

SOUTH AFRICA / JUDGMENT

ABSA Bank LTD v Minnaar (65149/16; 52267/2017) [2022] ZAGPPHC 443 (7 June 2022) [2022] ZAGPPHC 443

COURT

North Gauteng High Court, Pretoria

BEFORE

Mathunzi

CASE / FILE NUMBER

65149/16; 52267/2017

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IN THE HIGH COURT OF

SOUTH AFRICA,

GAUTENG DIVISION,

PRETORIA

CASE

NO:65149/16

REPORTABLE:NO

OF INTEREST TO OTHER

JUDGES:NO

REVISED.

In

the matter between: ABSA
 BANK
 LTD
 Applicant
 and
 HENDRINA
 JOHANNA
 MINNAAR
 Respondent

JUDGMENT

MATHUNZI AJ:

- [1] The Applicant approached this court on 28th October 2021 for an order in terms of Rule 46(A) (8)(e) of the Uniform Rules of the High Court which is an order by this court to set a reserve price.
- [2] The background of the facts in the matter in brief is as follows: The Applicant had issued summons on the Respondent on 25 August 2016 with the dies induciae expiring on the 8th of September 2016 and the Respondent entered no form of intent to oppose or defend the matter.
- 2.1. On the 10th of October 2016 the Applicant then obtained a default judgment against the Respondent for payment of the sum of R 1 200 190.35 and an order declaring the property located in Erf[....]Melodie Extension 28 Township, North West Province measuring 466 square meters Transfer T2836/08 declaring it executable.
- 2.2 The cause of action arose from the Respondent's failure to comply with the contractual obligations regarding payments following a loan agreement of the amount of R1 200 190.00 to the Respondent advanced with the covering mortgage-bond being Erf[....]Melodie Extension 26 Township as above mentioned on the 14th January 2008.
- 2.4 The loan amount was to be repaid in a period of 360 monthly instalments. At the time of issuing of summons by the Applicant the outstanding arrears instalment amount in total were at R67 560.61
- [3] The Applicant had initially enrolled the matter for hearing in an application for a court to set a reserve price in terms of Rule 46(A) B(E) for the 2nd of March 2021.
- [4] It was on February 22nd in 2021 when the Respondent filed their notice of intention to oppose application by the Applicant in terms of Rule 46(A) 8(E) together with an Answering Affidavit.

- [5] The Respondent had also filed an application for condonation owing to the late filing of the Answering Affidavit as it did not comply with the Rules of this court specifically Rule 46(A) 5(F) and a further Affidavit was also delivered and filed by the Respondent without first seeking permission of this Court to do so.
- [6] The Applicant had filed a notice in terms of Rule 6(5)(d)(iii) for an application to have the additional affidavit from the Respondent struck off by this Court but have since indicated in their heads of argument and in their submissions in court that they are abandoning the application.
- [7] As a result thereof, the Applicant was also late in filing their Replying Affidavit in response to the Respondent's Answering Affidavit to the Rule 46(A) 8(E) application was due on 10 March 2021 but only served on 14 April 2021.
- [8] What this they meant was that the court had two applications for condonation for the late filing from both the Applicant and the Respondent and it was in the interest of justice seeing that there was no prejudice suffered by either party if condonation was granted and also seeing that neither party opposed each other's application for condonation, the condonation for both parties was then granted.
- [9] The Respondents in the Answering Affidavit and in opposing the application in terms of Rule 46(A) 8(E) by the Applicant raised the following as grounds:
- 9.1 the existence of a loan agreement between the Applicant was placed in dispute owing to the allegation that the Applicant cannot provide the signed agreement.
- 9.2 the granting of the loan amount to the respondent at the time itself amounted to reckless lending.
- 9.3 the application to set a reserve price is therefore deemed unnecessary as a result thereof.
- [10] The Applicant has gone as far deep as they can in responding to the defence raised by the Respondent addressing the roots of every ground raised by the Respondent in their heads of argument and in their submissions before court wherefore this then creates a false impression that before me is an opposed application for summary judgement by the Applicant. I am not keen to entertain any merits of the defence grounds raised by the Respondent as I do not believe that they are pertinent with the application before me neither do I have any application for recession before me by the Respondent nor am I Court sitting as a court hearing an application for a summary judgment application by the Applicant where the Respondent opposes the said application
- [11] What is before me for determination is an application by the Applicant for a reserve price to be set by this court in terms of Rule 46(A) 8(E) of the Uniform Rules of High Courts.
- [12] It therefore follows that the Applicant succeeds in the application in terms of Rule 46(A) B(E) wherefore the following order is made:

The draft order by the Applicant is marked "X" and therefore made an order of court as amended

AJ MATHUNZI

ACTING JUDGE OF THE HIGH COURT

Appearances

For the Applicant: A Jacobsz

Instructed by: Hack, Stupel and Ross Attorneys

For the Respondents: H Fraser

Instructed by: Johan van Zyl Attorneys

Date of hearing: 28 October 2021

Date of Judgment: 07 June 2022

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO. 52267/2017

Before the Honourable Justice Mathunzi, AJ

On this 7th day of June 2022

ABSA BANK LIMITED

Plaintiff

HENDRINA JOHANNA MINNAAR Defendant

(Identity Number:[....])

This Order is made an order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the Parties/their legal representatives by e-mail. This Order is further uploaded to the electronic file of this matter on Case line by the Judge or his/her Secretary. --

ORDER

Having read the documents filed, heard counsel and considered the matter, the following order is made:

1. The Court Order date 10 October 2016 under the same case number is supplemented to:
 - a. include an order in terms whereof the immovable property known as:

ERF[....]MELODIE EXTENSION 28 TOWNSHIP, REGISTRATION DIVISION: JQ, NORTH WEST PROVINCE, MEASURING: 466 (FOUR SIX SIX) SQUARE METRES,

HELD BY DEED OF TRANSFER T2836/2008,

SUBJECT TO THE CONDITIONS THEREIN CONTAINED AND SUBJECT TO THE CONDITIONS OF
BHUBEZI VILLAGE HOME OWNERS ASSOCIATION

may be sold in execution with a reserve price of R935 000.00 (nine hundred and thirty five thousand rands).

- b. The Defendant is ordered to pay the Plaintiffs taxed costs on a scale as between attorney-and-client.

By order of the Court

The Registrar

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Prepared on 14 October 2026 · Esheria