

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 2488/2016

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED: 10/2/2020

DATE

SIGNATURE

In the matter between:

PALESA PAMELA CHABULA

Appellant

and

RMB PRIVATE BANK

First Respondent

SADDLEBROOK RESIDENTS ASSOCIATION PLC

Third Respondent

JUDGMENT

SENYATSI J:

A: INTRODUCTION

- [1] This is an application for leave to appeal against the judgment granted by my brother Botha AJ on 1 July 2019.
- [2] Botha AJ was not in a position to attend to the hearing of this application. As a consequence the application was allocated to me and the hearing thereof took place on 28 October 2019. Judgment was reserved.
- [3] The application for leave to appeal is against the following order by Botha AJ:

"Under case no: 2488/2016

1. *The application for rescission dated 10 March 2019 is dismissed;*
2. *The applicant in the application for rescission, Palesa Pamela Chabula, is to pay the costs of the first, second and third respondents in the rescission application, which costs are to include, where applicable in respect of the respective respondents, the costs of the hearing on 11, 15, 29 March, any costs submitting the additional and supplementary heads of arguments."*

"Under case no: 46487/2017

1. *The first respondent, Palesa Pamela Chabula and all those who occupy the property situated at Portion 1 of the farm Saddlebrook Estate No. 61 better known as 1 Goodwood Avenue, Saddlebrook Estate Kyalami ("the property"). By virtue of the first respondent's occupation thereof are ordered to vacate the property by no later than 3 June.*
2. *In the event of the first respondent and/or any of those occupying the property and by virtue of her occupancy thereof are failing and /or refusing to vacate the property within the period stipulated in paragraph 1 above, then and in that event the Sheriff of this Honourable Court is hereby authorised and ordered to forthwith enter onto the property and evict the first respondent and/or all those who occupy the property under and by virtue of her occupancy thereof;*

3. *The first respondent is ordered to pay the costs of the application for eviction;*
 4. *The counter application is dismissed with costs on the attorney client scale."*
- [4] The main ground of appeal seems to be that the court ought to have found that the mortgage loan agreement between the applicant and the first respondent had been reinstated in terms of section 129 (3) of the National Credit Act.

B: BACKGROUND

- [5] The first respondent advanced monies to the applicant and secured same under a mortgage loan agreement concluded on 5 September 2012.
- [6] The first respondent obtained a money judgment against the applicant on 31 May 2016. The applicant was present at court on the day that the money judgment was granted. An order declaring the applicant's immovable property specifically executable was postponed sine die in order to enable the applicant to sell the property.
- [7] The applicant failed to sell the property. As a consequence, the first respondent obtained an order declaring the immovable property specially executable on 13 October 2016.
- [8] The first respondent purchased the immovable property at a duly constituted sale in execution on 28 March 2017.
- [9] The first respondent subsequently sold the immovable property to the second respondent on 1 April 2017.
- [10] The applicant instituted three applications for leave to appeal against the foreclosure order of 13 October 2016, in the Supreme Court of Appeal. The applications for leave to appeal were all dismissed with costs.

- [11] On 28 November 2017, the second respondent, as the new owner of the immovable property, instituted the eviction application against the applicant.
- [12] On 23 January 2018, the applicant opposed the eviction application and brought a counter-application seeking to declare the transfer of the property from the first respondent to the second respondent null and void.
- [13] On March 2019, a day before the hearing of the eviction application and the counter-application the applicant instituted an application for the rescission of the money judgment obtained on 3 May 2016.
- [14] The eviction application; counter application; counter-application and rescission application were heard by Botha AJ. Botha AJ granted the eviction application and dismissed both the counter-application and the rescission application with costs.

C: ISSUE FOR DETERMINATION

- [15] The issue for determination is whether another court would come to a different conclusion on the entire judgment handed down by Botha AJ.

D. LEGAL PRINCIPLES

- [16] Leave to appeal is regulated by Section 17 of the Superior Courts Act, 10 of 2013 ("the Act") which deals with the requirements that an application for leave to appeal must comply with.
- [17] Section 17(1)(a) is applicable to the application in this case and it reads as follows:
"17 (1) Leave to appeal may only be given where the Judge or Judges concerned are of the opinion that-

- (a)(i) the leave would have a reasonable prospect of success;
- (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.

[18] I am of the view that there is no reasonable prospect that another court would come to a different conclusion. In addition, I find that there are no compelling reasons for the appeal to be heard.

[19] Consequently the application for leave to appeal must fail.

ORDER:

The application for leave to appeal is dismissed with costs.



SENYATSI J

Judge of the High Court of South Africa
Gauteng Local Division, Johannesburg

Date leave to appeal application heard: 28 October 2019

Date of Judgment: 10 February 2020

Appellants Counsel: *In Person*

1st Respondents Counsel: Adv. M De Oliveira

Instructed by: Jason Michael Smith Incorporated Attorneys

3rd Respondents Counsel: Adv. N Alli

Instructed by: Poswa Incorporated Attorneys