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

**Case Number: 2017-1594**

**REPORTABLE: NO**

**OF INTEREST TO OTHER JUDGES: NO**

**REVISED: NO**

**DATE: 15/03/2024**

**THUTSE, MOSES THELEDI**

Applicant

and

**FIRSTRAND BANK LIMITED**

Respondent

## JUDGMENT

[1] For the sake of convenience, I will refer to the applicant as Mr Thutse and the first respondent as Firststrand.

[2] On 6 September 2017 this court granted judgment in favour of Firststrand against Mr Thutse for:

- (1) Payment of the sum of R530 538,10;
  - (2) Interest on the said amount at the variable rate of 12,64% per annum calculated daily and compounded monthly from 1 December 2016 to date of final payment;
  - (3) An order in terms whereof the immovable property described as portion 59 of Erf 6[...] Z[...] E[...] 4[...] T[...] Registration Division IQ ("the property") he declared specially executable subject to the conditions therein contained;
  - (4) Costs of suit on the scale as between attorney and client.
- ("the judgment")

[3] Sometime in December 2019, according to Mr Thutse, he obtained knowledge of the judgment and thereafter there were several unsuccessful attempts to settle the disputes between the parties. In February 2020, following upon the judgment, the property was sold in execution and transfer effected into the name of the fourth respondent sometime in early February 2020. The property has since been transferred by the fourth respondent to Pamella Matebese, who is obviously an

interested party in these proceedings since, Mr Thutse seeks not only a rescission of the judgment but an order directing that the sale in execution be set aside<sup>1</sup>.

[4] Mr Thutse seeks rescission of the judgment on the grounds that he has a *bona fide* defence to the claim of Firstrand, that he has good prospects of succeeding in the rescission application, and that there is a good reason for the delay in bringing the application<sup>2</sup> and that if he succeeds, transfer into the name of the fourth respondent should succeed. Presumably, the same considerations apply in relation to the further transfer to Pamela Matebese.

[5] On the best version put forward by Mr Thutse, knowledge of both the application for judgment and the fact that judgment had been granted came to his attention in December 2019. Thereafter, the attempts to settle the matter did not come to fruition and by early February 2020, transfer of the property into the name of the fourth respondent had occurred pursuant to a valid sale in execution.

[6] Even if I ignore the inordinate delay (of four years) and I give due consideration to his difficulty in obtaining legal representation, there is in my view no proper case made out for a rescission of judgment, even apart from the consideration that there has been a non-joinder of Pamela Matebese.

[7] The principles in relation to rescission are well-established and bear no detailed repetition. They are:

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<sup>1</sup> On 13 March 2023 this court made an order directing joinder of Pamela Matabese but I was advised from the bar that this application is still pending.

<sup>2</sup> There is in my view no adequate explanation

- (1) A proper explanation for the delay explaining why the indulgence is sought;
- (2) The applicant must establish that the application is *bona fide* and has not been launched for the purposes of delay;
- (3) The applicant must establish a *bona fide* defence or claim, as the case may be<sup>3</sup>.

[8] The affidavits of Firstrand set out in great detail the history of the litigation, the interactions between Firstrand and Mr Thutse, the attempts to resolve the dispute, the facts and circumstances leading to the judgment and the subsequent sale in execution. Even accepting that Mr Thutse only knew of the judgment against him in December 2019 and that settlement discussions then took place, there is no explanation for the failure to initiate these proceedings at an earlier stage, nor has the delay from February 2020 to the date of the launching of the application been explained. Furthermore, the “issues” raised by Mr Thutse in relation to the judgment do not in my view taken cumulatively or individually raise a *bona fide* defence which of course has a material impact on the second requirement in relation to “good cause”, namely that the application is *bona fide*.

[9] Apart from these considerations, there is the all-important issue in relation to the non-joinder of a party that has a material and substantial interest in the outcome of these proceedings, namely the failure to join Pamella Matebese. The litigation cannot proceed indefinitely and there must be an end to litigation. That is particularly so in the present case.

[10] In the circumstances, the application falls to be dismissed and I make the following order: the application is dismissed with costs.

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<sup>3</sup> Silber v Ozen Wholesalers (Pty) Ltd 1954 (2) SA 345 A at 353

**D M FINE SC**

**ACTING JUDGE OF THE HIGH**

**COURT**