



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: **058372/2022**

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: NO
 (2) OF INTEREST TO OTHER JUDGES: NO
 (3) REVISED: NO
 DATE:
 SIGNATURE: JANSE VAN NIEUWENHUIZEN

In the matter between:

THE BODY CORPORATE OF NONSA COURT

Applicant

and

GAOLATLHE MOTHOGAE

First Respondent

CITY OF JOHANNESBURG METROPOLITAN CITY

Second Respondent

JUDGMENT

JANSE VAN NIEUWENHUIZEN J:

Introduction

- [1] This is an application in terms of Rule 46(1) and 46A of the Uniform Rules of Court for an order declaring the first respondent's immovable property specially executable and authorising the Registrar to issue a warrant of execution in respect of the property.
- [2] The application is opposed by the first respondent, who appeared in person at the hearing of the matter.

Background facts

- [3] The first respondent is the registered owner of a unit in Nonsa Court, Johannesburg South, Gauteng. According to the records held in Deeds Office, the first respondent purchased the property on 7 November 2013 at a purchase consideration of R 800 000, 00. In the result, the first respondent has been the owner of the property for just over eleven years.
- [4] In view of the first respondent's ownership of the unit, she is a member of the applicant and is liable to make payment of levies. The first respondent's levy payments fell into arrears during 2019 and on 14 March 2023 the applicant obtained judgment against the first respondent in the amount of R 111 797, 59.
- [5] The first respondent did not pay the judgment amount, and the applicant caused a warrant of execution against movables to be issued by the registrar. On 26 September 2023 the Sheriff executed the warrant and issued a *nulla bona* return.
- [6] The *nulla bona* return resulted in the present application being launched.

Opposition

- [7] The first respondent explained in her answering affidavit that it had always been her dream to own her own property. At the time of the purchase of the property, the first respondent was employed at the University of the Witwatersrand

("Wits"). The purchase consideration for the property was financed through a mortgage bond from Nedbank and, in order to realise her dream, the first respondent made extra bond payments monthly.

- [8] In March 2018 Wits retrenched the first respondent and she utilised the settlement amount to pay off the Nedbank bond and to continue paying the monthly levies.
- [9] In December 2018, the first respondent applied for and was accepted for a PhD Fellowship Programme at the Wits School of Public Health. A few months into the program and during July 2019, the first respondent fell ill and required surgical intervention. Shortly thereafter, the first respondent was diagnosed with Stage IV Endometriosis, a severe condition that required major surgery. The surgery was booked for November 2019.
- [10] The first respondent stated that she was, sadly, unfairly dismissed from the PhD Fellowship Program in September 2019. Although the CCMA has ruled that the first respondent's dismissal was, both procedurally and substantively unfair she could not be reinstated due to the nature of the contract she had signed which is somehow unique to the Wits School for Public Health.
- [11] The first respondent engaged with the University in an endeavour to find an amicable solution. Her engagements have not borne any fruit to date, and she has escalated the matter to the Council for Higher Education as well as the Department of Higher Education and Training.
- [12] In the meantime the first respondent has been seeking alternative employment without success. The first respondent attached proof of her job seeking efforts.
- [13] The first respondent stated that she takes full responsibility for the payment of the levies, but that her current financial situation makes it extremely difficult to honour her financial commitments. The first respondent has made some payments towards the arrear levies, but the amounts she paid did not even

equal the monthly levy amount. The first respondent is convinced that her financial position will change at some point in the future and requested that she be given time to honour her financial obligations towards the applicant.

[14] Finally, the first respondent summarised her opposition to the application as follows:

14.1 the property is the only property she owns, and it is her primary residence;

14.2 she lives with her niece who is a first-year student in need of accommodation;

14.3 she is presently in a period of financial difficulty due to her unfair dismissal which dismissal is receiving the attention of the CHE and DHET senior officials;

14.4 she has on various occasions engaged the applicant and its attorneys to explain her situation and her intention to settle the debt; and

14.5 she has been paying small amounts towards the debt.

Legislative framework

[15] Rule 46(1) of the Uniform Rules of court provides that a warrant for execution against immovable property may, subject to rule 46A, only be issued if a debtor's movable property is insufficient to satisfy the debt and the immovable property has been declared specially executable by the court or the registrar in terms of Rule 31(5).

[16] Rule 46A, in turn, provides for execution against residential immovable property. In terms of rule 46A(2)(a)(ii), a court must consider alternative means available to a judgment debtor to satisfy the debt, other than execution against

a debtor's residence. In *casu* the first respondent on her own version does not have alternative means to satisfy the debt.

- [17] Furthermore and in terms of rule 46A(2)(b) a court shall not authorise execution against a residential immovable property that is a primary residence, unless the court, having considered all the relevant factors, considers that the execution is warranted.
- [18] The applicant is a juristic body created in terms of the provisions of the Sectional Titles Management Act, 8 of 2011. The function of the applicant is to, *inter alia*, collect levies payable by the owners of the units in the scheme. The levies payable by all the owners is for their joint benefit in that, the buildings, garden and other infrastructure in the scheme is properly maintained. Proper maintenance in turn, ensures that the value of the properties is enhanced.
- [19] Without proper maintenance the scheme will most likely fall in disrepair and will significantly decrease the value of all the properties in the scheme. The payment of levies by all the owners of the scheme is to their mutual benefit.
- [20] It is against the aforesaid background, that the court must consider whether the authorisation of execution against the property of the first respondent is warranted.
- [21] Firstly, I wish to state that the first respondent's financial woes are not due to any fault on her part. The first respondent has on all accounts worked hard to achieve her dream of owning a property and, until her dismissal, has promptly honoured all her financial obligations. In the circumstances, the position the first respondent finds herself in is most unfortunate.
- [22] The high levels of unemployment is a sad reality in our country. There are daily applications in court to execute against residential property that is a primary residence. More often than not a debtor's sudden loss of employment is the cause for the debt.

- [23] The law must, however, be applied equally to the rights of all the parties before court. Should the court refuse to authorise the execution of the first respondent's property, the rights of the other owners in the scheme who is in a position and does pay levies, will unfairly be infringed.
- [24] On the conspectus of the evidence before court, I cannot find that authorisation to execute against the first respondent's property is unwarranted.
- [25] Lastly, the first respondent relied on her constitutional right to adequate housing as envisaged in section 26(1) of the Constitution of the Republic of South Africa, Act 108 of 1996. The first respondent submitted that her aforesaid right will be infringed should the court authorise execution against her property.
- [26] In this regard, Mr Louw, counsel for the applicant, referred to the matter of *Standard Bank of South Africa Ltd v Saunderson and Others* 2006 (2) SA 264 (SCA), in which the court held that the right "*obliges private parties not to infringe unjustifiably with any person's existing access to adequate housing*".
- [27] The first respondent's property is unencumbered and a sale in execution will in all likelihood, having regard to the amount of the debt, result in a surplus to the benefit of the first respondent. The fact that the law authorises the sale of the first respondent's property in execution negates the notion that the applicant is "*unjustifiably*" infringing the first respondent's right to adequate housing by applying for such an order.
- [28] In authorising the execution of the first respondent's property, the court must in terms of rule 46A (9), consider whether a reserve price should be set.
- [29] The market value of the property was estimated at R 1 225 000, 00 by a sworn valuator, Mr Furness. Mr Furness estimated the forced sale value of the property to be R 900 000, 00. The Municipal valuation of the property is R 979 000, 00. On 4 October 2023, the first respondent owed the second respondent R 41 595, 00 in respect of rates and taxes, electricity, water

consumption and related charges. The outstanding levies in May 2024 amounted to R 255 776, 78. Once the amount owed in respect of municipal taxes and the levies owed to the applicant is deducted from the forced sale value of the property, I deem a reserve price of R 600 000, 00 to be fair and reasonable in the circumstances.

- [30] The first respondent indicated during the hearing of the matter that her financial circumstances may change in the foreseeable future. In the circumstances, the applicant has agreed to a suspension of the execution order for a period of two months.

Costs

- [31] The applicant as the successful party is entitled to a cost order in its favour.

ORDER

The following order is granted:

1. The following immovable property:

SECTION NO. 20 AS SHOWN AND MORE FULLY DESCRIBED ON SECTIONAL PLAN NO. SS170/2002, IN THE SCHEME KNOWN AS NONSA COURT IN RESPECT OF THE LAND AND BUILDING OR BUILDINGS SITUATED AT JOHANNESBURG NORTH, CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY OF WHICH SECTION THE FLOOR AREA, ACCORDING TO THE SAID SECTIONAL PLAN, IS 114 (ONE HUNDRED AND FOURTEEN) SQUARE METRES IN EXTENT; AND

AN UNDIVIDED SHARE IN THE COMMON PROPERTY IN THE SCHEME APPORTIONED TO THE SAID SECTION IN ACCORDANCE WITH THE PARTICIPATION QUOTA AS ENDORSED ON THE SAID SECTION PLAN

HELD BY DEED OF TRANSFER NO. ST 15175/2014

is declared specially executable.

2. The registrar is authorised to issue a warrant of execution against the immovable property.
3. The immovable property to be sold in a sale in execution with a reserve price of R 600 000, 00.
4. The execution of this order is suspended for a period of two months from date of this order.
5. The first respondent is ordered to pay the costs of the application.

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**N. JANSE VAN NIEUWENHUIZEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

DATE HEARD:

24 February 2025

DATE DELIVERED:

3 March 2025

APPEARANCES

For the Applicant: Advocate Louw

Instructed by: Beyers Incorporated Attorneys

The First Respondent: In person.