

SOUTH AFRICA / JUDGMENT

Thokwana v Standard Bank SA Ltd and Others (2935/2008) [2025] ZALCJHB 256 (12 February 2025)

[2025] ZALCJHB 256

COURT

Labour Court Johannesburg

BEFORE

Barnes

CASE / FILE NUMBER

2935/2008

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IN THE HIGH COURT OF SOUTH
AFRICA

GAUTENG LOCAL DIVISION,
JOHANNESBURG

CASE

NO: 2935/2008

DATE:

12-02-2025

(1)

REPORTABLE: NO

(2)

OF INTREST TO OTHER JUDGES: NO

(3)

REVISED: YES

DATE

12 February 2025

In

the matter between

THOKWANA,

BIKWAPHI MIRRIAM

Applicant

and
STANDARD BANK SA
LTD
First Respondent
SIPHONO JOHNSON
VILAKAZI
Second Respondent
PRINCE NHLANHLA
MABENA
Third Respondent
THE REGISTRAR OF
DEEDS
Fourth Respondent
PRETORIA
Fifth Respondent
KEMPTON PARK SOUTH

THE SHERIFF FOR THE
HIGH COURT:

JUDGMENT

BARNES, AJ: This is an application to set aside the sale in execution of an immovable property, namely: Erf 2846, Birch Acres, Ext 17, Kempton Park. In what follows, I will refer to it simply as “the property.”

There is no appearance by the Applicant despite proper notice of the set down of the matter for today. In this regard there is, on the papers before me, a return of service from the sheriff which confirms that the notice of set down for today was served on the Applicant.

In addition to this, I have been directed to an email, (using the email addresses that have been utilised by the parties to this litigation by agreement), advising the Applicant of today’s set down.

Before dealing with the present application, it is necessary to refer to the history of this litigation, which began as far back as 2008, and is characterised by some very troubling features.

On 11 June 2008 default judgment was granted against the Applicant and the Third Respondent jointly and severally in terms of which, inter alia, the property was declared specially executable.

On 25 March 2010 the property was sold in execution. On 19 May 2010 the Applicant and the Third Respondent launched an application for rescission of the default judgment.

This will be referred to as “the first rescission application.” The first rescission application was postponed pending attempts at settling the matter. This culminated in the conclusion of a repayment agreement between the First Respondent, on the one hand, and the Applicant and the Third Respondent, on the other, and the cancellation of the sale of the property.

In the event, the Applicant and the Third Respondent failed to honour the terms of the re-payment agreement, and the First Respondent brought an application in terms of Rule 46(11). On 29 July 2015 this Court granted that application and made an order in terms of which the property was put up for sale again.

To date the first rescission application has not been disposed of or withdrawn by the Applicant and the Third Respondent. Notwithstanding this, 17 February 2016 the Applicant launched a second rescission application, again seeking to set aside the default judgment.

The Applicant failed to prosecute the second rescission application and it was set down on a number of occasions by the First Respondent, only to be postponed on every occasion at the instance of the Applicant.

Eventually, on the 23 April 2018, the second rescission application was dismissed by this Court with punitive costs.

Thereafter, the necessary procedures were complied with and on 20 September 2018, the property was sold in execution to the Second Respondent. On 19 June 2019 the present application to set aside the sale in execution of the property was launched.

The Applicant has taken not a single further step in relation to the present application since it was launched over five years ago. Yet again, it fell to the First Respondent to set the matter down on numerous occasions in an attempt to dispose of it.

On 19 May 2022 the matter came before this Court and the Applicant sought a postponement. The Court granted the postponement and ordered the Applicant to deliver her heads of argument within three days, failing which her claim would be struck out with punitive costs. The Applicant failed to comply with that order.

Thereafter, the matter was again set down on 18 November 2022 at the instance of the First Respondent. The Applicant again sought a postponement, this time on the grounds that she had no legal representation. This Court postponed the matter sine die and afforded that Applicant three days to obtain legal representation and five days to deliver her heads of argument. Yet again, the Applicant failed to comply with this order.

The Applicant is accordingly in default of both the aforesaid orders of this Court, issued on 19 May 2022 and 18 November 2022 respectively.

The present application has again been set down at the instance of the First Respondent. There is no appearance for the Applicant today. As stated above, I am satisfied that the Applicant has had proper notice of today's set down and of the fact that a punitive costs order is being sought against her.

The history set out above clearly demonstrates that the Applicant has litigated in bad faith. She has over many years launched applications and failed to take steps to prosecute them. Orders of this Court affording the Applicant the indulgence of a postponement or granting her a final opportunity to deliver heads of argument have been routinely ignored. This conduct is unacceptable and warrants a punitive costs order against the Applicant.

In the circumstances, I make the following order:

The application to set aside the sale in execution of the immovable property, namely: Erf 2846, Birch Acres, Ext 17 in Kempton Park is set aside.

The Applicant is to pay the costs of this application on the attorney and client scale.

BARNES, AJ

JUDGE OF THE HIGH COURT

DATE: 12 February 2025

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Prepared on 11 October 2026 · Esheria