

REPUBLIC OF SOUTH AFRICA




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

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

30/8/2019

DATE


SIGNATURE

CASE NO.:36814/2108

In the matter between:

CERTUS PROPERTY SOLUTIONS CC

Applicant

And

ROXLEY RAVUKU

First Respondent

ZANELE NOLWANDLE RAVUKU

Second Respondent

JUDGMENT

E DREYER AJ:

1. The Applicant seeks an order authorising the issue of a writ of execution against the immovable property of the Respondents described as Erf 2150, Albertsdal Ext 8 Township, Registration Division IR, Province of Gauteng, held by Deed of Transfer T24212/1996, with physical address at 100 Langkloof Street, Albertsdal, Alberton ("the Albertsdal property") in terms of Uniform Rule 46A.
2. The parties referred a dispute between them arising from a written Joint Venture Agreement ("the Joint Venture Agreement") to arbitration.
3. The arbitration hearing proceeded on 26 September 2018 and on that day the parties entered into a Settlement Agreement which was made an award by the Arbitrator.
4. The Applicant subsequently brought an application to have the Arbitrator's award made an order of Court, which order was granted on 15 November 2018 ("the order").
5. The Respondents defaulted on their payment obligations in terms of the order and on or about 20 November 2018 the Applicant's attorneys of record issued a writ of execution against the movable property of the First Respondent.
6. On 16 January 2019 the Sheriff served the writ of execution upon the First Respondent personally and demanded payment of the judgment debt from the First Respondent. As the First Respondent was unable to pay the judgment debt and costs in full or in part, the Sheriff proceeded to judicially attach the movable property described in the inventory attached to the Return of Service.
7. The First Respondent informed the Sheriff that all contents and movables on the Albertsdal property belong to Olive Garden Rendezvous CC.

8. It is therefore evident that there is insufficient movable property to satisfy the writ of execution issued against the movable property of the Respondents.
9. Attached to the Notice of Intention to Defend delivered by the Respondents is an Affidavit deposed to by the First Respondent.
10. The First Respondent avers that the arbitration process was *“flawed and unjust”* in that he *“declared explicitly and it was recorded on the particular day that I was very sick and couldn’t actively participate in the process.* The First Respondent further avers that *“Conclusions and agreements were made under duress in order to immediately and expeditiously terminate and finalise the process so that I can get appropriate urgent medical attention.”*
11. The First Respondent however fails to attach a medical certificate to the Affidavit as proof that he in fact sought medical attention and what illness he was diagnosed with, if any.
12. The Applicant in its Replying Affidavit deposed to by its sole member, André Francois Rust, sets out what transpired at the arbitration hearing as follows:
 - 12.1 The First Respondent made general statements that he was not feeling well.
 - 12.2 The First Respondent could not convey his symptoms to the Arbitrator when questioned by her.
 - 12.3 During the period that the Arbitrator adjourned in order for her to prepare her ruling on the postponement, the First Respondent, the Applicant’s attorney of record and the Applicant’s project manager, Helena Chetty, started negotiating a settlement which ensued for just over an hour.

- 12.4 At about 12:00pm the Applicant and the First Respondent settled the dispute between them by signing the Settlement Agreement before Court.
- 12.5 The arbitration hearing was reconvened at about 12:30pm. The Arbitrator requested the First Respondent to confirm the Settlement Agreement and that he was satisfied with its terms and the First Respondent then confirmed.
13. The Respondents also owns another immovable property being Erf 1738, Likole Ext 1 Township, Katlehong, Registration Division IR, Province of Gauteng, held by Deed of Transfer T57555/2000.
14. The Respondents would therefore not be rendered homeless should the order sought by the Applicant be granted.
15. The following also bears mention:
- 15.1 The original debt was incurred by the Respondents pursuant to the conclusion of the Joint Venture Agreement.
- 15.2 The First Respondent admitted and acknowledged the Applicant's claim, however for purpose of settlement the parties agreed that that the First Respondent shall pay the Applicant the sum of R365 000.00 (Three Hundred and Sixty Five Thousand Rand) in monthly instalments of R15 208.00 (Fifteen Thousand Two Hundred and Eight Rand) commencing 1 November 2018.
- 15.3 Since the service of the writ of execution the First Respondent has made no attempt to settle the judgment debt.

- 15.4 At the hearing of the matter the Applicant informed the Court that he is currently occupying the Albertsdal property with his major son and his son's wife.
- 15.5 The judgment debt which the Applicant seeks to enforce was not incurred in order to purchase the Albertsdal property.
- 15.6 The Albertsdal property does not appear to have been acquired by means or with the assistance of a State subsidy.
- 15.7 The Albertsdal property is utilised for both residential and commercial purposes, as it was converted into a guest house. At the hearing of the matter the First Respondent did however inform the Court that the property is not being utilised as a guest house at this stage.
- 15.8 There is no possibility that the First Respondent's liability to the Applicant may be liquidated within a reasonable period of time.
- 15.9 The Applicant did not institute the arbitration with an ulterior motive.
16. I am satisfied that the Applicant has made out a proper case in accordance with the provisions of Uniform Rule 46A and further that there has been compliance with the requirements set out in Chapter 10.17 of the Practice Manual of the Gauteng Local Division of the High Court.
17. At the hearing of the matter I asked Counsel for the Applicant, Mr. W G Pretorius, to address the Court on the amount at which the reserve price is to be set. Mr. Pretorius submitted the amount of R1 000 000.00 (One Million Rand) at which to set the reserve price. Having regard to the market value of the property, the local authority valuation of the property, the amounts owing on the mortgage bond and the amounts owing to the local authority for rates

19.4 The Respondents may prevent the sale of Erf 2150, Albertsdal Ext 8 Township, Registration Division IR, Province of Gauteng, held by Deed of Transfer T24212/1996, with physical address at 100 Langkloof Street, Albertsdal, Alberton if they pay to the Applicant the sum of R365 000.00 (Three Hundred and Sixty Five Thousand Rand), together with interest at the rate of 10.25% per annum from 26 September 2018, prior to the property being sold in execution.

19.5 The Respondents are ordered to pay the costs of this application jointly and severally, the one paying the other to be absolved, on the attorney and client scale.



E DREYER

**Acting Judge of the High Court of
South Africa
Gauteng Local Division
Johannesburg**

APPEARANCE

Applicant : Adv W G Pretorius

Instructed by : Postma Attorneys

Appearance for Respondents : Mr. R Ravuku (First Respondent in person)

Date of hearing : 26 August 2019

Date of Judgment : 30 August 2019

and other dues, I am in agreement with the amount of R1 000 000.00 (One Million Rand) submitted by Mr. Pretorius.

18. The Applicant's attorneys of record addressed a letter to both First National Bank and the Ekurhuleni Metropolitan Municipality requesting to that they are to stipulate within 10 (days) from receipt of the letter, a reserve price or to agree in writing to a sale without reserve. Service of the letter was effected on First National Bank by the Sheriff on 18 June 2019. Service of the letter was effected on Ekurhuleni Metropolitan Municipality by the Sheriff on 26 June 2019. No response has been received from either First National Bank or the Ekurhuleni Metropolitan Municipality.
19. I make the following order:
 - 19.1 Erf 2150, Albertsdal Ext 8 Township, Registration Division IR, Province of Gauteng, held by Deed of Transfer T24212/1996, with physical address at 100 Langkloof Street, Albertsdal, Alberton is declared specially executable.
 - 19.2 The issue of a writ of execution against Erf 2150, Albertsdal Ext 8 Township, Registration Division IR, Province of Gauteng, held by Deed of Transfer T24212/1996, with physical address at 100 Langkloof Street, Albertsdal, Alberton is hereby authorised.
 - 19.3 Erf 2150, Albertsdal Ext 8 Township, Registration Division IR, Province of Gauteng, held by Deed of Transfer T24212/1996, with physical address at 100 Langkloof Street, Albertsdal, Alberton is to be sold in execution, subject to a reserve price of R1 000 000.00 (One Million Rand).