

IN THE HIGH COURT OF THE REPUBLIC OF SOUTH AFRICA

NORTH GAUTENG, PRETORIA

1/2/2013

Case number 9850/2000

In the matter between

RASIMATE THOMAS BALOYI

JANE MIHLOTI BALOYI

and

ABSA BANK LTD

RAMOGHLO DONA MAPHUTA

MATJEANE MAPHUTHO NO

REGISTRAR OF DEEDS, PRETORIA

NEDBANK LIMITED

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO.	
(2) OF INTEREST TO OTHER JUDGES: YES/NO.	
(3) REVISED. <i>L</i>	
31/01/2013 DATE	<i>[Signature]</i> SIGNATURE

First Applicant

Second Applicant

First Respondent

Second Respondent

Third Respondent

Fourth Respondent

Fifth Respondent

JUDGMENT

BAM AJ

1. The applicants, in prayer one of this application, applied for an order rescinding a default judgment granted by the Registrar against the applicants on 19 May 2000. At the time the applicants were residing in a property acquired by them in 1997. First respondent, the bond holder, was the plaintiff in the case, claiming payment of R64.020-95. An order for the sale of the property in execution was also granted by the Registrar. Subsequently the property was sold in execution to the second respondent after a bond was registered in favour of fifth respondent. The property was then registered in the name of the second respondent. The latter events prompted the applicants to apply, in prayers 2 and 3 of this application, for an order compelling the fourth respondent (the Registrar) to restore the registration of the property in the name of the applicants and for an order cancelling the bond registered in favour of the fifth respondent.
2. The application for rescission of the default judgment is not opposed. Prayers 2 and 3 are however opposed by only the fifth respondent.

3. The basis for the application is that the initial summons was not served on the applicants. I do not deem it necessary to refer in detail to the evidential material on record in that regard. It suffices to say that the applicants have made out a proper case for the rescission of the judgment in question.

4. On the probabilities it may be that the first respondent will not be interested to pursue the matter afresh. In that event the applicants should consider their options in law. However, the fifth respondent's concerns about prayers 2 and 3 are understandable. In my opinion, if the application for rescission is granted, it does not follow that the applicants will eventually succeed with their defence against the first applicant's claim. That will be for the trial court to decide. Prayers 3 and 4 clearly affect the rights of fifth respondent. The issues addressed in those prayers will be subject to the finding of the trial court. Accordingly this Court will not be entitled to grant the relief sought in prayers 3 and 4.

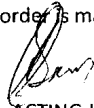
5. I therefore make the following order:

ORDER

1. The default judgment in case number 9850/2000, granted by the Registrar on 19 May 2000 against the applicants in favour of ABSA Bank Ltd, is rescinded.

2. Prayers 2 and 3 are postponed *sine die* pending the trial court's final decision in case number 9850/2000.

3. No costs order is made.



A J BAM ACTING JUDGE OF THE HIGH COURT
31 January 2013