Property obtained deceitfully – can I keep it?

In the matter of *MEINTJIES NO V COETZER AND OTHERS 2010 (5) SA 186* the court was faced with a situation where a property was obtained through fraud. In this matter, the deceased executed a will in 1993 in terms of which she bequeathed her entire estate to her three sons in equal shares. In 1998, she executed another will in terms of which she bequeathed certain portions of her farmland to each of her three sons.

In 2002, two of her sons committed fraud by forging her signature on a sale agreement wherein they sold 2 portions of their mother's farm to themselves. They later signed the transfer documents by forging her signature again, and the transfer of the two portions was registered in their names at the Deeds Office.

In 2003, after learning about the fraud, she executed a new will in terms of which her third 'innocent' son was named the sole heir and executor of her estate. However, she took no further legal action against her two sons based on the fraud. As such, the two portions fraudulently sold and transferred were still registered in their names.

After her death, the innocent son, now acting as executor, brought an action for the rectification of the title deeds to indicate that the deceased was still the owner and not his two brothers. The effect of this would be that he would then inherit those two portions as the sole heir in terms of the will. The other two brothers defended the action.

The court had to decide whether the deceased's failure to take further legal action to address the fraud committed by her two sons amounted to an implied waiver of her ownership of the two portions of land.

Interestingly, the provincial division of the High Court ruled in favour of the two brothers, allowing them to keep the land. However, the executor appealed the decision to the Supreme Court of Appeal, who held that the abstract theory of ownership applies. According to the abstract theory, two requirements for the transfer of ownership apply, namely:

- There must be delivery of the item – in the case of immovable property, this is registration in the Deeds Office; and
- There must be a real agreement between the parties.

The latter requirement does not refer to a standard agreement, such as a sale agreement, but rather to an agreement between the parties in which the transferor intends to transfer the property and the transferee intends to receive the transfer.

The court then applied these principles and concluded that there could not have been a real agreement since the deceased was unaware of the sale or registration. She, therefore, could not have intended to transfer ownership.

The court also stated that the facts did not support the conclusion that she had waived her ownership. Therefore, it was unnecessary for the court to decide on the question of whether it would be possible to waive ownership rights in this manner.

The 'innocent' son thus won the case, and the court ruled that the deeds should be rectified to indicate that the deceased was the owner at the time of her death. The effect of this was that the 'innocent' son, as the sole heir, inherited all 3 portions of the farmland.