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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case Number: 2021-37755

In the matter between:

JAN VAN DEN BOS

APPLICANT

(in his capacity as the administrator)

And

SIMPHIWE CECIL NDEVU

1ST RESPONDENT

RESHOKETSWE SHOCKY NDEVE

2ND RESPONDENT

NEUTRAL CITATION: *Van den Bos vs Ndevu and another* (Case No: 2021-37755)
[2023] ZAGP JHC 421 (04 May 2023)

JUDGMENT

DELIVERED: *This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail and publication on CaseLines. The date and time for hand-down is deemed to be 16h00 on 04 May 2023.*

MANYATHI AJ

INTRODUCTION

- (1) The applicant in this matter is an administrator of the President Tower Body Corporate. The respondent is the owner of unit [...] in the scheme known as President Towers. The said unit was registered in the name of the respondent in March 2007.
- (2) As an owner, certain rights and duties arise. Every owner and member of the scheme is obliged by rules and regulations to contribute to the maintenance and management of the scheme. That is the payment of levies, utilities and other charges due to the applicant.
- (3) The Applicant alleged that the Respondent failed, despite demands and court order to comply with the terms of his duties. In 2018, Monetary Judgement was granted in favour of the applicant. All attempts to satisfy the Judgement Debt are unsuccessful, due to the fact that the Respondent can- not be located. The said unit is rented out to someone else. They tried to trace the Respondent from different addresses with no success. In the process, the Respondent's debt to the Applicant has ballooned to the amount more than the value of the unit, that no other means exist to satisfy the Judgement Debt.
- (4) This is an application whereby the Applicant seeks an order to have the unmovable property, specifically unit [...] situated at President Towers, declared specifically executable, so as to enable the Applicant to sell the property in the auction, in order to recuperate unpaid contribution and charges due to the applicant by the Respondent.

EVIDENCE ON RECORD

- (5) In December 2018 the Germiston Magistrate court granted an order for the payment of R95.200.85 (Ninety-Five Thousand Two Hundred and Eight Five Rands) against the Respondent. The un-contradicted evidence indicates that by October 2019 the said debt has increased to R124.194.65. the municipal evaluation of the property is R90.000.00 (Ninety Thousand Rands)
- (6) The Respondent does not dispute that he is owing, but disputes the amount owed, without stating how much according to him is owing. He alleges that the water bill can-not be so high because he is not staying in the house. In the absence of any evidence to the contrary one is bound to accept the amount by the Applicant as the correct amount.
- (7) The Respondent's defence mostly hinges on the status of the applicant. The Respondent submits that the applicant does not have locus standi to act on behalf of the scheme. This argument is based on the allegations that at the time the order forming the bases of this action was granted, the Applicant was not appointed as the administrator and therefore the order is null and void.
- (8) The Respondent further submitted that all other subsequent appointments were obtained fraudulently and illegally. That he is contemplating bringing a Recession application for the appointment of the applicant as the administrator of the scheme
- (9) On the 21st of February 2017, Justice Mashill granted an order appointing the applicant as an administrator for a period of 24 months. It goes without saying that this appointment will lapse on the 21st of February 2019. The monetary Judgement against the respondent granted in December 2018 fell within the legitimate scope of the Applicant. That order for all intents and purposes is still valid and binding until formally set aside by a legitimate court. There is no appeal or application for setting aside of the order and therefore the order is valid and binding. This view also extends to subsequent appointments of the Applicant as the administrator. This order empowered him to institute any legal proceedings on behalf of the scheme.

- (10) Whether the Default Judgement was granted fraudulently or not, it is still binding until it is set aside. I am of the view that the allegations of mismanagement of the scheme funds were supposed to be raised during the appointment application. The issue for determination before this court is whether the Respondent owes the applicant, if so there are enough bases to declare the unmovable property specifically executable.
- (11) It is common cause that the Respondent owes the Applicant money. Despite several demands, the Respondent still failed to pay. The irregularities alleged in the obtaining of the Judgement calls for an action on the part of the Respondent, either to appeal or setting aside the court order. A period of three years has lapsed without an action the part of the Respondent.
- (12) Since the court order on the 16th of December 2018 the applicant could not satisfy the Judgement debt. This is so as a result that the Respondent can- not be found. The immovable property in question has been rented out to someone. There is no movable property belonging to the Respondent to satisfy the Judgement Debt. This is clear indication that it is not the primary resident of the Respondent. On the other hand, the amount owing increases month to month to the detriment of the other members of the scheme. I am of the view that there are no merits in the Respondent's defence. As a result, I make the following order.

CONCLUSION

- (12.1) That the immovable property situated at Door Number [...], Unit [...], President Towers, 147 President Street, Germiston, registered under Sectional Title Deed ST14103/2004 (the property) is declared specially executable.

(12.2) That a writ of the execution be issued in respect of the property, as envisaged in terms of Uniform rule 46(1)(a) and

(12.3) That the 1ST Respondent pay the cost of the application on the attorney and client scale.

B.P. MANYATHI
Acting Judge of the High Court
Gauteng Local Division, Johannesburg

DATE OF HEARING : 16 August 2022

DATE OF JUDGEMENT: 04 May 2023

APPEARANCES:

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