IN THE HIGH COURT OF SOUTH AFRICA
[GAUTENG DIVISION, PRETORIA]

CASE NO: 14462/2019

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHERS JUDGES: ~~YES~~/NO
(3) REVISED

31/07/2023 [redacted]
DATE SIGNATURE

In the matter between:-

CHANGING TIDES 17 PTY LTD NO. Applicant/Plaintiff

and

TIYANE BOLDWING NTSANWISI Respondent/Defendant

JUDGMENT

SKOSANA AJ

[1] This application is brought in terms of Rule 46A(9) (c) and/or (d) for the reconsideration of the reserved price as set by the order of Mdalana J on 20 June 2019. The served price was set at R1 241 367-23. The order also provided that, in the event of the reserved price not being attained, the plaintiff may approach this court for the reconsideration thereof in terms of Rule 46A(9)(c).

[2] In its supplementary affidavit and as informed by counsel for the plaintiff, at the auction which took place in November 2020, the sale could not be concluded as the highest bid received was R860 000-00. This appears from the Sheriff's report. It is further stated that the arrears with instalment totalled R756 597-40 as on 11 July 2023 with the last successful payment having been received from the defendant on 22 September 2018 for an amount of R10 000-00. The defendant also owed an amount of R23 021-00 as rates and taxes as on 17 July 2023.

[3] It is on that basis that the plaintiff prays for either the confirmation of the sale in execution of 05 November 2021 to be confirmed or cancelled or that, in the event of the cancellation of such sale, either no reserve price be set alternatively the reserved price be set at R1 147 500-00.

[4] The defendant, who is a Chemical Engineer by profession appeared in person and stated that the property is a huge house with a market value of about R1 700-00 and that it was placed on auction only on one occasion. He further stated that the R761 000-00 granted in the main court order was actually the balance of the bond. He needs an opportunity to groom his business in order to be able to settle the debt and there is a bond protection plan that can assist in the settlement of the debt.

[5] As correctly pointed out by counsel for the plaintiff, the judgment has already been given on the merits. The alleged protection plan referred to by the defendant is actually a life cover, not an income protector. It cannot assist the defendant at this stage.

[6] On the other hand, it is clear that the property is a primary residence for the defendant and his family. The sale in execution was held in 2020 when the economic conditions of this country and the world over were at their lowest with a bleak focus of the future as well.

[7] Having considered the factors set out in Rule 46A(9)(a), I am of the view that the reserve price proposed by the plaintiff in terms of his draft order is fair and just in these circumstances. It follows that the sale in execution of 05 November 2020 must be cancelled and the reserve price be set at R1 147 500-00.

[8] As to costs, the sale could not be concluded in November 2020 because of the reserve price set by the court. The defendant was entitled to place facts before this court which must be considered in relation to the reconsideration of such a reserve price. Consequently, I am not inclined to grant costs in this application.

[9] In the result, I make an order that the draft order contained on case lines 022-4 to 022-6 is made an order of court subject to the deletion of paragraphs 1.1 (confirmed or) and 5 thereof.

[redacted]

DT SKOSANA
Acting Judge of the High Court

Date of Hearing:	27 JULY 2023
Judgment delivered:	31 JULY 2023

APPEARANCES:

Counsel for the Applicant:	Adv P Oosthuizen
Instructed by	Velile Tinto & Associates Inc
For the Respondent:	Mr Tiyani Ntsanwisi (In person)