

SOUTH AFRICA / JUDGMENT

# Botha v Home Obligors Mortgage Enhanced (33723/15) [2025] ZAGPPHC 653 (11 June 2025) [2025] ZAGPPHC 653

## COURT

North Gauteng High Court, Pretoria

## BEFORE

Moila AJ

## CASE / FILE NUMBER

33723/15

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## REPUBLIC

## OF SOUTH AFRICA

## IN

## THE HIGH COURT OF SOUTH AFRICA

## GAUTENG

## DIVISION, PRETORIA

## Case

Number: 33723/15

(1)

REPORTABLE: YES / NO

(2)

OF INTEREST TO OTHER JUDGES: YES/NO

(3)

REVISED: YES/NO

## DATE

11/06/2025

## SIGNATURE

In

the matter between:

CATHARINA  
BABY BOTHA

Applicant  
and

HOME  
OBLIGORS MORTGAGE ENHANCED

Respondent

Delivered: 11 June 2025.

This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties and their legal representatives via email, as well as by uploading it to the electronic file of this matter on Caselines.

## JUDGMENT

MOILA AJ

### Introduction

- [1] This is an application for a declaratory order to dismiss all financial claims the respondent purports against the applicant, rescind the default judgment order dated 10 September 2015, stay the writ of execution and set the matter down for reconsideration.
- [2] The respondent opposes the application, contending that it is a mala fide application. The respondent brings a counter application that the applicant be declared a vexatious litigant, as contemplated in terms of section 2(b) of the Vexatious Proceedings Act 3 of 1956.

The parties

- [3] The applicant is Ms Catharina Baby Botha, residing at 1[...] B[...] U [...], Mabopane, since 1987 (unrepresented). The respondent is Home Obligors Enhanced, represented by J Eastes SC.

Factual

### background

- [4] On or about 25 June 2009 and 11 November 2009, respectively, the applicant and the respondent, both duly represented, entered into two written loan agreements.
- [5] The applicant's indebtedness to the respondent, arising from these loan agreements, was secured by the registration of two covering mortgage bonds under the bond number B[...] and B[...] over an immovable property.
- [6] The applicant breached the agreements and the registered mortgage bonds by failing to pay her monthly instalments on the due dates, as agreed with the respondent.

- [7] Subsequent thereto, the respondent issued a summons against the applicant on 13 May 2015 under case no 33725/15. The claim was for a total payment of R260,168.73, with arrears amounting to R20,488.35.
- [8] On 5 June 2015, the applicant and the respondent, both duly represented, entered into a written agreement. Pursuant to this agreement, the applicant was required to make a monthly payment of R3,500.00, effective from 26 June 2015, along with an additional payment of R268.27 to settle the arrears. The applicant subsequently breached this agreement.
- [9] Subsequently, on 10 September 2015, the respondent applied for default judgment, and the court granted judgment against the applicant in favour of the defendant. In terms of Rule 46A of the uniform rules, the order also declared the immovable property covered in terms of the bonds specially executable. The parties thereafter agreed to deter the sale on condition applicant paid and adhered to the payment plan.
- [10] Later, the respondent issued a warrant of attachment and attached the applicant's immovable property.
- [11] Despite not complying with the agreement and owing the respondent large amounts of money, the applicant brought an urgent application for reconsideration of the default judgment on 16 October 2015. The respondent opposed the application.
- [12] On 16 October 2015, Raulinga J gave judgment that the respondent would not be allowed to proceed with the sale in execution of the applicant's immovable property on condition that the applicant punctually complies with her contractual obligations as contained in the written agreement.
- [13] Subsequently, the applicant applied for rescission of default judgment granted on 10 September 2015. On 7 October 2019, Constantindes AJ dismissed the applicant's application. Subsequently, leave to appeal was refused. The applicant made several appeals or applications for rescission of the 2015 judgment, but all the applications were dismissed.
- [14] On 11 February 2022, the applicant served a petition to the Constitutional Court. The leave to appeal was refused with costs.
- [15] On 17 May 2023, the Rule 46A application was granted in favour of the respondent. The applicant's request for leave to appeal Rule 46A judgment was refused by Janse van Nieuwenhuizen J with costs. On 19 June 2023, the applicant served the petition to the Supreme Court of Appeal, which was not granted in her favour.

Applicant's

**submissions**

- [16] The applicant asserts that the court should dismiss all financial claims made against her by Absa. According to her, she has endured significant prejudice and hardship for nine years, becoming extremely impoverished due to the respondent's actions.
- [17] She asserted that in 2009, an agent of the respondent visited her workplace. During the visit, she completed applications for microloans with the agent, Walter, in the amounts of R150,000.00 and R50,000.00. She did not physically visit Absa. Subsequently, he discovered that these loans were categorised as home loans on her financial statements.
- [18] Ms Botha further claims that she had inquired from Walter because she had never applied for a home loan or ceded her property to ABSA. Applicant paid Absa account faithfully until 2014, when she was dismissed from her employment. She then negotiated with the bank to pay R3500.00 from June 2015 until she was financially restored.
- [19] While the payment plan was in effect, the respondent obtained a default judgment on 15 September 2015. She only learned about the judgment only when the sheriff came to attach her private dwelling.
- [20] On 16 October 2015, she applied for an urgent application, which was heard by Raulinga J, who saved her house. Thereafter, the bank started demanding more money, R4200.00 and later R5500.00.
- [21] Ms Botha maintains that she has been applying for rescission of judgment since then, and the judges and DJP Gauteng Division could not assist her. Her application for rescission of the judgment and the leave to appeal had been dismissed. She further appealed to the Supreme Court of Appeal and the Constitutional Court, but all her appeals were unsuccessful. The JSC is now said to be addressing her grievances.
- [22] The applicant finally prays that all financial claims by the respondent be dismissed and a declaratory order be issued to close the above matter.

Respondent

**submissions**

- [23] The respondent's Counsel contends that the applicant did not make out a case for a declaratory order. He points to an undue delay that is not explained in the applicant's founding affidavit.
- [24] Counsel averred that the applicant had been litigating ill-foundedly against the respondent since 2015. In her submission, the applicant makes scurrilous and unfounded allegations against officers of this court, the respondent, attorneys, and Judges of the High Court.

- [25] Counsel further submits that orders and judgments granted hereof in litigation between the parties clearly show that various matters are res judicata, and that the applicant, without a doubt, is harassing the respondent, which is done to delay the finalisation of the matter.
- [26] The respondent's Counsel argued that the applicant's opposition to all applications was based on the fact that her debt was for a personal loan, not a home loan and that judgment was sought fraudulently.
- [27] Counsel submitted further that there was no longer an appeal pending. The respondent had brought an application in terms of the Uniform Rules 46 A(9)(a), only for the court to establish whether or not the immovable property is to be sold with or without a reserve price.
- [28] Counsel further argues that the applicant was aware of the judgment for a long time. The applicant does not address the very long delay in the founding affidavit. Therefore, there is no reasonable explanation for the delay.
- [29] Counsel submits that the applicant admitted being indebted to the respondent. The issue about the payment plan is res judicata, as Raulinga J has already considered it in the urgent court. The acquiescence in the execution of a judgment will normally bar an application of rescission. The applicant agreed with the process followed and, therefore, acquiesced to the judgment and execution. See *Schmidlin v Multi Sound (PTY) Ltd*, 1991 (2) SA 151 (C).
- [30] Mr Eastes, the applicant's Counsel, in supporting his application, referred to NK and another v BB (30472/21) [2023] ZAGPJHC 1025, at para 15, wherein the court stated as follows:
- "states that a vexatious litigant includes launching various proceedings for improper purposes, which includes harassing and oppressing other persons by multivarious proceedings brought for purposes other than the assertion of legitimate rights."*
- [31] Counsel finally submitted that the applicant's case was frivolous and improper. The applicant did so to annoy the respondent. The conduct clearly demonstrates an abuse of court processes and makes scurrilous allegations against judges and legal representatives who are officers of this court. In that regard, the main application must be dismissed with costs on an attorney and client scale, and the applicant be declared a vexatious litigant.

## Issues

in dispute

[32] The issues for determination are:

- a) whether the applicant has demonstrated an interest in an existing, future or contingent right or obligation?
- (b) whether the applicant qualifies as a vexatious litigant?

## Legal principles and discussion

[33] In South African law, a declaratory order is a court's determination of a legal right or entitlement, resolving a dispute about its existence or nature without necessarily granting specific relief. It's a flexible remedy often used to clarify legal issues, particularly when the dispute is purely a question of law or is interlocutory in nature.

[34] In terms of section 21(1) (c) of the Superior Courts Act 10 of 2013, the High Court may grant a declaratory order without any consequential relief sought. Subsection (1) provides that:

*“(1) A division has jurisdiction over all persons residing or being in, and in relation to all clauses arising and all offence triable within, its area of jurisdiction and all other matters of which it may, according to law take cognisance and has power-*

(a).....

(b).....

(c) in its discretion, and at the instance of any interested person, to enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination.”

[35] It is trite that the requirements for granting a declaratory order are two-fold:

- (a) The court must be satisfied that the applicant has demonstrated an interest in an existing, future or contingent right or obligation; and
- (b) Once a court is so satisfied, it must consider whether or not the order should be granted. See *Cordiant Trading CC v Daimler Chrysler Financial Services (PTY)Ltd* 2005(6) SA 205 (SCA) paras 16-17.

[36] It is evident from the papers that the applicant owes the respondent. The default judgment order was granted as far back as 2015, the applicant had been applying for rescission of the judgment, which was refused several times in different courts. The matter is now *res judicata*.

[37] The court is of the view that the applicant has no interest or right in the matter, as the issue raised is a legal position that is clearly defined by statute.

[38] The court will not grant a declaratory relief where the issue raised is hypothetical, abstract, or academic or where the legal position is clearly defined by statute. See *Ex Parte Noriskin* 1962 (1) SA 856 D at 857. In my view, the issues raised by the respondent have long been decided. Furthermore, the issues raised by the applicant are *res judicata*. This principle envisages that parties may not again litigate on the same matter once it has been decided on the merits. Granting the declaratory orders or rescission application under these circumstances will offend the principle of *res judicata* and also amount to an abuse of process.

- [39] The respondent raised a counterclaim that the applicant be declared a vexatious litigant. In South Africa, a vexatious litigant is defined as someone who persistently and without reasonable grounds institutes legal proceedings, often with the intention of harassing or financially burdening the other party.
- [40] The Vexatious Proceedings Act 3 of 1956 provides a remedy for such actions, allowing a court to restrict a person from initiating further legal proceedings without leave or potentially declare them a vexatious litigant.
- [41] In *S v Sitebe* 1965 (2) SA 908 (N), Caney J held that the purpose of the legislation is to put a stop to the persistent and ungrounded institution of legal proceedings.
- [42] The respondent can make an application to the court for an order declaring the applicant a vexatious litigant. The effect of this is that the applicant can no longer institute legal action in any court against the applicant without leave of the court. The court will only grant such leave if it is satisfied that the legal action is not an abuse of the court process and that there are prima facie grounds for the proceedings.
- [43] It is evident from the papers that the applicant has brought at least 12 applications since 2015, which were all dismissed. This includes multiple rescission attempts, appeals, petitions, and complaints against judges.
- [44] In the matter of *Christensen NO v Richter* 2017 JDR 1637 (GP), an application in terms of s2(1)(b) of the Act was brought to declare the first respondent, a vexatious litigant. The first respondent had launched several applications against the estate. In deciding whether to declare the first respondent a vexatious litigant the court held that:
- “[the first respondent] is, in my view, a vexatious litigant. He should therefore be prevented from instituting any further legal proceedings against the estate and/ or its executors. I am satisfied under the circumstances that the applicants have made out a case for a final interdict. They have established a clear right for the granting of a final interdict. It is clear that the applications launched by the first respondent are vague and not substantiated and the balance of convenience favours the granting of the final interdict. The first respondent cannot continue to litigate as relentlessly as he does, disregarding court orders. This has to stop. I am inclined to accept that the applicants have no alternative remedy to stop him from continuing with his actions.”*
- [45] In terms of section 34 of the Constitution of the Republic of South Africa, everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum. However, such rights are limited in terms of section 36 of the Constitution.
- [46] In *Beinash and Another v Ernst and Young and Others* 1999 (2) SA 116 (CC), the court considered the constitutionality of s2(1)(b) of the Act. The court confirmed that:

*“the provision does limit a person’s right of access to court. However, such limitation is reasonable and justifiable. While the right of access to court is important, other equally important purposes justify the limitation created by the Act. These purposes*

include the effective functioning of the courts, the administration of justice, and the interests of innocent parties subjected to vexatious litigation. Such purposes are served by ensuring that the courts are neither swamped by matters without any merit nor abused in order to victimise other members of society”.

[47] It is evident from the number of applications stated above that the applicant instituted legal proceedings persistently and without reasonable grounds. The proceedings were an abuse of court processes, and there were no prima facie grounds for further proceedings.

#### Costs

[48] The respondent in this matter has been successful in the relief sought and is accordingly entitled to costs.

#### Order

[49] In the result, I make the following order:

1. The applicant’s application for the declaratory order is dismissed with costs on scale C
2. The respondent counter application is granted, and the applicant, Catharina Baby Botha, is declared to be a vexatious litigant as contemplated in terms of the Vexatious Proceedings Act 3 of 1956
3. Applicant shall not institute legal proceedings against the respondent in any court without leave of the court.
4. This order must be brought to the attention of the Registrar of this court
5. On the counter application, the applicant is ordered to pay costs on scale C

MOILA AJ

ACTING JUDGE OF THE HIGH COURT

PRETORIA

For the Applicant: In person

For the Respondent: Advocate J Eastes

Instructed by: Delberg Inc.Attorneys

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