

SOUTH AFRICA / JUDGMENT

Firststrand Bank Limited v Madonsela and Another (57786/2019) [2020] ZAGPPHC 548 (27 August 2020)

[2020] ZAGPPHC 548

COURT

North Gauteng High Court, Pretoria

BEFORE

Modisa

CASE / FILE NUMBER

57786/2019

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Policy

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH

AFRICA

GAUTENG DIVISION , PRETORIA

(1)

REPORTABLE:

YES/NO

(2)

OF

INTEREST TO OTHER JUDGES: YES/NO

(3)

REVISED.

CASE

NO: 57786/2019

In

the matter between:

FIRST
RAND BANK LIMITED
Plaintiff
And
MODUDUZI
IAN MADONSELA
First Defendant
(ID
No. [...])
ZODWA
EUGENE MADONSELA
Second Defendant
ZENZELE
ICT CONSULTING CC
Third
Defendant
(Reg
No. : 2007/249555/23)

JUDGMENT

MODISA AJ:

- [1] This is an application for default judgment against the First and Second Defendants whereby Plaintiff claims payment to the amount of R1 801 151.11, payment of interest at the rate of 11% from 07 June 2019 to date of payment, an order declaring the Defendants immovable property described as portion [...], an order that a Registrar be authorised to issue a warrant of attachment , an order that the Sheriff be authorised to execute the warrant of attachment on the property , an order setting the serve price at R1 531 235.07 as well as costs on the scale as between attorney and client;
- [2] The First Defendant appeared in person on 18 August 2020 to oppose the default judgment on the following basis:
- (i) That he was not given sufficient time to oppose the matter;
- (ii) That there were renovations and/or extensions on the property which were not taken into consideration in setting the reserve price.
- (iii) That he has taken steps to put the property on sale and the Plaintiff was informed accordingly.
- [3] It is common cause that the property in issue is not the primary residence of the First Defendant;
- [4] According to the First Defendant there are tenants residing at the property and he only received one monthly rental for one occupied room recently;

- [5] It is common cause that the Defendants are in arrears for an amount of R 265 000.00 calculated for 15.3 months instalments;
- [6] It appears that service of the summons was effected on 23 June 2020 by the Sheriff and such summons were received by a certain Emmanuel who effected service on the spouse of the First Defendant;
- [7] Counsel for the Plaintiff submitted that the First Defendant does not have any defence and the question of the reserve price should not be entertained and no reserve price should be set once it is accepted that the property is not the primary residence of the First Defendant. He continued to indicate that the valuation of the property is irrelevant for purposes of these proceedings. I agree with this proposition;
- [8] Counsel for the Plaintiff chose to insert a reserved price in prayer 6 of the draft order. I am not inclined to interfere with the proposed draft order in its entirety;
- [9] Counsel also based his submissions on the judgment of ABSA Ltd v Mokebe and Related Cases[1]. The Court in ABSA Bank supra remarked as follows:

"[66] We are aware that Rule 46A(8) provides that a court 'may' set a reserve price. In order to comply with the constitutional requirement of just and equitability, it would be an exception rather than a rule where a reserve price is not set by a court. In our view, question 7 should be answered as follows:

'Save in exceptional circumstances a reserve price should be set by a court, in all matters where execution is granted against immovable property which is the primary residence of a debtor, where the facts disclosed justify such an order.'

- [10] Be that as it may, it is trite that a party wishes to reinstate a cancelled credit agreement has to ensure that payment of all the arrears together with interest and legal fees is effected before he or she can invoke such reinstatement. This issue is not before this Court;
- [11] I am of the view that it will be in the interest of justice to afford the First Defendant an opportunity to exercise his options within a limited time ;
- [12] In the premises the following order is made:
1. The draft Court order annexed hereto marked "X" is made an order of Court;
 2. The implementation of the Court order is suspended for a period of three (3) months from the date of the granting of the order ;

MODISA AJ

PRESIDING JUDGE

DATE OF HEARING: 18 AUGUST 2020

DATE OF JUDGMENT: 27 AUGUST 2020

APPLICANT/ PLAINTIFF COUNSEL : ADV J MINNAAR

APPLICANT/ PLAINTIFF'S ATTORNEY: HAMMOND POLE MAJOLA INC

FIRST DEFENDANT : IN PERSON

“X”

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

On this the 18th day of August 2020

Before the Honourable Judge MODISA AJ

CASE NUMBER: 57786/2019

FIRSTRAND BANK LIMITED

PLAINTIFF

MDUDUZI IAN MACONSELA

FIRST DEFENDANT

(I.D. NO: [...])

ZODWA EUGINE MADONSELA

SECOND DEFENDANT

ZENZELE ICT CONSULTING CC

THIRD RESPONDENT

(REG NO: [...])

COURT ORDER

HAVING read the Application and other documents filed of record and having considered submissions on behalf of the Applicant's counsel: -

THE COURT GRANTS Judgment in favour of the Plaintiff against the 1st and 2nd Defendants, jointly and severally, the one paying the other to be absolved for: -

- 1) Payment of the sum of R 1 801 151.11;
- 2) Payment of interest on the sum referred to in paragraph (1) hereof at the rate of 11.00% (ELEVEN POINT ZERO ZERO) per annum calculated and capitalised monthly in advance in terms of the mortgage bond, from the 07/06/2019 to date of payment;

- 3) An order declaring the Defendants' immovable property, being [...] mortgaged under Mortgage Bond No. B41884/2014 and held under Deed of Transfer [...] ("the Property"), is specially executable for the sum of R 1 801 151.11 plus interest thereon at the rate of 11.00% per annum from 07/06/2019 to date of payment plus costs on the scale as between attorney and client;
- 4) The Registrar of the above Honourable Court is authorised to issue a Warrant of Attachment herein;
- 5) The Sheriff of the above Honourable Court is authorised to execute the Warrant of Attachment on the Defendants property;
- 6) The reserve price is set in the amount of R1 531 235.07;
- 7) Costs on the scale as between attorney and client;
- 8) The relief claimed against the 3rd Respondent, jointly and severally with the relief granted against the 1st and 2nd Respondent, the one paying the other to be absolved is postponed sine die.

BY ORDER: REGISTRAR

HAMMOND POLE MAJOLA INC.

REF: MAT438959 / JJW /dw

TEL: 0118741800

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[1] 2018 (6) SA492 (GP)

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Prepared on 10 October 2026 · Esheria