


IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 29741/14

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED:
(4)	DATE DELIVERED:



24/4/2014

In the matter between:

SIPHO SANNIE SAMUEL DLAMINI

Applicant

and

ABSA BANK

First Respondent

SHERIFF OF THE HIGH COURT
(JOHANNESBURG SOUTH)

Second Respondent

REASONS FOR ORDER MADE ON 15 APRIL 2014

BAM J

1. The applicant, on an urgent basis, on 15 April 2014, applied for an interim interdict, pending the finalization of a rescission application, restraining the first respondent from selling in execution a certain property in Mondeor, Johannesburg, on the same day. The application was, apparently electronically, served on the first respondent's attorneys on 14 April at 22h35. When counsel for the applicant, Mr Makhambeni, appeared in chambers at 8h00, I requested that the first respondent's attorneys be phoned to establish whether the application was opposed or not. Shortly thereafter Mr Roos attended court, instructed on behalf of the first respondent and the matter was stood down to enable the first respondent to file its opposing affidavit. I was informed that the second respondent would hold the sale in abeyance until later that day.

2. Subsequently the first respondent's opposing affidavit, deposed to by Mr Maduma, the first respondent's attorney of record, was handed up during argument. After having heard argument by both counsel, in view of the fact that the application was urgent, I decided to make the applicable order and to furnish my reasons later. My order entailed that the application was refused with costs.

These are my reasons:

3. The following salient facts were recorded by the applicant in his founding affidavit:
 - (i) In September 2005 the applicant and the respondent entered into a mortgage bond agreement concerning the property in question;
 - (ii) The monthly repayments were about R9000;
 - (iii) In 2006 the applicant experienced financial constraints, causing him to pay whatever he could afford towards the loan, ranging from R3000 to R9000 per month;
 - (iv) In 2010 and 2011, due to personal circumstances, the applicant's financial situation worsened;
 - (v) For most part of 2012 the applicant could afford about R3000 per month towards the down payments;
 - (vi) The Bank then started to demand full payment;
 - (vii) In August 2012 the applicant's financial situation further worsened. He fell into arrears with most of his creditors and he was listed at a credit bureau;
 - (viii) On 2 March 2013 summary judgment was granted against the applicant in the amount of R1 153 949.09, despite the applicant's prior endeavours to have the instalments reduced;
 - (ix) In May 2013 the applicant secured new employment with a netto salary of R45 000 per month;
 - (x) Since May 2013 the applicant managed to pay the monthly instalments but "missed" the payments for August and September;
 - (xi) The instalments for October and November were however deducted from the applicant's bank account;
 - (xii) The present situation is that capital amount is R1 321 852.87 and the arrears, for 22 months, R313 303.75;
 - (xiii) The applicant, apparently continuously, endeavoured to negotiate with officers of ABSA. It appears that it was of no avail;
 - (xiv) On 22 November 2013 the applicant received notice that the property would be sold in execution on 10 December 2013;
 - (xv) The applicant's request that the sale in execution be withdrawn was met with ABSA's response, on 5 December, that the full arrears amount should be paid beforehand.

4. In the first respondent's opposing affidavit it was pointed out that on 7 April 2014, during a meeting, the applicant and his attorneys were informed that the sale in execution was set down for 15 April 2014 but that ABSA would still be prepared to consider reasonable settlement proposals. It was further stated in the opposing affidavit that the applicant bought a similar urgent application on 9 December 2013. At that stage ABSA indicated that they would not proceed with the application on condition that the applicant paid the amount in arrears. That however did not happen.
5. From the applicant's own version it was clear that he had no legal ground for the application. The applicant based his application on ABSA's unreasonable attitude to sell the property in the circumstances, as contended by Mr Makhambeni. In this regard the applicant, in paragraph 47 of his founding affidavit, stated that he would reduce the arrear amount "*quite handsomely in the next few months to come*". With reference to this proposal by the applicant, it was contended by Mr Roos that it could, in any event, never be construed as a reasonable settlement proposal and that the applicant has had more than sufficient leniency granted by ABSA in that regard.
6. It is indeed a very serious matter to have a person's residence sold in execution. However, it is a basic fact of life, as submitted by Mr Roos, that if a person cannot afford to pay his bond payments, and for that matter the amount in arrears, he cannot afford the specific housing with consequences that speak for itself.
7. In view of the fact that the applicant did not have a legal ground for his application and was merely depending on sympathy of the first respondent, this Court had no authority in the circumstances to compel the first respondent to be more reasonable towards the applicant's problem. Accordingly the application stood to be dismissed.



A J BAM JUDGE OF THE HIGH COURT
24 April 2014