

SOUTH AFRICA / JUDGMENT

Philander and Another v First Rand Bank and Others (753/2010) [2012] ZAECPEHC 63 (11 September 2012)

[2012] ZAECPEHC 63

COURT

Eastern Cape High Court, Port Elizabeth

BEFORE

N Dambuza

CASE / FILE NUMBER

753/2010

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IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE – PORT
ELIZABETH)

Case

No.: 753/2010

Date

heard: 04 September 2012

Date

delivered: 11 September 2012

In the matter between:

KENNETH PHILANDER
First Applicant
OLIVIA KATHRINA PHILANDER
Second
Applicant
and
FIRST RAND BANK
First
Respondent
MR
TIRY MOHAAD
Second Respondent
BOND PEOPLE
Third
Respondent
WILMA
VAN DER BANK
Fourth Respondent
THE

REGISTRAR OF DEEDS
Fifth
Respondent

JUDGMENT

DAMBUZA, J:

I have difficulty in understanding what relief the applicants seek in this application. Paragraph 2 of the Notice of Motion calls upon the respondents to show cause, on 28 August 2012, why:

“2.1 In the promises; we respectfully submit that the application districted to an order in terms of the notice of motion and the set aside of judgement against attached of property for public auction on 16th April 2008 at the Uitenhage Magistrates Court and auction never taken place, and sake in execution set aside and writ of execution.”

The application came before me on 4 September 2012, by which time the return date had already passed. I may mention that prior to hearing the matter, having “read” the papers, I attempted, in vain, to persuade the applicants, who were not legally represented, to try and secure services of a legal representative. The first applicant, being the husband of the second applicant, insisted that they were determined to have the matter heard on that day and were not interested in securing services of a legal representative.

The first and fourth respondents oppose the application. As Ms Zietsman submitted on their behalf the application does not comply with the Rules of Practice in this Court. The application was launched on 30 July 2012. It does not set out any period within which the respondents should file their opposition thereto. The Notice of Motion is neither in Form 2 or Form 2a of the forms prescribed in the Rules of Practice. The first paragraph thereof provides that the application will be heard on 28 August 2012 and the order to be sought on that day will, as I have stated, be that the respondents to show cause, on 28 August 2012, why the final order should not be granted. The application appears to have been brought on either an urgent or semi-urgent basis; however no certificate of urgency was filed. The application was served on the respondents by the first applicant personally. There is no explanation as to why it was not served by the Deputy Sheriff as provided for in the Rules. The applicants’ address does not comply with the provisions of Rule 4. The founding affidavit (also termed “Notice of Motion”) is unintelligible and does no better than the Notice of Motion in setting out the cause of action and relief sought by the applicants.

The application was a “non-starter”.

Given that the applicants are not legally represented in these proceedings I invited Ms Zietsman to make submissions as to whether the applicants should be ordered to pay the costs of the application in the event that their

application is dismissed. She submitted that because this is the third fatally defective application brought by the applicants

against the respondents, the respondents persist in seeking an order that the applicants pay their wasted costs. The applicants'

submissions (through the first applicant) on both the issue of costs and on merits were most unhelpful. The first applicant merely bemoaned the unfairness with which they have been treated in being driven out of their home and the impropriety of causing them to appear in courts of law when the first applicant is a respected religious leader in his community. I am persuaded that it is only proper, in the circumstances that the applicants pay any legal costs that the first and fourth respondent may have incurred.

Consequently the order I grant is the following, that:

The application is dismissed and the applicants are ordered, jointly and severally, the one paying, the other to be absolved, to pay such legal costs as the first and fourth respondents may have incurred.

N. DAMBUZA

JUDGE OF THE HIGH COURT

Appearances:

For the applicants:

In person

For the first and fourth respondents:

Adv T Zietsman

Instructed by

Lessing, Heyns, Keyter & Van der Bank Incorporated
of Uitenhage

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Prepared on 11 October 2026 · Esheria