

SOUTH AFRICA / JUDGMENT

Marcus Farming CC and Others v Land and Agricultural Development Bank of South Africa (A222/2018) [2020] ZAGPPHC 537 (19 August 2020)

[2020] ZAGPPHC 537

COURT

North Gauteng High Court, Pretoria

BEFORE

CG Lamont, N Kollapen

CASE / FILE NUMBER

A222/2018

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA,

GAUTENG

DIVISION, PRETORIA

(1)

REPORTABLE:

NO

(2) OF

INTEREST TO OTHER JUDGES: NO

(3)

REVISED:

18/08/2020

APPEAL CASE NO: A222/2018

CASE NUMBER 3274512017 (COURT A
QUO)

In

the matter between'

MARCUS M FARMING CC

First Appellant

KGABO VIRGINIA MASENYA

Second

Appellant

MATOOTOO LYDIA MASENYA

Third

Appellant

PAULINE MPHEFO NGOETSANA
Fourth
Appellant
LESETJA SOLOMON MASENYA
Fifth
Respondent
TLOU
JULIA MASENYA
Sixth Respondent
and
LAND
AND AGRICUTURAL DEVELOPMENT
Respondent
BANK
OF SOUTH AFRICA

JUDGMENT

LAMONT, J:

- [1] The respondent instituted action against the seven appellants and in due course summary judgment was granted in its favour The respondents appealed against that judgment The parties are referred to herein as they were in the action
- [2] The plaintiff lent and advanced monies to the first defendant pursuant to a written contract The remaining defendants were sureties for co-principal debtors with the first defendant for the obligations of the first defendant to the plaintiff. The plaintiff annexed the contract of loan and the suretyships There was no dispute that the contracts had all been concluded
- [3] The plaintiff obtained further security from the first defendant in the form of a mortgage bond which the first defendant passed over immovable property (a farm) which was purchased. by the first defendant using the proceeds of the loan. The farm was acquired for a commercial purpose.
- [4] The defendants claimed that as more than one cause of action had been completed in the particulars of claim and as the affidavit did not specifically refer to each individual claim pleaded that the courses of action were mutually destructive This defence does not avail the defendants as the affidavit opposed to verify the courses of action.
- [5] The defendants claim further that the National Credit Act 34 of 2005 (NCA) applied to the relationship between the parties. This claim is misguided as the first defendant is a juristic person which concluded a loan an excess of R5 million In terms of section 9 (4) of the NCA a Credit Agreement is a large agreement if it is a mortgage agreement. The agreement of loan In question is a large agreement as it is a Mortgage Agreement ie the principal debt is secured by a mortgage bond In terms of section 4

- (1) of the NCA a large agreement concluded by a Juristic person whose asset value is below the threshold value determined by the Minister

is not a creditor agreement subject to the Act. A Credit Agreement in terms of which the consumer is a juristic person whose asset value exceeds the threshold value determined by the Minister is also not a Creditor Agreement subject to the provisions of the Act. Accordingly, whatever the value of the assets of the plaintiff, as the Credit Agreement is a large agreement. It is not subject to the provisions of the Act.

- [6] Once. the provisions of the Act do not apply to the principal debt they do not apply to the deeds of suretyship.[1]
- [7] The defendants raised the question of indebtedness and reckless credit granting These were introduced as concepts under part D of the NCA (section 78 - 88) Part of the NCA does not apply to a Credit Agreement in respect of which the consumer is a Juristic person. The principal debtor is a juristic person hence by reason of the provisions of section 78 (1) of the NGA, the Act does not apply to the contract between the plaintiff and first defendant Hence the questions of reck lessness and over indebtedness are irrelevant.
- [8] The defendants stated that the amount claimed was incorrect. There is no evidence of the incorrectness. The plaintiff relies on a cause within the contract which establishes the accuracy of the indebtedness prima facie. The defendants have set out no factual basis to question the certificate provided by the plaintiff. The defendants to upset the prima facie proof of evidence were required to present evidence.[2]
- [9] The sixth defendant who was in control of the farming enterprise opposed to a confirmation affidavit but raised no facts relating to the question of the amount claimed being incorrect.
- [10] It is accordingly my view that the court are quo correctly found that the defendants had not raised any defence of merit and that accordingly the plaintiff was entitled to Judgment.

[11] In my view the appeal should be dismissed.

[12] I make the following order

12.1 The appeal is dismissed with costs.

CG LAMONT

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

I agree

N. KOLLAPEN

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

T.A.N. MAKHUBELE

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RESPONDENT'S ATTORNEY:

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DATE OF HEARING:

19 August 2020

DATE OF JUDGMENT:

19 August 2020

(Judgment delivered electronically in accordance of Covid 19 Regulations)

- [1] See *Firststrand Bank limited v Carl Beck Estates (PTY) Limited* 2009 (3) SA 384 1 PD
- [2] See *Joob Joob Investments v Toks Mavundla Zek* 2009 (5) SA 1 (SCA) [29] to [33] SA *Taxi Securitization (PTY) Limited v Mbatha* 2011 (1) SA 310 (GS J), *Land and Agricultural Development Bank of Africa v Chidawaya & another* 2016 (21 SA 15 (GP) at [13]

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Prepared on 11 October 2026 · Esheria