

SOUTH AFRICA / JUDGMENT

Mathibe v Faku and Others (41861/2020) [2021] ZAGPJHC 787 (8 December 2021)

[2021] ZAGPJHC 787**COURT**

South Gauteng High Court, Johannesburg

BEFORE

E Molahlehi

CASE / FILE NUMBER

41861/2020

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Source record**REPUBLIC****OF SOUTH AFRICA****IN****THE HIGH COURT OF SOUTH AFRICA****(GAUTENG****LOCAL DIVISION, JOHANNESBURG)****CASE NUMBER:**

41861/2020

REPORTABLE: Not

OF INTEREST TO OTHER

JUDGES:

REVISED.

08 December 2021

In

the matter

between:

AJAMAL JEFFERSON

MATHIBE

Applicant

AND

THANDO

FAKU

First Respondent

PHATHISWA

FAKU

Second Respondent

FIRST NATIONAL

BANK

Third Respondent

BIDVEST BANK

LIMITED

Fourth Respondent

THE SHERIFF CENTRAL

JOHANNESBURG

Fifth Respondent

THE SHERIFF SANDTON,

SOUTH

Sixth Respondent

NOROC NTP CONSORTIUM

(PTY) LTD

Seventh Respondent

This judgment is

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platform. The date of issue is deemed to be 08 December 2021

JUDGEMENT

MOLAHLEHI J

- (1) The applicants (the first and second respondent in the main application) Mr and Mrs Faku seek leave to appeal the judgment made on the 15 March 2021 by this court. The court accepted that the matter deserve to be treated as on one of urgency and accordingly declared the writ of execution and attachment of the respondents (the applicants in the main application) Mr. Mathibe's bank account null and void. For this reason, this court found the attachment to be irregular and accordingly set it aside. For ease of reference and to avoid confusion I will refer to the parties with their names.
- (2) The attachment of the bank accounts and execution arose from the default judgment granted to Mr and Mrs Faku. The other details relating to the dispute between the parties are dealt with in the judgment and accordingly are not repeated in this judgment.
- (3) It is now well established that the standard of reasonable prospect of success on appeal in the application for leave to appeal has been elevated to the higher standard by the provision of section 17 of the Superior Courts Acts 10 of 2013 (the SC Act). In this respect of section 17 of the SC Acts provides that leave to appeal may be granted in the circumstances where the court believes that the appeal will have reasonable prospect of success or some other compelling reason while the appeal should be heard.
- (4) Mr and Mrs Faku in this application have raised several grounds of appeal, which I do not deem necessary to repeat in this judgment. The grounds of appeals appear in the notice of the leave to appeal. It is, however, essential to point out that applicants emphasized during the hearing of this application the contention that the court erred in interpreting Rule 45 as requiring notice "prior to the attachment" of the bank accounts. The finding on this point is dealt with in the judgment, and thus I do not deem it necessary to repeat the same in this judgment. Similar to all other grounds of the appeal raised by the applicants, I am not

persuaded that another court would reach a different conclusion to that reached by this court on this point.

- (5) Mr and Mrs Faku also raised as an issue for appeal a patent error made by the court in paragraph [25] of its judgment in noting that the sheriff did not serve the “fourth and fifth respondent(s) on 16 and 18 February 2021,” with the notice of attachment. This is an obvious error that deserve correction. The 16 February is the date on which Mr and Mrs Faku obtained the writ of execution from the registrar directing the Sheriff to attach Mr Mathibes’ bank account under case number 41861/2020. In my view this error is not material to warrant a conclusion that there are prospects of success on appeal.
- (6) In considering the grounds on leave to appeal, I took into account the heads of arguments of both the parties, the impugned judgment and the oral submission made during the hearing. In my view, all the issues raised by Mr and Mrs Faku in this application have been dealt with in the judgment of this court. I stand by the conclusion reached in that judgment and thus have not been persuaded that another court would reasonable reach a different conclusion than that of this court.
- (7) In the circumstances, the applicant’s application for leave to appeal stands to fail.

Order

- (8) In the premises the applicants’ application for leave to appeal is dismissed with costs.

E MOLAHLEHI J

Judge of the High Court of South Africa,

Gauteng Local Division, Johannesburg

Representations:

For the applicant: Adv. T Mathopo

Instructed by: Ncube Attorneys

For the respondents: Adv T Faku

Instructed by: T Faku Inc. Attorneys

Date of the hearing: 19 October 2021

Delivered: 08 December 2021

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Prepared on 12 October 2026 · Esheria