Liability of the Registrar of Deeds for negligent transfer of immovable property

The decision in Stirling v Fairgrove (Pty) Ltd and Others shows that the registrar of deeds can be held liable for a loss suffered as a result of the negligent conduct of her staff in the transfer of immovable property.

The facts of this case are as follows: in 2015, the Applicant, Stirling, an owner of immovable property, found out that her house had been sold and transferred, without her knowledge, to the Third Respondent, Alvares, who shortly thereafter sold it to the First Respondent, Fairgrove. Alvares alleged that he paid R 2 790 000.00 for the property while he sold it to Fairgrove for R 3 650 000.00.

The Applicant approached the High Court for an order declaring that she was still the owner of the property and for the expungement of the two deeds of transfer, the first one to Alvares and the second to Fairgrove.

In a counter-application, Fairgrove sought damages against the Second Respondent, the registrar of deeds, for her role in allowing a blatantly fraudulent transfer to take place, as well as against Alvares for his fraudulent activities. The claims were meant to recover the purchase price and transfer duty, which Fairgorve had paid.

Alvares instituted a separate application against the estate agents, Phungula-Nkosi Properties, who sold the property to him, alleging that he was a victim of their fraudulent activities. He also contended that the registrar of deeds was to blame for allowing the fraud to take place. The applications were consolidated and dealt with together. The application of Alvares against the estate agents was dismissed with no order as to costs. The dismissal was due to the fact that it did not appear that Alvares ever bought the property, as it was fraudulently transferred to him, free of charge.

With regard to the main application of Stirling, an order was granted in terms of which it was declared that she was the lawful owner of the property. To that end, the registrar of deeds was ordered to cancel and remove from her records the

title deeds issued, the one in favour of Alvares and the other in favour of Fairgrove.

The court held that if the agreement was tainted with fraud or obtained by some other means that vitiated consent, ownership of the property would not pass despite registration in the deeds registry. The registrar and those employed in her office were responsible for ensuring that all the legal requirements for registration were heeded.

The Deeds Registries Act 47 of 1937 ("the Act"), conferred on the registrar of deeds significant powers and responsibilities to ensure the proper administration of a land registration system in the country. The registrar held an important oversight role which required that she and the officials in her employment scrutinise documents placed before them.

In the present case, when consideration was given to a number of deficiencies in respect of the transfer of the property to Alvares, it was clear that the deficiencies were significant and should have been identified by the registrar as a reason for rejecting the transfer. The court also said that the registrar failed to discharge her statutory duty in a reasonable and acceptable manner and was accordingly negligent. Section 99 of the Act subjected the registrar and her staff to normal standards of reasonable care and diligence and imposed liability for deviating from same.

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