

REPUBLIC OF SOUTH AFRICA



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

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO.	(NO.)
(2) OF INTEREST TO OTHER JUDGES: YES/NO.	(NO.)
(3) REVISED.	✓
DATE	SIGNATURE <i>Sheen</i>

CASE NO: 29688/2015

In the matter between

FIRSTRAND BANK LIMITED

Applicant

and

MAKALENG MH

Respondent

LEAVE TO APPEAL JUDGMENT

WEINER J:

[1].The applicant applies for leave to appeal in respect of a judgment I granted on 8 October 2015, where the applicant applied for a money judgment and execution of the property of the respondent.

[2].The arrears in the matter were extremely low and the defendant had not

been in arrears for a lengthy period of time. In addition, there was no personal service on the defendant; service had taken place on his wife.

[3]. Having regard to the judgment of the full bench of this division¹ a Court in making an order should not grant execution if the requirements set out in *Lekuku* have not been met. These include personal service and an assessment of the arrears, as well as the implications for the respondent.

[4]. Having found that the *Lekuku* requirements were not complied with, I postponed the matter for six months and ordered that the applicant file an affidavit on the next date of hearing setting out what attempts were made to prevent foreclosure.

[5]. The Applicant submits, *inter alia*, that such order was wrong and that, the practice directives relied upon do not have the status of court orders and are mere guidelines.

[6]. Section 17 of the Superior Court's Act² empowers a court to grant leave to appeal where there are conflicting decisions in either the same jurisdictions or different jurisdictions.

[7]. I am aware of judges in both this division and in other divisions granting foreclosure where there is no personal service despite the *Lekuku* judgment. I am also aware of judges granting piecemeal judgments by

¹ Absa Bank Limited v Lekuku (32700/2013) [2014] ZAGPJHC 244 (14 October 2014)

² Superior Court's Act 10 of 2013

ordering a money judgment but postponing the foreclosure.

[8].These are issues which arise in numerous matters in this court daily. Undoubtedly, this must occur in other courts around the country. Constitutional jurisprudence, matters of procedure and practice directives, as opposed to substantive law are involved. To solve this issue of conflicting judgments, it is my view, that this matter should be referred to the Supreme Court of Appeal to decide, *inter alia*, on the status of practices directives, the issue of personal service, whether there should be a piecemeal judgment, and whether a court has the discretion to postpone a matter based upon the factors set out in *Lekuku*.

[9].Accordingly, leave to appeal to the Supreme Court of Appeal is granted.

A handwritten signature in black ink, appearing to read 'S. Weiner', written over a horizontal line.

S WEINER

**JUDGE OF THE HIGH COURT OF
SOUTH AFRICA (GLD)**

Appearances

For the Applicant: Charl Cilliers Inc.
Instructed by: Advocate HM Viljoen
For the Respondent: In person
Date of hearing: 3 December 2015
Date of Judgment: 3 December 2015