

SOUTH AFRICA / JUDGMENT

Nedbank Limited v Kuni and Others (31087/2019) [2022] ZAGPPHC 357 (25 May 2022) [2022] ZAGPPHC 357

COURT

North Gauteng High Court, Pretoria

BEFORE

Maubane

CASE / FILE NUMBER

31087/2019

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Policy

REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG

DIVISION PRETORIA)

CASE

NO: 31087/2019

REPORTABLE:

NO/YES

OF

INTEREST TO OTHER JUDGES: NO/YES

REVISED

25

May 2022

In

the matter between:

NEDBANK
LIMITED
APPLICANT
(REGISTRATION
NO: 1951/1000009/06)
And
RENOVGAVATHIE
KUNI
1ST RESPONDENT
(ID
NO: [...])
S
B GUARANTEE CO RF (PTY) LTD
2ND RESPONDENT
(REGISTRATION
NO: 2006/021576/07)
LABOLILANO
TRADING 50 (PTY) LTD
3RD RESPONDENT
This
judgment is issued by the Judge whose name is reflected herein and is
submitted electronically to the parties/their legal representatives
by email. The judgment is further uploaded to the electronic file of
this matter on Caselines by the Judge or his/her secretary.
The date
of this judgment is deemed to be 25 May 2022.

JUDGMENT

MAUBANE AJ

INTRODUCTION

1. On the 25th January 2022, the applicant made an application to the above honourable court in terms of Rule 46 and 46(A) of Uniform Rules of Court for the following relief:

a. That the 1st Respondent's immovable property known as:

ERF [...], BRACKENHURST Ext 2 TOWNSHIP, CITY OF EKHURULENI METROPOLITAN MUNICIPALITY HELD BY DEED OF TRANSFER NO T[...] (also known as [...] Lotus Street Brackenhurst)

ERF [...] LENASIA EXT 6 TOWNSHIP LOCAL MUNICIPALITY OF THE CITY OF JOHANNESBURG, HELD BY DEED OF TRANSFER NO: T[...] (also known as [...] Teak Avenue, Lenasia)

Be declared specifically executable in accordance with the provisions of Rule 46 (1) and the Registrar is requested to issue a writ in accordance herewith.

- b. That the First Respondent be ordered to pay the costs in this application on a scale as between attorney and client
 - c. Further and/or alternative relief
2. The application was heard before Ladyship Justice Tlhapi who made the following order:

2.1 . The 1st Respondent's immovable property known as:

ERF [...] Lenasia Ext 6 TOWNSHIP LOCAL MUNICIPALITY OF THE CITY OF JOHANNESBURG HELD BY DEED OF TRANSFER No T[...] (also known as [...] Teak Avenue, Lenasia) is declared specifically executable in accordance with the provisions of Rule 46(1) of the Uniform Rules of Court. The registrar is authorized to execute a writ to this effect in terms of Rule 46.

2.2 . No reserve is set for the property known as [...] Teak Avenue, Lenasia.

2.3 The application to declare the immovable property known as-

ERF [...], BRACKENHURST Beackenhurst Ext 2 TOWNSHIP CITY OF EKHURULENI METROPOLITAN MUNICIPALITY HELD BY DEED OF TRANSFER NO T[...] (also known as [...] Lotus Street Brackenhurst)

is postponed sine die and the first Respondent is directed to file his answering affidavit if any within 10(ten) days from date of this order, failing which the applicant will be entitled to enrol the matter on unopposed roll.

3. The 1st Respondent is to pay costs of the applicant as on the scale between attorney and client.

EVIDENCE

4. The 1st Respondent, on the 31st January 2022, served and uploaded a notice in terms of Rule 49(1)(b) requesting Her Ladyship Justice Tlhapi to provide written reasons for granting the order on the 25th January 2022 with specific reference to the findings of the fact and/or rulings of law relied upon in granting such order.

5. On the 16th May 2022, the applicant came before court seeking an order that:

ERF [...], BRACKENHURST Ext 2 TOWNSHIP CITY OF EKHURULENI METROPOLITAN HELD BY DEED OF TRANSFER NO T[...] (also known as [...] Lotus Street Brackenhurst)

be declared especially executable in accordance with the provisions of Rule 46(1) of the Uniform Rules of Court and the Registrar be authorised to issue a writ in accordance herewith and the first respondent be ordered to pay the costs on a scale between attorney

and client.

6. It is worth noting that the First Respondent did not file his answering affidavit within 10 days from Ladyship Justice Tlhapi's order but he instead, on the 31st January 2022, requested to be furnished with written reasons for granting the order on the 25th January 20022. On the

16th May 2022 the applicant's Counsel appeared before this court and moved the application on an unopposed basis requesting that the above referred property be declared specially executable and the Registrar be authorised to issue a writ. On the date of the hearing, that is 16th May 2022, the First Respondent uploaded the recently served application for leave to appeal. The Counsel for the applicant argued

before court that the application for leave to appeal was filed late and as such the matter should proceed as unopposed.

7. The 1st Respondent, through Counsel, argued that in terms of the Uniform Rules of Court, he is within time to note an application for leave to appeal in that he is still to receive the reasons for judgement.

Analysing the law

8. Rule 49(1) (a)&(b) state that:
 - a. When leave to appeal is required, it may on a statement of the grounds therefor be requested at the time of the judgement, or order
 - b. When leave to appeal is required and it has not been requested at the time of the judgement or order, application for such leave shall be made and the grounds therefor shall be furnished within fifteen days after the date of the order appealed against : Provided that when the reasons or the full reasons for the Court order are given on a later date than the date of the order, such application may be made within fifteen days after such later date: provided further that the court may upon good cause shown, extend the aforementioned periods of fifteen days.
9. Taking into consideration the provisions of Rule 49(1) (a)&(b) and the fact that the First Respondent is still to be furnished with written reasons for granting the order on the 25th January 2022 with specific reference to the findings of fact and/or rulings of law relied upon granting such order, it cannot be said that the 1st Respondent is out of time to note an application for leave to appeal. The 1st Respondent is within his rights to note an application for leave to appeal within fifteen days of receipt of reasons for the Court's

order as contemplated by Rule 49(1)(b).

10. In view of the above facts and consideration I make the following order:

10.1 The Applicant's application on an unopposed basis is postponed pending receipt of reasons for an order granted on the 25th January 2022, by Ladyship Justice Tlhapi, to the First Respondent.

10.2 That the 1st Respondent should file his leave to appeal within (15) fifteen days of receipt of reasons for judgment or order, of the 25th January 2022, granted by Ladyship Justice Tlhapi.

10.3 Costs are reserved.

JUDGE OF THE HIGH COURT

Appearances

Counsel for the Applicant

: Adv. C. Richard

Attorney for the Applicant

: Weavind & Weavind Incorporated

Counsel for the 1st Respondent : Adv. M. Kohn

Attorney for the 1st Respondent : Jaffer Incorporated Attorneys

Date of Hearing

: 16 May 2022

Date of Judgment

: 25 May 2022

Judgment

transmitted electronically

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Prepared on 11 October 2026 · Esheria