



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NO: 63104/2015

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
	4/6/2018
	DATE
	SIGNATURE

In the matter between:

REGINALD SANDILE MTHUNYWA

Applicant

and

STANDARD BANK OF SOUTH AFRICA LTD

Respondent

In re:

STANDARD BANK OF SOUTH AFRICA LTD

Plaintiff

and

REGINALD SANDILE MTHUNYWA

Defendant

J U D G M E N T

DEWRANCE AJ

- [1] This is an application launched by the applicant to rescind a judgment granted by default by this court by Molopa J on 30 November 2015. Molopa J granted an order in the following terms:

[1.1] payment of the sum of R484 710.63 and interest at 9.250% per annum calculated daily and compounded monthly with effect from 15 July 2015 to date of payment, both dates inclusive;

- [2] Subsequent to the granting of the aforesaid order, the respondent obtained a writ of execution from this court on 21 December 2015 and an order from Du Plessis AJ on 20 May 2016 declaring the property, Erf 227 Helderwyk Township, Registration Division IR, Gauteng Province, in extent 880m², held by Deed of Transfer No T051350/08, specifically executable.

- [3] The applicant's application is somewhat incoherent. I will return to it momentarily.

RESPONDENT'S CAUSE OF ACTION

- [4] The respondent issued summons against the applicant on 6 August 2015 for payment in the amount of R484 710.63 together with interest thereon at the rate of 9.250% per annum calculated daily and compounded monthly with effect from 25 July 2015 to date of final payment, both dates inclusive. The respondent further sought an

order in terms whereof the applicant's movable property be declared specifically executable and an order authorising the Registrar of this court to issue a warrant of execution against the aforesaid movable property.

- [5] The respondent's cause of action at that stage was based on the applicant's breach of a written loan agreement. The applicant did not defend the respondent's claim, which resulted in the respondent consequently applying for and obtaining default judgment before Molopa J on 30 November 2015. Molopa J only granted the monetary claim and postponed the issue of executability *sine die*. Consequent upon obtaining the Molopa J order, the respondent issued a writ of execution and instructed the Sheriff to execute thereon. The Sheriff attempted to execute but could not find sufficient movable assets to satisfy the judgment and therefore issued a return of *nulla bona*.

- [6] The respondent thereafter obtained the Du Plessis J order.

APPLICANT'S CASE

- [7] The applicant contends that the respondent obtained the Molopa J order "*in bad faith*". This bad faith, presumably, arises from the allegation that the respondent did "*not have the authority to repossess*" and that the respondent "*knew very well that [it] did not follow the standard procedure but what [it] did was the abuse of the law*". The respondent, so he argues, has "*to send supplementary*

notices to [him] whether by registered post" to notify the applicant of the debt. The respondent must follow all "*remedies*" but "*decided to repossess the movable assets at the expense of the court*".

- [8] Based on this alleged abuse of court processes, the applicant argues that the rescission be granted.

RESPONDENT'S CASE

- [9] The respondent contends that the applicant has not complied with the requirements of Rule 31(2)(b) which entails:

[9.1] giving a reasonable explanation of his default;

[9.2] showing that the application is made *bona fide*; and

[9.3] showing that there is a *bona fide* defence to the plaintiff's claim which *prima facie* has prospects of success. Such a defence must be a defence in law.

- [10] The respondent argues that there are none of the requirements under Rule 31(2)(b) have been met. I agree with this submission.

- [11] However, I deem it prudent to discuss the issue of "*supplementary notices*". The applicant delivered a supplementary affidavit to demonstrate that there has been non-compliance with section 29 of

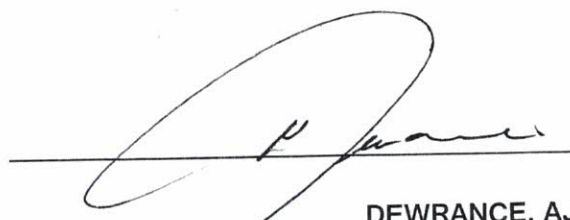
the National Credit Act, 34 of 2005 ("NCA"). I provisionally admitted the supplementary affidavit. However, the supplementary affidavit failed to show that there has been non-compliance with section 29 of the NCA.

[12] This matter can be disposed of on the basis that the applicant cannot demonstrate that it has a *bona fide* defence against the claim of the respondent. The only defence, on the papers before me, is that it appears that the applicant contends that he was unemployed and therefore not able to comply with his contractual obligations. That is not a good defence in law. The allegation that the respondent abused this court's processes cannot be sustained.

[13] Accordingly, this application is dismissed with costs.

[14] Accordingly, I make the following order:

[14.1] The application is dismissed with costs.



DEWRANCE, AJ
ACTING JUDGE OF THE HIGH COURT