

# Real Estate Law ALERT

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CLIFFE DEKKER HOFMEYR

INCORPORATING  
KIETI LAW LLP, KENYA

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### Fraudulent immovable property transfers: Fraud unravels all

The recent judgment handed down by Judge Adams in *Botha NO v Leboko-Radebe and Others* (16835/2021) [2022] ZAGPJHC 724 (22 September 2022), in the High Court Gauteng Division, Johannesburg, considered whether fraud should result in the cancellation of a title deed relating to immovable property.



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## Fraudulent immovable property transfers: Fraud unravels all

The recent judgment handed down by Judge Adams in *Botha NO v Leboko-Radebe and Others* (16835/2021) [2022] ZAGPJHC 724 (22 September 2022), in the High Court Gauteng Division, Johannesburg, considered whether fraud should result in the cancellation of a title deed relating to immovable property.

Jeremiah Radebe divorced Nthibi Leboko-Radebe (Leboko) in March 1997. In 2002, Radebe bought immovable property, however, two years later, in 2004, he passed away. Upon Radebe's death, Leboko pretended to be the surviving spouse of the deceased. She fraudulently obtained letters of authority entitling her to take control of the assets of the deceased and then transferred the property into her name. She further obtained a loan from ABSA Bank and registered a mortgage bond over the property as security.

Mr Botha, Radebe's estate executor and the applicant in this case, applied for vindicatory relief in the form of the transfer of the property to Leboko being cancelled, and for the property title and ownership to be returned to the deceased's estate.

The question the court had to consider was whether the transfer of the property into Leboko's name was valid and based on a lawful and sustainable cause.

The court found that it was not. The transfer of the property occurred because of Leboko's fraudulent activity and misrepresentations. It was therefore tainted by fraud. This evoked a well-known principle in our law, which is that "*fraud unravels all*". Accordingly, registration of the transfer and of the bond must be set aside.

Importantly, it does not matter that in the taking out of the bond ABSA Bank was innocent and not implicated in the fraud. Even if an innocent party may be prejudiced by the unravelling of the fraud, the principle stands, and the transaction is void. As an example, if A sells a property to B fraudulently, then B subsequently sells it to C legitimately and C sells it to D legitimately, the fraudulent activity of A to B unravels all the later transactions. B, C and D would have no rights to the property.



## Fraudulent immovable property transfers: Fraud unravels all

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Section 6 of the Deeds Registries Act 47 of 1937 provides that:

*"Registered deeds not to be cancelled except upon an order of court:*

*(1) Save as is otherwise provided in this Act or in any other law no registered deed of grant, deed of transfer, certificate of title or other deed conferring or conveying title to land, or any real right in land other than a mortgage bond, and no cession of any registered bond not made as security, shall be cancelled by a registrar except upon an order of court.*

*(2) Upon the cancellation of any deed conferring or conveying title to land or any real right in land other than a mortgage bond as provided for in subsection (1), the deed under which the land or such real right in land was held immediately prior to the registration of the deed which is cancelled, shall be revived to the extent of such cancellation, and the registrar shall cancel the relevant endorsement thereon evidencing the registration of the cancelled deed."*

In summary, section 6(1) states that no title deed can be cancelled unless an order of court is granted. Section 6(2) goes on to say that if a title deed is cancelled, the deed which existed immediately prior to the registration of the cancelled deed, is revived. The court therefore ordered the title deed to be cancelled in terms of section 6, and the property to be transferred back to Radebe's estate late.

This case affirms the fact that if an agreement and subsequent transfer are tainted by fraud, the courts have the power to order the transfer cancelled and revive the previous ownership.

**Mike Collins**

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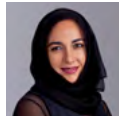
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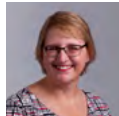
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