

LESOTHO / JUDGMENT

Seipati Ramone V Standard Lesotho Bank & 4 Others (CCT/0517/2024) [2025] LSHC 240 (11 September 2025) [2025] LSHC 240

COURT
High Court

CASE / FILE NUMBER
CCT/0517/2024

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IN THE HIGH COURT OF LESOTHO
(COMMERCIAL DIVISION)

HELD AT MASERU

CCA/ /2025

CCT/0517/2024

SEIPATI RAMONA

APPLICANT

AND

STANDARD LESOTHO BANK LTD

DEPUTY SHERIFF MONYAKO

LAND ADMINISTRATION AUTHORITY

THABISO MAKEPE

1ST RESPONDENT

2ND RESPONDENT

3RD RESPONDENT

4TH RESPONDENT

Neutral Citation: Seipati Ramona v Standard Lesotho Bank Ltd & 3 Others [2025]

LSHC 240 Comm. (11 SEPTEMBER 2025)

CORAM:

MOKHESI J

HEARD: 19 AUGUST 2025

DELIVERED: 11 SEPTEMBER 2025

SUMMARY

CIVIL PRACTICE: Application for rescission of judgment in terms of the provisions of Rule 159 of the High Court Civil Litigation Rules 2024 it being alleged that the court acted in error when it made the settlement agreement between the parties an order of court after the applicant had accumulated arrears on his mortgage repayment- Held, the a deed of settlement being made an order of court was not meant to replace the parties' mortgage agreement but to reinforce it- In terms of the agreement the 1st respondent was granted the right to proceed to execute

in the event of the applicant's default – embodying this right in the agreement was meant to obviate instituting proceedings to recover the debt, and therefore when the

1st respondent triggered it, the applicant cannot be heard to complain- The court having not found an error to have been committed dismissed the application with costs.

ANNOTATIONS

LEGISLATION

The High Court Civil Litigation Rules 2024

CASES

LESOTHO

CGM Industrial (Pty) Ltd v Adelfang Computing (Pty) Ltd LAC (2007-2008) 463

Standard Lesotho Bank v Tlokotsi Mphale & Another (CCT/0064/2018) [2024]

LSHC 252

SOUTH AFRICA

Arcus v Arcus 2022 (3) SA 149 (SCA)

Nyingwa v Moolman N. O 1993 (2) SA 508 (Tk)

JUDGMENT

[1]

Introduction

The applicant's counsel at hearing of the matter conceded that the application lacks any merit. I think that concession was correctly made as it becomes apparent in the ensuing discussion. The applicant brought this rescission application on urgent basis. It was brought in terms of the provisions of Rule 150 of the High Court Civil Litigation Rules 2024 seeking the following reliefs against the 1st respondent: "1. That the modes and periods pertaining to notices, service and filing be dispensed with and the matter be heard on short notice as an urgent application.

2. That a rule nisi be issued returnable on the date and time to be determined by this Honourable Court, calling upon the respondents to show cause, if any, why;

- (a) Execution of the judgement of the Honourable Court and public auction in CCT/0517/24 shall not be stayed pending the final determination of this application.
- (b) The 3rd respondent shall not be ordered to put in abeyance the process of deregistering and transferring plot number 13302- 135 from the applicant into the names of the 4th respondent pending finalization of this matter.
3. The judgment of this Honourable Court dated the 2nd December 2024 in terms of which plot number 13302-135 situated at Lithabaneng Maseru Urban area was declared specially executable be rescinded and set aside.
4. That public auction held on the 27th day of June 2025 in terms of which plot number 13302-135 was sold in execution be declared null and void ab initio.
5. The costs of suit.”
- [2] Background facts On 20 January 2012 the 1st respondent bank agreed to extend credit facility in the form of a home loan to the applicant in the sum of M486,786.00 repayable within 240 months at the monthly instalment of M6,594.59. In terms of the conditions of the agreement the applicant caused a mortgage bond to be registered over his property known as plot number 13302-135 situated at Lithabaneng Maseru Urban area. The mortgage bond over the property was registered in the Deeds Registry on 8 February 2012. One of the terms of the bond was that in the event the applicant failed to observe and perform in terms of the bond, the 1st respondent was entitled to forthwith consider the full amount claimable and without notice to the applicant proceed to recover the amount by having the mortgaged property declared specially executable for the full amount of the bond.
- [3] The applicant failed to pay the monthly instalments as agreed and as of 08 August 2024 was in arrears in the sum of M48,119.94 and the full amount due and payable on default as at that date was M447,123.55 plus interest at the prime rate plus 2% per annum. The property in question comprises of commercial property which the applicant rents out to tenants. It would appear that he lost his job and could no longer keep up with monthly instalments in terms of the bond. Before the 1st respondent could sue out originating application against the applicant, he was served with pre-litigation notice in terms of Section 21 of the Financial Consumer Protection Act 2022. Despite this notice he could not pay the arrears as demanded resulting in the 1st respondent suing out originating application in terms of which it claimed an amount of M447,123.55 plus interest and an order declaring the property in question specially executable.
- [4] Upon the applicant receiving the originating application sought to settle the matter. Towards that end he approached the 1st respondent’s attorney’s offices to negotiate the terms of settlement. Consequently, parties came to a settlement and under paragraph 5 of the agreement the parties agreed on the timeframes for payment of the arrears in the following manner: (i) Payment of the amount of M20,000.00 on or before 30 November 2024; (ii) Payment of the sum of M30,000.00 on or before 31 December 2024; (iii) Payment of monthly

instalments in terms of the mortgage bond until the applicant would have fully paid off the loan. [5] In terms of paragraph 2 the parties agreed that the applicant's property is declared specially executable. Relevant for present purposes, in terms of paragraph 6 of the agreement the parties agreed that: "The applicant [1st respondent] may enforce the court order contemplated in clause 2 above by issuing writ of execution against the property of the respondent [applicant] if the respondent [applicant] fails to comply with his obligations herein. The order declaring the respondent's [applicant's] property specially executable shall only be executed in the respondent [applicant's] fails to comply with his obligations under this agreement and fails to pay the instalments in the manner outlined in paragraph 5 above. The respondent [applicant] undertakes to comply with his obligations without fail." [6] In terms of the repayment schedule outlined above the applicant failed to make pay the sum of M20,000.00 on or before 30 November 2024. He only paid M19,800.00. By January 2025 the applicant had repaid about M51,000.00 in arrears. In terms of the home loan, in January 2025, he only paid the sum of M2000.00 and failed to make any payments in February 2025. He only paid the sum of 3000.00 on 13 March 2025, and other sums of M1900.00 and M3980.00 on 27 March 2025 and 28 March 2025 respectively. The payment of 28 March 2025 was made after the applicant was served with a notice of attachment and the writ of execution in terms of paragraphs 2 and 6 of the deed of settlement following his default in making monthly payment in the manner outlined above.

[7] Respective Parties' Cases The applicant contends that he settled the arrears as agreed in the deed of settlement, and further under paragraph 6 of his founding affidavit he avers that: "I have never received or been served with a letter of demand in relation to the 1st respondent's demand before issuance of the originating application."

[8] At paragraph 7 he contends that : "...the order was erroneously sought in my absence in as much as I have negotiated or agreed with Advocate Fiee for the 1st respondent about the terms of payment and signed a deed of settlement on the 19th November

2024. I aver that the order was erroneously sought because I was still under the impression that having negotiated with Mr Fiee the terms of payments the matter would be settled amicably out of court."

[9] On the one hand the 1st respondent's case in a nutshell is that the applicant was in default of his repayment obligations and therefore it resolved to execute in the manner agreed in the deed of settlement. It therefore argued that the applicant has failed to make out a case for "rescission."

[10] The law and discussion Rule 159 of the High Court Civil Litigation Rules 2024 provides that: "(1) In addition to any other powers it may have, the court may of its own initiative or on application brought within a reasonable time by an affected party, vary or rescind any order or judgment:

(a) erroneously sought or erroneously granted in the absence of any party affected thereby;

- (b) in respect of interest or costs granted without being argued;
 - (c) in which there is an ambiguity or a patent error or omission, but only to the extent of that error, ambiguity or omission; or
 - (d) an order granted as a result of a mistake common to the parties.
- (2) A party who intends to apply for relief under this rule may make an application on notice to all parties whose interests may be affected by the variation or rescission sought, and the provisions of rule 65 shall apply, with necessary modifications required by the context.
- (3) The court may not make an order rescinding or varying an order or judgment unless it is satisfied that all parties whose interests may be affected have been served with the proposed order.
- (4) Nothing in this rule shall affect the rights of the court to rescind any judgment on any ground on which a judgment may be rescinded at common law.”
- [11] I concluded that the applicant was relying on Rule 159 judging from the language used which can never be used under Rule 140 or under common law. The applicant’s case is based on the alleged error of the court, but other than that, there is nothing in the founding affidavit to suggest that the applicant is also relying on the common law, which would have entitled this court to resort to in the event rule 159 fails (*CGM Industrial (Pty) Ltd v Adelfang Computing (Pty) Ltd LAC (2007-2008) 463 at para.12*). Erroneous judgment within the meaning of this rule has been interpreted to mean that an order is erroneously granted if at the time it was granted there existed a fact which would preclude a court from granting it, if it was aware of it (*Nyingwa v Moolman N. O 1993 (2) SA 508 (Tk) at 510D-G*). The applicant’s case is that the court made an error when it endorsed the parties’ agreement and made it an order of court because: “7.1 I must hasten to state that the order was erroneously sought in my absence in as much as I have negotiated or agreed with Advocate Fiee for the 1st respondent about the terms of payment and signed a deed of settlement on the 19th November 2024. I aver further that the order was erroneously sought because I was still under the impression that having negotiated with Fiee the terms of payments the matter would be settled. 7.2 I wish to mention also that in the midst of all above I have never been served with the court order by the 2nd respondent in this matter, the only process that was ever served on me was only the originating application.”
- [12] In my judgment there was no error in this case: The parties concluded an agreement settling the issue of the applicant’s non-payment in terms of the mortgage bond and in the process, set out payment schedule for arrears, and on top they incorporated the terms of the mortgage bond, in the sense ensuring that the applicant understands that even after settling the arrears he will have to continue paying off the loan monthly in terms of the mortgage bond. In paragraph 3 of the Deed of settlement the parties agreed that that agreement may be made an order of court at the instance of either party. I do not therefore understand why the applicant says that he was not aware that the agreement was made an order of court

when the 1st respondent acted in terms of the agreement to turn it into an order of court.

- [13] If the agreement was not turned into an order of court it would have been open to the 1st respondent to enforce it by seeking contractual remedies, and that would have meant the applicant incurring huge costs if he were to ultimately lose the case – as it appears he would have lost given that the defaulted in making regular monthly instalments from January 2025 as I show below. What the parties did in terms of the agreement in issue was to replace the 1st respondent's right of action with the right to execute the consent order and that is permissible in law as was stated in *Arcus v Arcus* 2022 (3) SA 149 (SCA) at para.33 quoting with approval *PL v YL* 2013 (6) SA 28 (ECG: "The legal nature of a consent order was considered by the appeal court in *Swadif (Pty) Ltd v Dyke* NO. It was held that where the purpose of the granting of the consent judgment is to enable the parties to the agreement to enforce the terms thereof through the process of the court, should the need therefor arise, the effect of the order is to replace the right of action on the agreement by a right to execute on the judgment: "[i]t seems realistic, and in accordance with the views of the Roman- Dutch writers, to regard the judgment not as novating the obligation under the bond, but rather as strengthening or reinforcing it. The right of action, as Fannin J puts it, is replaced by the right to execute, but the enforceable right remains the same." The consent order accordingly does not have the effect of eliminating the contractual basis thereof. Rather, through operation of the *res judicata* principle, the judgment constitutes a bar to any action or proceedings on the underlying settlement agreement. The provisions of the agreement are instead to be enforced by the remedies available to a judgment creditor on a judgment. It is of course always open to the parties to abandon the judgment in whole or in part and to enter into a new agreement."
- [14] By replacing the right of action with the right to execute as regards the mortgage bond has the consequence that in case of default of payment the 1st respondent would proceed straight to trigger execution process in terms of the rules of this court. In the present matter the applicant contends that he settled the arrears as per the deed of settlement and was continuing to make monthly repayments of the loan. But as was stated in the background facts to the case the applicant paid only M2000.00 in January 2025. He failed to make any payment in February 2025. He paid M3000.00 on 13 March 2025. Following this payment, on 25 March 2025 the 1st respondent opted to accelerate the debt and initiated the process of execution by serving the applicant with a notice of attachment of the immovable property in issue. Following the receipt of this notice of attachment the applicant made electronic payments of M1900.00 and M3980.00 on 27 March 2025 and 28 March 2025 respectively.
- [15] By not paying any instalment all or paying lesser amount than is required by the mortgage bond the applicant committed a breach which entitled the 1st respondent to accelerate the debt per clause 2 of the mortgage bond. The fact that he thereafter in March electronically deposited certain amounts into the home loan account did not make any difference. In law, the 1st respondent was entitled to do so as this court stated in *Standard Lesotho Bank v Tlokotsi Mphale & Another* (CCT/0064/2018) [2024] LSHC 252 (11 December

2024) in paras. 7 and 8: “[7] When one is desirous of borrowing money from the financial institution and puts up his/her immovable as a collateral, the drawing up of a bond is a standard practice. Such a bond is registered in the deeds registry as a form of security to the creditor and is binding on the third parties as well. An important term of this agreement is almost always invariably that when the borrower defaults in his payments the creditor will call up this bond and claim not only the arrears amount but the arrears plus the full outstanding debt and further claim cancellation of the agreement. This is called debt acceleration. At common law even if the debtor defaults in repaying one instalment the creditor is still entitled to accelerate repayment of the full debt and claim cancellation of the agreement (Badenhorst et al Silberberg and Schoeman’s Law of Property 5th ed. at 367-368). [8] At common law even a debtor who wants to purge his default and brings its payment up to date, once the creditor has elected to foreclose and to accelerate the full repayment of the debt, foreclosure will not be defeated, it will still proceed ahead. It will however be a different matter where the creditor accepts the late payment (Boland Bank Ltd v Pienaar and Another 1988 (3) SA 618 (AD) at 623D-E). Even if the amount of default is so trifling, the creditor is entitled to foreclose and to accelerate full debt repayment. A clearer example of this situation is a case of ABSA Bank v Ntsane 2007 (3) SA 554 (T) where the creditor sought foreclosure and acceleration of the full debt repayment after the debtors were in arrears in their repayment in the amount of R18.46 (Eighteen Rand Forty-Six Cents) in respect of the remaining debt of R62,042.46 (Sixty Two thousand and Forty-Two Rands, Forty-Six Cents plus interest). To free himself from the clutches of foreclosure, the debtor can make use of its right of redemption, by which it is meant that he must make full payment of the outstanding debt – not only arrears. (Badenhorst et al Silberberg and Schoeman’s Law of Property (above) at 381: see also Reghard Brits “Purging Mortgage Default: Comments on the Right to Reinstate Credit Agreements in terms of the National Credit Act.” Stell LR 2013 (1) 165 at 167).”

[16] In the result the following order is made:

(a) The application is dismissed with costs.

MOKHESI J For the Applicant: Advocate T. V Masasa For the 1st Respondent: Advocate T. Fiee For the rest of the Respondents: No appearance 13

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