

SOUTH AFRICA / JUDGMENT

Radebe v Standard Bank of South Africa Limited; In Re: Radebe v Standard Bank of South Africa Limited (5023/2017) [2017] ZAGPJHC 266 (18 September 2017) [2017] ZAGPJHC 266

COURT

South Gauteng High Court, Johannesburg

BEFORE

Nkosi

CASE / FILE NUMBER

5023/2017

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

CASE

NO: 5023/2017

Not

reportable

Not

of interest to other judges

Revised.

18

September 2017

In

the matter between:-

RADEBE

,MPUMELELO

BRIAN Applicant

And

STANDARD

BANK OF SOUTH AFRICA

LIMITED Respondent**In**

re: CASE
NO: 2150/2010
RADEBE,
MPUMELELO
BRIAN Applicant

JUDGMENT

NKOSI AJ

INTRODUCTION

1. The applicant seeks an order to stay the warrant of execution pending the response from the Department of Land Reform and Rural Development (The Department).
2. The Applicant has abandoned the other prayers sought in his notice of motion.

ISSUE

3. The only issue before Court is whether the execution of the property and or farm should be stayed pending the outcome of the response from the department.

FACTUAL**BACKGROUND**

4. The respondent applied to this court for default judgment. The application contained the executability affidavit in terms of chapter 10.17 of the practice manual of this Division. The applicant's indebtedness to the respondent stems from the applicant's

breach of his loan agreement with the respondent in that he failed to make monthly payments as required by the agreement. The application

was heard in an open court on the 11 February 2016. The Honourable Makhaya J granted inter alia, the monetary order for payment of R867 512, 02 and the declaratory order that the property known as Portion 11 of the farm Klipview 175, Registration Division 1 R, Province of Gauteng, measuring 11,5891 Hectories held under Deed of transfer T129874/2007 be specially executable . The registrar was ordered to issue the warrant of execution against the aforementioned property.

5. The respondent caused a warrant of execution to be issued against the property and as on the 17 January 2017, the applicant was aware of the warrant of execution and the date of sale. The property was due to be sold by public auction on the 23 February 2017 at 14H00.

6. The applicant approached this court on urgent basis in an attempt to stop the sale. The application was heard by the Honourable Meyer J on the 23 February 2017 and the following order was granted.

“6.1 The sale in execution to be held at 14:00 on 23 February 2017 pertaining to Portion 11 of the farm klipview 175m Registration

Division IR, Province of Gauteng held by the Deed of Transfer T12987/07be and hereby is stayed and shall remain stayed pending the finalisation of the application as contemplated in paragraph 2 hereof ;

6.2 The remainder of the application dated 22 February 2017 is postponed sine dine pending the finalisation of the application;

6.3 The respondent shall deliver its Answering Affidavit to the application within 15(FIFTEEN) days of the granting of this order;

6.4 The applicant is to pay:

6.4.1 The costs of the sale in execution occasioned by the stay of the sale in execution, on an attorney and client scale; and

6.4.2 The wasted costs of the urgent application occasioned by the postponement of the matter, on an attorney and client scale.”

7. This matter is back at this court because of the order granted by Meyer J on the 23 February 2017 in order to determine whether the execution should be stayed further.

CONSIDERATION OF THE ISSUE

8. The applicant neither seeks an order rescinding and setting aside the judgment of Makhaya J nor reviewing and setting aside such

judgment.

He merely seeks an order for the stay of the execution pending the response of the Department.

9. The applicant bears the onus of giving good reasons why the execution should be stayed. He has to demonstrate the steps he took to obtain a response which should influence and persuade the court to further place the execution on hold. In the process of doing so, he has a duty to further demonstrate to court that his conduct is not merely dilatory in nature and intended to frustrate his creditor.
10. The applicant made two submissions in support of his application. Firstly, he submitted that certain information which should have influenced the court's decision when the application for default judgment was heard and granted was not placed before court. Secondly, he submitted that the Department had undertaken to buy out the property from the respondent and a new agreement entered into between the Department and himself.

11. I shall deal with the applicant's first submission. The applicant's submission is incorrect. An affidavit required by Chapter 10.17 of the practice manual of this court was before court together with the application for default judgment. The said affidavit and the application were served by the sheriff on the applicant's father at the applicant's place of residence on the 14 January 2016. The said affidavit drew the attention of the applicant to inter alia, the provisions of section 26 of the constitution[1] as well as the provisions of Rule 46 of the court rules[2] . It is not the applicant's case that the court did not exercise its judicial oversight at all or that, if it did, it misdirected itself. The applicant simply argues that certain information was not taken into account. The information referred to by the applicant is the same information dealt with by the respondent when addressing the constitutional requirements in section 26 and rule 46 of the rules of the Court. The applicant did not file a replying affidavit to challenge the allegations raised under section 26 and rule 46.
12. It is clear from the bundle of papers before court that Makhaya J had all the information before him to exercise the judicial oversight as required of a court[3] before a warrant of execution would be authorised. I further find that there is nothing in the papers before me suggesting that the Honourable Judge did not properly consider the application for default judgment or apply his mind to it. There is further; no submission made to the effect that the default judgment authorising the warrant of execution against the property was granted by error. I am therefore not persuaded by the applicant's submission.
13. I now turn to deal with the applicant's second submission. The applicant states the following in his founding affidavit

"3. The Department of Rural Development and land Reform had undertaken to buy out the property from Standard bank and enter into an agreement with me. See copy attached marked A".

Annexure A is a letter from the Department addressed to the applicant. It is dated 3 February 2014 and reads:

"The Provincial Shared Service Centre Gauteng (PSSC: G) South Eastern region, confirms that your application to be rescued on the above farm was received by the office. Should you require more information please do not hesitate to contact the project officer....."

14. It is now more than three years since the letter was sent to the applicant. On the other hand the arrears are now almost R400 00, 00. There is no indication from the applicant that since the date he received summons, he made payments towards the liquidation of the debt. The respondent submitted that the applicant has not made any payment since the date of summons.
15. On the 20 February 2017, three days before Meyer J granted an order pending the execution , the applicant received a letter from the Department stating that :

“The Provincial Shared Services Centre: Gauteng (PSSC:G) acknowledges receipt of your request to rescue your plot. Please provide us with the current loan balance from your bank with interest up to April 2017 so that we know how much you owe the bank. “

16. In both letters, the Department or PSSC: G has made no undertaking to purchase the property from Standard Bank. The applicant has placed no facts before court to indicate what steps if any he took to obtain a final and positive reply from PSSC: G. Counsel for the applicant attempted to give evidence from the bar in an attempt to explain the applicant's efforts. These efforts are not referred to in the founding affidavit. In any way they do not indicate any progress made to obtain the final reply from PSSC: G. In my view the applicant has failed to discharge the onus of proving that there are good reasons to stay the execution further.

ORDER

17. The following order is made.
- 1) The application is dismissed
 - 2) The applicant is to pay the costs of the application

NKOSI, AJ

For Applicant : Advocate Mkhize

Instructed by : Pro Bono office

Johannesburg

For Respondent : Advocate Ellis

Instructed by : Strauss Daly Inc

Date of Hearing : 06 and 07 September 2017

Date of Judgment : 18 September 2017

[1] The Constitution of the Republic of South Africa , Act 108 of 1996

[2] Uniform Rules of Court

[3] Jaftha v Schoeman and Others ; Van Rooyen v Stolt and Others [2004] ZACC 25; 2005 (2) SA 140 CC at Para 55 “It is my view that this is indeed an appropriate remedy in this case. Judicial oversight permits a magistrate to consider all the relevant circumstances of a case to determine whether there is good cause to order execution “ .

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Prepared on 23 October 2026 · Esheria