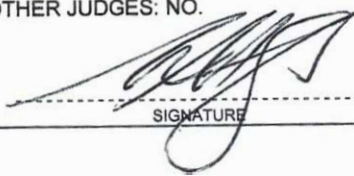


IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA



Case Number: 74905/2015

2/8/17

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: NO.
(2)	OF INTEREST TO OTHER JUDGES: NO.
(3)	REVISED.
4/18/17	
DATE	SIGNATURE

In the matter between:

PATIENCE THOKO KOMBECH

1<sup>ST</sup> APPLICANT

DONALD MUSA KOMBECH

2<sup>ND</sup> APPLICANT

and

NEDBANK LIMITED

1<sup>ST</sup> RESPONDENT

SHERIFF, TEMBISA

2<sup>ND</sup> RESPONDENT

DEEDS OFFICE PRETORIA

3<sup>RD</sup> RESPONDENT

Coram: HUGHES J

REASONS

HUGHES J

[1] In these rescission application proceedings the applicants are Patience Thoko Kombech and Donald Musa Kombech. The respondents are Nedbank Limited, the Sheriff of Tembisa and the Deeds Office of Pretoria.

[2] On 2 August 2017 I duly dismissed the application for rescission by the applicants with costs.

[3] The respondent relevant in these proceedings is Nedbank Limited the first respondent.

[4] When the application was heard there was no appearance on behalf of the applicants. The applicants had not filed a replying affidavit nor heads of argument.

[5] The applicants sought to rescind an order granted by this court on 5 November 2015. This order directed the applicants to pay an amount of R535 873.66 with interest in respect of a bond and loan agreement with first respondent. The order also declared the property held in respect of the bond to be declared specially executable.

[6] In their application the applicants do not set out whether they seek the rescission in respect of the common law, rule 42(1)(a) or rule 32(1)(b).

[7] What does emerge though is that they allege that they did not receive the summons which the first respondent alleged was served. They state that it might be that the summons was served at the wrong address. They further allege that they became aware of the proceedings of the first respondent on 1 July 2016. This was when they were approached by an agent who attended on their home. The agent informed them that their property was to be sold in a sale in execution. They contend that they were not in wilful default and that this good cause exists to grant the rescission.

[8] The first respondent on the other hand pointed out that the summons in the main application was served at the *domicilium* address of the applicant on 22 September 2015. It was received by a friend of the applicant who stated that he lived on the premises and that he would bring it to the attention of the applicants.

[9] Furthers to the aforesaid the first respondent states that applicants were aware of their failure to pay for their bond as far back as 16 March 2014. This was when a Distressed Restructure Agreement was entered into by the parties. The applicants in their founding papers for this rescission application confirm that they reside at Erf 6330 Munungu Street, Birch Acres extension 31, Kempton Park, which is also known as 13 Munungu Avenue Birch Acres Extension 31. This being the same address, the *domicilium* address where the summons had been served. So states the first respondent as regards service.

[10] There are no submissions advanced in with regard to good cause that exist on the papers of the applicants. Neither is there any submissions with regards to whether they *prima facie* case with prospects of success or at the least a *bona fide* defence to substantiate the grant of the rescission sought.

[11] For the reason contained herein I duly made the order sought by the respondent.



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W. Hughes  
Judge of the High Court Gauteng Pretoria