
SOUTH AFRICA / JUDGMENT

Cruz N.O and Others v Nedbank Limited and Others (62211/14) [2015] ZAGPPHC 913 (18 September 2015) [2015] ZAGPPHC 913

COURT

North Gauteng High Court, Pretoria

BEFORE

M F Legodi

CASE / FILE NUMBER

62211/14

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REPUBLIC

OF SOUTH AFRICA

OFFICE

OF THE CHIEF JUSTICE

(GAUTENG

DIVISION. PRETORIA)

CASE

NO: 62211/14

DATE: 18 SEPTEMBER 2015
IN THE MATTER BETWEEN
ALERANDRA
CARLOS MONTEITO CRUZ
N.O.....First
Applicant
TAMLYN
LAURA SCULLY
N.O.....Second
Applicant
ROSANNE
SCULLY
N.O.....Third
Applicant
And
NEDBANK
LIMITED.....First
Respondent
HACK
STUPEL & ROSS
ATTORNEYS.....Second
Respondent
REGISTRAR
OF DEEDS,
PRETORIA.....Third
Respondent
REGISTRAR
OF DEEDS,
MBOMBELA.....Fourth
Respondent
JANSEN
ROELOF
JOHANNES.....Fifth
Respondent
SHERIFF
MBOMBELA.....Sixth
Respondent

JUDGMENT

LEGODI J

HEARD ON: 08 SEPTEMBER 2015

HANDED DOWN ON: 18 SEPTEMBER 2015

- [1] The sale in execution on 29 January 2014 and subsequent transfer and registration of the immovable of property known as Portion [5.....] [Erf 3.....] [N.....], Extension [1.....] into the names of the fifth respondent Roelof Jahannes Jansen became the subject of the dispute before me.
- [2] The applicants want orders declaring that the agreement they concluded with the first respondent (Nedbank) is reinstated by the payment made by the Applicants on 29 January 2014 and that the sale in execution of the property together with all subsequent registration and transfer are null and void. In addition, they want the third respondent (the Registrar of Deeds, Pretoria and the fourth respondent, the Registrar of Deeds Mbombela be directed to de-register the property from the names of the fifth respondent (purchaser at the sale in execution) and to re-register same into the names of the Perfect View Trust (the previously registered owner of the property. Lastly, the applicants want NEDBANK to be ordered to reinstate and re-register the mortgage bond in respect of the property in the names of the Perfect View Trust.
- [3] The applicants are suing in their representative capacities as trustees of Perfect View Trust. Nedbank had obtained default judgment against the Trust when it failed to pay in terms of mortgage loan agreement. The sale in execution which took place on 29 January 2014 was the result of the default judgment aforesaid. However, just before the sale in execution on 29 January 2014, Nedbank concluded an agreement in terms of which the applicants were to pay 80% of the arrears before 09h00 on 29 January 2014. The applicants paid R61 800.00 on 29 January 2015 being 80% of the arrears. It is in contention whether payment was effected before 09h00. Nedbank however in order to meet the applicants half-way, sent an email to the applicants on the same date after the sale in execution, notifying them of the sale in execution and advised them to lodge an application for cancellation of the sale in execution. That the applicants did not do. On 24 May 2014 the property was registered and transferred into the names of the fifth respondent.
- [4] The fifth respondent is a bona fide purchaser. I was referred to the case of *Knox v Mofo and Others* 2013 (4) SA 46 (GSJ) in particular at paragraph 17 thereof, wherein Van der Merwe AJ stated:

"17. The common law principles are also reflected in Badenhorst, Pienaar & Mostert (\$* edition) Gilbery and Schoeman's Law Property 261 in the following terms with reference to the relevant common law authority:

Property sold at judicial sales cannot after delivery in the case of movables or registration in case of immovable, be vindicated from a bona fide purchaser. Even when an article is sold by mistake as belonging to a judgment debtor, the true owner cannot vindicate it from a bona fide purchaser (though Malt having states that he or she can do so on refunding the purchase price to the purchaser). Thus, section 70 of the Magistrates' Courts Act provides that the sale in execution by the Sheriff of the court will not, in the case of movable things after delivery thereof or in the case of immovable things after registration, be liable to be impeached as against a purchaser in good

faith and without notice of any defeat. In footnote 192 on the same page, the authors qualify the general statement by stating that '[the sale, however, has to be a valid sale complying with the applicable rules of court and statutory measures. See *Van der Walt v Kolektor (Edms) Bpk* 1989 (4) SA 690 T, *Joosub v J1 Case SA (PTY) Ltd* 1992 (2) SA 665(N) at 679 B."

[5] The principle set out above has been there for many years. It is not the applicants' case that the fifth respondent is not

a bona fide purchaser neither is it suggested that the fifth respondent had knowledge of the arrangement concluded between the

applicants and Nedbank up to and including the period the 29 January 2014 to May 2014 when the property was ultimately registered and transferred into the names of the fifth respondent.

[6] What the applicants' counsel strongly contended during oral argument was that, at least Nedbank must be ordered to reinstate and re-register the mortgage bond in respect of the property into the names of the previous registered owner of the property, Perfect View Trusts. The contention was that this will enable the applicants to have a claim against Nedbank. I am unwilling to go to that direction. The subject matter of the mortgage bond is the property and to reinstate and re-register such a mortgage bond in respect of the property registered in the names of the fifth respondent, will just simply complicate matters and will be prejudicial to the fifth respondent's rights. Same goes for the relief sought to declare the arrangement concluded between the applicants and Nedbank alive. As regard declaring the sale in execution null and void, it is important to mention that, the sale in execution was the result of valid default judgment granted in favour of Nedbank. Whether or not the arrangement was fulfilled at 09h00 as agreed by the parties, on probability, it did not. However I refrain from making a final determination in this regard. To this end, the applicants' application is destined to fail.

[7] Consequently the application is hereby dismissed with costs.

M F LEGODI

JUDGE OF THE HIGH COURT

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Prepared on 11 October 2026 · Esheria