

IN THE NORTH-GAUTENG HIGH COURT, PRETORIA
~~DELETE WHICHEVER IS NOT APPLICABLE~~
(REPUBLIC OF SOUTH AFRICA)
(1) REPORTABLE : ~~YES/NO~~
(2) OF INTEREST TO OTHER JUDGES : ~~YES/NO~~
(3) REVISED
Date: 2011-09-01
DATE 2-9-11 SIGNATURE Case Number: 46832/10

In the application between:

NEDBANK LIMITED Plaintiff/Respondent

and

NGOANAKGORO JOHANNES PHIHLELA Defendant/Applicant

And in the application between:

Case Number: 43433/10

NEDBANK LIMITED Plaintiff/Respondent

And

NGOANAKGORO JOHANNES PHIHLELA Defendant/Applicant

JUDGMENT

SOUTHWOOD J

- [1] These are applications in terms of Rule 49(11) that the applicant be permitted to execute the writs of execution on the summary judgments

granted under case numbers 46832/10 and 43433/10 pending the respondent's application for leave to appeal against the judgment and order dismissing the respondent's application to rescind the summary judgments.

[2] It is clear from the provisions of Rule 49(11) that the filing of the notice of application for leave to appeal against the judgment and order dismissing the respondent's application for rescission of the summary judgments does not have the effect of suspending the summary judgments granted for the return of the vehicles – see ***MV Snow Delta: Seeva Ship Ltd v Discount Tonnage Ltd* 2000 (4) SA 476 (SCA)** para 6; ***SAB Lines (Pty) Ltd v Cape Tex Engineering Works (Pty) Ltd* 1968 (2) SA 535 (C)** at 537C-F. These orders therefore still stand and the applicant may execute upon them. The applicant is therefore entitled to have the vehicles attached by the sheriff and returned to it. If the respondent refuses to comply with these orders he will be in contempt of court as pointed out in the judgment refusing the application for rescission. Any advice that the filing of the notice of application for leave to appeal suspends the operation of the summary judgments is clearly wrong. The respondent is therefore obliged to comply with these orders forthwith.

[3] The applicant applies for an order calling upon the respondent to show cause why he should not be committed for contempt of court. It seems to me that this is the only way that the respondent will be brought to his

senses. *Prima facie* the applicant has shown that it obtained orders against the respondent, the respondent is aware of these orders and the respondent is deliberately not complying with the orders. In view of the urgency of the matter I am prepared to grant the rules *nisi* requested by the applicant.

- [4] The applicant is entitled to the costs of these applications and such costs should be taxed on the scale as between attorney and client.
- [5] An order is made in terms of prayers 1, 1.1, 1.2 and 2 of the amended draft order which is marked 'X'.


B.R. SOUTHWOOD
JUDGE OF THE HIGH COURT

CASE NO: 46832/10 and 43433/10

HEARD ON: 1 September 2011

FOR THE APPLICANT: ADV. J.P. VAN DER BERG

INSTRUCTED BY: Van Heerden's Inc.

FOR THE RESPONDENT: ADV. TSHABUNGWA

INSTRUCTED BY: Tumi Mokwena Inc.

DATE OF JUDGMENT: 1 September 2011

EX

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

1/9/11

CASE NO.:46832/10

PRETORIA, 1 SEPTEMBER 2011
BEFORE THE HONOURABLE JUSTICE SOUTHWOOD, J

In the application between:

NEDBANK LIMITED

Plaintiff/Respondent

And

NGOANAKGORO JOHANNES PHIHLELA

Defendant/Applicant

AND in the application between:

CASE NO.:43433/10

NEDBANK LIMITED

Plaintiff/Respondent

And

NGOANAKGORO JOHANNES PHIHLELA

Defendant/Applicant

DRAFT COURT ORDER

After perusing the documents filed of record herein, and hearing the counsel on behalf of the plaintiff/respondent, the following order is granted:

1. That in terms of the provisions of rule 49(11) leave be granted that the order and judgment by the Honourable Mr Justice Southwood handed down on Tuesday, 7 June 2011, be carried into execution pending any application for leave to appeal to this court or an application for leave to appeal to the Supreme Court of Appeal by more specifically ordering:
 - 1.1 that the writ of execution issued subsequent to the granting of judgment under case number 46832/10 may be carried into

3.2 he should not be sentenced to imprisonment for such a period or any other appropriate sentence as is deemed appropriate by this Honourable Court.

That the respondent/defendant be ordered to pay the costs of this application on the scale as between attorney and client.

BY ORDER OF THE COURT

REGISTRAR

Antonia
19/11