

REPUBLIC OF SOUTH AFRICA

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

CASE NO: 2020/32222

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED: NO

[14 MARCH 2022]

In the matter between:

THE SOUTHBOYS

MARKETING & PROMOTIONS CC

VILAKAZI JOSEPH THEMBA

VILAKAZI BEATRICE

APPLICANT

SECOND APPLICANT

THIRD APPLICANT

And

MATHIBA AMUKELANI TSHILIDZI

MATHIBA LIMUWANI MATODZI

NEDBANK LIMITED

THE CITY OF JOHANNESBURG MUNICIPALITY

THE REGISTRAR OF THE HIGH COURT

JOHANNESBURG

FIRST RESPONDENT

SECOND RESPONDENT

THIRD RESPONDENT

FOURTH RESPONDENT

FIFTH RESPONDENT

J U D G M E N T

MUDAU, J:

[1] This opposed application divided into 2 parts, was launched as an urgent one in terms of rule 6(12) (a) of the Uniform Rules of Court enrolled for hearing on 22 October 2020. On that day, the application was removed from the urgent court roll by virtue of the applicants' failure to appear. Part A constitutes the urgent relief sought by the applicants in which the applicants seek interdictory, and ancillary, relief against, in particular, the first and second respondents the first and second respondents are interdicted and restrained from taking occupation of an immovable property Erf [...] Meredale Township, Registration Division IQ, Province of Gauteng, situated at [...] Lark Street Meredale ("the property"), pending the determination of application for leave to appeal in part B. No relief is sought against the third respondent in part A of the notice of motion.

[2] In part B of the notice of motion, the applicants seek an order granting them leave to appeal to the full court of this division and/or the Supreme Court of Appeals, against the judgement or order of Dukada AJ dated 2 December 2018.

[3] Pursuant to the third respondent ("Nedbank") delivering an answering affidavit herein, nothing further has been heard from the applicants and they have not delivered a replying affidavit. The applicants' erstwhile attorneys, Masina attorneys, filed a notice to withdraw as early as 15 November 2020.

Background

[4] The immovable property concerned was owned by the first applicant. The second and third applicants bound themselves as sureties and co-principal debtors for the due and punctual fulfilment of the first respondent's obligations unto the third respondent in terms of a written credit agreement. Judgement was granted against the applicants, jointly and severally, the one paying the other to be absolved, on 4 July 2014 in the following terms: payment of the sum of R1 75 778.87; interest on the aforementioned sum at the rate of 9% per annum from 10 April 2014 to date of

payment; and costs on the scale as between attorney and client. The judgement of 4 July 2014 was not challenged by the applicants.

[5] On 8 October 2014, Nedbank launched an application, in terms of which it sought an order declaring the first applicant's immovable property to be specially executable for the judgement debt plus interest costs ("the executability application"). The applicants opposed the executability application. Numerous delays were occasioned in the hearing of the executability application occasioned by virtue of the alleged illness, and unavailability, of, in particular, the second applicant. On 2 December 2016 Dukada AJ granted judgment declaring first applicant's immovable property to be specially executable for the judgment debt plus costs.

[6] The applicants made application for leave to appeal against the executability judgement, which was heard by Dukada AJ on or about 3 July 2018 and 20 July 2018 respectively. The applicants were legally represented. On 31 July 2018 Dukada AJ dismissed the applicants' application for leave to appeal with costs. The first applicant's immovable property was sold to the first and second respondents at a sale in execution. It appears that no application for leave to appeal against the dismissal of their application for leave to appeal was directed to the Supreme Court of Appeal. The applicants have now launched this application.

[7] The applicants' founding affidavit was deposed to by the second applicant. In paragraph 10 thereof, it is stated that the first applicant, a CC has since been liquidated. As the first respondent has been wound up, only its appointed liquidators may take any steps on its behalf. This justifies the dismissal of the application on this ground alone.

[8] Section 17(2)(a) of the Superior Courts Act 10 of 2013 ("the Superior Courts Act") provides that leave to appeal may be granted by the judge or judges against whose decision an appeal is to be made or, if not readily available, by any other judge or judges of the same court or Division. In this instance however, an application for leave to appeal as contemplated by section 17(2)(a) has already been heard and was dismissed by Dukada AJ on 31 July 2018. Section 17 (2) (b) of the Superior Courts Act provides:

“If leave to appeal in terms of paragraph (a) is refused, it may be granted by the Supreme Court of Appeal on application filed with the registrar of that court within one month after such refusal, or such longer period as may on good cause be allowed, and the Supreme Court of Appeal may vary any order as to costs made by the judge or judges concerned in refusing leave”.

[9] The relief sought by the applicants is accordingly incompetent and irregular as the matter is already been dealt with and dismissed on merit. The application is undoubtedly an abuse of court processes. Conduct which is vexatious and an abuse of the process of the court as this one is, may form the basis for an order that costs should be paid on an attorney and client scale.

Order

[10] The application is dismissed together with costs on an attorney and client scale.

T P MUDAU

[Judge of the High Court]

Date of Hearing: 25 January 2022

Date of Judgment: 14 March 2022

APPEARANCES

For the Applicant: No appearance

Instructed by: None

For the third respondent: ADV D Van Niekerk

Instructed by: HAMMOND POLE MAJOLA