

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

CASE NO: 27224/2013

DATE: 10 SEPTEMBER 2014

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

In the matter between:

THE STANDARD BANK OF SA LTD

APPLICANT

And

MAC VAY: JOHN ADAM PETRUS

RESPONDENT

JUDGMENT

WEBSTER J

1. The applicant in this matter served summons on the respondent on 15 May 2013. The *dies* expired on 29 May 2013 and the respondent did not enter an appearance to defend the action.
2. Subsequently the applicant issued an application for default judgment. On 25 July 2013 an order was granted by my brother, MASHILE AJ in the following terms:

“1. Payment in the sum of R567 664.87

2. Interest thereon at the agreed rate of 9.150% per annum in terms of the said Mortgage Bond from 2013-04-12 to date of payment together with monthly Insurance Premiums of R0.00 from the said date (both days inclusive)

3. *Attorney and client costs as provided for in terms of the said Mortgage Bond."*

3. According to two returns of services which appears at pages 11 and 74 of the indexed and paginated bundle in the court file states that the Sheriff for the district Germiston South served the papers at “...*the chosen domicilium citandi et executandi at SECTION NO. 53 LAKE POINT BEING SECTION 53 (DOOR 704) L[...] P[...] 16 A[...] STREET D[...] L[...] EXT 6 G[...] by affixing...to the principle door*”

4. An attorney of Blakes Maphanga Incorporated deposed to two affidavits at pages 3 and 4 of the papers. The first affidavit deals with the Section 129 NCA Letter “...*sent on the 5 February 2013 to the Defendant ...*” and the second affidavit confirms the physical address of the respondent as “*SECTION 53 (DOOR 704) L[...] P[...], 16 A[...] STREET, D[...]L[...] EXT 6, G[...]*’.

5. At page 67 of the papers, the Mortgage Bond SB036136/11 the following is stated under paragraph 13.2 to 13.4:

“13.2 The Mortgagor chooses the physical address set out below as the address to which notices and documents in any legal proceedings against the Mortagor, including notices of attachment of the property, may be served-704 L[...] P[...]16 A[...] ST D[...]L[...] EXT 6 1401

13.3 The Mortgagor chooses the postal address set out below as the address to which letters, statements and notices may be delivered, and the Mortgagor accepts that any letters and notices posted to this address by the Bank by registered post will be regarded as having been received within 14 (fourteen) day after posting-

704 L[...] P[...] 16 A[...] ST D[...]L[...] EXT 6 1401

13.4 The Mortgagor may change the above physical address (provided the physical address is in the Republic of South Africa), by giving at least 14 (fourteen) days’ written notice of such change to the Bank. In such event the new physical address will be the Mortgagor’s chosen address for the purposes as set out in 13.2.”

6. In an affidavit deposed to by Stephanus Jacobus Pieterse at page 75 of the papers it is stated that “...*Whereas it is evident that the defendant does not have any intention of settling the judgment debt the plaintiff requests an order in terms of prayers three and four of the original application for default judgment. The notice of set down for the relief as set out in this affidavit was served by Sheriff on 3 June 2014 “...by affixing a copy of the NOTICE OF SET DOWN to the principal door...” of the respondents chosen domicilium citandi et executandi.*

7. After hearing argument by Mr Mollentze, counsel for the applicant the court reserved judgment in this matter to consider the various issues and requirements set out in the judgment by the full bench of this division in the matter of Firstrand Bank LTD v Folscher and Another, and similar matters 2011(4) SA 314 (GNP).

8. The monetary part of the default judgment was granted on 25 July 2013. It is almost a year later when the applicant enrolled the matter for the second part i.e. declaring the property executable and authorising the issuing of a Writ of Execution. It is stated in the matter of Firstrand Bank LTD v Folscher (*supra*) that “...*The court must be mindful in all matters that a judgment debtor facing execution and subsequent eviction should not be a victim of an abuse of the process, even though such would be rare in matters in which a specially hypothecated immovable property is the object of the execution process. The creditor’s position must first be considered in its proper context...*”

9. It is my considered view that taken into account the time lapse since the granting of the monetary judgment and the application currently before the court, it cannot be said that the respondent is “...*a victim of an abuse of the process...*”. The applicant afforded the respondent ample time to remedy the situation or to approach the bank to come to an amicable solution or to place relevant facts before this court: he did not.

10. In light of the above, the following order is granted:

IT IS ORDERED:

1. THAT Section No 53 as shown and more fully described on Sectional Plan No. SS67/1985, in the scheme known as L[...] P[...] in respect of the land and building or buildings situate at D[...]L[...] EXTENTION 6 TOWNSHIP, EKURHULENI METROPOLITAN MUNICIPALITY of which section the floor area, according to the said sectional plan, is 93 (NINETY THREE) square metres in extent; and an undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan, held by Deed of Transfer No. ST47477/2011 be and is hereby declared executable;

2. THAT the Registrar be and is hereby authorised to issue a Warrant of Execution against the property in terms of Rule 46(1)(a)(ii).

G. WEBSTER

JUDGE IN THE HIGH COURT

DATE OF HEARING : 18 July 2014

COUNSEL FOR THE APPLICANT: Adv Mollentze

INSTRUCTING ATTORNEYS : Blakes Maphanga Inc