

SOUTH AFRICA / JUDGMENT

First Rand Bank Limited v Bila and Another (24283/2017) [2024] ZAGPPHC 1393 (19 December 2024) [2024] ZAGPPHC 1393

COURT

North Gauteng High Court, Pretoria

BEFORE

Ramawele

CASE / FILE NUMBER

24283/2017

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IN

**THE HIGH COURT OF SOUTH AFRICA
(GAUTENG
DIVISION, PRETORIA)**

Case

Number: 24283/2017**(1) REPORTABLE: NO****(2)****OF INTEREST TO THE JUDGES: NO****(3)****REVISED****DATE:** 19/12/24**SIGNATURE:** In

the matter between: FIRST
RAND BANK LIMITED
APPLICANT
and
TSAKANI
EPHRAIM BILA
FIRST RESPONDENT
SASAVONA
DORIS BILA
SECOND RESPONDENT

JUDGEMENT

Ramawele AJ

Introduction

- [1] This is an application to declare the immovable property known as ERF DARRENWOOD TOWNSHIP to be specially executable and to direct the Registrar of the above Honourable Court to issue a warrant of execution in respect of the immovable property. The Applicant further prays that the immovable property be sold in execution without a reserve price alternatively at a reserve price of R1 204 791,79.
- [2] The First and Second Respondents (the "Respondents") are the registered owners of the immovable property and the Applicant is the registered bondholder thereof.
- [3] As a result of the Respondent's breach of the terms of the Credit Agreement, the Applicant instituted action and judgement was granted against the Respondents on 8 February 2018 in the amount of R1 852 772,03. A Warrant of Execution against the immovable property was issued on 28 March 2022.
- [4] A dispute exists between the parties in respect of the amount that is currently owing. However, the Respondents concede that they are in default and owe a substantial amount of money to the Applicant.
- [5] According to the Applicant, at the time of sending the section 129 Notice of the National Credit Act, 34 of 2005, the Respondents were in arrears with instalments in the amount of R51 147,86 which further accumulated to the amount of R110 796, 25 on 25 August 2022. The Applicant alleges further that the arrears accumulated partially as a result of the Respondents' sporadic or non-payment of the instalment and that the Respondents only paid R1000,00 on 22 June 2022.
- [6] The Applicant attached documents in these proceedings showing that the market value of the property is estimated at R2 100 000,00 and the municipal valuation property at R1 754 000,00. The amount owing in respect of the municipal rates is estimated at R144 108,21.
- [7] The Respondents allege that the immovable property is their primary residence which the Applicant is unable to deny.
- [8] The Applicant alleges that it has on numerous occasions attempted to assist the Respondents to rectify the default and arrears on the account by contacting them telephonically on 4 June 2022 and 26 July 2022 respectively. The Respondents then advised the Applicant that they will pay R30 000,00 per month, starting on 20 June 2022.

[9] On 20 August 2022 and 22 August 2022, the Applicant sent an SMS (short service message) to the Respondents advising them that due to the arrears on the bond account, legal proceedings would be instituted.

[10] The Respondents allege that they have already paid the amount of R1 212 900,00 to the Applicant. It is not clear from the papers when this amount was paid to the Applicant. The Applicant does not deal with this alleged payment in its replying affidavit. The Applicant only states in its reply that "The excuse that they offer is that they paid a certain amount since initiation of legal process, albeit not the full amount required in terms of the underlying loan agreement."

[11] The Applicant as the custodian of the records is expected to clearly set out in the replying affidavit how much money was paid by the Respondents, particularly where the Respondents allege that they have already paid an amount of R1 21 900,00. It does appear from the papers that the Respondent owe the Applicant substantial amount of money but there is no clear evidence of how much money was paid by the Respondents after these proceedings were instituted. The amount

currently owed by the Respondents to the Applicant is R110 796, 25.

[12] In Absa Bank LTD v Ntsane and Another[1], the court stated the following while addressing lack of sufficient facts in this type of application:

"It is obvious that the full picture of the history of the relationship between the Plaintiff and the Defendant was not dealt with in the first affidavit supporting the original application for default judgement. It was not even dealt with in the second attempt"[2].

[13] The court in ABSA Bank LTD further held that:

"The question the arises whether this omission is significant and whether the Plaintiff should have disclosed more facts that would have informed the court of the struggle the Defendants have been through in their endeavour to retain their house. The information that was not included in the affidavit supporting the application for default judgement can only be regarded as relevant if such information, had it been at the court's disposal, was of a nature that might have led the court to a different decision than the one it would have reached without having those facts drawn to its knowledge. It is clear that much of what was Jeff unsaid could have informed the court's eventual decision[3]".

[14] The Respondents are 5.70 months in arrears. It is very concerning that the Applicant alleges that it contacted the Respondents on 4 June 2022 and the Respondents undertook to pay the amount of R30 000, 00 on 6 June 2022 per month starting on 20 June 2022.

[15] The Respondent were not afforded sufficient period to consider how to purge their default because the communication between the parties took place on 4 June 2022 and an agreement to pay R30 000,00 per month was reached two days later on 4 June 2022 and surprisingly, the first payment was due on 20 June 2022.

[16] It is not unreasonable to rule out that fearful of losing their primary residence, the Respondents agreed to an undertaking which they would not have been able to keep.

[17] In all the circumstances I am not persuaded that the Applicant has made a proper case for the relief sought.

Order

[18] In the premises the following order is made:

[1] The application is postponed sine die.

[2] Prior to re-enrolling the application, the Applicant must serve on the Respondent personally through the Sheriff the following documents:

[2.1] A revised section 29 notice in terms of the NCA ("the 129 notice") in which the current arrears are stated and distinguished from the previous

129 notice appearing as an Annexure in the application by a heading stating that the notice is a revised notice reflecting the

Respondent's current arrears;

[2.2] A copy of the application together with all the annexures;

[2.3] A notice of re-enrolment which must state:

[2.3.1] that the application which was set down for hearing on the previous occasion (and the previous occasions 'date to be specified) was postponed sine die by the court;

[2.3.2] the Respondent's rights in terms of the NGA, and in particular those contemplated in section 129(1)(a) of the NGA, are unaffected by the fact that the application has already been instituted and a further note that the Respondent is invited to respond to the revised notice within ten days of the service of the documents referred to herein on the Respondent;

[2.3.3] the Respondent is given ten days from the date of service of those documents referred above, to explore those non-litigious ways of purging the Respondent's default as set out in the revised section 129 notice;

[2.3.4] in the event of the Respondent failing to respond to the revised section 129 notice within ten days of service of the documents referred to above, then the application will be made for an order in terms of the notice of motion which appears in the application which was set down.

[3] In the circumstances set out above, the application must be made to court on a specified date which date must be more than ten days from the date of service of the documents set out above, on the Respondent.

[3] The Sheriff in his return of service must specifically state that the revised section 129 notice was served on the Respondent together with the notice of re-enrolment of the application.

[4] Costs of the application are to be costs in the cause.

RATHAGA RAMAWELE

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION OF THE HIGH COURT, PRETORIA

Date of hearing: 25 November 2024

Date of judgement: 19 December 2024

Appearances:

For the Applicant: CJ Mouton instructed by Schuler Heerschop Pienaar Xaba INC

For the Respondent: R van Dyk instructed by Michael Krawitz & Co

[1]

[2006] ZAGPHC 115; 2007 (3) SA 554 TPD

[2] Id page 563 paragraphs [51] and [52]

[3] Id page 563 paragraph [53] & [54]

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Prepared on 12 October 2026 · Esheria