IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2935/2008

DATE: 12-02-2025

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

DATE 12 February 2025

In the matter between

THOKWANA, BIKWAPHI MIRRIAM	Applicant
and	
STANDARD BANK SA LTD	First Respondent
SIPHONO JOHNSON VILAKAZI	Second Respondent
PRINCE NHLANHLA MABENA	Third Respondent
THE REGISTRAR OF DEEDS PRETORIA	Fourth Respondent
THE SHERIFF FOR THE HIGH COURT: KEMPTON PARK SOUTH	Fifth Respondent

JUDGMENT

<u>BARNES, AJ</u>: This is an application to set aside the sale in execution of an immovable property, namely: Erf 2[...], Birch Acres, Ext 17, Kempton Park. In what follows, I will refer to it simply as “the property.”

There is no appearance by the Applicant despite proper notice of the set down of the matter for today. In this regard there is, on the papers before me, a return of service from the sheriff which confirms that the notice of set down for today was served on the Applicant.

In addition to this, I have been directed to an email, (using the email addresses that have been utilised by the parties to this litigation by agreement), advising the Applicant of today’s set down.

Before dealing with the present application, it is necessary to refer to the history of this litigation, which began as far back as 2008, and is characterised by some very troubling features.

On 11 June 2008 default judgment was granted against the Applicant and the Third Respondent jointly and severally in terms of which, *inter alia,* the property was declared specially executable.

On 25 March 2010 the property was sold in execution. On 19 May 2010 the Applicant and the Third Respondent launched an application for recission of the default judgment.

This will be referred to as “the first recission application.”

The first recission application was postponed pending attempts at settling the matter. This culminated in the conclusion of a re-payment agreement between the First Respondent, on the one hand, and the Applicant and the Third Respondent, on the other, and the cancellation of the sale of the property.

In the event, the Applicant and the Third Respondent failed to honour the terms of the re-payment agreement, and the First Respondent brought an application in terms of Rule 46(11). On 29 July 2015 this Court granted that application and made an order in terms of which the property was put up for sale again.

To date the first recission application has not been disposed of or withdrawn by the Applicant and the Third Respondent. Notwithstanding this, 17 February 2016 the Applicant launched a second recission application, again seeking to set aside the default judgment.

The Applicant failed to prosecute the second recission application and it was set down on a number of occasions by the First Respondent, only to be postponed on every occasion at the instance of the Applicant.

Eventually, on the 23 April 2018, the second recission application was dismissed by this Court with punitive costs.

Thereafter, the necessary procedures were complied with and on 20 September 2018, the property was sold in execution to the Second Respondent. On 19 June 2019 the present application to set aside the sale in execution of the property was launched.

The Applicant has taken not a single further step in relation to the present application since it was launched over five years ago. Yet again, it fell to the First Respondent to set the matter down on numerous occasions in an attempt to dispose of it.

On 19 May 2022 the matter came before this Court and the Applicant sought a postponement. The Court granted the postponement and ordered the Applicant to deliver her heads of argument within three days, failing which her claim would be struck out with punitive costs. The Applicant failed to comply with that order.

Thereafter, the matter was again set down on 18 November 2022 at the instance of the First Respondent. The Applicant again sought a postponement, this time on the grounds that she had no legal representation. This Court postponed the matter *sine die* and afforded that Applicant three days to obtain legal representation and five days to deliver her heads of argument. Yet again, the Applicant failed to comply with this order.

The Applicant is accordingly in default of both the aforesaid orders of this Court, issued on 19 May 2022 and 18 November 2022 respectively.

The present application has again been set down at the instance of the First Respondent. There is no appearance for the Applicant today. As stated above, I am satisfied that the Applicant has had proper notice of today's set down and of the fact that a punitive costs order is being sought against her.

The history set out above clearly demonstrates that the Applicant has litigated in bad faith. She has over many years launched applications and failed to take steps to prosecute them. Orders of this Court affording the Applicant the indulgence of a postponement or granting her a final opportunity to deliver heads of argument have been routinely ignored. This conduct is unacceptable and warrants a punitive costs order against the Applicant.

In the circumstances, I make the following order:

The application to set aside the sale in execution of the immovable property, namely: Erf 2[...], Birch Acres, Ext 17 in Kempton Park is set aside.

The Applicant is to pay the costs of this application on the attorney and client scale.

BARNES, AJ

JUDGE OF THE HIGH COURT

DATE: 12 February 2025