IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG LOCAL DIVISION, JOHANNESBURG)

Case No. 2019/38095

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
SIGNATURE	DATE: 5 March 2025

In the matter between:

STANDARD BANK OF SOUTH AFRICA LIMITED Applicant

and

DANIEL MOLOISANE Respondent

JUDGMENT

WILSON J:

1 The respondent, Mr. Moloisane, owns Unit 7[…], F[…] P[…], […] M[…] Street, Florida Lake, Roodepoort ("the property"). The property is bonded to the applicant, Standard Bank, as security for a loan advanced to purchase it. On 20 February 2024, my brother Adams J declared the property specially executable for the full amount outstanding on the loan agreement.

2 On or about 8 August 2024, Mr. Moloisane self-drafted, served and filed what he called an urgent application to stay the execution of, and to rescind, Adams J's order. The application is embodied in two affidavits, in which Mr. Moloisane says that he had no notice of the hearing at which Adams J's order was made, and that he had been making substantial payments – totalling some R140 000 – toward the arrears due on the loan agreement since the special execution proceedings were instituted.

3 I cannot say whether these facts, if true, would have led Adams J to make a different order. But they are, *prima facie*, relevant to the question of whether special execution could have been avoided. They call for an answer from Standard Bank.

4 Instead of delivering that answer, Standard Bank applied to strike Mr. Moloisane's application out under Rule 30 of the Uniform Rules of Court. Rule 30 deals with irregular proceedings. The irregularity alleged was that Mr. Moloisane had not complied with Rule 6, in that the affidavits said to constitute Mr. Moloisane's application were not accompanied by a notice of motion setting out the relief Mr. Moloisane seeks, together with the other particulars a notice of motion is required to contain. Standard Bank then enrolled its application in my unopposed court of 17 February 2025. It sought an order dismissing Moloisane's stay and rescission application with costs. Mr. Moloisane appeared in person, and confirmed that he was not, and had never been, represented by a legal practitioner in connection with his stay and rescission application, although he did benefit from the guidance of a lawyerly friend.

5 Even assuming (with some difficulty) that Rule 30 can be deployed in aid of an order dismissing outright an application in which an irregular step has been taken, Standard Bank has neither alleged nor demonstrated in its founding affidavit that it has suffered any prejudice as a result of the irregularity (on the requirement of prejudice see *Brenner's Service Station and Garage (Pty) Ltd v Milne* 1983 (4) SA 233 (W) at 237G). Counsel's effort to cure that defect in his written submissions notwithstanding, it seems to me that there is no such prejudice. Mr. Moloisane's case and the relief he seeks are clear enough, and Standard Bank is already aware of all

of the other particulars that would have appeared in a notice of motion had one been prepared.

6 Mr. Moloisane's case for a stay and rescission is yet to be tested. Of particular concern is whether Mr. Moloisane's efforts to make good on his arrears would have earned him a postponement in circumstances where the mortgaged property was not his primary residence, or whether those efforts were sufficient to reinstate the loan agreement or create a real prospect of him doing so reasonably soon. The fundamental point, though, is that Standard Bank is called upon to answer Mr. Moloisane's case on its merits. Standard Bank is not entitled to resort to the manoeuvre of an application to strike out. Standard Bank's application must be dismissed.

7 One further point calls for comment. In its founding affidavit, Standard Bank relies on what seems like the high-minded proposition that the rules of court apply equally to all litigants. Whether or not that is true, the equal application of the rules does not mean treating every litigant identically. Lay litigants are entitled to the most careful and sensitive treatment, as they seek to navigate legal proceedings which must often seem to them excessively formal and festooned in unnecessary and ritualistic language and behaviour.

8 It is a presiding officer's duty do all that they fairly can to cut through those formalities, and to seek to identify the substance of a lay litigant's case, even if the case has not been presented with the care or precision a court is entitled to expect from a legal practitioner with rights of appearance. As the Constitutional Court has held, "[p]leadings prepared by laypersons must be construed generously and in the light most favourable to the litigant. Lay litigants should not be held to the same standard of accuracy, skill and precision in the presentation of their case required of lawyers. In construing such pleadings, regard must be had to the purpose of the pleading as gathered not only from the content of the pleadings but also from the context in which the pleading is prepared. Form must give way to substance" (*Xinwa v Volkswagen of South Africa* (Pty) Ltd 2003 (4) SA 390 (CC), paragraph 13). The substance of Mr. Moloisane's case is clear on any sensible reading of his affidavits. It is time for Standard Bank to address that case.

9 The application to set aside the respondent's stay and rescission application as an irregular step is dismissed with costs. Those costs are limited to the disbursements the respondent reasonably made in preparing and presenting his case.

S D J WILSON

Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 5 March 2025.

HEARD ON:	17 February 2025
DECIDED ON:	5 March 2025
For the Applicant:	K O Moodley Instructed by Ramsay Webber Attorneys
For the Respondent:	In person