

**IN THE NORTH GAUTENG HIGH COURT
(REPUBLIC OF SOUTH AFRICA)**

DELETE WHICHEVER IS NOT APPLICABLE

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

CASE NO.: 23845/2007

DATE:

In the matter between:

RE:
SHERIFF OF THE HIGH COURT HALFWAY HOUSE

APPLICANT

And

**SARAH HOPE IN HER CAPACITY AS EXECUTRIX FOR
THE ESTATE OF JUSTIN HOPE**

RESPONDENT

In the matter between

NEDBANK LIMITED

PLAINTIFF

And

TRUSTEES FOR THE TIME BEING OF TRIPLE 7 TRADING

DEFENDANT

JUDGMENT

WEBSTER J

1. This is an application brought in chambers for an order declaring a sale in execution concluded on 9 February, 2010 in terms of which the applicant sold immovable property known as Section 52, Carlswald View, Noordwyk Extension 65 Township to the respondent to be invalid and to be cancelled and set aside.
2. From an affidavit by a candidate Attorney, Salome Jansen van Vuuren, in the plaintiff's Attorneys' employ the application was lodged with the Registrar on 29 October, 2010. On 22 November, 2010, she discovered upon examining the court file that "...the

court file seem to have been misplaced...". Despite a diligent search the "...court file could not be found". She then annexed "...copies of all the pleadings in this matter", declaring that they were true copies of the original documents.

3. The application served before my Brother Msimeki J on 25 November, 2010. He declined to grant the order of cancellation as "...there is no proof of service of the application on the purchaser in terms of the conditions of sale". This is clearly so from the documents annexed to the affidavit of Salome Jansen van Vuuren referred to above.
4. There is currently another bundle similar to that referred to above. It is, to all intents and purposes, the original set of the papers. The only difference is the date stamps appearing on the first page of each bundle. Annexed to the "new bundle" is a return of service dated 19 August, 2010. It appears to be the original return of service and bears a signature of the Deputy Sheriff.
5. According to the return of service referred to in the preceding paragraph the "Notice of Motion, Applicant's report in terms of Rule 46(11) of the High Court rules and annexure thereto was (sic) served upon MR N MOGENTALE during the respondent's temporary absence on 19 August, 2010 at 07h25 at 52, 13th Street, Orange Grove". The return of service appears to be valid.
6. It is clear that the order by my Brother Msimeki J was based on the bundle that did not have the return of service. That is no longer the position. In my view the applicant has made out a proper case and is entitled to the relief he seeks.

7. The following order is accordingly granted:

IT IS ORDERED:

1. **THAT the sale in execution which was held on the 9th of February 2010 in respect of the immovable property known as SECTION 52, CARLSWALD VIEW, NOORDWYK EXTENTION 65 TOWNSHIP, be and is hereby cancelled.**
2. **THAT the Respondent pays the costs of this application.**

G Webster

G WEBSTER

JUDGE IN THE HIGH COURT