

SOUTH AFRICA / JUDGMENT

ERF [....] Hyde Park (Pty) Ltd and Another v United Technical Equipment Company (Pty) Ltd and Others (30706/2021) [2021] ZAGPJHC 464 (3 August 2021)

[2021] ZAGPJHC 464

COURT

South Gauteng High Court, Johannesburg

BEFORE

Makume

CASE / FILE NUMBER

30706/2021

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Policy

REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

CASE

NO: 30706/2021

REPORTABLE:

NO

OF

INTEREST TO OTHER JUDGES: NO

REVISED

DATE:

3/8/2021

In

the matter between:

ERF
[....] HYDE PARK (PTY) LTD
FIRST APPLICANT
KHOMOTSO
TEFFO N.O.
SECOND APPLICANT
And
UNITED
TECHNICAL EQUIPMENT COMPANY
FIRST RESPONDENT
(PTY)
LTD
TERRENCE
KOMMAL
SECOND RESPONDENT
SHERIFF
SANDTON SOUTH
THIRD RESPONDENT
REGISTRAR
OF DEEDS, PRETORIA
FOURTH RESPONDENT

JUDGMENT

MAKUMEJ:

INTRODUCTION

- [1] In this application which was brought on an urgent basis in terms of Rule 6(12) of the Uniform Rules the Applicant seeks the following relief:
- a) Declaring the sale in execution of the first Applicants immovable property being Erf [....] Hyde Park Extension 47, Johannesburg which sale took place on the 15th June 2021 to be unlawful and be set aside.
 - b) Interdicting the Respondents from selling alienating, encumbering and transferring the immovable property to the second Respondent or any other person whilst the Applicant is still under business rescue.
- [2] This matter served before me in the urgent court on the 6th July 2021 and stood down for argument on the 7th July 2021.
- [3] It is common cause that the first Applicant owns the immovable property known as [....] Hyde Park, Johannesburg. Mr Bamoza Eric Molefe is presently the sole director of the Applicant. He and his family live on the property it is their residential home. The property is located at 2 Townsend Avenue, Hyde Park, Sandton.

- [4] During or about the 27th July 2020 the first Respondent obtained a money judgment against the Applicant in this court for payment of the amount of R9 million (See case number 34709/2019) Mr Eric Bamoza

Molefe and his wife Veronica Sibongile Molefe were co-defendants in that matter in their capacities as Trustees of a Trust,

- [5] Simultaneously with the judgment the court declared the immovable property owned by the Applicant specially executable.

EVENTS THAT TOOK PLACE PRIOR TO AND AFTER THE JUDGMENT

REFERRED TO ABOVE

- [6] It needs be mentioned that at the time that judgment was entered against the Applicant as described above the directors of the Applicants were the daughters of Mr BE Molefe namely:

- i) Jessica Molefe;
- ii) Violet Molefe.

- [7] On the 7th November 2019 a resolution was passed by the Company (Applicant) in terms of which it was resolved to voluntarily begin business rescue proceedings and to place the Applicant under supervision since according to the directors there existed then reasonable grounds and belief that the company was in financial distress. The resolution authorised Mr Eric Bamoza Molefe to sign all documents on behalf of the company to give effect to the resolution. In the resolution one Michiel Jacobus Van Tonder was appointed business rescue practitioner for the company.

- [8] That resolution was never given effect to and accordingly lapsed in terms of Section 129 (5) (a) of the Companies Act 71 of 2008.

- [9] The judgment referred to above in paragraph (4) was granted after it was opposed. Counsel appeared on behalf of the Applicant. Applicant's attorneys then one Mario Kyriakon engaged first Respondent's attorneys in an attempt to settle the judgment debt. The negotiations came to a nullity.

- [10] On the 28th May 2021 the first Respondent in its capacity as the judgment creditor published notices in both the Star Newspaper and the Government Gazette that a sale in execution of the attached immovable property will take place on the 15th June 2021.

- [11] On the 27th May 2021 first Respondent's attorneys received an email from one Michael Snyman informing them that they as JF Van Deventer. Incorporated had just been appointed to act as attorneys for the Applicant and requested that they be invited on case line's to enable them to peruse the court file and advise their client accordingly. This was done. However Mr Snyman never reverted to first Respondent attorneys as to what their instructions were.

- [12] On the 15th June 2021 third Respondent proceeded with the Sale in Execution and sold the property to the second Respondent. The Sale in Execution took place earlier in the day and at 14h32 first Respondent's attorneys received an email from the Applicant's attorneys namely Messrs Mashabane and Associates in which they informed first Respondent's attorneys that the Applicant had been placed under business rescue and that the second Applicant is the appointed Business Rescue practitioner.
- [13] In the letter the Applicants attorneys called upon the first Respondent's attorneys to admit that the sale was null and void as it took place when the Applicant was already under Business rescue they demanded an undertaking to that effect by close of business on the 15th June 2021 failing which they will launch on urgent application in the High Court to set aside the sale.
- [14] The urgent application was only launched on the 28th June 2021 some 13 days later. The Respondent's attorneys responded to that letter on the 17th June 2021 informing them that it was the first time that this information was brought to their attention and then requested that Applicants attorneys urgently forward to them the following document's
- a) the resolution adopted to commence business rescue proceedings (Section 129(1) of the Companies Act.
 - c) Notice of appointment of the business rescue practitioner (Section 129(3) and (4) of the Companies Act).

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Prepared on 12 October 2026 · Esheria