

SOUTH AFRICA / JUDGMENT

Ndzamela v ABSA Bank Limited (E3131/2017) [2019] ZAECHGC 40 (22 March 2019) [2019] ZAECHGC 40

COURT

Eastern Cape High Court, Grahamstown

BEFORE

NG Beshe

CASE / FILE NUMBER

E3131/2017

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IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION, GRAHAMSTOWN)

Case No: E3131/2017

In the matter between:

ALICE NONTUTHUZELO NDZAMELA

Applicant

And

ABSA BANK LIMITED

Respondent

REASONS FOR ORDER

BESHE J:

[1] On the 22 March 2019, having heard Ms Sephton for the Respondent, and having read papers filed of record and after refusing an application for postponement by the applicant in this matter, I made an order in the following terms:

The application for the setting aside or rescission of the order that was granted against the applicant by default on the 24th October 2017 be and is hereby dismissed with costs.

[2] Reasons for the order were to follow. The following are those reasons.

- [3] As the order suggests, judgment by default was granted against the applicant in favour of the respondent. The judgment by default was for payment of the sum of R140 715.38 in respect of monies loaned and advanced by the plaintiff (respondent in this matter) in favour of the defendant who is the applicant in this matter. Applicant was also ordered to pay interest in the amount of R140 715.38. The bonded property, which is a vacant erf, was declared executable. This, it was alleged, was at applicant's instance in terms of a written Mortgage Loan Agreement between the parties. Applicant was afforded a bond account facility in the capital amount of R492 000.00. Of that amount R75 000.00 was paid to the applicant via attorneys who attended to the transfer of the bonded property to the applicant. This is also apparent from paragraph 4.7 of the Mortgage Loan Agreement. This paragraph records that a sum of R417 000.00 of the loan of R492 000.00 will be retained by the respondent and paid as work / building on the property progresses. R75 000.00 being the difference between these two amounts.
- [4] In her application for the rescission of the judgment mentioned above, applicant states that she only became aware of the judgment against her in October 2018 when she learnt that there was a notice at the Sheriff's offices reflecting that there was writ of attachment bearing her name.
- [5] Applicant denies that she was in wilful default. According to her none of the summonses served at three

different addresses came to her attention.

- [6] She denies she is indebted to the respondent in the sum stated. According to her the firm of attorneys that transferred the vacant erf in question to her name is Smith Tabata Inc. Further that she did not consent to a sum of R75 000.00

being paid to Messrs Barnard Majavu Inc.

- [7] Applicant does not produce any evidence of payment to Smith Tabata Inc for purposes of the transfer of the property to her name. She does not deny that the sum of R75 000.00 was paid to Messrs B Majavu Inc for the purpose or that the property was transferred to her.
- [8] I am not persuaded that the fact that action had been instituted against her in connection with this matter did not come to her attention. It is highly unlikely that all three sets of process at three different addresses served in accordance with Rules of this court did not come to her attention. I am therefore not persuaded that she has shown that she was not in wilful default. I am also not persuaded that applicant has succeeded in showing that she has a bona fide defence to respondent's claim. As indicated earlier, she does not deny she entered into a mortgage bond agreement with the respondent for the amount stated. She does not deny that an amount of R75 000.00 was paid by the respondent towards the transfer of the property to her. She only disavows that Barnard Majavu Inc were his attorneys. No one suggested that they were. There is evidence that an amount of R75 000.00 was paid to this firm of attorneys for purposes of transferring the property to the applicant. Which they

did – they attended to the transfer of the property to the applicant. There is a bond of transfer to

prove this.

[9] Her denial is therefore implausible.

[10] It was for these reasons that I found that the applicant had not made a case for the rescission of the judgment that was granted against her on the 24 October 2017.

NG BESHE

JUDGE OF THE HIGH COURT

APPEARANCES

For the Applicant : N/A

Instructed by : LD

LUSASENI ATTORNEYS

C/o MGANGATHO ATTORNEYS

119 High Street

GRAHAMSTOWN

Ref: Mr Mgangatho

Tel.: 078 214 2511

For the 1st Respondent : Adv: Sephton

Instructed by : McWILLIAMS

& ELLIOT INC.

C/o HUXTABLE ATTORNEYS

26 New Street

Ref: OH/JM de Klerk

Tel.: 046 – 622 2961

Date Heard : 22 March 2019

Order Given : 22 March 2019

Reasons

made available :28 March 2019

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Prepared on 9 October 2026 · Esheria