

Judge "unscrambles an egg": 20 years of property sales reversed

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A high court judge has "unscrambled the egg" and undone a series of what he deemed to be "unlawful" sales of a property which began 20 years ago, returning it to its original owners.



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Johannesburg High Court Acting Judge Tebego Thupaatlase ruled that the original sale in execution of the property in 2001 by the then BOE Bank (now Nedbank), had been done without judicial oversight or authority.

The bank bought the property, adding it to its own property portfolio, for R100. It then on-sold it. In all, it was transferred to three different entities and was finally sold to the present owner Tobeka Mahamba in 2014.

The original owners Agnes Malinga and Joseph Njoko continued to reside in their home over this period, believing that they were still the owners.

It was only when Mahamba applied in the Sebokeng magistrate's court for their eviction, they say, that they became aware

that their home had been sold more than 20 years before.

Acting Judge Thupaatlase, in the application before him, said he had to determine the legality of the transactions over the years.

“The analogy that the court is called upon to unscramble an egg, which was scrambled some two decades ago, is not far-fetched,” he said.



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'Chequered and messy' history

“The matter has a history that is chequered and messy, so to speak,” the judge said.

He said it was not in dispute that Malinga and Njoko were the original owners who had obtained financing through the now defunct NBS Bank during 1990. The bank then went through several mergers and eventually in 2005, most of its assets and liabilities were transferred to Nedbank.

He said according to Malinga and Njoko, during this time they did not know where to pay their instalments and they fell into arrears.

Nedbank, on behalf of BOE Bank, submitted that this resulted in the foreclosure and sale in execution in 2001.

The judge said while the bank said the couple then paid rent, entitling them to stay in the property “there is no indication that they were aware of this state of affairs and there is no further evidence of rental agreement”.

The applicants attached receipts showing that payments were made around 2003 which they believed to be repayments on their bond.

They said in 2014 they “suspected something was amiss” when they were visited by “unscrupulous and illegal estate agents”.

This was at the time that the property was being marketed by a company called CUF Properties (which had bought it from Company Unique Finance which had bought it from Meadowstar Investments which had bought it from the bank).

CUF sold it to Mahamba.

“This case is about the rights of an owner of a property that was sold without his or her knowledge and without due legal process ... on the other hand, the case also implicates the rights of the bona fide [genuine] purchaser,” the judge said.



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'Disturbing behavioural pattern'

“The facts of this case reveal a very disturbing behavioural pattern of the various banking institutions which morphed after

the demise of NBS. It is not clear how the various ownership changes were communicated to existing clients.”

He said the fact that the property had been sold for R100 was the kind of “mischief” which was to be avoided through judicial supervision.

“There is no indication that any judicial processes were instituted when the home loan agreement was cancelled around 2001,” he said.

He said this meant that the foreclosure and sale by the bank was tainted with illegality. And because of this, the subsequent sales were also tainted.

He declared the repossession of the property by the bank to be unlawful and invalid and the subsequent sales and transfers to be null and void.

He ordered the Registrar of Deeds to cancel all the transfers and to register the property in the names of the applicants within 60 days.

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