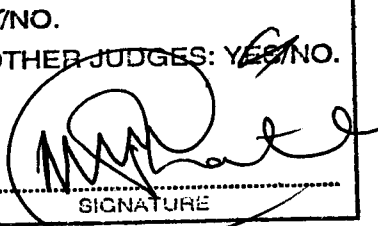




IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES /NO.	
(2) OF INTEREST TO OTHER JUDGES: YES /NO.	
(3) REVISED.	
03/02/2015	SIGNATURE

Case No: 12203/2010

Date heard: 03 February 2015

Date of judgment: 03 February 2015

In the matter between:

NGOANATSOMANE NOAH NKADIMENG

Applicant/Judgment debtor

And

FIRSTRAND BANK LIMITED
THE SHERIFF, POLOKWANE
ANDRE PIENAAR
MARITZA PIENAAR
REGISTRAR OF DEEDS, PRETORIA

Respondent/Judgment creditor
Second Respondent
Third Respondent
Fourth Respondent
Sixth Respondent

JUDGMENT

A.M.L. PHATUDI J:

[1] At the commencement of the hearing, it has been placed on record that the respondents do not oppose the relief sought by the applicant but for the development of jurisprudence with regards to the interpretation of the word "execution" as stipulated in section 129(4)(b) of the National Credit Act.

[2] The *lis* between the parties is as a result, been brought to an end. For purposes of the *lis* between the parties in *casu*, determination and interpretation of the word "execution" as worded in section 129(4)(b) is *moot*.

[3] The applicant is not interested in such determination but for the relief sought as encapsulated in the draft order. Where disputes between the parties have been settled, there exists no discretion for the court to exercise.

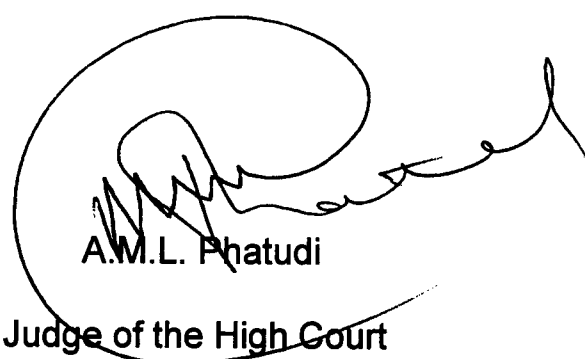
[4] The matter has been set down for three days. Both parties engaged services of two counsel. The complexity of the matter required such employment of two counsel.

[5] Having heard counsel for both the applicant and the respondent, I find that the order of costs of two counsel is justified.

I therefore make the following order:

Order:

The draft order marked "X" as handed up by the applicant is hereby made an order of court



A.M.L. Phatudi
Judge of the High Court

On behalf of the applicant:

Bosman Smit & Pretorius Attorneys

C/O Du Preez Attorneys

The Works

258 Brooklyn Road

Menlo Park

Pretoria

Adv. A.J.H. Bosman

Adv. C.J. Bosman

On behalf of the 1st Respondent: PDR Attorneys

Hatfield Bridge Office Park

c/o Richard & Stanza Bopape Street

Hatfield

Pretoria

Adv. P.G. Cilliers SC

Adv. J.L. Myburgh

THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

X
M
03/02/2015

On the 3rd day of February 2015 before Phatudi J

CASE NO: 12203/2010

In the matter between:

NGOANATSOMANE NOAH NKADIMENG

Applicant / Judgment Debtor

and

FIRSTRAND BANK LIMITED

First Respondent / Judgment Creditor

THE SHERIFF, POLOKWANE

Second Respondent

ANDRE PIENAAR

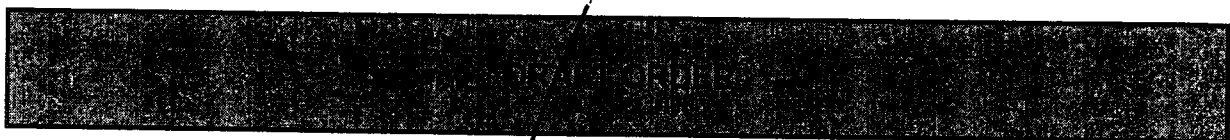
Third Respondent

MARITZA PIENAAR

Fourth Respondent

REGISTRAR OF DEEDS, PRETORIA

Fifth Respondent

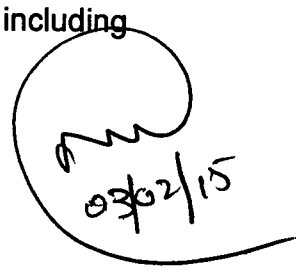


After hearing counsel for the Applicant and counsel for the Respondent the following is ordered:

1. It is declared that the Credit Agreement, comprising:

1.1 The mortgage bond agreement (B30194/08); and

- 1.2 The Home Loan Agreement, dated 27 October 2007 (Annexures "A" and "B") to the Applicant is reinstated in terms of Section 129(3) of the National Credit Act 34 of 2005;
2. The judgment granted by the above Honourable Court on 19 October 2010 and the warrant of attachment ceased by operation of law to have any force or effect;
3. It is declared that the sale in execution of the property by public auction on 12 March 2014 to the Third and Fourth Respondents was invalid and that the said sale in execution of the property is set aside;
4. The First, Second and Fifth Respondents are restrained from causing transfer of the property into the name of the Third and Fourth Respondents;
5. The First Respondent is ordered to pay the costs of the application including costs of two counsel.



BY ORDER

THE REGISTRAR