REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO.: 43315/16

16/2/18

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.

SIGNATURE

16/02/2017
DATE

In the matter between:

STANDARD BANK OF SOUTH AFRICA LTD Applicant/Plaintiff

versus

SPHIWE JOHANE MSIBI 1st Respondent/Defendant

BOENA VICTORIA MSIBI 2nd Respondent/Defendant

JUDGMENT

MPHAHLELE J

[1] This is an application for summary judgment against the respondents, for the respondents' breach of a written home loan agreement, as the respondents defaulted with minimum monthly instalments.

[2] On or about 16 February 2007, the applicant and the respondents entered into a written home loan agreement. The debt was secured by a covering mortgage bond registered in favour of the plaintiff on 29 March 2007 for the sum of R67 200-00 and an additional sum of R16 800-00. The mortgage bond was registered in favour of the applicant is a continuing covering security for all and any sum or sums of money which may then or in the future be owing or claimable by the applicant from the respondents from any cause of whatsoever nature. The applicant hypothecating erf 1043 Ezamokuhle Extension 1township, registration division: H.S., Mpumalanga Provvince measuring: 288 (two hundred and eighty eight) square metres held by deed of transfer no.: T15075/19997 subject to the conditions therein contained ("the property").

[3] the applicant state that the express, alternatively implied, further alternatively tacit terms of the home loan agreement are as follows:

3.1 The parties agreed that the loan amount would be repaid by the respondents to the applicant in 240 monthly instalments in the amount of R914-74, to be adjusted by the plaintiff in the event of variation of its annual finance charge provided it does not exceed the legal maximum permissible rate.

3.2 The parties further agreed that an event of default would occur in the event of the respondents failing to make payments of any instalment due in terms of the loan agreement and/or breach any of the terms and conditions of the loan agreement or any other agreement between the parties. Upon an event of default and/or breach of any of the term and conditions of the loan agreement or any other agreement between the parties, the applicant would be entitled, at its election and without prejudice to any other remedies which may have to:

terminate the loan and claim immediate repayment of the outstanding balance by giving notice to the defendant; and

institute legal proceedings for the recovery thereof and for an order declaring the immovable property executable.

[4] The respondents allegedly failed and/or neglected to maintain the instalments agreed in terms of the home loan agreement and the mortgage bond and the applicant contend that, as in terms of the agreements between the parties, the full amount outstanding has accordingly become due and payable.

[5] In the opposing affidavit, the respondents raised the issue that this court has no jurisdiction to entertain this matter as the respondents as well as the property to be executed are situated in the area of Amersfoot in the province of Mpumalanga.

[6] On 15 January 2016, the Minister of Justice and Correctional Services determined the areas of jurisdiction of the Gauteng Division of the High Court, with effect from 25 January 2016.

[7] Section 7(1) of the Superior Courts Act 10 of 2013 (the Act) provides that the Judge President of a provincial division may by notice

in the Gazette divide the area under the jurisdiction of that division into circuit districts, and may from time to time by like notice alter the boundaries of any such district.

[8] Currently the Mpumalanga Province falls under the jurisdiction of the Gauteng Division functioning as Mpumalanga Division. On 29 January 2016, the Judge President of the Gauteng Division (the Judge President), acting in terms of section 7(1) of the Act, issued a notice establishing the Mbombela and Middelburg Civil Circuit Courts in the Mpumalanga Province.

[9] Section 173 of the Constitution provides that the Constitutional Court, Supreme Court of Appeal and High Court have the inherent power to protect and regulate their own process, and develop the common law, taking into account the interest of justice.

[10] Clause 2.1 of the Practice Directive provides that: "All action and motion proceedings including urgent applications in any area in the Mpumalanga province shall, with effect from 1 February 2016, be issued through designated officials and at the offices situated at the Mbombela and Middelburg courts specified in clause 4 below which shall operate as the Registrar's office of the circuit court"

[11] By issuing the practice directive in terms of the powers vested in him by section 173 of the Constitution and Section 7(1) of the Superior Courts Act, the Judge President effectively established the areas of jurisdiction of the Mbombela and Middelburg Circuit Courts, until further

notice. Importantly, the directive stipulates that *"All action and motion proceedings including urgent applications in any area in the Mpumalanga province shall, with effect from 1 February 2016, be issued through designated officials and at the offices situated at the Mbombela and Middelburg courts ....."* The wording of the directive is clear. There is no suggestion that the Judge President acted outside his powers. In the circumstances, the Practice Directive must be adhered to.

[12] Therefore this court has no jurisdiction to hear the matter.

[13] In the result, the point in *limine* is allowed with costs.

S S MPHAHLELE

JUDGE OF THE HIGH COURT,

PRETORIA

FOR THE APPLICANT: A P Ellis

INSTRUCTED BY: Struass Daly Inc.

FOR THE RESPONDENTS: A M Smit

INSTRUCTED BY: LK Joubert Attorneys