

IN THE LAND COURT OF LESOTHO

HELD AT MASERU

CIV/LC/APN/0011/2022

In the matter between

MAKHOMO THETSANE

APPLICANT

AND

MOEKETSI SABASTIAN THETSANE

1ST RESPONDENT

LAND ADMINISTRATION AUTHORITY

2ND RESPONDENT

Neutral Citation: Makhomo Thetsane v Moeketsi Thetsane and Another [2023] LSHC 163 Civ (22 March 2024)

CORAM : **BANYANE J**
HEARD : **08/06/23, 16/02/23,24/02/23**
DELIVERED : **22 March 2024**
REASONS DELIVERED : **10 Sep 2024**

Summary

Cancellation of a deed of transfer on the grounds of the fraud-respondent relying on the agreement of sale without adducing evidence of its terms- abstract theory of transfer of ownership discussed-requirements of real agreement- owner's intention to transfer lacking-deed canceled

ANNOTATIONS

Legislation;

1. Transfer Duty Act of 1966
2. Stamp Duties Act 1972

Cited Cases

Lesotho:

1. Sello v Pitso and another Civ/A/1/95

2. Mphofe v Ranthimo and another LAC (1970-79) 464
3. Mbangamthi v Phalatsi (Civ /A/25/79[1982] LSHC 99
4. Limema v Shale C of A(CIV) 53 of 2014

South Africa

1. Mckenna v Shea and others [2008] ZASCA 144
2. Nedbank v Mendelow 2013(6) SA 130(SCA)
3. Legator Mckenna Inc v Shea and Nedbank Ltd v Mendelow Nivo
4. Absa v Moore [2015] ZASCA 171
5. Senti v Naidoo LAC (2007-2008) 161
6. National Employers' General Insurance Co. Ltd v Jagers 1984(4) SA 437
7. Pillay v Krishna 1946 AD 946
8. Resisto Dairy v Auto Protection Insurance 1963 (1) SA (AD) 632
9. Kriegler v Minister and another 1949 (4) SA 821

JUDGMENT

BANYANE J

Introduction

[1] The dispute between the parties pertains to the transfer of the applicant's rights in plot No. 12291- 091 to the 1st respondent on 16 January 2015. This is a developed commercial plot with several rental apartments. It is situated at Ha Ratjomose in the Maseru Urban area. The applicant challenges the transfer on the grounds that it was fraudulently acquired. The 1st respondent defends the propriety of the transfer on the grounds that it was voluntarily made based on a sale agreement between them.

Common cause facts

[2] The applicant is the surviving spouse of the late Stephen Tlali Thetsane who passed in 2006. During his lifetime, Stephen amassed immovable property including plot 12293-014 and the contentious plot No 12291-091. He acquired the

contentious plot from Mr. Motlatsi Qobose in August 1987. On this plot are several rental apartments, about fourteen (14) in number. Although the applicant's husband departed in 2006, the lease was registered in the applicant's name several years later on 02 October 2014.

[3] It is also common cause that the couple begot five children, including the 1st respondent's mother. The applicant raised the 1st respondent from a very tender age after he lost his mother. He lived with the applicant until after he married around 2016 or 2017. He later moved out of the applicant's home to the disputed site whereat he established a home by extending two of the rentable rooms on this plot.

[4] The dispute between the parties about the disputed site commenced in June 2021 when their relationship soured. On 1 June 2021, the applicant instituted binding-over proceedings in the Magistrate Court against the 1st respondent. In these proceedings the presiding Magistrate ordered the 1st respondent to return title documents for the disputed plot as well as registration documents of the applicant's vehicle. This was on 14 June 2021.

[5] Following this order, the 1st respondent filed an application in the Magistrate Court reclaiming these properties from his grandmother. He sought an order interdicting the applicant from collecting rentals on this plot, an order directing her to

release the vehicle documents as well as title documents for the disputed plot. On 07 June 2021 the Court issued an interim order for the reliefs sought. This order was confirmed on 29/07/2021. Both these orders were granted by default.

[6] On 21 September 2021, the 1st respondent applied for the committal of the present applicant for contempt of court. The applicant opposed the application. The applicant thereafter sought stay of execution of the order, and rescission of both the interim and final orders granted on 07 June 2021 and 29 July 2021 respectively. On 22 March 2022, the Magistrate Court declared the proceedings filed by the 1st respondent as null and void. The current application was thereafter filed before this Court.

Reliefs sought before this Court

[7] The applicant sought the following reliefs before this court:

3. It be declared that the transfer of right and interest in plot **NO. 12291-091** to the **1st Respondent** unlawful null and void and without any effect in law.
4. Directing the **2nd Respondent** to cancel the transfer of **Applicant's** right and interest to the **1st Respondent**.

5. Directing the **Respondent** to pay to the **Applicant M48,200.00 (Forty Eight Thousand and Two Hundred Maloti)** being rentals that has been collected from the Applicant's plot from June to the date of issuance of this proceeding.

6. Directing the **Respondent** to pay to the **Applicant** all rentals that would have collected after the issuance of the proceeding to the date of judgment in this matter.

The counterclaim

[8] The 1st respondent opposed the application and filed a counter-claim seeking the following orders:

- 1) That he be declared the rightful owner of rights to plot 12291-091 and all developments thereon.
- 2) That his grandmother be directed to refrain from collecting rent and interfering with his use and enjoyment of this property.
- 3) That his grandmother be directed to restore the lease and deeds of transfer for plot 12291-091 to his possession along with the documents of the corolla vehicle registered in his names.

[9] On 22 March 2024, I issued an order dismissing the 1st respondent's counterclaim and partially granting the main claim. Although the written judgment had been drafted, it was not immediately edited and furnished to the parties. The delay in the delivery of written reasons is deeply regretted.

The Trial

[10] At the hearing of this matter, the applicant testified that she was born in 1942. She told the Court that the 1st respondent's mother was unmarried and died when the 1st respondent was an infant. She testified that she singly raised the 1st respondent and incurred all his education expenses. After completing his studies at Bloemfontein Technikon, the 1st respondent returned home to live with her because he had no job.

[11] Around the year 2016 or 2017, the 1st respondent married. They both lived with her until, by her consent they moved out to occupy one of the rooms at the disputed plot. She testified that they moved out because other grandchildren were visiting for the Christmas holidays. Although their stay on the disputed plot was intended to be a short one for Christmas holidays, it gained permanency. The 1st respondent and his wife continued to live there.

[12] She told the Court that they had a close relationship with the 1st respondent, so she entrusted him with her errands and several other responsibilities including rent collection on the disputed plot. Because of this close relationship of trust, the 1st respondent always had the use of the applicant's vehicle. The 1st respondent also had access to all her important matters and

documents including bank accounts, leases, and identity documents. Some of these documents were kept in a briefcase which the 1st respondent always carried around in the vehicle.

[13] Sometime in 2021, they had a fallout and she told him to vacate the disputed land and return her vehicle. According to her, the 1st respondent had become unruly and hostile towards her by ignoring her instructions, refusing to run her errands, and being unfaithful with the rentals collected. During the argument, the 1st respondent made a shocking revelation that the land is registered in his name. She followed up the matter with relevant authorities (Land Administration Authority (LAA)).

[14] She discovered that her rights in the disputed land had been transferred to the 1st respondent. On examination of the documents effecting the transfer, namely, the application for consent to transfer, a power of attorney authorizing an attorney to effect the transfer, a declaration by the transferor, and other documents, she observed that her signature had been forged on some of these documents. When she discovered this, she sought assistance from legal aid and thereafter instituted binding-over proceedings in the Magistrate Court (earlier referred to).

[15] She admitted signing some transfer documents such as an affidavit on p35 of the record. According to her evidence, she signed this document because she had sold a piece of land to some lady (unnamed), so she believed that she was processing the transfer to this lady.

[16] She further testified that the 1st respondent cunningly accessed her identity documents to process the transfer. She said one day she caught a child sneaking into her house to take her identity document. On confrontation, the child said she was acting on the instruction of the 1st respondent.

[17] She further testified that the 1st respondent extended the two rental rooms without her consent. She told the Court that she was unaware of the construction on the plot until 2020 because the 1st respondent avoided driving her to the disputed land for some time. One day in 2020, she requested someone to take her there. When she arrived, she found this new structure in which the 1st respondent and his wife live.

[18] It was suggested to her in cross-examination that after completion of the structure, she was invited to a housewarming party. She denied this and stated that she considered the invitation as a way for the 1st respondent to show her the improvements he had made on the site.

[19] It was further suggested that she concealed that the main cause of her discontentment was a fallout she had with the 1st respondent's wife in 2021 and that she became upset because the 1st respondent sided with his wife. She denied having any clash with the 1st respondent's wife.

The respondent's case

[20] In the counter-application, it is averred that sometime in 2014, the applicant '*voluntarily decided to bequeath plots No 12293-014 and 12291-091*' to her son Khotso Thetsane and 1st respondent respectively. She accordingly signed the necessary transfer documents to relinquish her rights over these plots. After the disputed land was transferred to 1st respondent, he built his house and then invited his grandmother to a housewarming party in 2018.

[21] At the trial, the 1st respondent testified that sometime in 2013, the applicant told her son, Khotso Thetsane that she was desirous to dispose of her rights over plots No.12293-014 and plot 12293-091(the contentious plot) to them. Because they did not know whether the plots were registered, they (Khotso and himself) accompanied their grandmother to LAA to make inquiries. After the lease was endorsed in his grandmother's name, the LAA apprised them about the transfer process. His

grandmother then applied for consent to transfer. After obtaining the certificate of consent, he drove her to attorney Malebanye to execute the necessary transfer documents.

[22] Under cross-examination, he testified that he acquired the land by sale and that the sale agreement was oral and never reduced to writing. He said he paid M59 0000 as a consideration. He paid this amount in four parts. The first payment of M16 000 was made to a carpenter who constructed built-in wardrobes for the applicant. An amount of M 19,000 was paid to cover impoundment fees after the applicant's livestock was impounded in South Africa. The third amount of M18 000 was paid towards renovations of certain properties held by his grandmother at Ladybrand. The last amount of M6000.00 covered his grandmother's medical bills. He also bought an engine for the applicant's vehicle. He told the Court that he kept no record of these payments because of their harmonious relationship.

[23] He further testified that he married in 2015. In 2018, he developed the plot. In 2019, he moved to his new house. He even invited his grandmother to a housewarming party.

[24] Sometime in 2021, a disagreement arose between them. The applicant accused him of neglect. She also accused his wife of being disrespectful to her. As a result, she reclaimed everything she gave to him.

[25] Ms. Molelekeng Mohajane from the Land Administration Authority (LAA) also testified at the trial. She explained the procedure followed to transfer land rights. She testified that as the first step, both the transferor and transferee fill in certain forms to obtain consent to transfer. If the application for consent is successful, a certificate of consent is issued. Once issued and collected by the concerned parties, the parties would then consult a lawyer to draft the necessary transfer documents.

[26] As part of her evidence, the officer handed in the application for consent dated 08 October 2014 although she could not confirm whether it was filled in by the applicant herself or the LAA officials as they sometimes assist applicants in filling the forms. The consent certificate was issued on 09 October 2014 and collected by the 1st respondent on 14 October 2014. She handed in several other documents, whose content is discussed later in the judgment.

The parties submissions

[27] The thrust of Mr. Ndebele's argument for the applicant is that although the 1st respondent alleges the existence of a sale agreement, he failed to produce a copy of the alleged agreement or adduce any form of evidence as proof of such agreement. Similarly the 1st respondent alleged, without proof, that the applicant appeared before the conveyancers, Ms. Ramphalile and Mr. Malebanye to sign the documents effecting the transfer.

[28] He directed the Court's attention to the fact that the consent forms incorrectly described the property as having four rooms. He submits that if the applicant had filled in the forms herself, she could not have distorted the true nature of the developments in this plot. Moreover, she could not have sold this developed property worth M800,000.00 at M59,000.00 only.

[29] Ms. Rakharebe for 1st respondent submitted on the other hand that the transfer is above board and unimpeachable. She developed the argument by referring to the evidence of the LAA official Ms. Mohajane, which in her view shows that the procedure for application of consent to transfer as set out in regulation 46 (i) of the Land Regulations of 2011 had been followed. Moreover, all the necessary documents to effect the transfer were signed by the applicant. According to her, the applicant's denial is a mere ploy to renege from a voluntary disposal of her rights in favour of the 1st respondent.

Issue for determination

[30] The crisp issue for determination is whether the applicant intended to transfer her ownership to the 1st respondent and thus willingly executed all the necessary transfer documents. Allied to this main issue is the question of whether the applicant sold her interest in the plot to the 1st respondent.

The Law

[31] Authorities abound that where there is no intention on the part of the transferor to transfer ownership, then ownership will not pass despite registration. In Legator **Mckenna v Shea and others**¹ Brand JA laid down the requirements for the passing of ownership as follows:

“[22] In accordance with the abstract theory, the requirements for the passing of ownership are two-fold, namely delivery which in the case of immovable property is effected by registration of transfer in the deeds office - coupled with a so-called real agreement. The essential elements of the real agreement are an intention on the part of the transferor to transfer ownership and the intention of the transferee to become owner of the property. Broadly stated; the principle applicable to agreements in general also apply to real agreements. Although the theory does not require a valid underlying contract, e.g sale, ownership will not pass despite registration of transfer if there is a defect in the real agreement.”

¹ [2008] ZASCA 144

[32] In **Nedbank v Mendelow**² the Supreme Court of Appeal re-affirmed the principle that where there is no real intention to transfer ownership on the part of the owner or one of the owners, then the purported registration of transfer (and likewise the registration of any other real right, such as a mortgage bond) has no effect.

[33] Applying **Legator Mckenna Inc v Shea and Nedbank Ltd v Mendelow Nivo** the Supreme Court of Appeal in Absa v Moore³ said

“[12] It is true that where registration of a transfer of immovable property is effected pursuant to fraud or a forged document, ownership of the property does not pass to the person whose names the property is registered after the purported transfer. Our system of deeds registered is negative. It does not guarantee the title that appears in the deeds register. Registration is intended to protect the real rights of those persons in whose names such rights are registered in the Deed’s office and it is a source of information about those rights, but registration does not guarantee title and if it is effected as a result of forged power of attorney or of fraud, then the right apparently created is no right at all.”

² 2013(6) SA 130(SCA) at para 13 and 14

³ [2015] ZASCA 171

[34] In our jurisdiction, the case **Mbangamthi v Phalatsi**⁴ confirms the principle that registration is not conclusive proof of ownership and that in cases where registration has been obtained through fraud or by mistake, then in such cases registration does not confer ownership.⁵

Evaluation of Evidence

[35] With these principles in mind, I turn to analyze the evidence adduced in the present matter. The essence of the applicant's case is that she never intended to transfer her rights to her grandson. She claims that: a) she did not sign the transfer documents but her signature was forged on some of these documents.

b) She further asserts that some of the transfer documents bear her signature. For these documents, she was hoodwinked as to what she was signing. This is because she had sold a certain piece of land to some lady, and the 1st respondent assisted her with the transfer process, so she believed that she was signing transfer documents relating to this lady. She did not understand that she was transferring her property to the 1st respondent. She was therefore tricked into signing documents effecting the

⁴ Mbagamthi v Phalatsi (Civ /A/25/79[1982] LSHC 99

⁵ see also Sello v Pitso and another Civ/A/1/95⁵, Mphofe v Ranthimo and another LAC (1970-79) 464.

transfer of rights in this plot. c) The 1st respondent took her original lease and identity documents without her knowledge to cause the impugned transfer.

[36] The 1st respondent's case is that the applicant agreed to sell the disputed land to him, so they entered into a verbal sale agreement. He further asserts that he performed his part of the agreement by paying the purchase price.

[37] The proper approach where the Court is faced with mutually destructive stories was stated in **Senti v Naidoo**⁶ where the Court quoted the following passage from **National Employers' General Insurance Co. Ltd v Jagers**⁷

“[W]here the *onus* rests on the plaintiff as in the present case, and where there are two mutually destructive stories, he can only succeed if he satisfies the court on a preponderance of probabilities that his version is true and accurate and therefore acceptable, and that the other version advanced by the defendant is therefore false or mistaken and falls to be rejected. In deciding whether that evidence is true or not the court will weigh up and test the plaintiff's allegations against the general probabilities. The estimate of the credibility of a witness will therefore be inextricably bound up with a consideration of the probabilities of the case and, if the balance of probabilities favours the plaintiff, then the court will accept his version as being probably true. If however the probabilities are evenly balanced

6 LAC (2007-2008) 161 at 164 G-I

7 1984(4) SA 437 at 440E-G :

in the sense that they do not favour the plaintiff's case any more than they do the defendant's, the plaintiff can only succeed if the court nevertheless believes him and is satisfied that his evidence is true and that the defendant's version is false.”

[38] In **Pillay v Krishna**,⁸ the court said the following about the incidence of onus.:

“The first rule is that the party who claims something from another in a Court of law has the duty to satisfy the Court that he is entitled to the relief sought. Secondly, where the party against whom the claim is made sets up a special defense as being the claimant; for the special defence, it is regarded in respect of that defense as being the claimant; for the special defense to be upheld the defendant must satisfy the Court that it is entitled to succeed on it. As the learned authors Zeffert et of South African Law of evidence (2nd edition) at 57 argue, the first two rules have been read to mean that the plaintiff must first prove his or her claim unless it be admitted by the defendant in his plea. The third rule is that he who asserts proves and not he who denies. A mere denial of facts which is absolute does not place the burden of proof on he who denies but rather on the one who alleges.”

[39] In **Limema v Shale**⁹ the Court of Appeal held that where a respondent files a counter-claim, he places himself in the same position as the applicant in respect of the onus of proof.

⁸ 1946 AD 946 at 951-952

⁹ C of A(CIV) 53 of 2014

[40] The onus rested on the applicant to prove fraud in the transfer process. Conversely, the 1st respondent bore the onus to prove the existence of the contract of sale, its terms, and the alleged performance.¹⁰

[41] I proceed to examine, evaluate the evidence, and apply the aforesaid principles of law to answer the essential question of whether either party has discharged the onus, which rests upon them to prove their respective claims on the balance of probabilities.

The valuation of the land

[42] The LAA records reveal that the 1st respondent initiated the transfer process by engaging the valuer to ascertain the value of this land. This was done presumably because transfer deeds are subject to duties as prescribed in the **Stamp Duties Order of 1972** (as amended). According to the schedule of this Act, the value of property or consideration is determinative of stamp duties payable.

¹⁰ (Resisto Dairy v Auto Protection Insurance 1963 (1) SA (AD) 632 at 645, Kriegler v Minister and another 1949 (4) SA 821 @ 827.

[43] The valuation report prepared by the valuer Mr. Meene Putsoa on 05 September 2014 shows the following pertinent facts:

- a) that the valuer received verbal instruction from Mr. Moeketsi Thetsane (1st respondent) to inspect the property for advertising on the open market value as of 04 September 2014.
- b) The property was reportedly inspected on 04 September 2014
- c) Under the heading improvements, it is recorded:

“This comprises of the main building and outbuildings, but they are not the subject matter as all the improvements on the land are being erected by the transferee.”

43.1 Concerning the market value, the valuer then recorded that:

“Having taken location and relevant facts into account, the market value of the property is M59, 000.00. This valuation is broken down as follows:

Land M 58 590.00

Say M 59 000.00”

[44] It appears clearly from this report that the valuation excluded the improvements on this land and that the 1st respondent told the valuer that he effected improvements on this land. It will be recalled that the disputed land is developed with 4 double-roomed apartments, seven (7) single apartments, two of which were extended by the applicant by about two more rooms, and a bigger room rented as a shop. In addition, the 1st respondent in his evidence said that he started building on this land in 2018. Clearly it is correct to say that the improvements on this land as of 2014 were carried on by him.

[45] Under cross-examination, the 1st respondent stated that the LAA officials advised him to exclude the improvements from the valuation. He did not, however, disclose the office nor the official that so advised.

[46] If the 1st respondent was so advised, he would reasonably be expected to have conveyed this advice to the applicant if they were acting together in the transfer process. Interestingly, the application for consent, to which the valuation report is attached, includes the developments on the plot although the nature of developments on this land is also distorted. On this application, it is recorded that there are only 4 rental apartments on this plot. As stated earlier, there are about 14 rentable rooms on this plot. If the 1st respondent was advised not to disclose the developments on the plot, it makes no sense why the applicant would paint a different picture on the application for consent if she filled in the application.

[47] Moreover, if the applicant filled in the consent form, she would not later declare that there is no development on this plot. The declaration I refer to was signed by the transferor according to section 15 of the **Transfer Duty Act of 1966** (as amended) on 31 October 2014 (more about it later). On this declaration, the transferor declared that:

‘3. At the date of the sale, the property consisted of no building and other improvements as are found on residential premises.’

[48] The 1st respondent did not explain these discrepancies. Absent an explanation, a reasonable inference to be drawn from these inconsistencies is that the 1st respondent acted single-handedly to defraud the government of duties chargeable according to law. In other words, the 1st respondent misrepresented the value of the land to evade the legal transfer duties chargeable against this property.

[49] Moreover, the 1st respondent did not explain why he collected the certificate of consent after its issuance. The evidence revealed that the certificate of consent was issued on 09 October 2014 and that he collected it on 14 October 2014. He did not explain how he knew it had been issued. He did not even suggest that his grandmother authorized him to collect it.

The alleged sale and consideration amount

[50] The misrepresentation of the developments aside, the 1st respondent alleges, without any proof, that he purchased the disputed land from his grandmother for M 59,000 as consideration which he paid in installments. A party who relies on a contract must plead and prove the terms of the contract. ¹¹ Notably, the 1st respondent did not allege a contract in his answer to the main claim or the counter-claim. It surfaced for the first time in his testimony before the Court.

[51] In his testimony, the 1st respondent cursorily dealt with this aspect. He did not disclose the place, the date on which the alleged sale agreement was concluded nor its material terms. He painted a very blurry picture of this agreement. He did not tell the Court how and when the purchase price was to be paid or at what stage of payment was the transfer to be effected. He also did not disclose the dates of the alleged payments, namely, medical bills, impoundment fees, and carpentry work for his grandmother.

[52] Despite the allegations of the form of payment of the purchase price, the records from the LAA paint a different picture altogether. They reveal that after the certificate of consent was granted, both the transferor and the transferee made certain declarations about the manner of acquisition of the property (presumably according to section 15 of the **Transfer Duty Act**

¹¹ Resisto Dairy v Auto Protection Insurance 1963 (1) SA (AD) 632 at 645, Kriegler v Minister and another 1949 (4) SA 821 @ 827.

of 1966 (as amended) before a commissioner of oaths Attorney Ramphalile. This was on 31 October 2014. In these declarations, it is recorded that the applicant sold the land by a private treaty for M59 000.000 on 27 June 2014.¹² According to these declarations, the amount was paid in cash, and no other method.¹³

[53] As stated earlier the value of property or consideration is relevant to determine stamp duties payable in terms of the Stamp Duties Order of 1972(as amended). Although the declarations reflect that the land was sold on 27 June 2014 for M 59 000, it will be recalled that the value of the property was only established by the valuer in September 2014 and not any time prior.

[54] The Absence of a written agreement or any other form of evidence that the applicant sold the land for M59 000 on 27 June 2014, and the absence of any form of proof of payment of the alleged amounts, lead to an irresistible conclusion that the 1st respondent manufactured this figure based on the valuation report. This is because it is improbable that the applicant could

¹² This date and consideration amount are also recorded on the power of attorney appointing the attorney Mr. Sekake Malebanye to effect the transfer, also signed on 31 October 2014.

¹³ p 31 of the record

have sold the land for M 59 000 in June 2014, yet she did not even know the value of this land at the time as the valuation was only carried out in September 2014.

[55] On the totality of the facts of this case, the Court finds that the 1st respondent failed to discharge the onus to prove the existence of the agreement or its terms as well as the alleged payment of the purchase price. Once he failed to prove the sale agreement on which he relied, he could not successfully prove that the applicant intended to transfer her rights to him.

[56] This Court further finds that the applicant's version that she did not participate in the transfer process but that the 1st respondent singly facilitated it, is borne out by the LAA record.

[57] Even if the applicant signed some of the transfer documents, it is clear, in my view, that she never intended to part with her ownership of the plot. The 1st respondent put up no evidence controverting the applicant's allegations that at one point, he was assisting her in the transfer process relating to one lady to whom she sold a piece of land. It, therefore, seems probable that she believed that she was signing transfer documents in favour of this lady. She was therefore misled into changing ownership in favour of the 1st respondent.

[58] For these reasons this court concludes that there is a defect in the real agreement, that is, there was no intention on the part of the applicant to transfer ownership of this land to the 1st respondent. Accordingly, ownership did not therefore pass despite registration.

Claim for rentals

[59] One last aspect that requires comment is the relief sought under prayer 5. The applicant claims that the 1st respondent had been collecting rent from tenants. She sought an order directing the **Respondent** to pay the **Applicant M48,200.00 (Forty-Eight Thousand and Two Hundred Maloti)** being rentals that had been collected from the Applicant's plot from June to the date of issuance of this proceedings.

[60] The 1st respondent asserted that the applicant collected rentals despite the registration of the land in his name. It is common cause that the collection of rentals was one of the issues in the litigation before the magistrate Court. In those proceedings, the 1st respondent sought an order interdicting the applicant from collecting rent. Moreover, the applicant did not refute the allegations that some tenants paid rentals directly to her. The evidence also revealed that for the longest time, the applicant entrusted the 1st respondent with rent collection. In my view the applicant's evidence was not articulate on this

aspect. She did to explain as to when he instructed the 1st respondent to stop collecting rentals, and how much he collected thereafter until these proceedings were launched. Evidence supporting this relief is therefore insufficient.

Order

[61] Accordingly, the following order is made:

1. The 1st respondent's counterclaim is dismissed
2. The 1st respondent is interdicted from collecting rent in **No. 12291-091**
3. It is declared that the transfer of rights and interests in plot **No. 12291-091** to the **1st Respondent** is unlawful null and void and without any effect in law.
4. The **2nd Respondent** is directed to cancel the transfer of **Applicant's** right and interest to the **1st Respondent**.
5. The **Respondent is directed** to pay the **Applicant** all rentals that would have been collected after the issuance of the proceeding to the date of judgment in this matter.
6. No order of costs

P. BANYANE
JUDGE

For applicant : Mr. Ndebele

For 1st respondent : Adv Rakharebe