



IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT)

Case number: 77215/2009

Date: 26 July 2013

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHERS JUDGES: YES/NO
(3)	REVISED
26/7/2013	<i>Pretorius</i>
DATE	SIGNATURE

In the matter between:

STANELEY MALATJI

1st Applicant

MASIYE PETER MALATJI

2nd Applicant

and

STANDARD BANK OF SOUTH AFRICA

Respondent

JUDGMENT

PRETORIUS J.

[1] The applicants are applying for leave to appeal to the Full Bench of this court against an order made on 24 May 2013.

[2] The order which was made:

- “1. The first respondent is ordered to comply with the provisions of section 129(1) of the National Credit Act, within 7 days of this order being granted;
2. The applicant has to enroll the application within 30 days after the first respondent had complied with the provisions of section 129(1) of the National Credit Act;
3. Costs to be costs in the application for rescission.”

[3] The grounds of appeal was set out as:

- “a) Her Ladyship erred in not finding that the Respondent failed to follow due processes as contemplated in terms of the National Credit Act;
- b) Her Ladyship erred in finding that the Respondent, by complying with section 129 (1) of the National Credit Act, will automatically cure the defect;
- c) Her Ladyship erred in ordering the Applicant to set the matter down immediately after receiving the section 129 letter in terms of the National Credit Act from the Respondent following the due processes contemplated therein.”

[4] A point *in limine* was raised by the respondent that the order of 24 May 2013 is an interlocutory order and therefore cannot be appealed. Section 20 (1) of the Supreme Court Act 59 of 1959 provides:

*“(1) An appeal from a judgment or order of the court of a provincial or local division in any civil proceedings or **against any judgment or order of such a court** given on appeal shall be heard by the appellate division or a full court, as the case may be.” (Court’s emphasis)*

[5] It is clear from the order that it did not finalize the matter in any way.

There is no indication in the judgment that the court had dealt with the merits of the application as the court only found that the respondent had not complied with the provisions of section 129 of the National Credit Act and provided an opportunity for the respondent to rectify it.

[6] In this instance the order is referred back to the court *a quo* for final consideration and is therefore not a final order. The court clearly stated in the judgment:

“The fact alone cannot dispose of the matter, but should be rectified and then the rescission application can be dealt with.”

[7] In **Zweni v Minister of Law and Order 1993 (1) SA 523 (A)** Harms AJA held at p 536 A – C:

*“In the light of these tests and in view of the fact that a ruling is the antithesis of a judgment or order, it appears to me that, generally speaking, **a non-appealable decision (ruling) is a decision which is not final (because the Court of first***

instance is entitled to alter it), nor definitive of the rights of the parties nor has the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings.” (Court’s emphasis)

[8] In **Carter v Haworth 2009(5) SA 446 (SCA)** Mthiyane JA held at paragraph 11 and 12:

“[11] But this litmus test only finds application when the court concerned has pronounced conclusively on the issues submitted to it for determination. The difficulty with the judgment of the court below is that we do not even get to the application of the test in Zweni because upon a proper reading of the judgment the issues in the case do not appear to have been brought to final conclusion.

[12] In my view the weakest link in the judgment lies in the absence of an order. I do not think there is a part of a judgment that provides a stronger indication of finality than an order at the end. If the order is removed or omitted the judgment is rendered ineffective and so, too, its element of finality.”

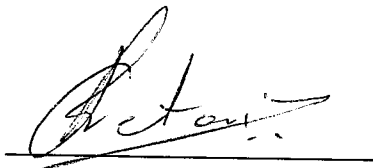
[9] I have listened to the arguments of counsel of both the applicants and the respondent and have considered the abovementioned authorities which set out clearly when an order is appealable. If I apply the tests as set out in the authorities I can only come to the conclusion that the

judgement of 24 May 2013 by this court is not appealable. It did not dispose of the matter in any way and due to the court's finding that the rescission application must still be dealt with, it cannot be regarded as anything but an interlocutory finding.

[10] I have considered the arguments on costs, but find that, although mistaken, the applicants were not vexatious or grossly negligent in bringing this application.

[11] The order:

1. The application for leave to appeal is dismissed with costs.

A handwritten signature in black ink, appearing to read 'Pretorius', is written over a horizontal line.

Judge Pretorius

Case number	: 77215/2011
Heard on	: 23 May 2013
For the Plaintiff	: Adv Mayhiti
Instructed by	: Vusi Mailula

For the Defendant : Adv van der Merwe
Instructed by : Delport van den Berg INC
Date of Judgment : 24 May 2013