

SOUTH AFRICA / JUDGMENT

Firststrand Bank Limited v Van Rooyen and Another (4636/2019) [2025] ZAMPMHC 15 (25 March 2025) [2025] ZAMPMHC 15

COURT

Middelburg High Court, Mpumalanga

BEFORE

Langa

CASE / FILE NUMBER

4636/2019

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IN

THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA

DIVISION (MIDDELBURG LOCAL SEAT)

CASE NUMBER: 4636/2019

(1) REPORTABLE:

NO

(2) OF INTEREST TO

OTHER JUDGES: NO

(3) REVISED

DATE 25/03/2025

SIGNATURE

In the matter between:

FIRSTRAND BANK LIMITED

APPLICANT

And

QUENTIN VAN ROOYEN

FIRST

RESPONDENT

CHARNE

KOTZE

SECOND RESPONDENT

JUDGMENT

Coram: Langa J

Introduction and Facts

- [1] This is an application for summary judgment by the Applicant FirstRand Bank Limited against the two respondents Quentin Van Rooyen and Charne Kotze. The application is based on the summons issued for the repayment of the outstanding amount on the bond with interest. The Respondents are opposing the application.
- [2] The application is based on the summons issued by the Applicant against the two Respondents on 29 October 2019 in which the former is claiming the following:
- 2.1 Payment of R349,628.52 together with interest and costs; and
- 2.2 An order in terms of Rule 46A declaring the Respondents' immovable property ("the mortgaged property") specially executable.
- [3] It is not disputed that the Respondents' indebtedness to the Applicant arises out of a loan agreement in terms of which the sum of R350,000.00 was advanced to the Respondents pursuant a mortgage agreement entered into on 17 July 2025 at Witbank. The Respondents defended the action and delivered their plea on 18 July 2024.
- [4] The application was served on the Respondents on 8 August 2024 which was still within 15 (fifteen) days of service of the Respondents' plea as required by Rule 32 (2)(a). In the summary judgment application, the Applicant avers that the Respondents are in arrears in the amount of R53 925.72 (Fifty three thousand nine hundred and twenty five rand and seventy two cents). The Applicant further contends that the Respondents' plea does not set out any valid defences to the Applicant's claim nor does it raise any triable issues.
- [5] In the opposing affidavit the Respondents have in the main raised a dispute in respect of the added legal costs only and did not pursue other issues raised in the plea. These issues which were raised can be considered as having been abandoned at least for the purposes of the summary judgment. The Respondents in essence argue that the Applicant added legal costs in the amount of R52 932.71 (Fifty two thousand nine hundred and thirty two rand and seventy one cents) together with interest thereon without any order of court. The Respondents argue therefore that if the legal costs and interest are removed from the equation, there will be no arrears, or if there is, the amount will be very negligible.

Common cause issues

- [6] It is common cause that on 17 July 2015, the Applicant and the Respondents concluded a written mortgage loan agreement ("the loan agreement") in terms of which the Applicant loaned the sum of R350,000.00 to the Respondents. It is not in dispute that the loan was repayable in monthly instalments on or before the first day of each month until all amounts

owing to or claimable by the Applicant had been paid in full. Is further common cause that the said agreement provides that the Respondents would cause a first mortgage bond to be registered over the mortgaged property and that they, the Respondents, would be liable for legal costs on the scale as between attorney and client.

- [7] The agreement further provides that the loan would incur interest at a variable interest rate which would initially be 8.75% per annum' and lastly the agreement has a clause that a certificate issued by a manager of the Applicant (certificate of balance) would be regarded as prima facie proof of the outstanding indebtedness under the loan agreement. On 23 November 2015, the Respondents indeed caused a first mortgage bond to be registered over the mortgaged property as security for the loan.

Discussion

- [8] Although the agreement provided for the payment of monthly instalments by the Respondents, it is clear from papers that the Respondents have failed to timeously and punctually perform their obligations under the loan agreement and consequently fell into arrears with the monthly instalments. As a result, the total outstanding amount under the loan agreement became due and payable. According to the certificate of balance, as at 1 September 2019 the Respondents were indebted to the Applicant in the total amount of R349,628.52. From the papers it is not disputed the Applicant complied with the provisions of the National Credit Act, 34 of 2005 ("the NCA") by delivering notices in terms of section 129 at the Respondents' chosen domicilium and by sending the

said notices to the Respondents via email.

- [9] Although these issues are no longer raised by the Respondents in the summary judgment it is worth mentioning that in their plea, in addition to the complaint that the outstanding amount of the loan includes legal costs, the Respondents inter alia averred that the Applicant is inflicting unnecessary expenses on them and further that they had entered into a payment arrangement with the Applicant. Additionally, the Respondents also claimed that account statements do not reflect all of their payments made.
- [10] As stated above, these issues raised in the plea were abandoned except for the issue of legal costs and interest which I will deal with as the only contentious issue before court at this stage. It can be accepted that no triable issue has been raised in respect of these other issues.
- [11] Turning to the legal costs, the Respondents, as stated above, allege that the outstanding amount of the loan includes legal costs which is not supposed to be the case. One has to examine the account statements in respect of the loan from July 2024 in order to make a determination on this issue. The statements show that the Applicant has credited the Respondents' account in respect of all legal costs.

after the legal fees have been subtracted and this is the amount which the Applicant now states it will pursue in the summary judgment and not the original amount which was due to a bona fide error. The Applicant therefore contends that it is not claiming payment of legal costs.

- [12] The Respondents' further allegation is that the subtraction of the total legal costs results in the arrears being erased. This contention by the Respondent does not found support in the facts, in my view the Respondents' allegation in this respect seems to be is premised on an incorrect assumption that the legal costs form part of the arrears.
- [13] It is clear from the statements of account that the legal costs are calculated separately and are not included in the arrears. For instance, when considering the account statements as at 26 March 2022, the arrear amount was reflected as R43,929.23. However, from the period between 27 March 2022 to 11 June 2022, the legal costs totalling R11,173.89 were debited to the account. During the same period, the Respondents made payments toward the account in the amount of R8,000.00. in this instance the legal costs exceeded the payments made by the Respondents with an amount of R 11, 173.89.
- [14] The accounts however show that these legal costs were not included in the arrears, otherwise the arrears would have increased during the said period with an amount of at least R 11,173.89 and would have totalled the sum of R55,103.12 being R929 .23 plus R 11,173.89) as at 11 June 2022.
- [15] However, as at 11 June 2022 the statements indicate that the actual arrears amounted to R48,483.20 and this amount is substantially less than it would have been had the legal costs been included as the Respondents contend. If the legal costs were included, the amount would be much higher taking into account that the calculation of the factor in the debits for the period 27 May 2022 to 11 June 2022.
- [16] The Respondents now contend that the amount of R349 628.52 which the Applicant now acknowledge to be the correct amount cannot be verified and therefore evidence must be adduced on this aspect. This contention by the Respondents however loses sight of the fact that this amount is confirmed in the founding affidavit at para 44. The deponent to the founding affidavit states that all the payments made by the Respondents have been taken into account in the calculation of the outstanding amount of R349 832.37 as at 8 June 2024. The statement of account clearly states, for instance at page 3 of the last statement under Annexure "SJ 1", page 123 of the papers, that "the legal costs included in the balance outstanding are not capitalised nor is interest charged thereon, subject to judgment being obtained, the current legal costs displayed may exclude costs not yet invoiced. ...".

[17] Furthermore, the Applicant has conceded that a higher amount was claimed in the summary judgment due to a bona fide error and that the amount claimed should be the one in line with the certificate of balance. The recent certificate of balance reflects the outstanding amount as R334 085.43, which is less than the amount of R349 832. 37. Upon a prospectus of all the facts, I am not persuaded that the Respondent's arrear amount include the legal costs as clearly evinced by the account statements.

Conclusion

[18] In conclusion, on the basis of the aforesaid, the Respondents have in my view not raised a bona fide defence to the Applicant's claim. Their plea does not raise any triable issues and it is clear that they have entered an appearance to defend and filed a plea solely for the purpose of delay. It is telling that in their opposition of the summary judgment they do not pursue some of the issues raised in the plea. I accordingly find that the Respondents' contentions involving the legal costs do not raise a triable issue and therefore stands to be dismissed. I am persuaded that the Applicant has made out a case for summary judgment to be granted against the Respondents. As far as the monetary judgment goes there is no issue with the granting of the

amount of R334 085. 43 which is confirmed in the certificate of balance in line with the agreement.

[19] Regarding the executability of the property as already stated in the preceding paragraphs, it has been established from the papers that as at 8 June 2024, the contractual monthly instalment was R4,992.04 and the arrears amounted to R53,925.72 which is approximately 10.8 months of missed instalments. However, according to the current and recent certificate of balance the current instalment is R3 799.70 (three thousand seven hundred and ninety nine rand and seventy cents) whereas the arrear amount is R44 247.17 (forty four thousand two hundred and forty seven rand and seventeen cents). The outstanding amount as at 13 January 2025 is R334 085.43 (three hundred and thirty four thousand eighty five rand and forty three cents). This in my view the amount the Applicant is entitled to obtain summary judgment for and to execute on.

[20] The market value of the mortgaged property is reflected in a valuation report prepared by a sworn valuator as R880,000.00. Further, a Lightstone Valuation Report reflects the value of the mortgaged property as R960 000.00 while the local authority valuation thereof is R810,000.00. The total amount due by the Respondents under the loan agreement as at 13 January 2025 is now R334 085.43 (three hundred and thirty four thousand eighty five rand and forty three cents) according to the most recent certificate of balance. The outstanding rates and taxes amount to R21 037.88. Based on these figures and factors the Applicant suggests a reserve price of R598,462.12 after the necessary calculations are made.

[21] While the reserve price suggested is not out of kilter with the accepted method of calculation, I am nevertheless of the view that a higher reserve price is in the interest of justice justified as that would place the Respondents in a better position financially once their property is sold. Considering the high valuations of the property and not ignoring the estimated forced sale thereof as well as the outstanding rates and taxes, I am of the view that a higher amount of R700 000.00 is justified and this is the reserve price I intend fixing in this matter. As regards the costs, the general rule is that costs follow the results and there is no reason why that should not be the case in this matter as well.

Order

[22] In the result I make the following order:

1. Summary judgment is granted against the First and Second Respondents in the following terms:

1.1. The payment of the sum of R334 085.43 (three hundred and thirty four thousand eighty five rand and forty three cents);

1.2. Interest on the sum of R334 085.43 (three hundred and thirty four thousand eighty five rand and forty three cents) at the variable rate of 11.25% nominal per annum calculated daily and compounded monthly from 30 June 2024 to date of final payment;

1.3. An order in terms of Rule 46A declaring the following property specially executable at a reserve price set by the court;

ERF 2[...] WITBANK EXTENSION 16 TOWNSHIP

REGISTRATION DIVISION J.S. PROVINCE OF MPUMALANGA

MEASURING 1432 (ONE THOUSAND FOUR HUNDRED AND THIRTY-TWO) SQUARE METRES
HELD BY A DEED OF TRANSFER NUMBER T1714/2015

SUBJECT TO THE CONDITIONS THEREIN CONTAINED

1.4. An order in terms of Rule 46(1) authorising the Registrar to issue a writ of execution against the immovable property referred to in paragraph 1.3 above;

1.5. It is further ordered that a sale in execution be held in respect of the property described in paragraph 1.3 above with a reserve price of

R 700 000.00;

1.6. The Respondents are ordered to pay the costs of the summary judgment and Rule 46 applications on a scale as between Attorney and Client.

MBG LANGA

JUDGE OF THE HIGH COURT

MIDDELBURG

Appearances

For the Applicant: Advocate CB Ellis For the First Respondent: Mr D Giebler Date of hearing: 20 January 2025 Date of judgment: 25 March 2025

This judgment was handed down electronically by circulation to the parties' representatives by email. The date for hand-down is deemed to be the 25 March 2025 at 14h00.

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Prepared on 10 October 2026 · Esheria