

SOUTH AFRICA / JUDGMENT

Poopedi and Others v SB Guarantee Company (RF) (Pty) Ltd and Others (14557/20) [2025]

ZAGPPHC 548 (23 May 2025)

[2025] ZAGPPHC 548

COURT

North Gauteng High Court, Pretoria

BEFORE

SG Maritz

CASE / FILE NUMBER

14557/20

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Policy

REPUBLIC

OF SOUTH AFRICA

IN THE HIGH COURT OF

SOUTH AFRICA

(GAUTENG DIVISION,

PRETORIA)

CASE

NO: 14557/20

(1) REPORTABLE:

YES / NO

(2) OF INTEREST TO

OTHER JUDGES: YES / NO

(3) REVISED. YES

DATE

23 May 2025

SIGNATURE

In

the application to stay a
warrant of execution
between:

MANAPANE
GRACE POOPEDI
(Identity
number: 6[...])
FIRST
APPLICANT
CHOENE
LAZARUS POOPEDI
(Identity
number: 4[...])
SECOND
APPLICANT
RAMATSOBANE
POOPEDI
(Identity
number: 8[...])
THIRD
APPLICANT
and
SB
GUARANTEE COMPANY (RF) (PTY) LTD
(Registration
number: 2006/0215576/07)
FIRST
RESPONDENT
THE
SHERIFF: BOKSBURG NORTH
SECOND
RESPONDENT

MEC:

GAUTENG PROVINCIAL DEPARTMENT OF EDUCATION
THIRD
RESPONDENT

DIRECTOR:

OFFICE OF THE DISTRICT OF EKHURHULENI SOUTH
FOURTH
RESPONDENT
THE
CHIEF EXECUTIVE OFFICER OF THE GOVERNMENT EMPLOYEES PENSION FUND,
REGISTRAR OF DEEDS
FIFTH
RESPONDENT
In

the application for
declaratory relief
between:

MANAPANE
GRACE POOPEDI
(Identity
number: 6[...])
FIRST
APPLICANT
CHOENE
LAZARUS POOPEDI
(Identity
number: 4[...])
SECOND
APPLICANT
RAMATSOBANE
POOPEDI
(Identity
number: 8[...])
THIRD
APPLICANT
and
SB
GUARANTEE COMPANY (RF) (PTY) LTD
(Registration
number: 2006/0215576/07)
FIRST
RESPONDENT

MEC:

GAUTENG PROVINCIAL DEPARTMENT OF EDUCATION
SECOND
RESPONDENT

DIRECTOR:

OFFICE OF THE DISTRICT OF EKURHULENI SOUTH
THIRD
RESPONDENT
THE
CHIEF EXECUTIVE OFFICER OF THE GOVERNMENT EMPLOYEES PENSION FUND,
REGISTRAR OF DEEDS – OFFICE OF THE STATE ATTORNEY,
PRETORIA
FOURTH
RESPONDENT

JUDGMENT

Introduction:

1. On 3 December 2020, this court (per the Honourable Basson J) granted summary judgment in favour of the first respondent against the applicants, jointly and severally, the one paying the other to be absolved, for an order in the following terms:

1.1. Payment of the amount of R1,537,568.76 (One million five hundred and thirty-seven thousand five hundred and sixty-eight rand and seventy-six cents);

1.2. Interest on the amount referred to at the rate of 10.80% per annum from 12 February 2020 to date of payment, both dates inclusive;

1.3. That the immovable property described as:

Erf 5[...] F[...] P[...], Ext 1 Township

Registration Division I.R., Province of Gauteng

Measuring 1105 (One thousand one hundred and five) square meters

Held by Deed of Transfer No. T36393/2016

Subject to the conditions therein contained

(“the property”)

be declared specially executable;

1.4. An order authorising the issuing of a writ of execution in terms of Rule 46 as read with Rule 46A for the attachment of the

property;

1.5. The property to be sold at a reserve price of R900,000.00;

1.6. Cost of suit.

The application for a stay of execution:

2. During June 2021, the applicants instituted an application seeking a stay of the warrant of execution and attachment authorised in terms of the summary judgment (“the stay application”).
3. In the stay application, the applicants also seek substantive relief against the third, fourth and fifth respondents.
4. Despite the applicants seeking far-reaching and invasive relief against the third, fourth and fifth respondents, it does not appear as if the applicants served the stay application on the third to fifth respondents.
5. Moreover, despite this being a substantive application, the applicants have inexplicably issued an interlocutory application under the same case number as the summary judgment proceedings. This is inappropriate.
6. This application is not interlocutory in nature and the third, fourth and fifth respondents were not parties to the summary judgment proceedings.

7. The stay application is instituted by the applicants as the first applicant is currently embroiled in a dispute with the third, fourth and fifth respondents regarding the payment of her pension pursuant to her resignation as an educator. This has nothing to do with the first respondent who obtained judgment as long ago as 3 December 2020.
8. The applicants in their stay application allege that:[1]
“The Honourable Court has in favour of the first respondent granted judgment against me and my co-applicants. I respect the judgment.”
9. Significantly, when the applicants instituted their present application for a stay of execution, the applicants elected not to appeal against the summary judgment order aforesaid.
10. Pursuant to the institution of the stay application, the first respondent held over with execution steps for the next 3 years. This was clearly an indulgence on the part of the first respondent.
11. The first respondent eventually filed an answering affidavit during August 2024. The delay in filing an answering affidavit is explained on the basis that the first respondent continued to grant the applicants an indulgence to bring the pending litigation instituted between the applicants and the third, fourth and fifth respondents either to finality, alternatively, to reach an amicable solution.[2]
12. In its answering affidavit, the first respondent claims that the applicants have failed to make out any case for a stay of execution. I agree.
13. Regardless of the aforementioned, the applicants have subsequently changed their stance and have indicated that they do not wish to proceed with their stay application. In this regard, the applicants have filed a notice of withdrawal of the application for a stay. As this was done after the matter was set down, this can only be achieved with the consent of all the parties, alternatively with the leave of the court.
14. The first respondent has not consented to the withdrawal of the application and persists on an order being granted on the merits.
15. Having considered the matter, I am inclined to agree to the first respondent’s request.
16. I am of the view that there is no merit in the application for a stay, and accordingly, I intend to dismiss the stay application.

The application for declaratory relief:

17. During October 2024, the applicants instituted an application in which the applicants seek various declaratory orders against the first to fourth respondents.
18. Even though the applicants seek substantive relief against all of the respondents, the applicants have again instituted an interlocutory application under the same case number as the summary judgment proceedings.
19. The defective nature of the application aside, the application was also not properly served on all of the respondents.
20. In *Lutchman N.O. and Others v African Global Holdings and Others*,^[3] the Supreme Court of Appeal per Meyer AJA (Saldulker JA, Molemela JA, Gorven JA and Smith AJA concurring) indicated the following with regard to the peremptory requirements of service pertaining to substantive applications^[4]:

“On a proper conspectus of the papers, it cannot be said that there has now been compliance, or even substantial compliance, with the service and the notification prescripts ... First, the business rescue application ought to have been served by the Sheriff on each joint liquidator of each of the six Bosasa companies in the manner provided for in Rule 4(1)(a) of the Uniform Rules of Court. It is a substantive Form 2(a) application, and not an ancillary or interlocutory application, which, in terms of Rule 4(1)(aA) may be served upon an attorney representing a party in proceedings already instituted.”
21. The first respondent has opposed the declaratory orders and ancillary relief sought against it.
22. As set out above, the relief sought against the first to fifth respondents constitutes substantive relief and as such, the applicants ought to have instituted a substantive application under a separate case number, which application had to be served on the first to fifth respondents by way of sheriff.
23. The applicants have failed to do so and the application for declaratory relief was simply delivered by hand to the first to fifth respondents.
24. Regardless of the defective service, the second to fifth respondents have not opposed the application for declaratory relief.
25. On 7 May 2025, the applicants delivered a notice of intention to amend their notice of motion. The notice of intention to amend, affects the second to fifth respondents. To date hereof, the applicants have not effected the amendment by the delivery of the amended pages.

26. Aside from the foregoing, the notice of intention to amend is confusing in multiple respects. Firstly, no mention is made with regard to what prayers ought to be deleted. Secondly, the prayers that the applicants seek to introduce in its amended notice of motion, in fact, does not amount to relief at all but rather appear to be an explanation as to why the first respondent was cited as a party in the declaratory relief application.
27. Effectively, the applicants in its notice of intention to amend contend that neither Standard Bank nor the first respondent (SB Guarantee) has a direct and substantial interest in the declaratory

relief sought by the applicants.

28. This is clearly incorrect as the applicants in its notice of motion (in its unamended form) clearly seek declaratory orders that affect the first respondent directly.

29. During the hearing of the matter, the applicants indicated that it was not persisting with any relief against the first respondent in terms of this application.

30. The first respondent seeks a dismissal of the relief sought against it in the application for declaratory relief.

31. The applicants have failed to make out any case against the first respondent for any declaratory relief.

32. The first respondent seeks costs on an attorney and client scale. I am inclined to agree to this request. There was never any case made out against the first respondent in either of the two applications.

33. In the premises, the following order is granted:

33.1. The applicants' application for a stay of execution is dismissed with costs on an attorney and client scale.

33.2. The applicants' application for declaratory and ancillary relief against the first respondent is dismissed with costs on an attorney and client scale.

33.3. The applicants' application for declaratory relief against the second, third and fourth respondents is postponed sine die.

33.4. The applicants are ordered to serve the application for declaratory relief on the second, third and fourth respondents by way of sheriff.

SG MARITZ AJ

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Counsel for Applicants: Mr MD Molusi Attorneys for the Applicants: Molusi Attorneys Counsel for
1st Respondent: Adv LA Pretorius Attorneys for 1st Respondent: Vezi & De Beer Inc Date of
Hearing: 19 May 2025 Date of Judgment: 23 May 2025

[1] Page D43, para 10.2.

[2] Page F16, para 11.2.

[3] 2022

(4) SA 529 (SCA).

[4] At para 40.

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