**REPUBLIC OF SOUTH AFRICA**

**IN THE HIGH COURT OF SOUTH AFRICA**

**(GAUTENG LOCAL DIVISION, JOHANNESBURG)**

**CASE NO: 47164/2018**

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED

**4 September 2019** **FHD VAN OOSTEN**

In the matter between:

**LUNESH SINGH** **APPLICANT**

and

**SHERIFF SANDTON NORTH** **FIRST RESPONDENT**

**STANDARD BANK OF SOUTH AFRICA** **SECOND RESPONDENT**

**THE BODY CORPORATE OF U.** **INTERVENING RESPONDENT**

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**J U D G M E N T**

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**VAN OOSTEN J:**

**Introduction and background facts**

[1] This is an application for the setting aside of a sale in execution of an immovable property pursuant to an order of court, held by the first respondent on 30 October 2018.

[2] The applicant, who appeared in person, is the registered owner of the immovable property, which is described as […] K. road, Sunninghill Ext 29 (the property). The applicant fell into arrears with the payment to the Body Corporate of U., the intervening respondent (the body corporate), of monthly levy contributions levied in terms of the Sectional Tiles Act 95 of 1985 and its successor, the Sectional Titles Management Act 8 of 2011. The body corporate instituted action first in the Magistrate's court and subsequently in the High Court, Gauteng Division, and obtained judgments in both actions, on 30 March 2012 and 22 October 2015 for payment of the amounts of R80 912.23 and R206 312.28 respectively. Pursuant to an order of the Magistrate's court, in terms of s 66(1) of the Magistrate's Court Act, the property was declared specially executable. The sale in execution was scheduled for 1 September 2015 but was cancelled due to the applicant having paid the full judgment debt. Execution proceedings in regard to the High Court judgment were thereafter instituted and opposed by the applicant who simultaneously applied for a rescission of judgment. The parties however concluded a settlement agreement in regard to both applications, which was made an order of court. The applicant failed to make the agreed payments in terms of the settlement agreement and the body corporate obtained a warrant of execution pursuant to which a sale in execution of the property was scheduled for 30 October 2018. The applicant however, launched a second application for rescission of judgment on the self-same facts, on 12 October 2018, as well as subsequently an urgent application for a stay of the warrant of execution, which was heard by Mvundla J on 23 October 2018. The learned judge dismissed the application with a punitive costs order against the applicant.

[3] The sale in execution proceeded on 30 October 2018 and the property was sold for an amount of R591 000.00. The outstanding bond balance owed to the second respondent was R590 622.24 and the execution purchaser became liable for payment of the further amounts of R43 550.73 and R552 189.09 in respect of municipal rates and taxes and arrear levies respectively. The total amount payable by the purchaser accordingly was R1 185 739.82.

[4] Subsequent to the sale in execution, on 14 December 2018, the body corporate obtained a further judgment against the applicant in respect of arrear levies in the amount of R52 128.55. The second rescission application was heard by Vorster AJ on 18 March 2019. The learned judge dismissed the application, likewise as in the previous application before Mvundla J, with a punitive costs order against the applicant. On 19 March 2019 the applicant instituted an ‘Application for summary judgment’ in respect of the present application. The application, apart from constituting an abuse of process, was in any event incompetent. The application moreover was not served on the body corporate. The applicant failed to attend court on the day of the hearing and the application was dismissed.

**The issue for determination in the present application**

[5] The only ground relied upon by the applicant in support of the application for the setting aside of the sale in execution, is that the arrear levies amount, the payment of which became the purchaser’s liability, as has been ascertained from the statement obtained from Trafalgar Property Management, the property managing agent on behalf of the body corporate, incorrectly included legal fees and costs relating to the collection of the arrear levy amounts from the applicant. The arrear levies amount payable by the purchaser, who happened to be an employee of Trafalgar Property Management, as I have alluded to, amounted to R552 189.09, which the applicant contends, having subtracted the legal fees and costs, should have been R86 813.00. The erroneous ‘inflated’ amount, so the applicant contended, may have influenced the purchaser to bid a lower amount at the execution sale, after factoring in the arrear levies amount that became the purchaser’s liability. Had the purchaser known that the arrear amount in fact was a substantially lesser amount, the bid on the purchase price may well have been substantially higher which in the end result, would have been to the benefit of the applicant.

[6] I do not consider not necessary to consider the argumentative contentions raised by the applicant any further. I propose to deal with the ground advanced by the applicant, on the basis of whether it is fundamentally sustainable.

[7] The answer to the question whether sectional title levies may include legal fees and costs will decide the fate of the application. Section 15(B)(3)(a)(i)(aa) of the Sectional Titles Act provides that registration of a unit can only be effected upon a conveyancer's certificate confirming payment of *all moneys* due to the body corporate. In *Barnard NO v Regspersoon van Aminie en 'n Ander* 2001 (3) SA 973 (SCA) para [15], the words *all moneys* were interpreted in their wider connotation, and therefore to include legal fees and costs. The sale in execution accordingly, correctly informed the prospective bidders in the conditions of sale, in wording almost identical to the wording of s 15(B)(3)(a)(i)(aa), of all moneys due to the body corporate, which the eventual purchaser was obliged to pay in order for registration of transport to be effected. 'All moneys' as held in *Barnard*, included legal fees and costs incurred in the collection of arrear levies from the applicant.

[8] The application accordingly falls to be dismissed.

**Vexatious litigant**

[9] The body corporate, having endured continuous delaying tactics employed by the applicant in an attempt to avoid payment of levies, now seeks an order declaring the applicant a vexatious litigant.

[10] I am satisfied, having considered the applicant's litigation in regard to the property, which I have alluded to above, that the proceedings were instituted persistently and without any reasonable ground and that an order restricting the applicant's institution of further proceedings, if any, is justified (see s 2(1)(b) of the Vexatious Proceedings Act 3 of 1956).

**Costs**

[11] The applicant's persistent vexatious attempts to avoid payment of levies and his reliance, once again in the present application, on unsustainable grounds, warrant a punitive costs order. This will be the third punitive costs order against the applicant in this line of litigation.

**Referral to the NPA**

[12] The body corporate has referred in detail to the past litigation in this matter and counsel for the body corporate with ample justification, submitted that the applicant's conduct should be referred to the National Prosecuting Authority for investigation in regard to the possible crimes of fraud and perjury having been committed by the applicant.

**Order**

[13] In the result the following order is made:

1. The application by the applicant, Lunesh Singh, (the applicant) for the setting aside of the sale in execution of the immovable property known as […] K Road, Sunninghill Extension 29, Gauteng Province, (the property) is dismissed.
2. The applicant is to pay the costs of the intervening respondent, the Body Corporate of U., on the scale as between attorney and client.
3. The applicant is declared a vexatious litigant in regard to the litigation referred to at pages 90 to 107 of the papers in this application.
4. The applicant shall not institute any legal proceedings in any court concerning the property without having first obtained the leave of this Court.
5. This application, including the judgment of this Court, is referred to the National Prosecuting Authority for investigation in respect of possible fraud and/or perjury having been committed by the applicant.

____*(Original signed)* _______
**FHD VAN OOSTEN**
**JUDGE OF THE HIGH COURT**

***APPLICANT*** ***IN PERSON***

***COUNSEL FOR INTERVENING RESPONDENT*** ***ADV NG LOUW***

***INTERVENING RESPONDENT'S ATTORNEYS*** ***RORICH WOLMARANS & LUDERITZ INC***

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| ***DATE OF HEARING*** | ***2 SEPTEMBER 2019*** |
| ***DATE OF ORDER*** | ***2 SEPTEMBER 2019*** |
| ***DATE OF JUDGMENT*** | ***4 SEPTEMBER 2019*** |