

SOUTH AFRICA / JUDGMENT

Bernabei v Bernabei; In re: Sheriff Johannesburg East v Kumalo (23325/2010) [2016] ZAGPPHC 755 (24 August 2016) [2016] ZAGPPHC 755

COURT
North Gauteng High Court, Pretoria

BEFORE
S P Mothle

CASE / FILE NUMBER
23325/2010

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE

NO: 23325/2010

DATE: 24 AUGUST 2016

In

the matter between:

MARCO

BERNABEI.....Plaintiff

And

EMMA

BERNABEI.....Defenda

nt

In

re: SHERIFF
JOHANNESBURG
EAST.....Applicant
KUMALO
GLADNESS.....Respondent

MOTHLE J

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3. It is a general practice of this Division of the High Court that applications in terms of Rule 46(11) are heard a Judge in
4. It appears from the file and prayer 1 of this application that the auction sale occurred in 2015. This application has been presented before other Judges before it came to me.
5. Upon receipt of the application, I noticed that service had been effected on the Respondent's address by affixing the documents on the entrance of her residence. There was no indication whether she had received the application and was aware of the relief sought. There was also no indication whether she intends to oppose the application. I noticed that the agreement contained her telephone numbers and requested my clerk to contact her and ascertain if she intends to oppose the application. Before I could consider the application, the Respondent came to the High Court and informed my clerk that she does not oppose the application but would like to have a refund of her deposit, minus the necessary costs that applicant has incurred. My clerk explained to her to file an affidavit and also serve it on the Applicant.
6. I have now had sight of the Respondent's affidavit as well as e- mail annexures which reveal the following:
 - 6.1 After purchasing the property on auction, she could not get further financial assistance to complete the transaction;
 - 6.2 She had informed the Sheriff by e-mail dated 4 May 2015, which e-mail is attached to her affidavit, that she is unable to proceed with the sale agreement and would like to have a refund of the deposit;
 - 6.3 In her affidavit before me, she deposes to the fact that she needs the refund urgently pay for her daughter's school fees. She further deposes to the fact that she has never taken occupation of the property.
7. It seems to me that the Respondent, on her own version, does not oppose the cancellation of the purchase and sale agreement pursuant to the sale in execution. The only concern she raises is a claim for a refund of her deposit. Further, considering that this transaction took place in May 2015, it is now more than a year and this matter has not been finalised.
8. It would seem that generally the process of refunding the purchaser what is due after all costs have been considered in a collapsed sale in execution, are very often a subject of considerable delay. The relief sought by the Respondent in this matter calls for an expeditious process, considering the delay that has already occurred in this matter.
9. Having regard to what is stated above, I make the following order:
 1. The sale in execution which took place on 30 April 2015 in respect of the immovable property described in prayer 1 of the notice of application is hereby cancelled;

2. The deposit paid by the Respondent as part of the purchase price shall be held in trust by the sheriff and be dealt with as shall be directed by the Court hearing this application;
 3. The Applicant is ordered to quantify the costs incurred in respect of the sale in execution, which costs should include;
 - 3.1 The costs of preparation and scheduling of the sale in execution;
 - 3.2 The Sheriffs commission relating to the sale in execution;
 - 3.3 Any loss sustained by the Plaintiff and/or the Applicant as a consequence of the Respondent's default in not proceeding with the sale in execution;
 4. The quantification of these amounts must be stated in an affidavit by the Applicant, including all necessary documentation in support thereof, which affidavit must be delivered (served and filed) within 10 calendar days from the date of this order;
 5. The Respondent may deliver an opposed affidavit in respect of the said amounts within 10 calendar days from receipt of the Applicant's affidavit and thereafter the Applicant may reply thereto within 10 calendar days.
 6. This application is referred to open Court for adjudication and the Registrar of this Court is directed to provide a preferential date in the opposed roll, being not later than
2016. The applicant must obtain the date of hearing from the Registrar and notify the Respondent of the date in writing and also by telephone, not later than 15 days before the hearing;

S P MOTHLE

Judge of the High Court

Gauteng Division

Pretoria

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CASE PAGE <https://chat.esheria.ai/case-law/south-africa/bernabei-v-bernabei-unknown-topic-agpphc-2016>

Prepared on 10 October 2026 · Esheria