



IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT JOHANNESBURG

Case no: J 1827-18

Not Reportable

In the matter between:

NORTH-WEST DEVELOPMENT CORPORATION (NWDC) Applicant

and

ABIEL MOHLAHLO

First Respondent

SHERIFF OF MAHIKENG

MR H.C. ACKERMAN (N.O.)

Second Respondent

Heard: 5 June 2018

Order delivered: 6 June 2018

Reasons for Order: 7 June 2018

JUDGMENT

WHITCHER J

[1] On 6 June 2018 I delivered the following order:-

1. The bond of security put up on 18 April 2018 and the new bond filed with this application is sufficient.

2. Pending finalisation of the rescission / declaratory application that is currently pending before this court, it is hereby ordered that:-

2.1 Further execution proceedings, including the sale in execution scheduled for 6 June 2018 is hereby suspended and stayed.

2.2 Applicant to pay First Respondent's costs occasioned by this application.

2.3 Reasons for this order will be delivered later this week.

[2] I granted the Order because in my view it is not competent to allow execution against property to be carried out in light of a pending application for rescission of judgment upon which the warrant of execution is based.

[3] I am of the view that the dismissal of this application will render the pending application for rescission of judgment to be of no force or effect. I would also be usurping the court, of its powers, that may be seized with the application for rescission of judgment if I were to exercise my discretion against the Applicant in that, by refusing this application, I would directly be rendering the application for rescission worthless, which I am not empowered to do in these proceedings. The court dealing with the application for rescission would be merely called upon to pronounce upon abstract or academic issues as there will no longer be any issues between the parties (*Coin Security Group (Pty) Ltd v SA National Union for Security Officers 2001(2) SA 872 (SCA) at 875A-D; Port Elizabeth Municipality v Smith 2002 (4) SA 241 (SCA) at 246I-247A*).

[4] However, though I have granted the application, I nonetheless feel that, considering the history of this matter, the Applicant should pay the First Respondent's costs occasioned by this application.

B Whitcher

Judge of the Labour Court of South Africa

Appearances:

For the applicant

Instructed by

For the respondent

Instructed by

Labour Court