

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 58798/2021

DATE: 2022-08-30

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

DATE: 7.07.2023

SIGNATURE

In the matter between

THE BODY CORPORATE OF LABORIE

Applicant

And

MCKONIE B

Respondent

J U D G M E N T

STRIJDOM, AJ: This is an *ex tempore* judgment in case 58798/2021.

1. This is an opposed application for provisional sequestration of the respondent. On 10 August 2021 judgment was obtained against the respondent in the Magistrate's Court Pretoria, under case number 19873/2021, for payment of the amount of R2,948-48 with interest at the rate of 20-percent per annum, and payment of cost on an attorney-and-client scale.
2. A warrant of execution against the property of the respondent was issued on 27 August 2021. On 22

September 2021, the sheriff issued a return in accordance with the provisions of the Magistrate's Court Act 32 of 1944. Payment of the judgment debt was demanded from the respondent by the Sheriff on 22 September 2021. The respondent was unable to pay the judgment debt, and it was demanded from the respondent to point out movable and disposable property which could be attached. Goods were attached by the Sheriff. The notice of attachment in execution includes items to the value of R3,850.

3. On 29 September 2021 an affidavit was received from Asanda Senyathi that he is the cousin of the respondent, and that the goods attached by the Sheriff are his property.
4. On 21 October 2021 the Sheriff attended the respondent's premises for a second attempt at execution, and no sufficient disposable property were pointed out to him by the respondent. The respondent was requested to declare whether she owns any immovable property which is executable, on which the following reply was furnished to the Sheriff, and I quote: 'No, does not own any immovable property.' A *nulla bona* return was submitted.
5. A Deeds Office search shows that the respondent is the sole owner of sectional title unit 55 or SS Laborie Scheme number 657, measuring 90 square metres, known as Unit 1.
6. A property valuation conducted indicates the aforesaid property having a market value of R800,000 and a force sale value of R650,000.
7. From 21 October 2021, the respondent remains indebted to the applicant for an amount of R7,235-31.

8. The respondent's opposition to the application for sequestration can be summarised as follows:

8.1 The deponent to the founding affidavit for sequestration does have the authority to do so, in that the managing agent Huurkor Admin (Pty) Limited cannot act on behalf of the body corporate.

8.2 The recovery of levies should be done on application to the Ombud and not by instituting litigation in a court of law.

8.3 The Sheriff has misled the Court by rendering a *nulla bona* return of service.

8.4 The respondent is in the process of rescinding the default judgment.

8.5 The applicant does not have a liquidated claim of R100 against the respondent.

9. This Court is not tasked to consider the rescission of the default judgment. Until the default judgment is set aside it is valid and must be given effect to.

10. The terms of the management agreement entered into between the applicant and Huurkor Admin (Pty) Limited, provides as follows:

10.1 Clause 2.6, and I quote: 'Huurkor Admin (Pty) Limited is duly authorised to institute any legal proceedings in the name of the Applicant against any person.'

10.2 Clause 2.8, I quote: 'Huurkor Admin (Pty) Limited is duly authorised to institute legal proceedings in the name of and on behalf of the Applicant, and to instruct attorneys to institute legal proceedings and further collection against a specific owner.'

11. It was submitted by counsel for the applicant that the Sectional Title Schemes Management Act and its regulations, the Sectional Title Act and its regulations, and the Community Schemes Ombud Service Act has no requirement that any body corporate must recover levies from its members by way of application to the Ombud. I agree with this submission.

12. Section 38(1) of the Community Schemes Ombud Service Act provides that, and I quote: 'Any person may make an application if such a person is a party to or affected materially by a dispute.'

13. Having considered the papers and submissions made by counsel for the parties, *prima facie* the applicant has established a claim against the respondent, that the respondent has committed an act of insolvency and that there is reason to believe that it will be to the advantage of creditors if her estate is provisionally sequestrated.

14. The draft order marked 'X' is therefore made an order of the Court.

There is a return date of 17 October 2022. The respondent is called upon to advance reasons if any why the Court should not order a final sequestration of the said estate on 17 October 2022.

STRIJDOM, AJ
JUDGE OF THE HIGH COURT
DATE: 7.07.2023