

SOUTH AFRICA / JUDGMENT

De Beer v Zitlamu Eiendomme (Pty) Ltd and Another (CA120/2020; 10704/2018 & 2915/2020) [2022] ZAECMKHC 105 (2 December 2022)

[2022] ZAECMKHC 105

COURT

Eastern Cape High Court, Makhanda

BEFORE

M Gwala, N G Beshe

CASE / FILE NUMBER

CA120/2020

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IN THE HIGH COURT OF

SOUTH AFRICA

(EASTERN CAPE

DIVISION, MAKHANDA)

APPEAL

CASE NO: CA120/2020

CASE

NO IN THE COURT A QUO: 10704/2018 & 2915/2020

In

the matter between:

FRANCOIS

DE BEER

Appellant

And

ZITLAMU

EIENDOMME (PTY)

LTD

First Respondent

CUROSOL

PROPRIETARY LTD

Second Respondent

JUDGMENT

GWALA AJ

1. This matter concerns an order made by the additional Magistrate: Gqeberha in the District Court of Gqeberha (the court a quo). The court a quo made an order in the following terms:

“[24] The judgement debtor is ordered to pay an amount of R2000.00 to the first judgement creditor ZITLAMU EIENDOMME (PTY) LTD and an amount of R2000.00 to the second judgement creditor: CUROSOL PROPRIETARY LIMITED with effect from the 01 June 2021 and thereafter on the first day of each succeeding month until both debts legal costs have been paid in full.”

2. The appellant is the judgment debtor. The first and second respondents are judgement creditors. The first and second respondents instituted separate actions in the court a quo pursuant to which they obtained default judgements against the appellant.
3. The first respondent obtained judgement against the appellant in the capital sum of R229 814 98 (two hundred and twenty-nine thousand eight hundred and fourteen rand ninety-eight cents) and costs. On the other hand, the second respondent also obtained default judgement against the appellant in the amount of R138 073.30 (one hundred and thirty-eight thousand and seventy-three-rand thirty cent) together with costs.
4. When the judgments remained unsatisfied, the judgment creditors separately issued notices calling upon the appellant to appear before a magistrate for an inquiry in terms of Section 65A (1) of the Magistrates' Court Act 32 of 1944 in respect of both judgment debts. The enquiry was held simultaneously before the magistrate. The matters were not consolidated though.
5. From the appellant's evidence at the inquiry, it appeared that the appellant is employed. He was earning a monthly salary in the amount of R15 300 (fifteen thousand three hundred rand) per month. Occasionally, he earns an extra income from part time jobs which he does over the weekends and that income ranges between R500 (five hundred) and R600 (six hundred) per job.
6. He stays in a rented house and pays an amount of R5 000 (five thousand rand) for rental. His other expenses as outlined by him are as follows: he pays an amount of R1 900 (one thousand nine hundred) per month for his contract with Mobile Telecommunications Network (MTN); a sum of R4 262 (four thousand two hundred and sixty two rand) for a life policy with Momentum over his life; a sum of R1 132 (one thousand one hundred and thirty two rand) for short term insurance with Santam for his vehicle; a sum of R1 460 (one thousand four hundred and sixty rand) for a hospital plan; a sum of R2 926 (two thousand nine hundred and twenty six rand) for his

vehicle hire purchase; R 201 (two hundred and one rand) for his internet connection; R1 050 (one thousand and fifty rand) in respect of other credit agreements; a sum of R1500 (one thousand five hundred) for his son who is an adult staying on his own; as well as a sum of R1 000 (one thousand rand) for his chronic medication.

7. Upon analysis of the financial status as presented by appellant, the court a quo found that there are sufficient funds that could be utilized to pay off the judgment debt. The court a quo reasoned that there are sufficient funds available that could be utilised towards the settlement of the judgment debts. The court a quo reasoned that the amount of R4 262 (four thousand two hundred and sixty two rand) which the appellant pays towards his life policy is such an amount that could be used towards payment of the judgement debts. On this basis she made order referred to above.
8. In his notice of appeal, the appellant attacks the reasoning of the court a quo on various grounds. I deem it not necessary to deal with each of the grounds of appeal in the form they appear in the notice of appeal. It is unnecessary to do so because they are an attack on the reasons for the judgment. It is trite that in the final analysis an appeal lies against the order of the court and not necessarily against the reasons given for the order. For instance, in *South African Reserve Bank V Khumalo and Another* 2010 (5) SA 449 SCA at para 4, the Supreme Court of Appeal stated the principle as follows:

- [4] An appeal lies against an order that is made by a court and not against its reasons for making the order. ... This means that the

principal issue on which the appeal turns is whether the full bench was correct in its conclusion on the invalidity of reg 22C(1) for the reasons that it gave. If the respondent fails on that issue and on the subsidiary issue that I referred to, then the order that it made falls to be set aside, and the challenge to the validity of the order falls to be dismissed. ..." See also *Baliso v First Rand Bank Ltd t/a West Bank* 2017 (1) SA 292 CC para 8.

9. With that said, the issue in this appeal turns on whether the court a quo was correct in its conclusion that the appellant be ordered to pay the amount of R2000 to each of the judgement creditors. If on the analysis the court a quo was correct, there ends the chapter. If not, then what is the appropriate order in the circumstances?
10. The purpose of s 65A of the Act is to conduct an enquiry into the financial position of the judgment debtor so that the court can make an order which has as its aim the settlement of the judgment debt. The clear object of the notice in terms of s 65A of the Act is to enforce the already existing judgment debt.
11. This will of necessity turn on whether considering the financial circumstances of the appellant there are sufficient funds available that could be utilized towards the settlement of the judgment debts. The analysis of the financial position of the appellant as disclosed by him in evidence at the inquiry indicates that there is an amount of R4 262 (four thousand two hundred and sixty-two) that he pays towards his life policy.

12. The life insurance is not a necessity. It is not one of the basic necessities of life. In its nature it is a provision for after life which the insured life never derive any benefit from. In fact, it could be characterised as luxurious in certain circumstances such as those of the appellant who is currently in a situation where he is unable to afford to pay off his judgment debt.
13. The appellant will never utilize for betterment of his life the pay out of his life insurance policy as such policies pay out only upon the death of the insured. The amount that he pays towards his life insurance, if re-directed, will go a long way towards satisfying the judgement debts. Whilst the said amount appears to be little compared to the judgment debts, it will nevertheless go a long way towards settling the debts. It will reduce the capital amount at least by R24 000 per year. As the financial situation of the appellant improves, more funds will be available to satisfy the judgment debt.
14. I am of the view that the court a quo was correct and cannot be faulted in finding that there are sufficient funds that could be utilized to pay the judgement creditors. There is no basis to interfere with the order of the court a quo. Accordingly, the appeal lacks merit and falls to be dismissed.
15. The appellant passionately argues that the court a quo should not have rejected his proposition that it was the aim of the legislature in providing for the inquiry proceedings in terms of section 65A of the Magistrates' Court Act to facilitate the settlement of the judgment debt. This argument does not cut the ice. It does not contribute on the question whether the court a quo was correct in making the order. The appellant may very well be correct in his interpretation but it is neither here nor there. Whilst it may stand, it has no bearing on whether the order was correct which is the focal point of the appeal.
16. Section 65A is a procedure that is available to a judgment creditor to secure the attendance of the judgment debtor before the lower court and to compel such judgment debtor to disclose his financial position in order to enable the court to inquire into such financial position and to make such order as the court may deem just and equitable. The court has a discretion in this regard guided by the consideration of what is just and equitable in the circumstances of each case. This much clearly appears from the provisions of section 65A(1) (a) themselves. The remainder of the provisions of section 65A make provisions for the procedure that will be followed for purposes of the inquiry.
17. The appellant contends that the amount of R2000 (two thousand rands) is too little to satisfy the judgment debts. It will result in a situation where there are no prospects that the appellant will discharge the debt within a reasonable time. In his view an appropriate order in the circumstances would be that the inquiry in terms of section 65A (1) of Magistrates' Court Act 32 of 1944, is closed. This view too does not cut the ice. It will not be just to the creditors. The appellant does have funds available
that could be re-directed to satisfy the debt.

18. The issue for consideration at 65A inquiry is the financial position of the judgment debtor to determine whether there are funds that may be used to satisfy the judgment debt over a period of time. The little that is available is better than nothing. The financial position of a debtor may improve over time. The very reason to invoke section 65A is that the judgment debtor is unable to settle

the debt when called upon to do so. The judgment debtor gets an opportunity to satisfy the debt over a period of time.

19. It must be borne in mind that the judgment debtor has an obligation to give effect to the court order. Invariably, at the stage section 65A is invoked, there is already a court order that the judgment debtor has an obligation to satisfy. To expect the court

to look away when there are funds that may be utilised to satisfy the debt, no matter how little they may be, will not be consonant with the obligation that a court order is binding upon whom it applies and must be given effect to as long as it has not been set aside.

20. I have concluded that there is no merit in the appeal and that it falls to be dismissed. I am of the view that costs should follow the event. In the circumstances I propose the following order:

a) That the appeal is dismissed with costs.

M.Gwala

Acting Judge of the High Court of South Africa

Beshe J

I agree and it is so ordered.

N.G. Beshe

Judge of the High Court of South Africa

For The Appellant: Adv. Westerdale

For First Respondent:

For Second Respondent:

Date of Hearing: 02 December 2022

Date of Judgment: 02 December 2022

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Prepared on 11 October 2026 · Esheria