

SOUTH AFRICA / JUDGMENT

Nedbank Limited v Antoniou (1150/2000) [2017] ZAECPEHC 34 (22 June 2017)

[2017] ZAECPEHC 34**COURT**

Eastern Cape High Court, Port Elizabeth

BEFORE

N G Beshe

CASE / FILE NUMBER

1150/2000

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Source record**IN****THE HIGH COURT OF SOUTH AFRICA****(EASTERN****CAPE LOCAL DIVISION, PORT ELIZABETH)****CASE****NO.: 1150/2000****In**

the matter between:

NEDBANK

LIMITED Applicant/Plaintiff

And

JULIANA

ANTONIOU Respondent/Defendant

JUDGMENT**BESHE, J:**

[1] Respondent was found liable for payment of three amounts as a result of her son's failure to pay debts owed by him to the applicant (Nedbank Limited). This was in respect of three separate loan accounts. Respondent had signed a surety agreement as co-principal debtor with her son in respect of these loan accounts. The amounts for which respondent was found liable are:

R308 624.67 plus interest;

R35 984.86 plus interest; and

R81 699.27 plus interest respectively.

The order directing the respondent to pay these amounts to the applicant was made on the 1 June 2016 after a trial that proceeded before Revelas J.

- [2] It appears to be common cause that following Revelas J's judgment, attempts were made to attach respondent's movable assets in satisfaction of the said judgment. This was by means of writ of execution dated 19 September
- 2016. The said writ was served on the 26 October 2016. The Sheriff found no attachable assets belonging to the respondent and filed a nulla bona return. This then led to the launching of the present application.
- [3] In this application, leave is sought for the issuing of a writ of execution against the immovable property of the respondent, being an unimproved piece of agricultural land covering 9,7565 hectares. This application was launched in January 2017.
- [4] Respondent duly filed notice of her intention to oppose the application. At the time attorneys Theron and Vennote were acting for her. There having been no opposing affidavit filed within the stipulated time, applicant had the matter set down for hearing as part of the uncontested opposed roll on the 30 May 2017.
- [5] Prior to that however respondent had purported to file a notice of application for leave to appeal Revelas J's judgment. However on the 15 May 2017 a notice of withdrawal as respondent's attorney of record from Theron and Partners came to hand together with a withdrawal of application for leave to appeal. The notices emanated from Theron and Partners, apparently under the hand Mr Theron Junior, who also indicated Mr Theron Senior, due to his advanced age as well as other reasons is not in a position to represent the respondent.
- [6] On the 30 May 2017 respondent appeared in court in person and apparently sought a postponement of the matter in order for her to arrange for a legal representative. The matter was postponed until the 20 June 2017. Respondent was ordered to file her opposing affidavit by 12h00 on Thursday the 15 June 2017. She was also ordered to pay the costs that were occasioned by the postponement.
- [7] On the 20 June 2017 and without filing her opposing affidavit, respondent appeared in person and once again asked that she be given an opportunity to secure legal representation. It would appear that she had made an effort to secure legal representation which effort was however in vain. Needless to say, her application from the bar for a postponement was opposed on behalf of the applicant. Counsel for the applicant Ms Morgan pointed out that not only in respect of this application but the progress of this case was marred by delays that were caused by the respondent. She moved for the order sought in applicant's notice of motion.

- [8] The fact that the matter has a long history was confirmed by the respondent in her address. She stated that this matter has been going on for sixteen (16) years. She also pointed out that she was seventy two (72) years old. She was suffering from ill health. She would need at least three months to get a lawyer who would be ready to take over the matter and seemingly explore the possibility of an appeal. It was not her fault that her lawyer Mr Theron could not act for her.
- [9] As to why the order sought should not be granted, she stated that she was innocent, this was a matter between her son and Mr Hull (applicant's official). She does not owe anybody, so she contended.
- [10] It is also apparent from Revelas J's judgment that the outcome of this matter (the trial) was delayed as a result of respondent's attorney's conduct / devices. She also found that respondent associated herself with this conduct.
- [11] I am not satisfied that respondent has made out a case for the postponement of the matter. It would appear that she is still

carrying on the same vein as during the trial, namely of delaying the finalisation of the matter and thereby delay the satisfaction of the judgment. The three months period is, according to respondent based on the fact that the matter has a long history, it will take a lawyer at least three months to familiarise himself / herself with the matter. In my view, that is a matter that can be determined by a lawyer not her. Besides, that is not the reason cited by Spilkin Attorneys for not acting for her. Rather a deposit was required so that counsel can also be briefed.

- [12] I am not persuaded that respondent has proffered any valid reason why the order sought by the applicant should not be granted. She cannot be heard to be saying she is innocent, that the matter is between Mr Hull and her son. She was found to be liable for the debts in question. She has not placed any facts before me to show that it will not be in the interest of justice to grant the order sought. That there is good cause why it should not be granted.

- [13] Accordingly the following order will issue:

1. That leave be and is hereby granted to the Registrar of this Court to issue a Writ of Execution against the immovable property of the Respondent, being:

Erf 481 Joubertina, in the Koukamma Municipality, Province of the Eastern Cape, situated at PJ Retief Street, Joubertina, in extent 9,7565 hectares held in terms of Deed of Transfer T62426/2991;

2. That leave is granted to the Applicant to attach the abovementioned property and to arrange its sale in execution to defray the amount due by the Respondent to the Applicant in terms of the Judgment of this Court given in this matter on 1st of June 2016;
3. Ordering the costs of this application to be paid by the Respondent.

N G BESHE

JUDGE OF THE HIGH COURT

PEARANCES

For the Applicant : Adv: M Morgan

Instructed by : BLC ATTORNEYS

4 Cape Road

PORT ELIZABETH

Ref.: Mr LT Schoeman/wjd/K/35068

Tel.: 041 – 506 3700

For the Respondent : Juliana Antoniou

Instructed by :

RESPONDENT IN PERSON

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29 Cape Road

Central

Ref.: Ms J Antoniou

Tel./Cell: 082 531 6863

Date Heard : 20 June 2017

Date Reserved : 20 June 2017

Date Delivered : 22 June 2017

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Prepared on 12 October 2026 · Esheria