

SOUTH AFRICA / JUDGMENT

Anthony and Another v Nedbank Limited (54741/2018) [2020] ZAGPPHC 426 (24 August 2020)

[2020] ZAGPPHC 426

COURT

North Gauteng High Court, Pretoria

BEFORE

Makhoba

CASE / FILE NUMBER

54741/2018

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IN THE HIGH COURT OF
SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

1)

REPORTABLE YES/NO

2) OF

INTEREST TO OTHER JUDGES YES/NO

3)

REVISED

Case

number:54741/2018

24/8/2020

In the matter between:

JOAN MARGARET
ANTHONY + 1
APPLICANT
versus
NEDBANK
LIMITED
RESPONDENT

JUDGMENT

MAKHOB A J

This is an application for leave to appeal by Ms J M Anthony against an order which I granted on the 11 June 2019. The summary

Judgment

and the order reads

as follows: “.....SUMMARY JUDGMENT IS GRANTED AGAINST THE SECOND DEFENDANT ...for:

- (a) Payment of the capital sum of R501,758.99
- (b) Payment of interest on the aforesaid sum of R501,758.99 at the finance charges of 9.00% calculated daily and debited monthly on the first day of each month from 23 JUNE 2018 to date of final payment:

- (c) Costs of suit on the scale as between attorney and client;
- (d) An order In terms of which the following property is declared specially executable:

ERF 217 CHRISVILLE TOWNSHIP, REGISTRATION DIVISION I.R, THE PROVINCE OF GAUTENG
IN EXTENT: 773 (SEVEN HUNDRED AND SEVENTY THREE) SQUARE METRES
HELD BY DEED OF TRANSFER NO: T10525/2008

- (e) An order in terms of Section 30(b) of the administration of Estate’s Act 66 of 1965 directing that the property may be sold.
- (f) An order authorizing the sheriff to execute the writ of Execution.,
- (g) The Respondents are advised that, subject to the provisions of section 129(3) and
- (4) of the National Credit Act 35 of 2005 (“the NCA”), the Applicant may apply to the Court for Judgment to be granted in favour of the Applicant.
- (h) The Respondent may prevent the sale of the property referred to above if they pay the Applicant all of the arrear amounts owing to the Applicant, together with the Applicant’s default charges and reasonable costs of enforcing the

agreement up to the time of the re-instatement, prior to the property being sold in execution.

(i) The arrear amounts, enforced costs and default charges may be obtained from the Applicant after default judgment has been obtained.

The Respondents are advised that the arrear amount is not the full amount of the Judgment debt, but the amount owing by the Respondents to the applicant, without reference to the accelerated amount.

(j) The Respondents are advised that the arrears amount is not the full amount of the Judgment debt; but the amount by the Respondents to the Applicant, without reference to the accelerated amount;

(k) A copy of this order is to be served personally on the Respondents, as soon as practicable, after the order is granted, but prior to any sale in execution.

(L) The property to be sold with the set reserve price of: R850 000.00.

Upon receiving a Notice of Appeal, I instructed my registrar to obtain the transcript of the proceedings as the Ms J.M Anthony failed to do so. Due to the period in which the country was under Covid – 19 lockdown there has been a delay in obtaining the transcripts. This was communicated to the parties during the virtual court session. The parties agreed that the court can determine the application based on the heads of argument.

Counsel for Nedbank raised two points in limine- the first point in limine is based on Rule 49(1)(b) of the Uniform rules of court which reads as follows:

“...when leave to appeal is required and it has not been requested at the time of the Judgment or order, application for such leave shall be made and the grounds therefore shall be furnished within 15 days after the date of the order appealed against:...provided further that the Court may, upon good cause shown, extend the aforementioned period of 15 days”

Counsel submits that the rule is peremptory in nature with regard to the time period within which such application should be lodged. Counsel submits that the appeal is void ab initio for being lodged out of time and in contrast with the peremptory provisions of Rule 49(1)(b).

4. The second point in limine is based on Rule 49(3) which reads as follows:

“ The Notice of Appeal shall state whether the whole or which part only of the Judgment or order is appealed against and if only part of such Judgment or order is appealed against, it shall state which part and shall further specify the finding of fact and / or ruling of law appealed against and the grounds upon which the appeal is founded”.

Counsel for the Respondent submits that the notice for leave to appeal should imprimis make it clear whether the appeal is on a point or points of law or on fact or on both. Counsel submitted that the Applicant in this matter attempts to revisit the entire subject matter of the main application and the application must be dismissed on this point alone.

5. Furthermore Counsel for the Respondent asks for punitive costs against second Applicant because she failed firstly to request reasons from the court for its order.

6. In this application Applicant is represented by an experienced attorney. It is clear that did not comply with the rules raised by the Respondent in the points in limine. There is no application before me why the said rules were not complied with.

7. On either of the points in limine the Respondent succeeds and the application for leave to appeal is out of time and there is no application for condonation.

8. The application for leave to appeal is dismissed with costs on an attorney and client scale.

D MAKHOBA

JUDGE OF THE HIGH COURT OF SOUTH AFRICA,

GAUTENG DIVISION

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Prepared on 13 October 2026 · Esheria