

IN THE NORTH GAUTENG HIGH COURT, PRETORIA

(REPUBLIC OF SOUTH AFRICA)

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES/NO.

(2) OF INTEREST TO OTHER JUDGES: YES/NO.

(3) REVISED. ✓

28.03.11

DATE

THE STANDARD BANK OF SOUTH AFRICA

SIGNATURE

PLAINTIFF

CASE NUMBER: 49339/2010

31/3/2011

YVETTE ENSLIN N.O.

THE TRUSTEE FOR THE TIME BEING OF
KHIMANO TRUST (t/ 3830/00)
FIRST DEFENDANT

VETTE ENSLIN N.O

(THE EXECUTRIX OF THE ESTATE OF
THE LATE DANIEL JOHANNES HENDRIK
ENSLIN N.O.)
SECOND DEFENDANT

Coram Sapire AJ

JUDGMENT

This is an application for Summary Judgement. The Plaintiff has issued a Summons for the recovery of a building loan which it alleges was made to the Khimano Trust and for which one D J H Enslin stood surety. This individual has died and the Defendant is his widow. She is cited in her capacity as executrix of the estate of her late husband and as trustee for the time being of the Trust.

The Defendant in both capacities has given notice of her intention to defend the action. The Plaintiff in response applies for Summary Judgement. Until a late stage no Affidavit in opposition to the Application for Summary Judgement was filed but such an Affidavit was in fact filed on the 6th of January 2011. The Affidavit is attested to by Yvette Enslin.

In the Affidavit she raises a number of points. The first point so raised is that the NCA Compliance Certificate is attached to the Affidavit supporting the application for Summary Judgment. She points out that this document is not part of the Summons and cognisance thereof cannot be taken. This objection is well taken as the Plaintiff's cause of action is to be found complete in the Summons itself.

The second point that is taken by her is that the Summons includes two causes of action, one against the Trust and one against the estate of her late husband.

The Affidavit in support of the application for Summary Judgement is attested by one Kennedy who is the Manager of the Customer Debt Department of the Plaintiff. In the Affidavit he refers to "the cause of action as stated in the Summons". The Application for Summary Judgement indicates that a judgment would be sought against the Defendants jointly and severally. There are two causes of action in the Summons one against the First Defendant and one against the Second Defendant. It is not clear which of the causes of action is verified.

The matter is clarified in the Affidavit as judgment is sought only against the Khimano Trust and this point is therefore not decisive as far as the First Defendant is concerned.

It may be noted that a Draft Order was placed before the Court in which judgment was sought against both Defendants jointly and severally. The application did not justify an order against both Defendants.

As far as the Trust is concerned the point is made that the Trust is under debt review in terms of the National Credit Act and that the action against it cannot on this ground proceed.

There is no answer to this. It would therefore not be proper to grant Summary Judgement against the First Defendant.

The Application for Summary Judgement is therefore refused but the costs are to be costs in the cause. The merits of the objection to the claim being enforced should be adjudicated speedily

The order is as follows:

- (a) The application is dismissed.
- (b) Defendants are given leave to defend.
- (c) The costs of this application are to be costs in the cause

(d) The defendants are to file their pleas within seven days, and the plaintiff may approach the Deputy Judge President, to be allocated an early trial date


SAPIRE, A.

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