

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: 29793-2016

(1) REPORTABLE: NO

(2) OF INTEREST TO THE JUDGES: NO

(3) REVISED: YES

DATE: 30/7/25

SIGNATURE:

In the matter between:

MOLETJI, ELLEN

APPLICANT

and

THE STANDARD BANK OF SOUTH AFRICA

1ST RESPONDENT

VEZI & DE BEER INCORPORATED ATTORNEYS

2ND RESPONDENT

VILAKAZI MUNTU ZENZO

3RD RESPONDENT

In re: the matter between:

THE STANDARD BANK OF SOUTH AFRICA
(Registration number: 1962/000738/06)

PLAINTIFF

and

MOLETJI, ELLEN
(identity number: 6[...])
(In her capacity as the duly appointed executrix
in the estate Of the late Mr Tshepo Joseph Moletji)

1ST DEFENDANT

THE MASTER OF THE HIGH COURT, JOHANNESBURG *2ND DEFENDANT*

WRITTEN REASONS FOR JUDGMENT

Ramawele AJ

Introduction

[1] This is an opposed application in terms of which the Applicant sought a relief declaring the conclusion of the contract of sale of an immovable property described as Erf Number 2[...] Protea Glen Extention 29 Township, Registration Division I.Q, Gauteng Province, IN EXTENT OF THREE HUNDRED SQUARE METRES HELD BY DEED OF TRANSFER NO: 2[...] ("the immovable property") null and void. The Applicant also seeks other ancillary relief.

[2] The material facts in this application are common cause or not seriously disputed between the parties.

[3] On 26 November 2024 I dismissed this application. This judgement constitutes the reasons for the dismissal of the application.

[4] The First Respondent and Tshepo Joseph Moletji concluded a home loan agreement on 31 May 2012. As security for the amount advanced in terms of the home loan agreement, the deceased caused a mortgage bond to be registered over the immovable property.

[5] On 29 October 2013 Tshepo Joseph Moletji ("the deceased") passed away. Anna Moletji, the deceased mother, was appointed as executrix of the deceased's estate on 16 March 2014. However, the executrix failed to honour the monthly instalments that were due as a result whereof the First Respondent instituted an action and obtained a judgement by default on 24 March 2017 and the immovable property was declared specially executable.

[6] The First Respondent obtained a warrant of execution, and the immovable property was attached on 24 May 2017.

[7] The executrix made an application for the rescission of the default order. The rescission application was dismissed on 3 December 2018.

[8] A notice of sale in execution was served on the executrix on 16 September 2021. The immovable property was sold to the Third Respondent and the bond was registered into the name of the Third Respondent on 28 April 2022.

Applicant's version

[9] The Applicant is the surviving sister of the late Tshepo Joseph Moletji who passed away on 29 October 2013. The Applicant's mother, Anna Moletji, was appointed as an executrix of the deceased estate.

[10] According to the Applicant, on 27 September 2021, she furnished the First Respondent with an offer to purchase ("OTP") the immovable property and simultaneously applied for a home loan. On 28 September 2021 the First

Respondent approved the home loan and provided the Applicant with an approval letter.

[11] The Applicant's version is further that she instructed her own conveyancers to attend to the transfer of the property and further engaged the First Respondent's conveyancers to finalise the transfer of the property.

[12] The Applicant further states that she was surprised to learn that the immovable property which she had bought was sold at an auction despite the fact that the First Respondent's attorneys had been assisting her to save the property from being auctioned. The immovable property was subsequently purchased by the Third Respondent at an auction.

First Respondent's version

[13] The First Respondent and the late Tshepo Joseph Moletji concluded a written home loan agreement on 31 May 2012. Pursuant to the conclusion of the written home loan agreement, a mortgage loan was registered over the immovable property.

[14] After the death of Tshepo Joseph Moletji, Anna Moletji was appointed as the executrix of the deceased estate. However, the executrix of the deceased estate failed to timeously and punctually make payment of the monthly instalments as and when they became due.

[15] The First Respondent made a default application, and the order was granted on 24 March 2017 in favour of the First Respondent against the deceased estate, which was duly represented by its executrix, Anna Moletji. The order contained both the monetary portion of the relief sought as well as the authorization to execute on the encumbered immovable property. The First Respondent subsequently issued a Warrant of Execution in respect of the immovable property, and the property was attached on 24 May 2017 and sold in execution on 4 October 2021.

[16] On 28 April 2021 the Applicant enquired from the Second Respondent about the arrear amounts owing to the First Respondent. The Second Respondent

responded on 3 May 2021 and informed the Applicant about the amount owing to the First Respondent.

[17] The Applicant took no further steps to settle the amount owing to the First Respondent.

Applicant's submissions

[18] The Applicant submits in broad terms that a contract was concluded for the purchase of the immovable property with the First Respondent and that such contract has not been lawfully cancelled.

[19] In the absence of the cancellation of the contract, the Applicant submits that ownership of the immovable property has passed to the Applicant and that the property should not therefore have been sold on auction.

[20] The Applicant further contends that the sale in execution was carried out erroneously and that no ownership has passed from the First Respondent to the Third Respondent.

First Respondent's submissions

[21] The First Respondent deals with three issues in its submissions, namely, condonation of the late delivery and service of the First Respondent's answering affidavit, point in limine regarding the locus standi of the Applicant and submissions on the validity of the alleged conclusion of the contract with the Applicant.

Point in limine

[22] The First Respondent contends that the Applicant lacks the necessary legal standing to institute the proceedings against the First Respondent.

[23] The First Respondent contends that the Applicant was not a party to the default judgement order authorising the First Respondent to execute upon the

immovable property. Accordingly, the First Respondent submits that no legal basis exists entitling the Applicant to an order setting aside the sale in execution and the subsequent transfer of the immovable property into the name of the Third Respondent.

Conclusion of the sale of the immovable property between the Applicant and the First Respondent

[24] The First Respondent submits that the real issue between the parties is whether there was a defect in the conclusion of the contract between the First Respondent and the Applicant.

[25] The First Respondent contends that the Applicant never caused the offer to purchase to materialise and that the contract was therefore not concluded.

[26] The First Respondent further submits that the only basis to successfully contend that the sale in execution should not have been continued with, will be in the instance where the arrears or full indebtedness amount was paid before the auction was held.

Analysis

[27] Although the First Respondent sought application for the condonation of the delivery of its answering affidavit without any notice of motion, the Applicant raised no issue with this approach. Accordingly, I did not deem it necessary to take this issue further. In any event, the reasons given by the Applicant for condonation are weighty, acceptable and justifiable and there was no need to be overly formalistic.

[28] On the issue of the point in limine, I am of the view, having regard to the submissions of the First Respondent as set above, that the First Respondent has made a persuasive argument that the Applicant lacks the necessary legal standing to institute these proceedings against the First Respondent. The Applicant is obviously not the executrix of the deceased estate and there are no facts justifying reasons for the institution of these proceedings against the First Respondent. The Applicant

should stay in her lane and avoid encroaching on the lane facing oncoming traffic. The consequences for such a conduct are always dire as it will be demonstrated below when I deal with the question of costs.

[29] Even if I am wrong on my finding in regarding to the point *in limine* raised by the First Respondent, I am still of the view that this application should nevertheless fail. As it is apparent from the above, the only issue upon which this application is premised is that there was a valid contract of sale concluded between the First Respondent and the Applicant. The Applicant contends that this should have led to the cancelation of the auction.

[30] The validity of the contract of sale of an immovable property is therefore central to the determination of this application. It is trite that in contracts for the sale of immovable properties, such contracts must always be in writing.

[31] According to the Offer to Purchase ("OTP") provided by the Applicant to the First Respondent, the seller of the immovable property is the Applicant, and the purchaser thereof is *Anna Moletji*.

[32] Without any further analysis of the law, it is clear that the Applicant, whose version is that she had purchased the immovable property from the First Respondent, could not have concluded an offer to sell the immovable with the executrix. Annexure "ANS7" which purports to be an offer to purchase concluded between the First Respondent and the Applicant, does not support the Applicant's contention. On the contrary, the conclusion of the aforesaid offer to purchase is contractually untenable. One cannot offer to sell a property which belongs to someone else. This application also fails on this point.

[33] Having regard to the history of the matter as well as the nature of this application i.e particularly the manner in which the Applicant has prosecuted its claim, I am of the view that these proceedings amount to an abuse of the court process. The Applicant should have known that it was only the executrix, as the representative of the deceased estate, who could at least, have brought the application.

Order

In the result the following order is made:

- [1] The application is dismissed.
- [2] The Applicant to pay costs on attorney client scale.

RATHAGA RAMAWELE
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION OF THE HIGH COURT, PRETORIA

30 July 2025