

SOUTH AFRICA / JUDGMENT

Absa Bank Limited v Dennison and Others (2152/2011) [2016] ZAGPPHC 637 (29 July 2016)

[2016] ZAGPPHC 637

COURT

North Gauteng High Court, Pretoria

BEFORE

T.D. Vilakazi

CASE / FILE NUMBER

2152/2011

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IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

29/7/16

CASE NO: 2152/2011

In the matter between -

ABSA BANK LIMITED APPLICANT

and

DENNISON, DIXIE STEPHEN FIRST

RESPONDENT

DENNISON, PRISCILLA ISABELLA SECOND

RESPONDENT

THE SHERIFF OF THE HIGH COURT, BRITS THIRD

RESPONDENT

THE PECANWOOD ESTATE HOMEOWNERS

ASSOCIATION NPC FOURTH

RESPONDENT

JUDGMENT

VILAKAZI, AJ:

- [1] For ease of reference I refer to the parties in this matter as follows: I refer to the applicant as ABSA, the Fourth Respondent as Pecanwood Homeowners Association.
- [2] This is an application to set aside a sale in execution. The basis of the application is that a Mr Jacobus Opperman, an administrative

clerk in the employment of its attorneys of record in this matter failed to furnish ABSA with a statement of the arrear levies. This omission caused it not to make an informed decision in calculating its bidding price.

- [3] On 30 April 2013, the applicant (ABSA) brought an application to set aside the sale Erf [...] Pecanwood Extension 1 1 Township (the immovable property) it purchased at a sale on execution on 13 January 2012 on the ground that the sale was induced by the mistake. In support of its application ABSA relied on the affidavit deposed to by Johannes Marthinus Opperman Oelofson Engelbrecht (Engelbrecht) a director of ABSA's attorneys of record which it had instructed to collect the amount owing under the mortgage bond registered over the immovable property. Engelbrecht's firm also represented ABSA at the sale in execution conducted by sheriff on 13 January 2012.
- [4] The application is opposed by Pecanwood Homeowners Association on various grounds. Besides opposing the application on the merits

Fourth Respondent (Pecanwood) has also raised a number of points in /imine which will be addressed later in this judgment. Not only does Pecanwood oppose the application it has also filed a counter application in which it seeks the following relief:

1. A declaratory order that the conditions of sale are valid and binding on ABSA and that ABSA must act in accordance with the sale in execution.
2. ABSA be directed to act in accordance with its obligations in terms of the conditions of sale including payment of transfer duties, cost of transfer, arrear rates and other charges including the amount due and owing by ABSA to Pecanwood as at date of transfer which is necessary to effect transfer of this immovable property being an undeveloped stand.
3. That ABSA be directed to take transfer against the back drop of compliance of the sale conditions to take transfer.
4. In the alternative to aforesaid relief and in the event that the court does not grant orders as aforesaid that ABSA be directed to make payment of the outstanding levies and charges due to Pecanwood up to date of the transfer of property.

5. In the further alternative to the aforesaid relief and only in the event that court does not grant an order as aforesaid that the Sheriff of court be directed to comply with rule 46(11) of the rules of court read together with clause 8 of the conditions of sale.
6. That it be declared that ABSA is liable for the loss sustained by Pecanwood by reason of its default.
- [5] As I have pointed out at the beginning of this judgment that Pecanwood is opposing the application, before dealing with the merits of its opposition, it is convenient to dispose of Pecanwood's preliminary points.
- [6] Pecanwood raised the following preliminary points:
 - 6.1 Firstly that ABSA has no cause of action, and that the error is not a just error that entitles them to walk away from the sale. It was contended by counsel on behalf of Pecanwood that the oversight by Mr Opperman of his failure to submit the arrear levies to ABSA bank is not an error in the execution of the court rules justifying cancellation of the sale. For this submission it relied in the case of *McCreath v Wolmarans NO and Others* 2009 (5) SA 451 (ECG).
 - [7] On the other hand ABSA contended that due to Opperman's mistake it incorrectly calculated its bidding figures as a result of his failure to submit to ABSA the arrear levies allegedly owed to Pecanwood by the Denisons. It was submitted on behalf of ABSA that the aforesaid omission by Mr Opperman to relay this requisite information was a justus error was reasonable.
 - [8] I agree with counsel for ABSA that the facts in the *McCreath* case are distinguishable from the present and in any event. In *McCreath* the main issues between the parties is that the bank's attorney who completed the sale on its behalf contended that he had made a bona fide mistake in respect of the court rules applicable to the sale in execution which in terms of a clause in the agreement entitled the bank to lawfully cancel the agreement. The court held that the bank's attorney ignorance of the conditions of sale and court rules did not constitute an error in execution of the court rule. I am of the view that the *McCreath* case is not a case on point. I also hold the view that this point in limine that ABSA has no cause of action should not have been raised as a point in limine because it is a point that goes to the merits of the dispute.
 - [9] The second point in limine is non-joinder. It was contended on behalf of Pecanwood that ABSA should have joined in *CJ Lourens* in the application seeking to set aside the sale. Pecanwood does not specifically state the basis of joining *Lourens* as a party.
 - [10] I am of the view that *Lourens* in concluding the sale in execution on 13th January 2012 was pursuing ABSA's interest. Attached to the conditions of sale, it is expressly stated that he signed in a capacity as a duly authorised agent of ABSA, his principal. He had no legal interest in the matter and has nothing to gain or lose in the outcome of the setting aside of the sale. There is no substance to this point and it falls to be dismissed.

- [11] Consequently the points in limine cannot be sustained.
- [12] I now proceed to deal with the merits.
- [13] The issue therefore is whether ABSA is entitled to resile from the sale on the basis of the allegations on which it relies. The issue arises from the following background facts which are common cause. On 8 June 2010 Pecanwood issued summons against First Respondent and Second Respondent (the Dennisons) for the payment of the sum of R305 481 .41 in respect of levies and related charges owing to it in respect of the immovable property. Pecanwood subsequently sought and obtained the default judgment against the Dennisons in the sum of R305 481 .41, costs of suit on an attorney and client scale plus interest of 15.53 per annum from date of issue of summons, being the 8 June 2010, to date of payment both days inclusive.
- [14] On 22 February 2011 ABSA issued summons against the Dennisons seeking payment of the sum of R 544 671,65, plus interest on the sum of R544 671 ,65 at the rate of 93 per annum calculated and capitalised monthly in arrears from 4 December 2010, to date of payment , and costs to be taxed on attorney and client scale. Its claim was based on a loan agreement it concluded with the Dennisons in terms of which it lent and advanced to them a sum of R 1 730 000, payment of which was secured by a mortgage bond which was registered over the immovable property.
- [15] On 29 August 2011 ABSA took default judgment against the Dennisons for the payment of the sum of R544 671 .65 plus interest and costs pursuant to a mortgage bond. ABSA also obtained an order declaring the immovable property be specially executable. Pursuant to that order ABSA arranged for the sale of the immovable property through the auction by the sheriff on 13 January 2012. Prior to the date of the holding of a sale in execution, Pecanwood as one of the Dennisons' s judgment creditors wrote to ABSA ' s attorneys of record notifying that the levies in the amount of R 1 184 179 .32 in respect of the immovable property was outstanding and that this amount the amount Pecanwood sought to recover from the proceeds of sale in execution of the property. Pecanwood furnished this information to Opperman, an administrative clerk in the employ of ABSA ' s attorneys of record. This is the information which ABSA contends it did not take into account in bidding for the property at an auction conducted by the Sheriff. It alleges Opperman did not furnish it with a statement of outstanding levies in respect of the property he obtained from Pecanwood and this resulted in it not factoring the outstanding levies in its bid for the property. It is this error which ABSA contends constitutes a valid ground for its decision to withdraw from the sale in execution.
- [16] On 29 August 2011, ABSA took judgment pursuant to a mortgage bond for monetary payment of R 544 671 , 65 with interest calculated on R544 671 .65 at the rate of 93 per annum calculated and capitalised monthly in arrears, from 4 December 2010 and this immovable property was declared specially executable.

[17] Pursuant to that order, the immovable property was sold in execution on 13 January 2012. The conditions of the sale which are relevant for this purpose of this judgment are as follows:

Clause 5: Should a bona fide error be committed by the Plaintiff's Attorney or the Sheriff in respect of the Execution of the Court rules either in the attachment or sale in execution of the property, this sale can be cancelled forthwith and the property be put up for auction again. Such error shall not be binding on the sheriff or the plaintiff 's attorney or the plaintiff and neither the purchaser of the immovable property or any other person shall have any claim whatsoever against the aforesaid parties.

Clause 7.1 : The purchaser shall on the day of sale pay a deposit of 10%(ten per centum) on the purchase price, the sheriff's fees in the amount of 63 (six per centum) of the proceeds of sale up to a price of R30 000.00 (Thirty Thousand Rand) and thereafter 3.53 (Three comma five per centum) of the balance of the purchase price up to a maximum fee of R 8 750 00 (Eight Thousand Seven Hundred and fifty Rand) subject to a minimum of R440 (Four Hundred and Forty Rand) in cash.

Clause

7. 3: "...The purchaser shall be liable for the payment of interest to the execution creditor at the rate of 93 per annum compounded monthly on the amount of the award to the execution creditor in the plan of distribution as from date of sale to date of registration of transfer.

Clause 7.4 ' The purchaser shall pay all transfer duties, costs of transfer, and arrear rates, taxes and other charges necessary to effect transfer upon request by attorney for the execution creditor '

Clause 8: "If the purchaser fails to carry out any of his obligations under the conditions of sale, the sale may be cancelled by a Judge on the report of the sheriff and due notice to the purchaser, and the property may again be put up for sale, and the purchaser shall be responsible for any loss sustained by reason of his default and the purchaser forfeit all amounts already paid by the purchaser as rouwkoop to the execution creditor, which loss may on application of any aggrieved creditor whose name appears on the distribution account, be recovered from him under judgment of the judge pronounced summarily on a written report by the sheriff, after such purchaser shall have received notice in writing that such report will be laid before the Judge for such purpose, and if he is already in possession of the property the sheriff may, on 7 (seven) days ' notice apply to a Judge for an order ejecting him or any person claiming to hold under him there from. The purchaser chooses as his domicilium citandi et executandi the address set out against his land hereunder"

Clause 10' the purchaser may obtain transfer after he has complied with all the provisions of condition 7. With registration of transfer any claim for interest shall lapse."

- [18] Pecanwood Homeowners Association sued Second Respondent and Third Respondent (the Dennisons) for payment of R 174 000 in respect of arrear levies and other charges which they alleged it owed. The Dennisons did not defend the action and Default Judgment was granted.
- [19] Pecanwood opposes the application and further filed a counter application in which amongst others they seeking specific performance
- to be ordered against ABSA and the Sheriff of court. This counter application will be dealt with later in my judgment.
- [20] The basis of their objection is on the following grounds:
- [21] In its Answering Affidavit it disputes that failure by Opperman, an administrative clerk in the employment of ABSA 's attorneys of record to furnish ABSA with the arrear levy figures due to it is a bona fide mistake, entitling it to set aside the sale it entered it with Sheriff on 13 January 2012.
- [22] It further avers that the so called mistake by ABSA 's attorneys as duly authorised agent is attributable to ABSA
- [23] The bona fide mistake claimed by ABSA 's agent does not fall within the ambit of the rules of court, nor the parameters of the conditions of sale
- [24] ABSA concluded the sale with their eyes wide opened and consequently they are bound by the conditions of sale.
- [25] It further avers that ABSA had knowledge prior to the sale in execution that it had obtained judgment against the Dennisons for arrear levies and charges in respect of this property and was further informed by email on 7 December 2011 of the outstanding amount.
- [26] It further avers that at a sale in execution sheriff of court mentioned the arrear levies due and payable by the Dennisons.
- [27] It further avers that the email dated 2 December 2011 , addressed to it by the said Opperman stated as follows:
- [28] "We act on behalf of ABSA Bank Limited. We are in the process of arranging a sale in execution of the abovementioned title unit. For us to continue with the sale that will take place in January 2012, we need the outstanding levies of the abovementioned ASAP to enable us to provide ABSA Bank Limited therewith."
- [29] "ABSA needs the information to prepare a bidding figure for the sale and execution. Once the sale has taken place, our conveyancing team will contact you for levy clearance figures and which amount will then be paid by the sale in execution purchaser."
- [30] It further relies on clause 7.4 that the sale in execution conditions which provides that the purchaser shall be responsible for arrear rates and other charges necessary to effect transfer constitutes a stipulation alter which was accepted by Pecanwood confers real right to it.

Secondly the email by a Mr Opperman addressed to them which states that once the sale has taken place, the conveyancing team will contact them for levy clearance figures and which amount will then be paid by the sale in execution purchaser amounted to a stipulation alteri which they accepted. As per the aforesaid clause in the conditions of sale ABSA is indebted to Pecanwood in the sum of R 2 1 1 7 443.84 as at November 2014.

- [31] In response thereto ABSA avers in its Replying papers that the said Mr Opperman having failed to provide ABSA with the arrear levies figures could not bind ABSA to pay the arrear levies to Pecanwood. It further avers that Mr Opperman did not have authority to make such a representation on behalf of ABSA.
- [32] It was the submission of ABSA that to hold it liable on the representation made by its agent on the basis of ostensible authority, it has to be established that the agent had authority to act as he had done under this circumstances.
- [33] ABSA denies that the email by Mr Opperman dated 6 December 2011, amounts to an assurance that the sale in execution purchaser is non-consequential as he did not have the authority to undertaking such on its behalf.
- [34] ABSA disputes that clause 7. 4 in the conditions of sale, which states that the purchaser shall be liable for the transfer costs necessary to effect transfer, constitutes a contract for the benefit of a third party in this matter, namely Pecanwood. Counsel for ABSA submits that in order for a valid agreement to come to fruition, the intention to contract must be present. In this regard counsel for ABSA relied on the case of Robinson V Randfontein Estates Gold Mining Co Ltd 192 1 AD 168. The court held that an assurance given without animus contrahendi which amounted to a general promise and consequently the contractual undertaking is unenforceable in law.
- [35] For Pecanwood to succeed in the stipulation alteri argument, the benefit on which they are alleging they have the right to intervene is dependent on the validity of the sale in execution. This sale was concluded between the sheriff of court and ABSA at an auction.
- [36] Hypothetically in the event that I am persuaded by Pecanwood's reliance on the stipulation alteri is correct in their submission that it has accepted the stipulation when they sent the email on 7 December 2012, which enclosed the statement of arrear levies allegedly owed by the Dennisons, this defence will only avail them if the cancellation application by ABSA is dismissed.
- [37] In my view it has to prove the following the following in order to succeed in their stipulation alteri argument:
- (i) That there is a benefit;
 - (ii) That benefit is derived from a valid contract;
 - (iii) The agreement of sale in execution must be found to be valid.

- [38] In *Eldacc (Pty) v Bidvest Properties (Pty) Ltd* (201 1) ZASCA 144 Cloete JA stated in a contract to benefit a third party relied on *Crookes NO & Another v Watson and others* 1 956 (1) SA 277 (A) Schreiner JA said at 291 B-F 'In the legal sense, which is alone is here relevant, what is not very appropriately styled a contract for the benefit of a third person is not simply a contract designed to benefit a third person, it is a contract between two persons that is designed to enable a third person to come in as a party to a contract with one of the two. The typical contract for the benefit of a third person is one where A and B make a contract in order that C may be enabled, by notifying A to become a party to a contract between himself and A. What contractual rights exist between A and B pending acceptance by C and how far after such acceptance it is still possible for contractual relations between A and B to persist are matters on which differences of opinion are possible, but broadly speaking the idea of such transactions is that B drops out when C accepts and thenceforward it is A and C who are bound to each other.' Ponnar AJA said in *Pieterse v Shrosbree No and Others* 2005(1) SA 309 (SCA) at para 9 and 10 said "In such a case, the policy holder (stipulans) contracts with the insurer (the promittens) that an agreed offer would be made by the insurer to a third party (the beneficiary) with the intention that on acceptance of the offer by beneficiary a contract will be established between the beneficiary and the insurer. What is required is an intention on the part of the original contracting parties to the benefit upon acceptance by the beneficiary would confer rights that are enforceable at the instance of the beneficiary against the insurer; for that intention is at the very heart of the stipulatio alteri." (Ellison Kanh 'Extension clauses in insurance contracts' (1952) 69 SAU 53 at 56). Thus the beneficiary, by adopting the benefit, becomes a party to the contract (See *Total South Africa (Pty) Ltd v Bekker* NO 1992 (1) SA 617 (A) at 625 D-G). On the death of the insured, provided the nomination has not been revoked during the insured's lifetime, any claim to the policy proceeds by the beneficiary against the insurance company would be based on the contract of the insurance between the deceased and the insurance company. It is to the insurance company and no one else that the beneficiary would have to look for payment."
- [39] My understanding of the reasoning in the *Eldacc* case is that there must be a valid contract or a valid insurance policy for the nominated beneficiary to claim entitlement to the benefits thereof. It follows without saying that if the insurance policy is invalid either at your instance that is the insured or at the instance of the insurance company, whatever benefits the beneficiary derives will depend on the validity of the contract.

In this matter before me it is ABSA's contention that the contract it concluded with Sheriff of court was induced by mistake. The question is whether the explanation given by ABSA is reasonable? The key in this argument of stipulatio alteri is whether the sale in execution was induced by error. If I accept that the conclusion of the sale in execution was induced by error then the stipulatio alteri argument fails.

[40] Against this background and with reference to Christie's 'The Law of Contract in South Africa' 61h edition, page 328 is of the view that a party to a contract who can go further than this and can show that at the time of the contract he personally was labouring under a misapprehension has a better claim to the laws attention if he seeks escape liability under the contract. His claim in effect is that the court should apply a subjective test to the formation of the contract and relieve him from liability either because due to his unilateral mistake, there was, subjectively no agreement at all or because in the circumstances it would not be fair to hold him to the contract. This claim must always meet with the reply that as a general rule the court must apply an objective test and enquire whether the mistaken party has so conducted himself as to give the other party reasonably to believe that he was contracting with him on certain terms, if so, he is bound, whatever the subjective state of mind. That is the general rule, and our law of unilateral mistake has been developed in a series of decisions on whether or not this general rule should apply. This relationship between unilateral mistakes is made clear in two appellate decision cases. In *George v Fairmead (Pty) Ltd* 1958 (2) SA 465 (A) 467 Fagan CJ said:

"When can an error be said to be justus for the purpose of entitling a man to repudiate his apparent consent to a contractual term? As I read the decisions, our courts in applying the test, have taken into account the fact that there is another party involved and have considered his position. They have in effect, said: has the first party-the one who is trying to resile- been to blame in the sense that by his conduct he has led the other party as a reasonable man, to believe that he was binding himself. If his mistake is due to a misrepresentation, whether innocent or fraudulent, by the other party, then, of course it is the second party who is to blame and the first party is not bound."

[41] I am satisfied that the explanation by Mr Engelbrecht, ABSA ' attorney is reasonable, and ABSA has discharged the onus of showing

that the mistake was a reasonable one justifying release from the contract. This mistake relates to a material matter justifying ABSA to escape from the contract because there was no fault on its part. I am of the view that the explanation by ABSA ' s attorney of record is reasonable and consequently the sale should be set aside.

[42] I am now turning to deal with Pecanwood counter application in which it seeks specific performance and seeks the following relief:

- a. A declaratory order that the conditions of sale are valid and binding;
- b. In the alternative, an order directing ABSA to effect payment to Pecanwood Homeowners Association of outstanding levies and charges due and payable to it;
- c. In the further alternative, an order directing the Sheriff of court to comply with Rule 46(11) (b) and declaring that ABSA is liable for the loss sustained by Pecanwood Homeowner Association by reason of the default of ABSA.

- [43] For the counter application by Pecanwood to succeed it will have to prove that a case has been made out on its argument on its reliance on a stipulation argument.
- [44] I am of the view that In respect of its relief to enforce ABSA ' s compliance with the terms of the sale of this ' s counter application falls away, due to the fact that I have ruled that the sale should be set aside.
- [45] In respect of the order directing that ABSA must pay the outstanding levies, if the sale is cancelled the sheriff of court cannot force the purchaser to pay the levies. Pecanwood contended that the title deed in respect of this property provides a condition which states that the property shall not be transferred without a clearance certificate issued by it confirming that all amounts owing by such owner to the association has been paid. It was submitted on behalf of Pecanwood that this title deed condition constitutes a real right enforceable against any third party.
- [46] In response thereto ABSA contends that this condition in the title deed, even if it constitutes a real right, simply translates that Pecanwood can prevent transfer being registered in favour of a purchaser unless the levies are settled. It was further submitted
- that this financial obligation is attached to the property.
- [47] I am of the view that the submission by ABSA has merit that payment of the levies is attached to the property. It is my finding that it is premature for Pecanwood to rely on clause 7.4 of the conditions of sale. Pecanwood cannot use the stipulation in clause 7.4 in the condition of sale to force ABSA to take transfer in the instance where it is seeking a relief setting aside a sale. This title deed condition read together with the aforesaid clause should be invoked or triggered when a transferee takes transfer. This is an equivalent of a section 18(3) of the Local Government Municipal Systems Act No. 32 of 2000 read with section 18(2) . Pecanwood cannot use the title deed condition attached to this property to force ABSA to take transfer. My understanding of the thrust of ABSA ' s contention is that its case is a 2-stage process.
- [48] Pecanwood contends that it relies on the conditions of sale clause 7.4. I am of the view that reliance by Pecanwood on the aforesaid clause at the stage of cancellation by ABSA will only assist them if ABSA fails to pay f or the legal costs associated with taking transfer of this property. ABSA in a nutshell argues that it does not want to be bound by this contract.
- [49] In my view, the answer to this question is that the contract should be cancelled and I conclude that this is the end of this matter.
- [50] In respect of a declaratory order directing sheriff to comply with rule 46(11)(b) of the Uniform Rules of Court, and directing the sheriff to recover its loss it allegedly suffered as a result of default by ABSA. Pecanwood for its contention relies on clause 8 in the conditions of sale which states that the purchaser shall be responsible for any loss sustained by reason of his default. It further contends that it considers itself as an aggrieved creditor whose name appears on the sheriff's distribution list. In response thereto counsel for ABSA argues

Pecanwood is not on sheriff's list of distribution of account. It was submitted on behalf of ABSA that sheriff did not place it on terms and neither can it place itself on terms.

[51] Finally in my view, that Section 46(11)(b) would be applicable if sheriff makes an in-chamber application to the Judge on his report to cancel the sale by reason of default by the purchaser and requesting the property to be put on the sale in execution again and further seeks to hold the purchaser liable for the loss incurred and associated with putting the property in the sale in execution again. It is my view that in the matter before me, the purchaser is seeking to cancel the sale and therefore Pecanwood cannot invoke the provisions of section 46(11)(b). This contention by Pecanwood is misplaced and is without substance. In this present case, Pecanwood cannot invoke the provisions of rule 46(11)b, where the purchaser is seeking to cancel the sale. This rule would apply if the sale was sought to be cancelled by sheriff of court by reason of default by the purchaser.

[52] As a result of my determination that ABSA is entitled to set aside the sale the Sheriff of court cannot force the purchaser in this instance, ABSA, to pay the levies. If the any loss that Pecanwood might have suffered, I am of the view that nothing prevents it from executing the judgment it obtained against the Dennisons in 2010. Whatever loss allegedly sustained by Pecanwood, I fail to understand what is so difficult for it to execute the judgment obtained against the Dennisons. Furthermore any prejudice if any that might be suffered by it as a consequence of the sale being set aside can be ameliorated by pursuing their claim and executing judgment obtained.

[53] There were other arguments advanced by counsel to the parties, which in my respectful view have no merit and some case authorities, which I find were not on point. My failure to deal with them is not out of disrespect for counsel.

[54] In respect of ABSA's main application, the sale in execution concluded on 13 January 2012 between the Sheriff of court and ABSA in respect of the property described as:

Erf [...] Pecanwood Extension 1 1 Township,

Registration Division J.Q, the Province of North - West,

In extent 522 (Five Hundred and twenty two) Square Metres

Which took on 13 January 2012 is hereby set aside.

[55] I will now deal with the costs of ABSA's main application. In exercising my discretion I am depriving ABSA a costs order on the basis that it is ABSA that is seeking an indulgence setting aside the sale because of the mistake committed by its attorneys. I am of the view that it is not fair and equitable to punish Pecanwood for the mistake of ABSA's attorneys. I further hold the view that Pecanwood's opposition of the cancellation application was not unreasonable. Their claim was not fictitious. The party that has created the problem is ABSA's attorneys as this mistake emanated from their office.

[56] In light of the above, ABSA is ordered to pay the costs of this application.

The order

[57] I make the following order :

1. The application for the sale in execution of the immovable property described as Erf [...] Pecanwood Extension 1 1 Township is hereby set aside.
2. The Applicant (ABSA) is ordered to pay the costs of its main application.
3. The Fourth Respondent (Pecanwood Estate Homeowners Association) counter application is dismissed with costs.

T.D. VILAKAZI

ACTING JUDGE OF THE HIGH COURT

DATE HEARD: 27 OCTOBER 2015

JUDGMENT

DELIVERED: 29 JULY 2016

COUNSEL FOR APPLICANT: J .A SWANEPOEL

INSTRUCTED BY: SMIT SEWGOOLAM INCORPORATED

COUNSEL FOR FOURTH RESPONDENT: C. WOODROW

INSTRUCTED BY: A.J VAN RENSBUR G INCORPORATED

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