



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

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~ / NO.

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO.

(3) REVISED.

DATE

23/2/2017

SIGNATURE

CASE NO: 1651/2012

DATE: 23/2/2017

IN THE MATTER BETWEEN:

ANDREW LESIBA SHABALALA

Applicant

and

STANDARD BANK LTD

1ST Respondent

**SHERIFF OF THE HIGH COURT,
WONDERBOOM**

2nd Respondent

REGISTRAR OF DEEDS, PRETORIA

3rd Respondent

**CITY OF TSHWANE METROPOLITAN
MUNICIPALITY**

4th Respondent

QHUBEKISA PROJECTS (PTY) LTD

5th Respondent

**MASTER OF THE HIGH COURT,
PRETORIA**

6th Respondent

JOEL BLAND HLABANGANE

7th Respondent

MURIEL MATSHIDISO HLABANGANE

8th Respondent

JUDGMENT

KOLLAPEN J:

1. The applicant seeks the following relief in these proceedings:
 - i. That the order granted by RABIE J on 6 February 2014 be rescinded;
 - ii. Costs in the event of opposition.
2. Only the seventh and eighth respondents oppose the relief sought, while the first respondent supports the grant of the relief sought.

Background

3. On 9 December 2011, the applicant purchased the immovable property situated at Erf 23331, Honda Street, Mamelodi Extension 4, Pretoria, Gauteng ('the property') at a sale in execution.
4. At the time of the sale in execution the seventh and eighth respondents were residing at the property.
5. The sale in execution followed due to a default judgment obtained by the first respondent against the seventh respondent (the seventh respondent being the former sole owner of the property).

6. It appears the aforesaid judgment was granted as a result of the seventh respondent's default in paying the agreed mortgage bond instalments in respect of the property.
7. On 14 March 2012 the property was duly registered into the applicant's name.
8. The applicant instituted eviction proceedings against the seventh and eighth respondents in this Court under case number 17638/2013.
9. On 28 August 2013 VAN OOSTEN J granted a final order for the eviction of the seventh and eighth respondents from the property.
10. Subsequent to the aforesaid, the seventh respondent launched a rescission application, in essence, seeking the following relief:
 - i. Condonation for the late bringing of the application;
 - ii. That the court order granted on 28 August 2013 under case number 17638/2013 be set aside;
 - iii. That the warrant of execution issued in respect of the property be set aside;
 - iv. That the sale in execution of the aforesaid property (to the applicant), be set aside;
 - v. Declaring the registration of the property in favour of the applicant under title deed T17255/2012 on 4 March 2012, invalid;
 - vi. Directing the third respondent to take all necessary steps to transfer the property into the name of the seventh respondent;

- vii. Directing that the costs incurred in respect of the transfer of the property be borne by the applicant.
11. That rescission application ('the first rescission application') was heard on an unopposed basis on 6 February 2014 before RABIE J, subsequent to which the aforesaid relief was granted.
12. It is this order of 6 February 2014 that the applicant seeks to rescind.
13. In advancing the relief sought the applicant's stance is as follows:
- **Wilful delay**
14. Although it appears that the application of the seventh and eight respondents which served before RABIE J was served on the 18th of December 2013, service was effected at 16387 Mamelodi East, Pretoria, which the applicant states is not his place of residence. The property was owned by him but leased at the time, and service was effected on the tenant.
15. The applicant states that he only became aware of the application on the 26th of March 2014 and instructed his attorneys to oppose the application. Notice of intention to oppose was filed on 28 March 2014 and the answering affidavit on 23 April 2014. (It would appear that by this time the order had already been obtained before RABIE J on 6 February 2014.)

16. It appears that the applicant's attorneys only became aware in July 2014 of the order taken on 6 February 2014 and this application was then launched in August 2014. The stance of the seventh and eighth respondents is that they dispute this, but beyond a bare denial, there is nothing to suggest that the explanation offered by the applicant with regard to his knowledge of the proceedings as well as the order taken, is not reasonable.
17. In addition to the above, the seventh and eighth respondents contend that when the matter came before RABIE J, a letter was submitted on behalf of the applicant through attorney Riaan Meyer to the effect that the applicant did not wish to oppose the relief sought. The applicant disputes this and say he does not know Mr Meyer and he did not instruct Mr Meyer in the fashion alleged.
18. When one has regard to the letter in question there is no reference to the applicant as being the client of Meyer and in fact the letter alludes to the matter of Qhubekisa v Hlabangane. In addition, it also appears from the founding affidavit of the seventh respondent in the application that served before RABIE J, that he alleged that Meyer acted for him at some stage. It is inconceivable that Meyer would have also acted for the applicant.
19. With regard to the question of wilful default, I am satisfied that the applicant was not aware of service in December 2013 and only became aware in March 2014, whereafter he acted expeditiously in seeking to protect his interests. It cannot also be said that he elected not to oppose relief on 6 February 2014 for the reasons I have already alluded to.

20. The applicant has given a full and proper explanation for the default and I am satisfied that he was neither wilful nor negligent.

▪ **Incorrect case numbers**

21. The seventh and eighth respondents take the point that the relief pursued is brought under case number 1651/2012 while the order of the 6th of February 2014 set aside and rescinded the relief granted under case number 17638/2013.

22. The answer to this is relatively simple. When the seventh and eighth respondents approached this Court on 6 February 2014, they sought relief under case 1651/2012 seeking to rescind the order of 6 February 2014 where reference is made to case number 17638/2013.

23. I fail to see the validity of the objection raised as that is precisely how the matter unfolded when the seventh and eighth respondents conflated the two case numbers and the applicant was thus obliged to bring these proceedings under case number 1651/2012 as the order that he seeks to rescind was granted under this case number (even though in the body of the order it refers to 17638/2013).

Bona fide defence

24. The applicant purchased the property in a sale in execution and it was transferred into his name subsequent to the purchase. It was on this basis that

the applicant was able to secure an eviction order from this Court on 28 August 2013.

25. The seventh and eighth respondents contend that the applicant bought the property for R1000-00 and that this was irregular and that they have sought the assistance of the South African Police Service.

26. The applicant's stance is that the effective purchase price was R194 548-19 as the purchase consideration of R1000-00 in real terms was to include arrear rates and taxes in the sum of R193 548-19.

27. At this stage there is no need to make a final determination on this aspect. All the applicant has to advance is that he has a valid and bona fide defence and I am satisfied on the papers that he has done so.

Costs

28. Mr Molobedi, appearing for the seventh and eighth respondents, conceded that a proper case had been made out. In my view, there was no need for opposition to the application. The grounds of opposition are without merit and in my view, a punitive costs order is justified.

ORDER

28. In the circumstances I ~~would~~ make the following order:

- 1) The order granted on the 6th of February 2014 by RABIE J under case number 1651/2012 and incorporating the relief under case number 17638/2013, is hereby rescinded and set aside in its entirety.
- 2) The seventh and eighth respondents are to pay the costs of this application on an attorney and client scale, which costs are to include the costs of the applicant as well as the first respondent.
- 3) The notice of opposition and the answering affidavit of the applicant in the rescission application of the seventh and eighth respondents will stand and the first respondent is given leave to file an answering affidavit within twenty days from the date of this order. The seventh and eighth respondents may thereafter reply to the answering affidavit of the applicant and first respondent within the time specified in the Rules, whereafter the matter may be enrolled.

1651/2012

HEARD ON: 01 February 2017 & 22 February 2017

DATE OF JUDGMENT: 23 FEBRUARY 2017

APPEARANCES:

FOR THE APPLICANT:

Adv. B Bergenthuin

INSTRUCTED BY:

Burden Swart & Botha Attorneys
(ref.: S1575/Riekert-Botha)

FOR THE 1ST RESPONDENT:

Adv. Jooste

INSTRUCTED BY:

Findlay & Niemeyer Inc (ref.: M
Coetzee/AK/F2304)

FOR THE 7TH & 8TH
RESPONDENTS:

Adv. N G Molobedi

INSTRUCTED BY:

Ntimane Attorneys (ref.: Ntimane/JB
Hlabangane)