

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO.: 031630/2023

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

Date: 22 November 2024 E van der Schyff

In the matter between:

Bela-Bela Local Municipality

Applicant

and

Dikala Plant Hire CC

First Respondent

The Registrar of the High Court
Gauteng Division, Pretoria

Second Respondent

The Sheriff: Bela-Bela

Third Respondent

JUDGMENT

Van der Schyff J

Introduction

- [1] The applicant approached the court seeking an order setting aside warrants of execution issued under case number 95187/2015, in terms of which the Sheriff was directed to attach and take into execution the sum of R82 795 796.84 and the notice of attachment in execution of the applicant's movable and immovable property dated 9 November 2022 pursuant to the warrant of execution under case number 95187/2015.

Discussion

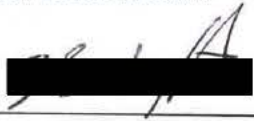
- [2] Two warrants of execution reflecting the same amount were issued under case number 95187/2015. The first is dated 5 August 2019, and the second is dated 27 October 2022. The notice of attachment in execution is dated 9 November 2022.
- [3] While the relief sought was simple and straightforward, the applicants raised several underlying issues in the founding affidavit. These underlying issues again surfaced in the applicant's heads of argument and the most recent practice note. For the reason set out below, it is not necessary to pronounce on any of the underlying issues.
- [4] The first respondent does not take any issue with the relief sought in the notice of motion. It does take issue with the underlying issues set out in the founding affidavit and the applicant's heads of argument. First respondent's counsel submitted that because it does not oppose the relief sought in the notice of motion, it is not necessary to deal with the underlying issues. He submitted, however, that each party should pay its own costs in this application.
- [5] The first respondent does not oppose the relief sought because it abandoned the warrants of execution reflecting the amount of R 82 795 796.84 and informed the applicant thereof already in June 2023. The first respondent avers that the third respondent acted on a frolic of its own when it attached the applicant's movable and immovable assets. The warrant clearly indicates that the Sheriff was directed to take into execution the 'movable goods' of the applicant.

- [6] The first respondent avers that it has not, since 17 November 2022, instructed the third respondent to execute the warrants and instructed the third respondent on 17 November 2022 to stay the execution of the warrant of execution. The notice of attachment in execution is dated 9 November 2022 and precedes the instruction to stay the execution. The first respondent does not indicate that it instructed the Sheriff to uplift any notice of attachment in execution.
- [7] The first respondent submits that the relief sought became moot because it informed the applicant that it abandoned the warrants of execution, which is the subject matter of this application. I disagree. The applicant's assets are still attached in terms of the notice of attachment in execution, and the notice of attachment in execution is based on a warrant of execution. In light of the first respondent's submissions that it abandons the warrant(s) issued for recovering the amount of R82 795 796.84, there is no reason not to grant the relief sought by the applicant.
- [8] That leaves the issue of costs. No costs order is sought against the third respondent in the notice of motion, or in a subsequent application by the first respondent. The first respondent attempts to absolve itself from any responsibility for costs by shifting the blame for the issue of the notice of attachment in execution to the third respondent. The first respondent, however, does not explain whether it communicated with the Sheriff and instructed him to cancel or uplift the notice of attachment in execution when it was alerted to its existence. The first respondent cannot be absolved of all blame for the current situation.
- [9] The applicant, on the other hand, raised several underlying issues it submitted had to be adjudicated by the court. The first respondent's continued opposition to deal with these underlying issues in these proceedings cannot be faulted.
- [10] This application could and should have been settled without the court's input being required. In these circumstances, it is fair and just for all parties involved to carry their own costs.

ORDER

In the result, the following order is granted:

1. The Warrants of Execution under case number 95187/2015 in favour of the first respondent as execution creditor, in terms of which the Sheriff was directed to attach and take into execution the sum of R82 795 796.84 plus interest at the rate of 9% from 18 July 2019 until date of final payment, plus plaintiff's costs in the sum of R650, plus further costs to be taxed, are set aside;
2. The Notice of Attachment in Execution of movable and immovable properties of the Applicant pursuant to the Warrants of Execution under Case number 95187/2015 in favour of the first respondent as execution creditor, dated 9 November 2022, is set aside;
3. The applicant and first respondent are responsible for their own costs.


 E van der Schyff
 Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be emailed to the parties/their legal representatives.

For the applicant:

Adv. M. Majozi

Instructed by:

Ndobela and Associates

For the first respondent:

Adv. S.D. Wagener SC

Instructed by:

Geyser Van Rooyen Attorneys

Date of the hearing:

20 November 2024

Date of judgment:

22 November 2024