



IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case no. 5201/2018

In the matter between:

GREENSEK (PTY) LTD

Applicant

and

TARITA DE JAGER

First Respondent

MOLIFI AARON MATSOSO N.O.

Second Respondent

PIETER JANSE DE JAGER

Third Respondent

WILHELMINA PETRONELLA PRETORIUS

Fourth Respondent

CORAM: **VAN RHYN, J**

HEARD ON: **24 JUNE 2022**

REASONS FOR ORDER MADE ON 24 JUNE 2022

(Delivered by email to the parties' legal representatives and by release to SAFLII.
The reasons shall be deemed to have been handed down at 10h00 on 19 July 2022)

[1] On 24 June 2022 I made an order in the following terms in this matter, which came before me as an urgent application:

"It is ordered that:

1. This application is heard as an urgent application in terms of the provisions of Rule 6(12) of the Uniform Rules of Court and the non-compliance pertaining to service and time periods is condoned.
2. The warrant of execution issued under the above case number on 22 April 2022 (hereafter "the warrant") is stayed pending the final adjudication of the interpleader proceedings under the same case number; and
3. The sale in execution pursuant to the above warrant of execution, as advertised to take place on 25 June 2022 at 13h00 is cancelled;
4. The First Respondent shall pay the costs of this application;
5. Written reasons for this order will be handed down in due course."

- [2] The applicant, a private company with its registered address at Welkom in the Free State Province, applied as a matter of urgency, to stay the execution of the warrant of execution and cancel the sale pursuant to the warrant, advertised to take place on 25 June 2022 at 13:00, pending the final adjudication of the interpleader proceedings issued under the same case number.
- [3] The first respondent is Tarina de Jager ("Mrs De Jager"), a major female and mother of two minor children. The second respondent, Molifi Aaron Matsoso, N.O. (the "Sheriff") is cited in his official capacity as the Sheriff for the district of Theunissen. The third respondent is Pieter Janse de Jager ("Mr De Jager") the ex-husband of the first respondent. The fourth respondent is Wilhelmina Petronella Pretorius a major female residing in Potchefstroom. No relief is sought against Mr De Jager and fourth respondent. Mrs De Jager opposed the application.
- [4] Mr and Mrs De Jager were divorced and 23 May 2019. The Deed of Settlement concluded between Mr. and Mrs. De Jager was made an order of court. Mrs De Jager alleges that Mr De Jager is in arrears as regards his obligations in terms of the Deed of Settlement. She obtained a warrant and attachment was effected on 13 August 2021. The Sheriff attached various immovable items as per the inventory appended to the founding affidavit. On 31 January 2022 the Sheriff issued and interpleader notice calling on claimants to deliver particulars of the claims on or before 11 March 2022.

- [5] Mr N E R Greyling, a director of the applicant, submitted an affidavit for purposes of the interpleader proceedings. The gist of the claim is that various of the attached movables are the property of the applicant and consists of livestock, a compressor, tools etc. The interpleader proceedings were enrolled to be heard on 22 April 2022. However, none of the claimants appeared at the hearing with the result that the interpleader application was removed from the roll. On 3 June 2022 the applicant received a notice of sale in execution in terms whereof the attached items would be sold in execution on 25 June 2022 at 13h00.
- [6] On 7 June 2022 the applicant's attorney requested Mrs De Jager's attorney in writing not to proceed with the sale in execution and to provide the applicant with proof of same by 13h00 on 11 June 2022, failing which, the applicant intends applying for an order to stay the execution of the warrant pending the adjudication of the interpleader proceedings. On 13 June 2022 the applicant's attorney telephonically discussed the request to stop the auction with Mrs De Jager's attorney who allegedly undertook to revert regarding the cancellation of the auction. On 17 June 2022 and after no response was received regarding the request, the applicant's attorney addressed a further letter to Mrs. De Jager's attorney indicating that should confirmation of the cancellation of the auction not be received by close of business on 17 June 2022, the applicant will have no option but to approach the court for urgent relief together with a request for a punitive cost order.
- [7] The applicant enrolled the interpleader proceedings for hearing on 18 July 2022. Mr Louw, counsel on behalf of Mrs De Jager argued that the applicant waited until 21 June 2022 to approach the court, a mere 2 days' notice seeking to stay the execution. It is therefore argued that the applicant's urgency is self-created and the matter should be struck from the roll for lack of urgency.
- [8] At the hearing of this application on 24 June 2022, I ruled that the matter is urgent and heard arguments pertaining to the merits of the application. I was satisfied that the applicant explained the circumstances which it avers rendered the matter urgent. I was of the view that the delay in bringing the application may have been caused by the fact that the applicant's attorney attempted to

settle the matter by way of correspondence. It appears as if, and due to some misunderstanding, the applicant's attorney waited for Mrs De Jager's attorney's response while the latter had allegedly already telephonically indicated that the sale in execution will proceed as advertised. The sale in execution was to take place the following day. Rule 6(12) allows the court to come to the assistance of a litigant who claims that he could not be afforded substantial redress at a hearing in due course.

- [9] Mr Van der Merwe, counsel on behalf of the applicant, argued that should the sale in execution proceed on 25 June 2022, the attached assets not belonging to Mr De Jager and under *bona fide* claims of ownership by third parties, including the applicant in a pending interpleader proceeding, will be sold in execution. The urgent application is the only means by which the applicant can avert the injustice that would be occasioned should the sale in execution proceed.
- [10] On behalf of Mrs De Jager it was contended that the applicant is laying claim to assets which are simply not under attachment and has therefore failed to prove any "right" (whether it be only *prima facie* and open to some doubt or a clear right) to the attached property. The applicant failed to mention any specific harm it would suffer if the sale proceeds and also failed to disclose that it will have no alternative recourse should the sale proceed.
- [11] Mr Louw argued that the "true brain" behind the current application was Mr. De Jager, who with his co-director of the applicant-company, Mr Greyling, have concocted a further scheme to delay and circumvent payments in terms of the judgment debt. From the contents of a confirmatory affidavit deposed to by the fourth respondent, it was furthermore evident that the assets claimed to belong to her as per the interpleader, was false as she was coerced by Mr De Jager into filing claims specifically to avoid the execution process from proceeding.
- [12] The effect of the issue of an interpleader notice is that any action by either of the claimants against the Sheriff is stayed¹. One of the special circumstances in which the aid of the court may be invoked to stay proceedings temporarily, is

¹ Chase & Sons (Pty) Ltd v Tecklenburg 1957 (3) SA 51 (T); Rule 58(7).

in terms of the provisions of Rule 58 or so-called “interpleader proceedings”. In **Strime v Strime**² Tebbutt J held as follows:

“Execution is a process of the Court and the Court has an inherent power to control its own process subject to the Rules of Court. It accordingly has a discretion to set aside or stay a writ of execution (see *Williams v Garrick* 1938 TPD 147 at 162; *Graham v Graham* 1950 (1) SA 655 (T) at 658; *Cohen v Cohen* 1979 (3) SA 420 (R) at 423 D-C). The Court will, generally speaking, grant a stay of execution where real and substantial justice requires such a stay or, put otherwise, where injustice would otherwise be done.”³

- [13] On behalf of Mrs De Jager it was contended that the failure of the applicant (as a claimant) to comply with the provisions of Rule 58 and the interpleader proceedings subsequently being struck from the roll, means that no interpleader proceedings are currently pending. Rule 58(5) provides that if a claimant to whom an interpleader notice and affidavit have been duly delivered fails to deliver particulars of his claim within the time stated or, having delivered such particulars, fails to appear in court in support of his or her claim, the court may make an order declaring him and all persons claiming under him barred as against the applicant from making any claim on the subject- matter of the dispute. Mr Van der Merwe argued that the applicant has not been barred in accordance with the provisions of Rule 58(5). The matter has been re-enrolled for hearing on 18 July 2022 and it therefore cannot be argued that no interpleader proceedings are pending. The applicant did not abandon the interpleader proceedings and will see to it that the matter proceeds as enrolled for 18 July 2022.
- [14] Essential to the operation of Rule 58 is the allegation by the Sheriff that two or more parties are making adverse claims to the items attached. It is not expected of the claimants to clothe his/her claim with the same precision as in a pleading. I agree with the submission made by Mr Van der Merwe that this is not the correct forum to adjudicate the claims made in respect of the items attached by the Sheriff. The applicant contends that an injustice would be done if the sale in execution would be allowed to proceed where it has a reasonable prospect

² 1983(4) SA 850 (CPD).

³ At 852 A-B.

of success at the hearing of the interpleader proceedings set down for 18 July 2022.

- [15] Execution should generally be allowed to proceed unless the applicant for a stay shows that real and substantial justice requires that such a stay should be granted.⁴ I was satisfied that the applicant is entitled to a stay of the execution pending the final adjudication of the interpleader proceedings, which in any event will be heard within a month.
- [16] There remains the question of costs. Even though this court had sincere sympathy with Mrs De Jager and her efforts to obtain compliance with the maintenance orders and other provisions of the Deed of Settlement, there was no reason why the normal rule that costs follow the result should not apply in this matter.



VAN RHYN J

On behalf of the Applicant:

ADV J VAN DER MERWE

Instructed by:

JACOBS FOURIE ATTORNEYS
BLOEMFONTEIN

On behalf of the First Respondent:

ADV. M C LOUW

Instructed by:

KRUGER VENTER ATTORNEYS
BLOEMFONTEIN

⁴ Van Rensburg and Another NNO v Naidoo and Others NNO; Naidoo and Others NNO v Van Rensburg NO and Others 2011 (4) SA 149 (SCA) at para 51-54.