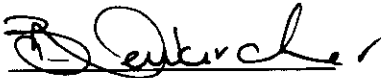


IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case no: 61276/2013

23/10/2014

(1) REPORTABLE : NO	
(2) OF INTEREST TO OTHER JUDGES: NO	
(3) REVISED: YES	
16/10/2014	
DATE	SIGNATURE

In the matter between:

MEDUPI LUCAS RAMETSI
ENILY DIPUO RAMETSI

First Applicant
Second Applicant

And

ABSA BANK LIMITED
GARRISON LESIBANA RAMETSI
SALOME RAMETSI
PULANI VINCENT RAMETSI
ACTING SHERIFF WONDERBOOM

First Respondent
Second Respondent
Third Respondent
Fourth Respondent
Fifth Respondent

JUDGMENT

NEUKIRCHER AJ:

- 1] In this matter the consideration is whether I am of the view that another court will come to a different conclusion and thus whether I should grant leave to appeal.

- 2] I do not intend to delve into, nor discuss, each ground upon which the leave to appeal is based, and what follows are brief reasons for my decision.
- 3] During argument, Ms Mabanjwa conceded that the applicants in fact sought the following:
- 3.1 to set aside the sale in execution of 20 September 2013;
 - 3.2 to rescind the judgment and order of execution granted on 28 May 2013: and she conceded that no separate application for rescission of judgment was brought. In fact, as I understood her argument, there was no intention to bring such an application at all¹;
 - 3.3 that the sale of the house by Molefe to the second, third and fourth respondent be set aside (without joining Molefe or even giving him notice);
 - 3.4 that Molefe's purchase of the property be set aside.
- 4] In effect, the applicants seek a "reinstatement" of the property into their possession without following proper procedures or joining interested parties, the latter including the present purchaser of the property who surely has a direct and substantial interest in the outcome of this matter.
- 5] It has also occurred to me that section 6 of the Deeds Registries Act no 47 of 1937 provides for the cancellation of "*...any deed conferring or conveying title to land...*" only upon an order of court and to this extent, the Registrar of

¹ Culverwell v Beira 1992 (4) SA 490 (W) : All orders of this Court, whether correctly or incorrectly granted, have to be obeyed until they are properly set aside

Deeds is an interested and necessary party from whom a report² may be required. The Registrar of Deeds is also not cited nor was notice given of this application.

- 6] On the issue of costs the following is relevant : as with the urgent application the present court file is in a lamentable state of disarray. I am of the view that to mulct the applicants with costs would be singularly unfair to them when it is the duty of their attorney to ensure that the court file is in order – this could have been done any time until 09h30 when court commenced.
- 7] Mr du Preez sought an order *de bonis propriis* once again. Ms Mabanjwa informed me from the bar that she had been assured by the Registrar that the court file was in order and she had accepted that it was so. It was still incumbent upon her to ensure that this was so. Be that as it may, I am not inclined to grant a costs order one way or another. My costs order in the original application, however, stands.
- 8] In light of the above I am of the view that, in addition to the facts set out in the original judgment, the failure to cite parties who have a direct and substantial interest in these proceedings is sufficient for me to come to the conclusion that another court will not come to a different conclusion.

² Ex parte Raulstone , NO 1959 (4) SA 606 (N) where the Registrar of Deeds provided the court with a report.

9] Accordingly I make the following order:

The application for leave to appeal is dismissed.