IN THE NORTH GAUTENG HIGH COURT. PRETORIA
(REPUBLIC OF SOUTH AFRICA)

CASE NO: 22927/2012

Date: 15 November 2012

In the matter between:

DE MATRIX POOL HOUSE CC — **1st Applicant**
(REG NO. 2003/051810/23)

LUFUNO LAWRENCE RAMABULANA — **2nd Applicant**

And

ABSA BANK LIMITED — **Respondent**

JUDGMENT

JANSEN AJ

Nature of Application:

[1]The application relates to the rescission of a default judgment obtained against the two applicants on 30 May 2012, brought in terms of Rule 42 of the Uniform Rules of Court.

[2]Rule 42 relates to the rescission of a judgment and reads as follows: —

> ***"42 Variation and Rescission of Orders***
>
> ***(1)The court may, in addition to any other powers it may have, mero motu or upon the application of any party affected,. rescind or vary:***
>
> ***(a)An order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby;***
>
> ***(b) an order or judgment in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission;***
>
> ***(c) an order or judgment granted as the result of a mistake common to the parties.***
>
> **(2)Any party desiring any relief under this rule shall make application therefor upon notice to all parties whose *interests may be affected by any variation sought.***
>
> ***(3)The court shall not make any order rescinding or varying any order or judgment unless satisfied that all parties whose interests may be affected have notice of the order proposed."***

[3] In case law these requirements have been said to have been met in the following circumstances: —

[3.1]If there was an irregularity in the proceedings;[1]

[3.2]If the court lacked legal competence to make the order;[2]

[3.3] a judgment to which a party is procedurally entitled cannot be considered to have been granted erroneously by reason of facts of which the judge who granted the judgment, as he was entitled to do, was unaware.[3]

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[1] Shabalala and Another v Peer 1979 (4)SA 27 (T).
[2] Athmaran v Singh 1989 (3) SA 953 (D).
[3] Lodhi 2 Properties Investments CC and Another v Bondev Developments (Pty) Ltd 2007 (6) SA 87 (SCA) at 94E.

[4]The applicants seek to bring themselves within the ambit of Rule 42 by alleging that the summons which was served is defective in that • it was a simple summons which was not signed (neither by an advocate nor an attorney) and that particulars of claim were attached to the simple summons.

[5] It is correct that a simple summons was used which stops abruptly without any reference to a firm of attorneys and without any signature of an advocate or an attorney. Particulars of claim have been appended to the simple summons which end off with a statement to the effect that the defendants may within ten days, oppose the action, but which do not make provision for the filing of a plea (with or without a counterclaim or an exception). The particulars of claim have been signed by an attorney.

[6] In this regard, it should be borne in mind that the Rules of the High Court are there for the court, not the court for the rules.

[7] Effectively the term "Particulars of Claim" could be deleted with the result that the summons, with further particularity, could be regarded as a simple summons.

[8] Rule 17(2)(b) provides as follows: "**In every case where the claim is for a debt or liquidated demand the summons shall be as near as may be in accordance with Form** 9 **of the first schedule",**

[9] Rule 17(2) (a) provides: **"In every case where the claim is not for a debt or liquidated demand the summons shall be as near as may be in accordance with Form 10 of the First Schedule to which summons shall be annexed a statement of the material facts relied upon by the plaintiff in support of his claim, which statement shall inter alia comply with rule 18".**

[10] It was submitted by the applicants for rescission that the attachment of the particulars of claim to a simple summons was irregular.

[11]Rule I7(3)(a) provides that: "Every summons shall be signed by the attorney acting for the plaintiff and shall bear an attorney's physical address, within 15 kilometres of the office of the registrar, the attorney's postal address and, ivhere available, the attorney's facsimile address and electronic mail address".

[12]It was further contended for the applicants that the simple summons was not signed by the attorney acting for the respondent and did not bear the attorney's physical address.

[13]In ***B W Kuttle & Association Inc v O'Connell Manthe and Partners Inc*** 1984 (2) SA 665 (C) Tebbutt J stated at 668B- D: -

> *(1)* ***"It must be remembered that under Rule 17, ivhich is the Rule dealing with summonses, a plaintiff can issue a simple summons or a combined summons ivhere the particulars of claim are annexed to the summons. It has on many occasions been laid doivn that the requirement that the cause of action must be set out in the summons in "concise terms" (the phrase used in Form*** 9 ***ivith ivhich the simple summons must be in accordance, in tei'ms of, Rule 17), does not mean that it must be done ivith the particularity required of a declaration (or the particulars of claim annexed to a combined summons). The object of a summons is not merely to bring the defendant before Court; it must also inform the defendant of the nature of the claim or demand he is required to meet. But it need do no more than that. It need not go into minute particulars. It is for this reason that a Supreme Court summons has been described as "merely a label" (see Emdon and Another v Margau 1926 WLD*** 159 ***at 162) or "a general indication of claim" (see Singh v Vorkel 1947 (3) SA 400 (C) at 405)"***

[14] In ***Volkskas Bank Limited v Wilkinson and Three Similar Cases*** 1992 (2) SA 388 (C) the Full Bench held the following at pages 397I"398C: -

> ***"It appears to us accordingly that where a plaintiff sues for*** **_repayment of a loan (or an overdraft_**) ***all that a simple summons need contain is a statement setting out the relief claimed and a succinct outline of the cause of action, ie that an agreement of loan (or of overdraft) was concluded between the parties providing for interest on the balance outstanding from time to time at a specified (or ascertainable) rate and which loan (or overdraft) was repayable on demand (or on a fixed or ascertainable date) and which, despite demand (or the arrival of that date), has not been repaid.'"***[4][Emphasis added]

[15] Counsel for the applicants also referred the court, by way of ' analogy, to the case of ***Sasol Industries (Pty) Ltd t/a Sasol 1 v Electrical Engineering (Pty) Ltd t/a L H Marthinusen*** **1992 (4) SA 466 (W)** where it was held that when a pleading does not comply with the sub-rules of Rule 18, requiring specified particulars to be set out therein, the prejudice required for the setting aside of the pleading in terms of Rule 30 has ***prima facie*** been established.

Particulars of Claim not complying with Rule 18:

[16] Rule 18(1) of the Rules of Court provides that: *"**A combined*** **summons, and every other pleading except a summons, shall be signed by both an advocate and an attorney or, in the case of an attorney who, under section 4(2) of the Right of Appearance in Courts Act 62 of 1995, has the right of appearance in the Supreme Court, only by such attorney or, if a party sues or defends personally, by that party".**

[17] It was argued that Rule 18(6) which provides that: ***'A party who in his pleading relies upon a contract shall state whether the contract is written or oral and when, where and by whom it was concluded, and if the contract is written a true copy thereof or of the part relied on in the***

[4] In similar vein are cases such as: **Credit Corporation of SA Ltd v Swart 1959 (1) SA 555 (O) at 557**; Landman Implemente (Edms) Bpk v Leliehoek Motors (Edms) Bpk 1975 (3) SA 347 (O) at 348-349 ; Dowson and Dobson Industrial Ltd v Van der Werf and Others 1981 (4) SA 417 (C) at 425 **; Globe Engineering Works Ltd v Ornelas Fishing Co (Pty) Ltd** 1983 (2) SA 95 (C)and **Absa Bank Ltd v Standard** (2011/24206)(2012 ZAGPJHC 26 (13 March 2012).

pleading shall be annexed to the pleading" was not adhered to as the respondent failed in its particulars of claim to state when, where and by whom the contract was concluded. It was further argued that this *prima facie* establishes prejudice for the applicants and the respondent should not have succeeded on the papers as they stand.

[18] There are yet further considerations. Given the fact that there should be due compliance with the provisions of the National Credit Act 34 of 2005 and all the necessary allegations have to be made, a simple summons does not seem to be appropriate in circumstances where a debt is due in terms of a credit agreement. Once this is the case it would appear as though non-compliance with the rules relating to a summons and the particularity required in particulars of claim are not merely technical defects but defects which can lead to an irregularity which vitiates the proceedings. It - was stated in the matter of **Firstrand Bank Ltd v Folscher and Another, and Similar Matters *2011 (4) SA 314 (GNP)*** *that when action is instituted to enforce a debt secured by a special hypothec over the debtor's primary residence, or usual or ordinal'}' residence, the debtor is entitled to be informed in the summons of his or her rights, in terms of s 26 of the Constitution.*

[19] An oral loan agreement relating to overdraft facilities has been pleaded, allegedly entered into on 16 March 2012 between the plaintiff and the first defendant. However, the date of 16 March 2012 referred to is, apparently, the date when it is alleged that certain arrears had accumulated, with the result that the date, the place where and the parties who entered into the oral credit agreement have 'not been pleaded. The specific terms of the overdraft agreement have not been pleaded. In particular, it has not been pleaded what amount in overdraft facilities was granted, that (presumably) the first applicant agreed to costs to be paid on an attorney and client basis when the first applicant fell in arrears, when demand was made for payment of the amount and that no payment was forthcoming, that a certificate of balance by a bank manger would ***constitute prima facie*** proof of the amount due and owing or what the ***domicilici citandi et executandi,*** if any, of the two applicants were. In fact, as set out by the second defendant, the amount of R293 675.75 probably relates to a home loan in respect of which a mortgage bond was obtained by the respondent over the second applicant's residential property situated at 313 B… A…, M…, Gauteng. Once this is so, non-compliance with the rules of court does constitute an irregular procedure as envisaged by Rule 42 due to the fact that the combination of a simple summons with a hybrid of particulars of claim results in an indiscernible claim.

[20]Furthermore, it is clear from the date of the suretyship, namely 4 January 2007, that the overdraft facility agreed upon was probably at approximately the same time.

[21] In particular, it is impossible to gauge whether the National Credit Act 34 of 2005 finds application.

[22]The first applicant is a legal entity. A consumer in respect of a credit agreement to which the Act applies is defined in section i(g) as the ***"guarantor under a ei'edit agreement"*** and also in section i(h) as ***"the party to whom or at whose direction money is advanced or credit granted under any other credit agreement;".*** [emphasis added]

[23] Legal entities are bound by the National Credit Act and only certain sections thereof do not find application, as set out in section 6 thereof.

[24] The second applicant signed a suretyship in respect of the first applicant's debt. Part C of Chapter Six of the National Credit Act applies to legal entities. However, section 4(i)(b) stipulates that when the credit agreement is a large credit agreement entered into • by a juristic person, then the National Credit Act is not applicable. A large credit agreement in terms of section 7(i)(b) read with section 7(2) is R250 000.00. Section 7(i)(b) reads as follows: —

7. ***Threshold determination and industry tiers***

(1)On the effective date, and at intervals of not more than five years, the Minister, by notice in the Gazette, must determine-

(a)... ***and***

(b)two further monetary thresholds 3 for the purposes of determining the three categories of credit agreements contemplated in section 9."

[25] It is unknown what the amount of the principal debt is in this matter.

[26] As regards the second applicant, a written security without limitation has been attached to the simple summons entered into between the second applicant and the respondent on 4 January 2007, which date coincides with the time period within which the first applicant obtained a home loan for the residential property mentioned above, where the second applicant resides.

[27]This suretyship, in clause 14 thereof, makes provision for a certificate to prove the rate of interest and the amount owning

for legal costs to be paid on a scale as between an attorney and his own client. The problem, however, is that the suretyship is ancillary to the main debt and once the main debt has been extinguished the suretyship cannot be enforced. Hence, when there is an absolute lack of clarity regarding the main debt, it is difficult to envisage how the ancillary debt can be enforced.

[28]Further, and in any event, there is no reference to section 2'6 in the particulars of claim nor of the fact that should the applicants not pay their debt, any immovable property may be declared specially executable and that the second applicant may be evicted as was held by the Full Bench in ***Firstrand Bank Ltd v Folscher and Another, and Similar Mattel's supra*** at 336A-G.

[29] Furthermore, upon reading the affidavits in the application for rescission, it is clear that the there was vet a further debt incurred by the first applicant in terms of a mortgage bond - a debt which has not been pleaded. The writ of execution obtained by the respondent seems to be in respect of two bonded immovable properties, one of which is used for residential purposes by the second applicant, namely the property situated at 313 B… A…, M…, Gauteng. It is thus wholly unclear whether the limitless security, on the facts of this particular case, relates merely to an alleged overdraft loan by the bank or whether it includes a loan secured by a bond over immovable property. In any event, in terms of the amendment to Rule 46(i)(a)(ii) of the High Court Rules which was effected on 19 November 2010 (GN R981 - which became effective on 24 December 2.010) a registrar cannot order immovable property to be specially executable when it constitutes a primary residence. Only a court can do so after having considered all the relevant circumstances. There is no evidence whatsoever that a court order, declaring the immovable property specially executable, was obtained.

[30] Rule 46(i)(a)(i)-(ii) reads as follows: —

> ***"46 Execution - Immovables***
>
> ***(i)(a)No writ of execution against the immovable property of any judgment debtor shall issue until —***
>
> ***(i)a return shall have been made of any process which may have been issued against the movable property of the judgment debtor from which it appears that the said person has not sufficient movable property to satisfy the writ; or***
>
> ***(ii) such immovable property shall have been declared to be specially executable by the court or, in the case of a judgment granted in terms of rule 31(5), by the registrar: Provided that where the property sought to be attached is the primary residence of the judgment debtor, no writ shall issue unless the court, having considered all the relevant circumstances, orders execution against such property*** [emphasis added]

Explanation for the delay in bringing an application for rescission and *bona fide* defence

[31] Before one can rely on the provisions of Rule 42, an application for rescission has to be brought within a reasonable period pf time. The purpose of this subrule is expeditiously to correct an obviously wrong judgment or order.[5] But a court shall not do so after the • lapse of a reasonable time.[6]

[5] Bakoven Ltd v G J Howes (Pty) Ltd 1992 (2) SA 466 (E) at 471 E-F; Promedia Drukkers & Uitgewers (Edms) Bpk v Kaimowitz and Others 1996 (4) SA 411 (c) at 417 B - I

[6] First National Bank of Southern Africa Ltd v Van Rensburg NO and Others: In Re First National Bank of Southern Africa Ltd v Jurgens and Others 1994 (1) SA 677 (T) at 68iG~B; Firestone South Africa (Pty) Ltd v Genticuro AG V)7~] (4) SA 298 (A) at 306H

[32] What a reasonable time is depends on the fact of each case.

[33] The applicants only became aware of the default order w'hen the second applicant received a notice from the respondent in respect of the sale in execution of the immovable properties, which sale was subsequently cancelled due to the applicants entering' into a payment arrangement with the respondent, on or about 24 October 2012. The terms of the settlement arrangements proposed by the respondent were as follows: —

> "24 ***October 2012***
>
> ***'WITHOUT PREJUDICE"***
>
> ***Dear Sir***
>
> ***ABSA BANK LTD / DE MATRIX POOL CC/ I I RAMABULANA/ACCOUNT NO: 40…………..***
>
> ***We refer to the abovementioned matter and wish to confirm that we have received instructions from our client ABSA Bank Limited to keep the mater in abeyance on the following conditions: —***
>
> ***1. Your client are*** *(sic)* ***to pay R4 000.00 on or before 1 November 2012 and thereafter R 4 000.00 on the first day of each and every succeeding month:***
>
> ***2. All the abovementioned payments have to be made directly into your client's Absa Bank Account with number: 40………***
>
> ***3. You client area*** *(sic)* ***to pay all attorney and client costs, collection commission and interest;***
>
> ***4. The acceptance on this offer should not be construed as a novation of your client's indebtedness towards our client and all securities held by our client shall remain of force and effect until payment of the full outstanding amount;***

5. Should any payment not be made on due date, the amounts claimed will immediately become due and payable and we ivill proceed with action against your client without further notice.
…"

[34]From the returns of service, one knows that neither the court order onor the hybrid summons came to the applicants' attention. (The second applicant is the only member of the first applicant.)

[35] The respondent alleges that only one payment was made and that a further sale in execution was scheduled but cancelled due to an administrative error. A new sale in execution was then arranged for 24 March 2013.

[36] The applicants in the application for a stay of the sale in execution point out that they requested the documents from which the certificate of balance relied upon by the respondent was compiled, but that they never received an answer. Furthermore, the second ' applicant alleges that he only agreed to payment of R4 000.00 per month to fend off the initial sale in execution and that the respondent's conduct in obtaining the settlement was conduct ***in terrorem.*** What is clear is that the respondent is unable to explain from which documents the certificate of balance was compiled. Effectively this leaves the respondent without a cause of action. The certificate of balance in any event constitutes only ***prima facie*** proof of the amount outstanding which the applicants have refuted.

[37] On 8 May 2013 the second applicant received a further notice of a ***new*** date for the new[7] sale in execution, namely 24 May 2013. The second applicant deposed to an affidavit in the application for rescission on 16 May 2013 and the applicants sought and obtained a stay of the sale of execution by way of an urgent application on 24 - May 2013 (pending the outcome of the application for rescission). This makes sense as one of the properties to be sold in execution is the second applicant's place of residence namely 313 B…. A…., M…... Gauteng. This property, according to the second applicant, is subject to a mortgage bond in favour of ABSA Home Loans. The applicants admit owing the respondent money in terms of a home loan. The respondent has thus, it would seem, sued the applicants on the wrong cause of action. The second applicant also states on oath that the respondent knows full well where he resides as the respondent is financing his residence and has all the mandatory details regarding his various contact details which he furnished to the respondent in order to purchase the immovable property which serves as his residence. In other words, the respondent knew that the ***domicilium citandi et executandi*** of the second applicant was no longer that which is set out in the suretyship agreement. He expressed his surprise that the respondent did not utilise this information in order to contact him.

[38]The hybrid summons was served on an old registered address of the first applicant (and the return of sendee makes it clear that the address is not a business address but a private residence) and on an old residential address of the second applicant, whereas the second applicant had furnished his new residential address to the respondent, which is the property which was funded by the home loan division of the respondent. In terms of section 168(b) of the National Credit Act 34 of 2005, service should have been effected at the last known address of the second applicant.

[39] In ***Absa Bank Ltd v Mkhize and Another and Two Similar Cases*** 2012 (5) SA 574 (KZD) the following is stated at page 592 paragraph [67]: -

> ***''But if ordinary post is to be sanctioned, then I think it is important that credit providers, wherever possible, increase the level of probability attaching*** to ultimate receipt by sending the notice not only to the chosen address of a consumer but to all other addresses where, according to the records of the credit provider, the consumer may be found***. I have in mind the place of work of the consumer who is employed; the address of a family member which might have been provided at the time credit was applied for, and so on. Collating the necessary information and sending out multiple letters may well impose an additional administrative burden but that does not seem to me to be an unreasonable imposition,*** given the importance of achieving compliance with s 129(1) of the Act, ***and given the fact that success opens the way to judicial enforcement if the offer of the processes contemplated by s I29(i)(a) is declined, or if they fail. I think that if ordinary post is to be sanctioned, it should be accompanied by another attempt at delivery by registered post to the consumer's selected address. This would meet the case of the consumer who did not evade receipt of the, first letter, but failed to collect it for some other reason.*** " [emphasis added]

[40]" In addition, although the section 129 notices in terms of the National Credit Act 34 of 2005 was sent to the alleged ***domicilium citandi et executandi*** per registered post, no track and trace records were affixed to the papers. There was therefore no compliance with the requirement that the section 129 notice reaches the correct post office, at the very least, as was held in ***Sebola v Standard Bank of SA Ltd and Another*** **2012 (5) SA 142 (CC).** Hence, it is deemed that no notice was given to the applicants as required by section 129 of the National Credit Act.

[41]The court which granted the default judgment on 30 May 2012 should therefore have adjourned the matter and, in terms of section I30(4)(b) of the National Credit Act, made ***an "…order setting out the steps***

the credit provider must complete before the matter may be resumed".

<u>Rule 31(2)(b) and the common law</u>:

[42] It is further trite that when an application for rescission of a judgment is brought in terms of Rule 42(1) it does not mean that it ' cannot be entertained under any other rule such as Rule 31 (2)Cb) or the common law, provided the requirements thereof are met."[7]

[43] At common law there must be an explanation for any delay in bringing the application for rescission as well as facts which demonstrate that the applicant(s) for rescission has/have a ***bonafide*** defence against the action or application which was brought against them.

[44]The reasons for the delay in bringing the application have been set out above.

[45] In addition, in the full bench judgment of ***Harris v ABSA Ltd t/a Volkskas*** **2006 (4) SA 527 (T)** at paragraph **[9]** it was made clear that once wilful default has been shown an applicant for rescission is not necessarily barred from relief. It was held that it was but one of several elements to be taken into account. In addition "wilful" default connotes deliberateness in the sense of knowledge of the action and of the consequences, its legal consequences and a conscious and freely taken decision to refrain from giving notice of intention to defend, whatever the motivation for this conduct might be.[8]

<u>Bona fide</u> **<u>defence:</u>**

[46] At common law, an applicant for rescission of a judgment must show sufficient cause which defies a precise or comprehensive • definition. The party seeking rescission must have a reasonable and acceptable explanation for his/her/its default and a *bona fide* defence which *prima facie* carries some prospect of success as was stated in **De Wet and Others v Western Bank** 1979 (2) SA 756 (A). In **Chetty v Law Society Transvaal** 1985 (2) SA **756 (A)** at 768C it was stated by Miller JA: —

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[7] Mutebwa v Mutebwa and Another 2001 SA 193 (TkH) at 198C-E
[8] Maujean t/a Audio Video Agencies v Standard Bank of SA Ltd 1994 (3) SA 801 (C).

"It may be that in certain circumstances, when the question of the sufficiency or otherwise of a defendant's explanation for his being in default is finely balanced, the circumstance that his proposed defence carries reasonable or good prospects of ' success on the merits might tip the scale in his favour in the application for rescission. (Cf Melane v Santam Insurance Co Ltd 1962 (4) SA 531 (A) at 532.) But this is not to say that the stronger the prospects of success the more indulgently will the Court regard the explanation of the default. An unsatisfactory and unacceptable explanation remains so, whatever the prospects of success on the merits."

[47] In ***Galp v Tansley N.O.*** 1966 (4) SA 555 (C) at page 560 reference was made to the case of ***Silber v Ozen Wholesaler (Pty) Ltd*** 1954 (2) SA (A), at page 352, where it was stated that the requirement introduced by the expression "good cause", as used in Rule 46(5), includes, but is not limited, to the existence of a substantial defence. It has been held that the requirement of "good cause" cannot be held to be satisfied unless there is evidence not only of the existence of a substantial defence but, in addition, of a ***bona fide,*** presently-held desire on the part of applicant for relief actually to raise the defence concerned in the event of the default judgment being rescinded.[9]

[48] The applicants dispute that they are indebted to the respondent for the monies claimed under Case No. 22927/2012. In the simple summons and in the particulars of claim (paragraph 2) the plaintiff, who is the current respondent, alleges that the applicants are indebted to it for an amount R293 675.95 which emanated from an overdraft facility which was authorised through an oral agreement. This claim and debt are disputed by the applicants. Reference was made to the lack of any supporting documents save for the certificate of indebtedness.

[49]The applicants deny that they are indebted to the respondent in respect of overdraft facilities, and in support of their contention, have attached the last statement of account that was issued by the respondent against the first applicant which the applicants allege was settled. In an)' event, the second applicant avers that the first applicant ceased trading on 31 March 2012, and would have had no reason to obtain any overdraft facilities from the respondent. Such overdraft facility as the first applicant had, was for an amount of R23 000.00 in 2008, which was paid and the facility was closed.

[50] The applicants never received the return of service attached to the default judgment application as is clear from the return of service. Sendee, as set out above, on the first applicant was effected by affixing it to

[9] See Kritzinger v Northern Natal Implement Co (Pty) Ltd 1973 (4)SA 542 (N) at 546

the door of an old registered address and not the bonded property which was the ***domicilium citandi et executandi.*** (As stated, the correct ***domicilium citandi et executandi*** is the immovable property which the respondent now seeks to sell after obtaining a writ of execution.)

[51]The address where sendee was sought to be effected on the second applicant was clearly not that of the second applicant. Nobody knew who the second applicant was at the address where sendee was effected, as can be seen from the return of sendee.

[52] As far as a ***bona fide*** defence is concerned (which is the second requirement for the rescission of a judgment), the applicants state that the)[10] have repaid all money loaned to them by way of an overdraft facility by the respondent.

[53] In the premises, the applicants have made out a case for the, rescission of the default judgment and the setting aside of the writ in execution.

Order

In the event, the following order is made: —

1. The default judgment, granted on 30 May 2012 is rescinded.

2. The writ of execution dated 5 July 2012, in respect of two immovable properties, namely Erf 54 and Erf 104 Montana Township, Registration Division J.R. Gauteng Province situated at 313 B…. A…... M…., Gauteng Province and 315 B… A…., M…., Gauteng Province are set aside.

3. The respondent is to pay the costs of the application, as well as the costs of the application for the stay of the sale in execution which were reserved on 23. May 2013.

MM JANSEN AJ
ACTING JUDGE OF THE HIGH COURT

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