IN THE NORTH GAUTENG HIGH COURT, PRETORIA

(REPUBLIC OF SOUTH AFRICA)

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

DATE 8/2/2013 SIGNATURE

8/2/2013

CASE NO: 48627/2011

IN THE MATTER BETWEEN

ROOKSANA DHODA	Applicant
and	
THE STANDARD BANK OF SOUTH AFRICA LIMITED	Respondent
IN RE:-	
THE STANDARD BANK OF SOUTH AFRICA LIMITED	Plaintiff
and	
ROOKSANA DHODA	Defendant

JUDGMENT

LEDWABA J:

[1] On 4 November 2011 this court granted default judgment against the applicant who was the defendant in the action proceedings. The order granted reads as follows:

1. Payment of the sum of R3 675 205,88.
2. Interest on the sum of R3 675 205,88 at the rate of 7.10% per annum compounded monthly in arrear from 15 June 2011 to date of payment.
3. Monthly insurance premiums from 15 June 2011 on the sum of R593.02 to date of payment.
4. An order declaring the property known as:
   Portion 1 of erf 793 forest town township,
   Registration Division I.R,
   Province of Gauteng,
   Measuring: 759 Square metres,
   Held by deed of transfer T62412/2006 to be specially executable.
5. That the Registrar of the above Honourable Court be authorized to issue a Warrant of Attachment in respect of the property.
6. Costs of this application on an attorney and client scale to be taxed.

[2] The applicant has now filed an application on 20 December 2011 in terms where an order is sought in the following terms:

1. Setting aside of the sheriff's return of service herein.
2. Rescinding the judgment entered by default on 4 November 2011.
3. Cost of suit if the Respondent oppose the application.

[3] On 13 January 2012 the respondent, Standard Bank of South Africa Limited, the plaintiff in the action proceedings filed a Notice to Oppose. The respondent's opposing affidavit was served on 2 February 2012.

[4] The applicant did not file any replying affidavit.

[5] The applicant in her supporting affidavit alleged that her application is in terms of Rule 42(11) (a) alternatively Rule 31 of the Rules of this Court.

[6] It is common cause that on 16 October 2006 the applicant registered a mortgage bond in favour of the respondent as security for monies lent and advanced.

[7] The applicant chose the address "*P.O Box 1534 Haughton Estate 2041 Gauteng*" as her *domicillium citandi executandi*.

[8] The sheriff's return of service reads as follows:

> *"On the 27th day of September 2011 at 09h58 and at 60 Riveira road, Killarney Mall, JHB the annexed summons, particulars of claim and annexures was served on the defendant, by affixing a copy of the original to P O BOX 1534 to the POST BOX, at the given address, being defendant's chosen domicilium citandi executandi, in terms of Rule 4(1)(a)(iv)."*

[9] The applicant, in her affidavit, alleged that the return of service is '*confused and impossible to understand*' because it states that the particulars of claim was served at 60 Riviera Road Killarney Mall, and further states that summons served by affixing a copy to P.O Box 1534.

[10] The applicant further stated that the service does not comply with the rules.

[11] Rule 4(1)(iv) of the Uniform Rules of Court provides that proceedings shall be effected by the sheriff "*If the person so to be served has chosen a domicilium citandi, by delivering or leaving a copy thereof at the domicilium so chosen.*"

[12] The applicant does not deny that she chose the "P.O Box" as her *domicilium*. There is no confusion in the return of service, the address 60 Riveira Road Killarney Mall explains where the applicant's post box is. There is no merit, in my view, in the applicant's prayer that the sheriffs return of service should be set aside. There is nothing irregular about the service.

[13] The applicant in her founding affidavit also raised a constitutional issue of her right to housing in terms of section 26 of the Constitution. In the combined summons it is clearly stated that, "*should the defendant claim that the order for execution will infringe that right it is incumbent on the defendant to place information supporting that claim before the court.*"

[14] Except to allege that she resides with her three minor children on the property, the applicant has not placed any information showing how her right to housing would be infringed. The respondent's rights to claim should also be considered.

[15] I also looked at the notice in terms of section 129 of the National Credit Act 34 of 2005.There is proof that the letter was sent by registered post to the *domicilium* address in August 2011. I have considered the decision of *Sebola v Standard Bank 2012(5) SA 142 CC.* The applicant, except to allege that she never received the notification, she did not allege why she could not have received the notice.

[16] I have carefully considered the requirements for an application for rescission under Rule 31. The applicant does not allege that she is no more using the post box. The arrears at the time of issuing summons amounted to about R1,5 million rands. She has also failed to show that she has a bona fide defence to the claim and that her application is not made with the intention to merely delay the plaintiff's claim.

[17] The default judgment granted was properly granted on the information available to the court and I cannot find any irregularity.

[18] I therefore make the following order:

20.1 The applicant's application is dismissed with costs.

A P LEDWABA
JUDGE OF THE HIGH COURT

HEARD ON: 1 October 2012

FOR THE APPLICANT: Adv Sam Shalom Cohen

INSTRUCTED BY: Gary Segal Attorneys, Joh + annesburg

FOR THE FRESPONDENT: Adv Wynand Roos

INSTRUCTED BY: Velile Tinto & Associates, Pretoria