

REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG, PRETORIA)

CASE NO: 20617/2013

DATE: 10 SEPTEMBER 2014

In the matter between:

NEDBANK LIMITED

APPLICANT

And

SIPHO MARTIN MATLOGA

FIRST RESPONDENT

MOTLANKANE PATIENCE TEBOGO MATLOGA

SECOND RESPONDENT

JUDGMENT

WEBSTER J

1. The applicant issued summons in this matter which was served on the defendants at their chosen *domicilium citandi et executandi* on 17 April 2013. The *dies* expired on 2 May 2013 and the defendants failed to enter an appearance to defend the action.

2. The applicants brought an application for default judgment in terms of Rule 31(2)(a) and Rule 46(1)(a)(ii) of the Uniform Rules of Court. The applicant seeks an order in the following terms:

“1. Payment of the sum of R1 106 045.41;

2. Interest on the amount of R1 106 045.41 at the agreed rate of 7.20% per annum from 1 February 2013 to date of payment;

3. An order in terms whereof the Respondents immovable property known as:

ERF [...] M[...] EXTENTION 39 TOWNSHIP REGISTRATION DIVISION: JR, GAUTENG PROVINCE MEASURING: 500 (FIVE ZERO ZERO) SQUARE METRES HELD UNDER DEED OF TRANSFER NO: T[...] (ALSO KNOWN AS: [...] M[...] STREET, MONTANA, PRETORIA)

Hypothecated in favour of the Applicant, in terms of Mortgage Bond, B53254/2007 is declared specially executable in terms of the provisions of Rule 46(1)(a)(ii);

4. Authorising and instructing the Registrar of the above Honourable Court to issue a Writ of Execution against the Respondents' immovable property as set out herein above;

5. That the Respondents be ordered to pay the costs of this application on the scale as between attorney and client, to be taxed."

3. The founding affidavit to the application for default judgment was deposed to by Bongani Gonyela who is a "...Foreclosure Manager of the Applicant...". He alleges that the original loan agreement was entered into between the parties to this application on or about 21 December 2006 for the sum of R972 000.00 and an additional amount of R97 200.00. He states that "...on or about 14 September 2011 the Applicant and Respondents concluded a Distressed Restructure Agreement in respect of a Home Loan..." He alleges that the "...Respondents defaulted in respect of payment of the agreed monthly payments and at the time when action was instituted they had been in arrears for 6.93 months..." and that "...Respondents' remain in arrears..."

4. He states further that "...the Applicant was unsuccessful in the informal and formal demands made upon the Respondents on numerous occasions for payment of the arrear and other amounts owed..." The section 129 notice in terms of the National Credit Act also elicited no response from the respondents.

5. No notice of intention to oppose the application for default judgment was filed by the Respondents nor any opposing papers.

6. The last payment received by the applicant was on 3 September 2012. This is more than two years later and no effort has yet been made by the Respondents to remedy the situation.

7. In light of the above it seems as though the applicant has gone out of its way to try and accommodate the respondents in this matter. They had ample time to contact the applicant to try and work out a way forward.

THE FOLLOWING ORDER IS ACCORDINGLY GRANTED:

1. Payment of the sum of R1 106 045.41;

2. Interest on the amount of R1 106 045.41 at the agreed rate of 7.20% per annum from 1 February 2013 to date of payment;

3. The Respondents' immovable property known as:

**ERF [...] M[...] EXTENTION 39 TOWNSHIP REGISTRATION DIVISION: JR,
GAUTENG PROVINCE MEASURING: 500 (FIVE ZERO ZERO) SQUARE METRES
HELD UNDER DEED OF TRANSFER NO: T42088/2007**

**(ALSO KNOWN AS: [...] M[...] STREET, M[...], PRETORIA) hypothecated in favour
of the Applicant, in terms of Mortgage Bond, B53254/2007 is declared specially
executable in terms of the provisions of Rule 46(1)(a)(ii);**

**4. The Registrar of the above Honourable Court is authorised to issue a Writ of Execution
against the Respondents' immovable property as set out herein above;**

**5. The Respondents are ordered to pay the costs of this application on the scale as between
attorney and client, to be taxed.**

G. WEBSTER

JUDGE IN THE HIGH COURT

DATE OF HEARING: 7 February 2014