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**IN THE HIGH COURT OF SOUTH AFRICA
[NORTH GAUTENG HIGH COURT, PRETORIA]**

CASE NUMBER: 14045/2009

DATE: 06 OCTOBER 2009

In the matter between:

**DELTA BLUE TRADING 489 CC
(REG NO: 2006/108791/23)**

APPLICANT

and

**MADIBANE ELIAS MAKHUBELA
(ID NO:.....)**

FIRST RESPONDENT

**SHEILA MARTHA MAKHUBELA
(ID NO:)**

SECOND RESPONDENT

JUDGMENT

KEMP,AJ

[1] The order I make in this matter is as follows:

1.1 It is declared that the First Respondent's undivided share in the immovable property known as Portion [.....], Registration Divisvon JR, in extent 344 square metres, held by the First Respondent under title deed T [.....], is executable for the outstanding amounts of the default judgment taken against the First Respondent by the Applicant in the Magistrates Court for the District of Pretoria, held at Pretoria on 12 September 2008 under case number 134446/2007.

1.2 The First and Second Respondents is ordered to pay the costs of this application jointly and/or severally.

[2] After I granted the above order certain events transpired which caused me to add the following to this judgment.

[3] This matter form part of my opposed application roll for the period 5 October 2009 to 9 October 2009.

[4] In terms of the latest directive from the Judge President opposed motions are all set down for the Monday of the week in which they will be heard. They are distributed to by the Senior Judge to various judges who will do duty in the opposed motion court during that week in advance to enable the judges to prepare.

[5] When the roll was called on Monday morning the 5th October 2009 Adv Coetsee appeared on behalf of the Applicants. There was no presence on behalf of the Respondents.

[6] Since the matter had already been placed on the roll for the 6th October 2009 I stood the matter down to ensure that if there was any appearance on behalf of the Respondents they would have ample time to address me.

[7] The Respondents gave notice of intention to defend the application on the 3rd day of April 2009 their attorneys being Makhabela Attorneys. No answering affidavit was filed on behalf of the Respondents.

[8] When I received the court file in this matter there was no practice note or heads of argument on behalf of the Respondents. Mr Coetsee filed a practice note but no heads of argument since there was no case to answer or argue other than the application itself.

[9] After I had granted the above order and had adjourned the Court my clerk

informed me that Mr Mkhabela had approached her in her office and informed her that the Defendants wanted to oppose the application but had not been able to find me or my court. I instructed her to immediately phone Mr Coetsee and the instructing attorney Mr Mkhabela to request that Mr Coetsee and Mr Mkhabela's counsel should approach me in chambers.

[10] Mr Coetsee returned to the Court and approached me in chambers at approximately 10h45. He apologised for coming to me on his own but informed me that he was unable to contact Mr Makhabela or to find out who his counsel is and could therefore not request such counsel to come to accompany him to my chambers. I requested him to wait and also did go back to my court to see if he could find anybody representing the Respondents. He returned a short while later accompanied by a colleague who informed me that he had just been instructed to ask for a postponement. I informed him that I would hear them in court at 11h30 and wanted an explanation why there was no opposing papers, practice note or heads of argument. Both counsel then left my chambers.

[11] At 11h30 counsel on behalf of the Respondents came to my chambers without adv Coetsee and told me that he was withdrawing as counsel since he could not obtain instructions. He then left.

[12] On the face of it would appear to me that Mr Makhabela made a misrepresentation to my clerk when he informed her that they could not find my court. A statement which I found incredible since the roll had been available for more than a week and was freely available throughout the building. On the roll it was clearly stated that I would be doing this particular application and my court number was displayed on the roll.

[13] The First Respondent is a pensioner and according to the return of service filed in the papers has no assets except his joint share in the abovementioned property. This would appear to be worth not much more than about R5 000.00. I do not believe that Mr Makhabela acted in the best interest of the

Respondents.

[14] I will request the Registrar to bring this judgment to the attention of the Law Society for the Northern Provinces.

KEMP AJ