

NOT REPORTABLE

IN THE HIGH COURT OF SOUTH AFRICA

(NORTH GAUTENG HIGH COURT, PRETORIA)

CASE NO: 30704/10

DATE: 09/12/2010

In the matter between

SAAMBOU BANK LIMITED

APPLICANT

And

LINDA ROTH

1ST RESPONDENT

LINDA ROTH BELEGGINGS

2ND RESPONDENT

JUDGMENT

MSIMEKI, J

INTRODUCTION

[1] This is an application for summary judgment. The application had come before Rabie J on 16 September 2010 when the application was postponed to 1 December 2010; the parties were granted leave to file the

supplementary affidavits before 1 December 2010; the Respondents were ordered to bring an urgent application to the magistrate court in terms of section 86 (11) of the National Credit Act to revive the debt review procedure and the Respondents were further ordered to bring the application within 10 days from the date of the order to afford the Applicant at least 10 days to file its opposing affidavit. The Applicant, in the event that the Respondents failed to comply with the court order, would be entitled to proceed with the application for summary judgment.

[2] The matter came before me on 1 December 2010 when Ms Cilliers submitted that:

2.1 The first Respondent had merely filed an application on 4 October 2010.

2.2 The deponent to the application is Geraldine Grundling, a debt Counsellor.

2.3 The application is headed:

NOTICE OF MOTION IN TERMS OF SECTION 86 (11) OF THE
NATIONAL CREDIT ACT, ACT 34 OF 2005.

2.4 The Notice of Motion is not stamped with the Magistrate's court stamp to show the issue thereof by the clerk of the court.

2.5 The Notice of Motion bears no date by which an indication should be given should the application be opposed.

- 2.6 The Notice of Motion is not accompanied by an application for condonation as the Notice of Motion was served on 4 October 2010 outside the 10 days the court order refers to.
- 2.7 The application was not brought on an urgent basis.
- 2.8 The Respondent had had enough time within which to bring the application.
- 2.9 There is no explanation why the court order was not complied with, and
- 2.10 The application does not indicate a date and time for the hearing thereof.
- [3] As Ms Cilliers, on behalf of the Applicant, correctly submitted, the Applicant filed an application which, on the face of it, does not comply with the rules of the court, has not been set down and has not been adjudicated upon. Mr van Zyl, on behalf of the Respondents, found himself in a difficult position in that he was not armed with the first Respondent's affidavit explaining what transpired from the time Rabie, J gave the order to date. In the absence of such an affidavit, especially with the difficulties and problems alluded to above, it cannot be said that the first Respondent has complied with the court order which was meant to assist her and the second Respondent. The Applicant, in the said Notice of Motion was not invited to oppose the application in terms of Section 86 (11) if it so wished. In the event that it so wished, it was not indicated by when it ought to have filed its papers which, according to Ms Cilliers, further rendered the Notice

of Motion defective. I agree. It is noteworthy that the first Respondent's debt review procedure has been terminated in terms of section 86 (10) of the NCA. Ms Cilliers further submitted, correctly in my view, that the first Respondent's application in terms of section 86 (11) of the NCA was not *bona fide* and that the second Respondent had neither been under debt review nor filed an opposing affidavit.

[4] Mr Van Zyl, realising the Respondent's problems, then applied that the matter be postponed to enable the Respondents to be properly before the court and to properly deal with the matter. Ms Cilliers opposed the application. In light of the history of the matter and the adequate time that the Respondents were accorded to deal with the matter, the application for a further postponement, in my view, stood to be dismissed. Ms Cilliers then proceeded to make her submissions in respect of the summary judgment application. The Applicant, having terminated the debt review procedure, its papers being in order and the Respondents having failed to comply with the court order of Rabie J, is entitled to the order that it seeks against the first and the second Respondents as set out in the notice of motion.

[5] In the result the order I make is as follows:

1. The application for postponement is dismissed with costs.

2. An order is granted in terms of prayers 1, 2, 3 and 4 of the application for summary judgment dated 16 July 2010.

MW MSIMEKI

JUDGE OF THE HIGH COURT

Heard on: 01 December 2010

For the Applicant: Adv. S. Cilliers

Instructed by: Petzer, Du toit & Fcamulifho

For the Respondent: Adv. H. van Zyl

Instructed by: Grundling & Nel Attorneys

Date of Judgment: 09 December 2010