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REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2023-076788

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

Date: 7 August 2023

E van der Schyff

In the matter between:

LIONEL MAKOKOTLELA

APPLICANT

and

THE BODY CORPORATE EIFFEL TOWERS FIRST RESPONDENT

K2016312397 SOUTH AFRICA (PTY) LTD SECOND RESPONDENT

REG NR: 2[...]

JUDGMENT

Van der Schyff J

[1] The applicant, who acts in person, approached the court on the basis of extreme urgency seeking the rescission of an order granted on 20 November 2019 under case number 61597/2019.

[2] The applicant does not make out a case for urgency in the papers. When the matter was heard, it became evident that a sale in execution, wherein the property the applicant allegedly owns will be sold, is scheduled for tomorrow.

- [3] The property is currently registered in the name of the second respondent, a company. The Windeed report filed by the first respondent indicates that the second respondent and registered owner of the immovable property has been finally deregistered. This, counsel for the respondent submits, means that the property is *bona vacantia*, and consequently vests in the State. As a result, the sale in execution cannot proceed tomorrow.
- [4] I initially indicated that I was not inclined to deal only with costs in the urgent court since the application became academic but reserved the order. After reading the papers filed again, I am of the view that it is not in the interest of justice not to deal with the costs issue.
- [5] The applicant seeks the rescission of an order granted in 2019. The applicant does not make out a case for urgency in the founding affidavit. In addition, the applicant contends that he was the owner of the immovable property in 2009, but that the second respondent became the 'new owner' in 2016. Although the applicant claims that the change in ownership was caused by fraudulent acts, he also states that the notice of attachment in execution was delivered to him on 20 April 2022.
- [6] I do not find any merit in the reasons the applicant proffers for not timeously approaching the court to have the order rescinded. Any urgency that might exist is self-created.
- [7] I agree with counsel representing the first respondent that the sale in execution can, in any event, not proceed in light of the immovable property currently being *bona vacantia*. But even if I am wrong, I would, nevertheless, not have entertained the application because of the self-created urgency.
- [8] It is just to strike the matter from the roll with costs on an attorney and client scale. The punitive costs order is justified by the fact that the applicant confirmed that he was informed by Legal Aid that there was no prospect of success in approaching the court on an urgent basis, and he, regardless, proceeded.

ORDER

In the result, the following order is granted:

- 1. The application is struck from the roll with costs on attorney and client scale.**

E van der Schyff
Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be emailed to the parties/their legal representatives.

For the applicant:

In person

For the first respondent:

Adv. JD Matthee

Instructed by:

Pretorius Le Roux Attorneys

Date of the hearing:

7 August 2023

Date of judgment:

7 August 2023