

SOUTH AFRICA / JUDGMENT

Minister of Public Works and Infrastructure v Endemic Developments (Pty) Ltd and Others (23801/2018) [2024] ZAGPPHC 1269 (29 November 2024)

[2024] ZAGPPHC 1269

COURT

North Gauteng High Court, Pretoria

BEFORE

Strijdom

CASE / FILE NUMBER

23801/2018

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION,

PRETORIA

CASE NO: 23801/2018

Date of Hearing:

12 November 2024

Handed down: 29

November 2024

(1)

REPORTABLE: YES/NO

(2)

OF INTEREST TO OTHER JUDGES: YES/NO

(3)

REVISED.

DATE:

29.11.2024

SIGNATURE:

In

the matter between:

MINISTER
OF PUBLIC WORKS AND
INFRASTRUCTURE
APPLICANT
AND
ENDEMIC
DEVELOPMENTS (PTY) LTD
FIRST RESPONDENT
MVELA PHANDA CONSTRUCTION
(PTY)
LTD
SECOND
RESPONDENT
THE
SHERIFF, PRETORIA EAST
THIRD RESPONDENT

JUDGMENT

Strijdom, J

1. This is an urgent application wherein the applicant sought an order in the following terms:

1.1 An order suspending the Sale in Execution of a Warrant or Writ of

Execution issued under case number 23801/2018 after default judgment was granted in favour of the first and second respondents, for payment of R12 078 528,49 alternatively the stay of the Writ of Execution;

1.2 That the Sale in Execution scheduled to take place at the Department of Public Works Head Office situated at number 2[...] CGO Building, corner B[...] and M[...] Streets, Pretoria,

Gauteng Province on 12 November 2024 is cancelled;

1.3 That the parties are directed as soon as possible to approach the Office of the Deputy Judge President for a case management of the matter under court case number 23801/2018.[1]

2. This matter was opposed by the first respondent. No answering affidavit was filed by the first and second respondent. It was conceded by die first respondent that the application is urgent.

3. It was stated by the applicant that the amount arising from the default judgment has currently ballooned to approximately R23 406 693,48.[2]

4. It is common cause that the first respondent has threatened to sell and remove the items listed in the Notice of Sale in Execution of Movable Assets.[3]
5. A rescission application was launched by the applicant on 6 November 2024 to rescind and set aside the default judgment granted against the applicant on 27 February 2024. The rescission application is still pending and was not brought on an urgent basis.
6. It is trite that an application for the rescission of a court order does not automatically suspend its execution. The remedy lies in Rule 45A.
7. Rule 45A of the Uniform Rules of Court provides that:
“The Court may, on application, suspend the operation and execution of any order for such period as it may deem fit.”
8. The Court has, apart from the provision of this Rule, an inherent discretion to order a stay of a Sale in Execution. It is a discretion that must be exercised judicially.
9. As a general rule, the Court will grant a stay of execution where real and substantial justice requires such a stay. The Court will grant a Stay of Execution where the underlying causa of the judgment debt is being disputed.
10. The general principles for the granting of a Stay in Execution were summarised as follows in *Gois t/a Shakespeares Pub v Van Zyl*:^[4]
“(a) A Court will grant a stay of execution where real and substantially justice requires it, or injustice would otherwise result.
(b) The Court will be guided by considering the factors usually applicable to interim interdicts, except where the applicant is not asserting a right, but attempting to avert injustice.
(c) The Court must be satisfied that:
(i) The applicant has a well-grounded apprehension that the execution is taking place at the instance of the respondent(s); and
(ii) Irreparable harm will result if execution is not stayed and the applicant ultimately succeeds in establishing a clear right.
(d) Irreparable harm will invariably result if there is a possibility that the underlying causa may ultimately be removed, i.e. where the underlying causa is the subject-matter of an ongoing dispute between the parties.
(e) The Court is not concerned with the merits of the underlying dispute – the sole enquiry is simply whether the causa is in dispute.

11. The applicant has established a prima facie right as the underlying causa is in dispute. It was stated by the applicant that the main claim has prescribed, and an arbitration award unequivocally states that the applicant is not liable to Mvelaphanda Construction for any payment and that include the first respondent as the sub-tractor to Mvelaphanda Construction.[5]
12. Irreparable harm will result if execution is not stayed, and the applicant ultimately succeeds in establishing a clear right. The possibility that the underlying causa may ultimately be removed cannot be excluded.
13. It is uncertain if the first respondent is in a financial position to repay the applicant the value of the goods attached in the event that the auction sale proceeds and at a later stage the main action is decided in favour of the applicant.
14. The applicant relies on the attached computers to execute its
mandate. If same are sold in execution, the applicant will not be able to process payments to landlords in terms of the running
leases, thereby breaching its material terms of the lease agreements it has with various landlords which will result in eviction of various client Departments.
15. Should the said computers be sold in execution, applicant will not be able to execute its running and new projects thereby affecting service delivery in terms of its mandate. The applicant will also not be able to process payments for various service providers.
16. The applicant bears an important statutory and Constitutional
obligation to take appropriate steps to prevent unauthorised, fruitless and wasteful expenditure.
17. The sale in auction of the listed items will result in the applicant not being able to operate at all as a strategic government institution.
18. The applicant has not other remedy available to it as no date has been set for the rescission application.
19. I conclude that the balance of the convenience clearly favours the applicant. To allow the first respondent to persist with the execution of the warrant or writ notwithstanding the rescission application and defence raised in the main will constitute an injustice to the parties and will not allow the ventilation of the disputes.
20. In the result, the following order is made:
 1. Pending the finalisation of the rescission application between the parties, the first respondent, Endemic Developments (Pty) Ltd is interdicted and restrained from executing a Warrant or Writ of Execution issued under case number: 23801/2018;

2. That the parties are directed as soon as possible to approach the Office of the Deputy Judge President for a case management of the matter under case number: 23801/2018.
3. The costs of this application are reserved for determination at the hearing of the main action.

JJ Strijdom

Judge of the High Court

Gauteng Division Pretoria

Appearances:

For the Applicant : Adv. T Tshitereke Instructed by

: State Attorney For the first Respondent : Adv E Furstenburg Instructed by

: P Marais Attorney

[1] Caselines: Court order: 28-23 to 24

[2] Caselines: 28-25 Cost Statement

[3] Caselines: 28-26

[4] 2011

(1) SA 148 (CLC)

[5] Caselines: FA 28-19 para 46

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