

SOUTH AFRICA / JUDGMENT

Mothuloe v Standard Bank of South Africa Limited (2016/42510) [2017] ZAGPPHC 703 (16 October 2017)

[2017] ZAGPPHC 703

COURT

North Gauteng High Court, Pretoria

BEFORE

LM Grenfell

CASE / FILE NUMBER

2016/42510

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE

NO.: 2016/42510

Before

Her Ladyship Ms Acting Justice Grenfell

Heard

on Wednesday 11 October 2017

Judgment

delivered Monday 16 October 2017

In

the matter between:

WYCLIFFE

EARNEST THIPE

MOTHULOE Applicant

And

THE

STANDARD BANK OF SOUTH AFRICA

LIMITED Respondent

JUDGMENT**ON LEAVE TO APPEAL****GRENFELL AJ:**

[1]

INTRODUCTION

1.1. The applicant seeks leave to appeal the judgment handed down on 8 September 2017, which dismissed the application for rescission and directed the applicant to pay the respondent's costs on an attorney and client scale.

1.2. The applicant's grounds for seeking leave to appeal are contained in a Notice for Leave to Appeal dated 27 September 2017. The grounds can be summarised as contesting the findings in the judgment that the applicant was in wilful default of noting an intention to defend, as he did not receive the summons which was served on his domicilium address and that the over-indebtedness defence fell to be decided in the applicant's favour as comprising a triable issue on the bona fide

defence leg of the rescission test.

1.3. In argument, Mr Jacobs who appeared for the applicant. submitted that although he had originally agreed that the appropriate appeal forum would be a

Full Bench of this court. upon queries raised during his submissions, it was during argument contended for the applicant, that the Supreme Court of Appeal would be the appropriate forum to decide this novel point of law.

[2] TEST FOR LEAVE TO APPEAL

2.1. In order to grant leave to appeal, I need to be of the opinion that either, the appeal would have a reasonable prospect of success or that there is some other compelling reason why the appeal should be heard.

3.3. This must be seen in the context of the evasion by the applicant of all attempts to communicate the reality of the pending litigation to him by the respondent's attorney and in my view, the attempt to draw a distinction between time period before and after service of the summons is artificial.

3.4. The second and more troubling aspect on deciding whether to grant leave to appeal and the best point for the applicant which was well argued on his behalf by Mr Jacobs, is whether the over-indebtedness contended for by the applicant, does not comprise a triable issue with a reasonable prospect of success.

3.5. This point, which is novel, would have the applicant seek to persuade an Appeal Court that the time at which the over-indebtedness should be determined would operate retrospectively, to cover debts from agreements concluded at the time that the National Credit Act ("Act") was not yet in force.

3.6. There is a passing comment on the possibility of the matter being uncertain in a commentary on the Act by an academic author, but no other authority.

3.7. I am persuaded that the answer lies in Mr Amm's submission that the facts do not provide a factual platform allowing for the raising of the argument at all, in that on the information as to asset value of the applicant known to the respondent at the time, there can have been no suggestion of over-indebtedness in what was really an attempt to raise the reckless granting of credit for subsequent vehicle finance transactions which are irrelevant to this action.

3.8. Accordingly, I cannot form the opinion that the applicant would have reasonable prospects of success on appeal on the over-indebtedness point.

3.9. It remains for me to consider whether there is any other compelling reason why the appeal should be heard. I am unable to think of any reason and none was suggested to me in argument.

3.10. The scale of costs is provided for in the agreements between the parties and I propose to give effect thereto in the exercise of my discretion.

[4] ORDER

I make the following order:

4.1. The application for leave to appeal is dismissed.

4.2. The applicant is ordered to pay the respondent's costs on an attorney and client scale.

LM GRENFELL

ACTING JUDGE OF THE HIGH COURT

Date of hearing:

11 October 2017

Judgment

delivered: 13 October 2017

Appearing for applicant: Adv G Jacobs

Counsel for Respondent: Adv G Amm

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPPHC/2017/703.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/mothuloe-v-standard-unknown-topic-agpphc-2017>

Prepared on 24 October 2026 · Esheria