REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case No: 3176/2021
REPORTABLE: NO
OF INTEREST TO OTHER JUDGES: NO
REVISED.
8/09/2022

In the matter between:

JAN VAN DEN BOS Applicant

And

SHIVAMBU NOMATHAMSANQA ETHEL First Respondent

CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY Second Respondent

JUDGMENT

MATOJANE J

[1] The Applicant seeks an order in terms of rule 46(1) of the Uniform Rules of Court declaring the respondent's immovable property situated at Door [....], Unit [....] in the scheme known as Pearlbrook, scheme number [....], at [....] B [....] Street, Hillbrow, Johannesburg ("the property"), specifically executable and for an order that

a writ of execution be issued in respect of the property, as envisaged in terms of Uniform Rule 46 (1) (a) lastly for a reserve price to be set.

[3] The Applicant acts as a Court appointed administrator of the Pearlbrook Body Corporate in section 16 of the Sectional Titles Schemes Managing Act, Act 8 of 2021 (STSMA"). The first respondent is the registered owner of a unit in the scheme and, by virtue thereof, a member of the body corporate. The second respondent is cited as an interested party, and no relief is sought against it.

[3] The Applicant alleges that It brought this application due to the first respondent's continued failure despite demand and an Order of Court to pay levies, utilities and other charges due to the Applicant in terms of Section 3(1) of the STSMA.

[4] The Applicant has obtained a judgment against the respondent in the Johannesburg Regional Court for R 334 498.77 (Three Hundred and Thirty-Four Thousand Four Hundred and Ninety-Eight Rand and Seventy-Seven Cents) for the recovery of amounts of arrear levies and consumption charges and related costs owed by the respondent to the body corporate.

[5] The Applicant caused a warrant of execution to be issued against the first respondent to recoup the judgment debt. The Sheriff rendered a *nulla bona* return of service. The debt remains unsatisfied, and as of October 2020, the arrear levies and other charges have increased to an amount of R401 694.10 (Four Hundred and One Thousand Six Hundred and Ninety-Four Rands and Ten Cents).

Locus standi

[6] *In Limine*, the respondent contends that the Applicant has no *locus standi* to launch this application. This is based on the reading of the order which appointed Jan van den Bos as an administrator in 2018. The order is not properly worded; it reads:

"Jan van den Bos N.O. ("the administrator) is appointed as administrator to the respondent for a period, from where a date obtained from the Court's Honourable Registrar to hear Part B opposed and or unopposed, from a final appointment up to date of appointment in terms of the provisions of section 16 of Act 8 of 2011 ("the Act")"

[7] This point *in limine* has been considered in other judgments in this division. Unless I can find that all those judgments are patently incorrect, I am bound to follow them. There is no basis to find that they are incorrect. In Okafor v Jan van den Bos N.O and Another[1] , the court interpreted the paragraph purposively and found that Applicant's appointment was immediate and thus had *locus standi* to launch proceedings in court.

[8] Section 16 (2) *(a)* of the Act empowers a magistrate to appoint an administrator where she finds evidence of serious financial or administrative mismanagement of the body corporate; and where there is a reasonable probability that, if it is placed under administration, the body corporate will be able to meet its obligations and be managed in accordance with the requirements of this Act. There is no purpose in delaying the appointment of an administrator for an indefinite period in the face of serious financial and administrative mismanagement of the body corporate. The point *in limine* falls to be dismissed.

[9] The second defense raised by the respondent is that the municipal value of the property cannot be R250 000.00. The respondent requires the court's permission to obtain her valuation. Nothing precludes the respondent from obtaining her valuation as she occupies the property. In any event, the municipal valuation is only relevant in determining whether there should be a reserve price and what the amount should be.

[10] In paragraph 22 of the answering affidavit, the respondent sets out her defense as follows:

[1] Case no. 28938/2020 dated 4 July 2022

> “My defense to the summons amount is very clear. The calculations are extremely questionable. The Applicant has consistently refused to engage me and other owners to resolve the issues. The Applicant has never been bona fide in attempting, If he did at all, to resolve the differences. The fact that I am about to lose my ONLY home should persuade the honorable court to find in my favor and dismiss the application. The Applicant will then engage me and all other affected owners. If need be, an independent accountant or auditor might be appointed to revisit the calculations. The cost of such exercise will then be borne by the Applicant and myself as well as other owners.”

[11] It is a basic rule of our law that an order of a court of law stands, until it is set aside by a court of competent jurisdiction. Until that is done, the court order must be obeyed, even if it may be wrong[2]. The judgment against the respondent stands even if the respondent regards it as "extremely questionable". In any event, the respondent does not say why she disputes the amount or that she made a payment that has not been accounted for. The respondent does not deny that she made the last payment in 2014.

The property is the primary residence of the respondent.

[12] As amended, section 46A of the Uniform Rules of Court ensures judicial oversight over the sale of debtors' homes. Subsection 2(b) provides that a court shall not authorize execution against immovable property, which is the primary residence of a judgment debtor, unless the court, having considered all relevant factors, considers that execution against such property is warranted.

[13] It is not in dispute that the property is the primary residence of the respondent. The unit was purchased for R50 000.00 in 1991 using the proceeds of an insurance payout after her husband's death. She receives R3200 from her late husband's pension fund and operates a tuck shop in the unit earning an additional R2 800.00.

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[2] Department of transport v Tassimo (Pty) Ltd with 2017 (2) SA, *Moodley v Kenmont School and Others* (para 36), Whitehead and Another v Trustees of the Insolvent Estate of Dennis Charles Riekert and Others(567/2019) ZASCA 124 (7 October2020

[14] The respondent has four children with her late husband and another child, who is now 17 years old, whom she begot after her husband's death. Only two of those children reside on the property. The youngest child was 17 at the time, and the other was 27-year-old. The other children are majors and do not reside on the property with her.

[15] The arrears as of December 2020 exceeded R401 000.00, the municipal valuation is R250 000.00, and the expected value of the property is R360 000.00. The respondent does not deny that she made the last payment in 2014.

[16] The respondent has not shown that she is unable to find alternative accommodation or that she will be rendered homeless if evicted from the property. She has an option of moving in with her adult children as they have a duty to maintain her. She has not paid her levies for the past nine years. In her rescission application, she states in paragraph 37 that the owners, including herself, have resolved not to pay any more levies until the Applicant became transparent and accounted to them for all monies collected over the years.

[17] Having considered that the expected value of the property is below the judgment debt, I do not consider it necessary to set the reserve price on the property.

[18] In the result, I made the following order:

1. The immovable property described as Door [....], Unit [....] in the scheme known as Pearlbrook, scheme number [....], at [....] B [....] Street, Hillbrow, Johannesburg, is hereby declared specially executable.
2. The Applicant is hereby authorized to issue a writ of execution in respect of the property as envisaged in Uniform Rule 46(1)(a)
3. The first respondent is ordered to pay the costs of this application.

KE MATOJANE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Heard: **31 August 2022**

Judgment: **08 September 2022**

For the Applicant:

Advocate N Lombard

Instructed by Schüler Heerschop Pienaar Attorneys

For the First Respondent:

Advocate D Ndlovu

Instructed by Precious Muleya Inc Attorneys