REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2024-091779

(1) REPORTABLE: YES / NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO

(3) REVISED.

(4)

……………………… …………………………..

DATE SIGNATURE

In the matter between:

REBECCA PATRICIA RAKALE	1st Applicant
REFILWE RAKALE	2nd Applicant
and	
STANDARD BANK OF SOUTH AFRICA	1st Respondent
REGISTRAR OF DEEDS JOHANNESBURG	2nd Respondent

JUDGMENT

MAKUME J:

[1] In this matter the Applicants seek an order on an urgent basis in the following terms:

1.1 That transfer of property known as Erf 3[…] L[…] Extension which had been sold on public auction on the 25 June 2024 be stayed.

1.2 Secondly that the Registrar of Deeds Johannesburg be directed to place a caveat on the registration and transfer of the property referred to above.

FACTUAL BACKROUND

[2] It is common cause and not in dispute that during or about the year 2019 the first Respondent Standard Bank obtained a money judgement against the first Applicant due to the first Applicant having defaulted on her loan agreement. The property 3[…] L[…] which had been bonded as security for the loan was declared specially executable.

[3] On the 25th June 2024 the property was sold by Auction for an amount of R761 000.00 to one Olga who is not a party to this application. During argument I raised this aspect of the purchaser not having been joined in the proceedings and could not get a satisfactory answer. The issue was left hanging. This is a clear care of non-joinder. A party who has an interest in the outcome of this litigation is left out and no reasons were advanced.

[4] Prior to the sale mention above this property had been put up for sale on the following occasions:

4.1 On the 21st April 2020 however the sale was cancelled due to the Covid 19 pandemic

4.2 On the 27 October 2020 the sale did not proceed

4.3 On the 7 March 2023 that sale was also cancelled as the Applicant made a payment of R150 000.00 towards the arrears.

4.4 On the 20 June 2023 which sale was cancelled as a result of the Applicant having concluded an agreement and paid half of the arrears at that time.

[5] The Applicants maintains that the transfer of the property should be stopped because firstly, she had asked the Bank's attorneys to let her have details of the settlement amount to enable her to make payment. Secondly that she has sold the property to her daughter the second Applicant who has had a loan approved. She has attached to her papers both the offer to purchase by the second Applicant as well as proof of the loan agreement.

[6] In further argument and relying on the Constitutional Court matter of **Nomsa Nkata vs Firstrand Bank Limited Case No CCT73/15** a judgment by Moseneke DCJ dated 21 April 2016 the Applicant maintains that in terms of Section 129 (3) once she makes payment of the arrears she is entitled to reinstatement of the agreement.

<u>IN ISSUE</u>

[7] In issue in this matter are the following:

7.1 The Respondent says that the application is not urgent in that the Applicant knew as far back as the year 2020 that the property is on sale at any time and did not take effective steps to stop the sale.

7.2 Is Section 129 (3) applicable and in favour of the Applicant to reinstate the agreement or does the provisions of section 129 (4) apply in this matter in favour of the Bank.

7.3 Should the purchaser of the property have been joined or not

URGENCY

[8] This Court is satisfied that on a strict analysis of the facts and happenings this application should have been brought during June 2024 and not wait till the 14 August 2024. Urgency is self-created. I should have struck the matter from the roll. I however decided to entertain the merits in view of not only the weak merits but also the fact that the purchaser has not been joined in this matter.

[9] It is trite law that for a party to succeed on an interdict he or she must satisfy the Common Law requirements of an interdict being the following:

9.1 The Applicant must establish a *prima facie* right.

9.2 He or she must show that irreparable harm is likely to result if the interdict is not granted.

9.3 That the balance of convenience is in favour of the granting of the interdict.

9.4 Lastly that there is no other remedy available to the Applicant.

[10] The Applicant lost any right to the property when the agreement was cancelled and the property declared executable.

[11] The last three requirements are all covered by the fact that the Applicant in her own words has offered an amount of R100 000.00 she accordingly has a remedy being initially to rent property and once the house is sold she will have access to the residue after the bank shall have deducted what is due. There is in my view no irreparable harm that will befall her. In the further alternative her daughter has a bond approved to buy her a home. It is my view that the balance of convenience is in favour of proceeding with the sale and transfer of the property.

[12] The Applicants reliance on Section 129 (3) is misplaced. That section should be read with Section 129(4) as *espoused* in Nkata (supra). The provisions of Section 129 (4) read as follows:

> "A consumer may not reinstate a credit agreement after:
>
> a) The sale of any property pursuant to:
>
> > i) An attachment order; or
> > ii) Surrender of the property in terms of Section 129.
>
> b) The execution of any other court order enforcing that agreement; or
>
> c) The termination thereof in accordance with Section 123"

[13] The Constitutional Court in Nkata (supra) at paragraphs 127 – 129 said the following:

> "127 I have held that Ms Nkata was entitled to have her credit agreement reinstated under Section 129 (3). The bank contended before us that even so her right to reinstate has been limited by the provisions of Section 129(4) (a) of the Act
>
> 128 The Section precludes a consumer from reviving a credit agreement after the sale of the property following on an attachment order. Section 129(4) (b) goes further to lay down that a consumer may not reinstate the agreement after execution of any other court order enforcing the agreement.
>
> 129 In giving meaning to Section 129(4)(b) the High Court held that the bar to a reinstatement occurs only when the proceeds from a sale in execution have been realised."

[14] In my view this application must also fail on the merits on application of Section 129 (4) (a)(b).

[15] In the result I make the following order

a) The application is dismissed.

b) The Applicants are ordered to pay party and party costs on scale C.

DATED at JOHANNESBURG this the 28th day of August 2024.

M A MAKUME

JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

APPEARANCES

DATE OF HEARING	:	21 August 2024
DATE OF JUDGMENT	:	28 August 2024
FOR APPLICANT	:	Att. Khumalo
INSTRUCTED BY	:	Messrs Khumalo Attorneys
FOR RESPONDENT	:	Adv Khumalo (Ms)
INSTRUCTED BY	:	Messrs Van Hulsteyns Attorneys