any right to seek nullification of the sale, transfer and registration of the property in the names of the buyer.

JUDGMENT

SAKOANE CJ:

Introduction

[1] The issue in this appeal is whether the heir has *locus standi* to challenge a sale in execution of immovable property processed and concluded during the lifetime of deceased judgment-debtor. *Mathaba J* decided the issue against the heir who is the appellant.

Background facts

[2] In 2001 (date is not disclosed in the record) Standard Lesotho Bank (the 1st respondent) sued the appellant's

mother who traded as *Mantšonyane* Hotel and obtained judgment in its favour.

- [3] On 16th December 2002 a writ of execution was issued against her immovable property.
- [4] The immovable property was bought by the 7th respondent (the buyer) at a sale in execution on 31st March 2003. On 19th July 2009, the deputy-sheriff registered the property in his names and obtained a lease. He transferred the property to the 7th respondent on 18th May 2015 having obtained the statutory consent of the Director General of the Land Administration Authority¹ on 30th March 2015.
- [5] The appellant's father and mother passed on on 3rd February 2011 and 29 January 2011, respectively. Thereafter the appellant was appointed by the family as their heir on 27th May 2021.
- [6] The family letter appointing the appellant as the heir mentions the property as the residential plot at Ha *Thamae* Deed No. 8007. This is the deed number under which the parents of the appellant registered the plot in the Deeds Registry on 23rd January 1969.
- [7] After being appointed as the heir, the appellant approached the Master of the High Court for assistance to transfer and register the property into his names. After a

¹ In terms of sections 35 and 36 of the Land Act, 2010

survey was done, he discovered that a lease on it had already been issued to the 7th respondent in 2015. Therefore, a second lease could not be issued.

- [8] On perusal of the files of the Master, the appellant also discovered that the Bank had indeed sued his mother and obtained judgment in its favour. Issuance of a writ followed, and the immovable property attached and sold in execution. The deputy-sheriff transferred and registered it in his names and subsequently in the names of the 7th respondent.

Discussion

- [9] The nub of the appellant's case is that by virtue of his status of heirship, he has *locus standi* and the right to seek the nullification of the attachment and sale of the property as it could not be sold without the consent of the mortgager (his late mother). To succeed in the endeavour to wrestle the property from the buyer, appellant must jump over the following seven hoops:

- (a) Failure to service a mortgage bond or pay on the due date triggers the exercise of the right of the mortgagee to foreclose and sell immovable property in execution².

² Nedcor Bank Ltd v. Kindo and Another 2002 (3) SA 185 (CPD)

- (b) The mortgagee's consent to release the property from the operation of the bond, is not required for the deputy-sheriff to transfer the property to the buyer³.
- (c) On attachment of the property in execution, the judgment creditor acquires a real right, known as *pignus judiciale* (judicial mortgage in favour of the judgment creditor). The effect thereof is that the attached property passes out of the estate of the judgment debtor and the judgment creditor is entitled to proceed with the sale and get its proceeds⁴.
- (d) An invalid or defective sale in execution is perfected after delivery and registration of transfer. The sale can only be impugned on grounds that the purchaser's acquisition was tainted with bad faith, or knowledge of defect⁵.
- (e) Upon transfer of the *dominium* in the property, the estate of the judgment creditor is divested of the property⁶.
- (f) On the death of the deceased, the heir does not acquire ownership of the estate property. He

³ Section 34(1)(a) of the Deeds Registry Act No. of 1967

⁴ Dream Supreme Properties11 CC v. Nedcor Bank Ltd and Others 2007 (4) SA 380 para [14]

⁵ Sookdeyi v. Sahadeo 1952 (4) SA 568(A) at 571H - 572

⁶ Simpson v Klein NO and Others 1987 (1) 405 (WLD) @ 412A-C

acquires a mere right to claim residual assets from the executor after the winding up of the estate⁷.

- (g) The mother, who was the judgment debtor, did not rescind or appeal the judgment that authorized attachment and sale in execution. Thus, finality was reached in the *lis* between the judgment creditor and judgment debtor.

Disposition

[10] When the appellant was appointed as the heir to his mother's estate, the property had long ceased to be part of the estate. His heirship does not, therefore, bestow on him any right to inherit it. The learned Judge made a correct determination that the appellant failed to go through the seven hoops, and therefore, did not deserve to be crowned the winner. In my respectful opinion, ours is to nod approval.

[11] *En passant*, the appellant is wrong to join the estate in the suit. The estate is not a legal *persona*. The executor is the person to sue⁸.

Order

[12] In the result, the following order is made:

1. The appeal is dismissed.
2. The appellant to pay costs to the 7th respondent.

⁷ Mokhutle NO v. MJM (Pty) Ltd and Others LAC (2000-2004) 186

⁸ Wills v. Hoosen 2010(2) SA 316 (WLD)



**S. P. SAKOANE
CHIEF JUSTICE**

I agree



**P. T. DAMASEB
ACTING JUSTICE OF APPEAL**

I agree



**P. MUSONDA
ACTING JUSTICE OF APPEAL**

FOR THE APPELLANT: L. G. MOKHATHOLANE

FOR THE RESPONDENTS: S. P. SHALE