THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

Case 21581/2022

(1) REPORTABLE: No

(2) OF INTEREST TO OTHER JUDGES: No

(3) REVISED: Yes

Date: 04 August 2024

In the matter between:

SHERIFF OF THE HIGH COURT, HALFWAY HOUSE Applicant

and

KGOSI MAEPA Respondent

In re:

NEDBANK LIMITED Plaintiff

and

ANIL KEMAN Defendant

JUDGMENT

DU PLESSIS J

Introduction

[1] In this application, the applicant, the Sheriff of the High Court, Halfway House ("the Sheriff"), seeks an order authorising the Sheriff to again sell in execution an immovable property previously sold in execution to Mr Maepa, the respondent. The other prayers were abandoned on the day of the hearing.

[2] Counsel for the Sheriff submitted that relief is based on Mr Maepa's failure to comply with the terms and conditions of a sale in execution of the property held at the Sheriff's offices on 30 May 2023. Since there was no compliance, the Sheriff needed to resell the property in execution, but to do so, the sale in execution, held on 30 May 2023, first needs to be set aside.

[3] Mr Maepa opposed this application based on non-joinder of Bemdi Financial Solutions CC ("Bembi") and the contention that no demand had been made in accordance with the conditions of sale. The other objections fall to the wayside after the abandonment of prayers 3 and 4.

[4] To adjudicate the dispute, the following background information is necessary. Firstly, the Sheriff averred that in the written conditions of sale (governing the sale of the property), the purchaser was stated as Mr Maepa. There was no indication at the signature that he was singing on behalf of another entity. Bembi's name is at the bottom of page 6 of the conditions of sale, with that of two other companies, written in manuscript, under the annotation "O.B.O.". There is no other indication on the part of Mr Maepa that he was acting in a representative capacity on behalf of one or all three entities. In the information to the conveyancer, he indicated Mr Maepa as the purchaser. Mr Maepa also personally made the payment of the deposit and the commission. The subsequent correspondence to Mr Maepa that was addressed to Bembi was an honest mistake; counsel or

the Sheriff submitted - it is the conditions of sale on which the claim is based that is the important document.

[5] The applicant submitted that when Mr Maepa did not pay the amount due to obtain a rates clearance certificate and the transfer costs to transfer the property into his name, the Sheriff started making demands. Mr Maepa made no payment, thus breaching the terms of the agreement.

[6] The applicant submitted that despite sending demands, there was no obligation to place Mr Maepa in *mora*, as the date of performance as stipulated in the agreement makes this an example of *more ex re*. Furthermore, Rule 46(11) does not require the purchaser to be put in *mora*. What is required is that notice be given that the provisions of Rule 46(11) are to be invoked.

[7] Anyone with a direct and substantial interest in a matter must be joined.[1] On the conditions of sale, Mr Maepa identified himself as the purchaser, not any of the entities he purportedly signed on behalf of. Likewise, in the instructions to the Sheriff, he identified himself as the purchaser. The power of attorney attached to the replying affidavit is not valid, as Mr Maepa is not a member of Bembi and therefore cannot give himself power of attorney. Based on these facts, I am satisfied that Bembi has no interest in the outcome, as it was not a party to the conditions of sale, and therefore need not be joined.[2]

[8] As to the lack of demand, this is factually incorrect. Several letters from the Sheriff requesting Mr Maepa to pay the outstanding monies as detailed above were sent. In any case, as established in *Standard Bank of South Africa Ltd v Ndlovu In re: Sheriff of Johannesburg South v Kibel In re: Kibel v Standard Bank of South Africa Ltd*,[3] there is no obligation on the Sheriff

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[1] *United Watch and Diamond Co (Pty) Ltd v Disa Hotels Ltd* 1972 (4) SA 409 (C) at 415A.

[2] *New Garden Cities Incorporated Association Not for Gain v Adhikarie* 1998 (3) SA 626 (C).

[3] [2012] ZAGPJHC 285 para 10.

to send any letter, since a specific deadline by which Mr Maepa must act was already set, making it mora ex re. There is no requirement for the purchaser to be put in mora; the only prerequisite is the notice in terms of Rule 46(11), should it be invoked.

[9] The Sheriff complied with all the requirements set out in Rule 46(11), and with the applicant abandoning prayers 3 and 4, it is not necessary to deal with the disputes that arose from those prayers. The default position of cost following the cause is applicable here, and due to the matter not being overly complicated, it is to be taxed on scale A.

Order

[10] Accordingly, the following order is made:

1. The sale in execution held on 30 May 2023 at 6[…] J[…] C[…], H[…] H[…], is set aside.

2. The applicant is authorised to again sell in execution the immovable property being Section 166 Protea Estates, Erf 7[…] E[…] G[…] Extension 70 Township.

3. The respondent is to pay the costs of this application, to be taxed on scale A.

WJ du Plessis
Judge of the High Court Gauteng Division,
Johannesburg

Date of hearing: 4 August 2025

Date of judgment: 4 August 2025

For the applicant: D van Niekerk instructed by Hammond Pole Majola

For the respondent:	No appearance.