

SOUTH AFRICA / JUDGMENT

Absa Bank Limited v White N.O and Another (M19/15) [2015] ZANWHC 57 (17 September 2015) [2015] ZANWHC 57

COURT

North West High Court, Mafikeng

BEFORE

Landman

CASE / FILE NUMBER

M19/15

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IN

THE HIGH COURT OF SOUTH AFRICA

(NORTH

WEST DIVISION, MAHIKENG)

CASE

NO.: M 19/15

In

the matter between:

ABSA

BANK LIMITED

APPLICANT

and

MATHILDA

CATHLEEN WHITE N.O

1ST RESPONDENT

duty

appointed EXECUTRIX in the ESTATE

OF

THE LATE MATTHEW GILLIAND WHITE and

MATHILDA

CATHLEEN WHITE

In

terms of Section 13 and 14 of the Administration

of

Estates Act 66 of 1965 (as amended)

MATTHEW

CHARLES GILLIAND WHITE N.O

2ND RESPONDENT

duly
appointed EXECUTOR in the ESTATE
In
terms of Section 13 and 14 of the Administration
of
Estate Act 66 of 1965 (as amended)

JUDGMENT

Landman J:

- [1] ABSA Bank Ltd, the applicant, applies on notice of motion against Mathilda Cathleen White NO and Matthews Charles Gilliand White NO, the executrix and executor of the estate of the late Matthew Gilliand White, the first and second respondents, for payment of the sum of R490 526,30 and interest as well as an order declaring the immovable property being security for the loan, to be declared especially executable that a warrant of attachment be issued and that the Sheriff be directed in terms of section 30 of the Administration of Estates Act 66 of 1965 to sell in execution the immovable property. The applicant also seeks costs on an attorney and client scale.
- [2] The application was not opposed. I enquired from Mr Scholtz, who appeared on behalf the applicant, whether the applicant was not obliged to lodge a claim for payment with the executrix and executor of the estate. Mr Scholtz submitted that the applicants are entitled to do so, but they were also entitled to resort to litigation. Mr Scholtz kindly supplied me with a copy of the judgment of the Supreme Court of Appeal in *Nedbank Ltd v Steyn* (20085/2014) [2015] ZASCA 30 (25 March 2015) which held this to be the case.
- [3] This is a case where the sale in execution should be authorized in terms of section 30 of the Administration of Estates Act 66 of 1965 in view of the delay by the respondents in finalizing the estate.
- [4] The mortgage bond stipulated that the deceased (and thereby his estate) is liable for costs on an attorney and client scale.

Order

- [5] I make the following order:

1. The draft order marked "AAL" is made an order of court.

AA Landman

Judge of the High Court

APPEARANCES:

Date of hearing:

10 September 2015

Date of Judgment:

17 September 2015

Counsel for the Applicant:

Adv Scholtz

Instructed by:

D C Kruger Attorneys

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