



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 40609/2012

30/10/2016

In the matter between:

THE SHERIFF OF VEREENIGING

Applicant

And

OLANREWAJU ISAAIAH AWE

First Respondent

MMAGESEKGWENG JACQUILINE AWE

Second Respondent

In re:

FIRSTRAND BANK LIMITED

Plaintiff

And

CHARMAINE SARAH GAULA

Defendant

JUDGMENT

MBONGWE, AJ

INTRODUCTION

[1] The applicant in this matter seeks an order in terms of Rule 46(11) of the Rules of the Court for the cancellation of a sale of immovable property that had been attached in execution in execution of a judgment and further ancillary relief. The application was considered in chambers.

REASONS FOR THE RELIEF SOUGHT

[2] The reasons for the relief sought is set out in a letter of demand dated the 11 April 2016 addressed by or on behalf of the applicant to the respondent. The second and the third paragraphs of the said letter, which is attached to the applicant's founding affidavit, read thus : *"In terms of condition 4.7 of the Conditions of Sale in Execution of Immovable Property, the purchaser shall be responsible for payment, within 7 days after having been requested to do so by the appointed conveyancer, as per clause 4.7.1:*

4.7.1 "of all amounts required by the Municipality for the issue of a clearance Certificate in terms of Section 118(1) of the Local Government Municipal Systems Act, No. 32 of 2000, to the effect that all amounts due in connection with the immovable property for municipal service fees, surcharges on fees, property rates

and other municipal taxes, levies and duties during the two years preceding the date of application for the certificate have been fully paid..”

The third paragraph of the same letter reads thus: *“You have breached the terms of the Conditions of Sale in Execution of Immovable Property and you are hereby given notice in terms of the duly signed Conditions of Sale in Execution of Immovable Property, specifically condition 8.1, to pay the rates and taxes in the amount of R60 984-61 (SIXTY THOUSAND NINE HUNDRED AND EIGHTY FOUR RAND AND SIXTY ONE CENT) plus interest at the rate of 10.40% on the amount of R180 000.00 (ONE HUNDRED AND EIGHTY THOUSAND RAND), nominal annual compounded daily from 13th September 2015 up to and including date of registration, as per condition 4.7.1 and 4.6, and in respect of condition 8.1 of the Agreement of Sale, within 7 (SEVEN) days of receipt hereof, failing which the seller will cancel the agreement with you and claim damages from you, if any.”*

INVALIDITY OF THE CONDTIONS OF SALE

[3] I have perused the document captioned "CONDCTIONS OF SALE IN EXECUTION OF IMMOVABLE PROPERTY" attached to this application. It appears to have been signed by the parties on the 13th August 2015. There are two paragraphs 4.7 appearing on paginated page 8; of relevance are the provisions of the lower paragraphs 4.7, 4.7.1 and 4.7.2. These clauses, in seriatim, read as follow:

“ 4.7 The purchaser is hereby informed of the following charges;

4.7.1 Arrear rates and taxes, will be provided to the sheriff prior to sale

4.7.2 Arrear charges payable in terms of the Sectional Titles Act, 95 of 1996, will be provide to sheriff prior to sale.

“ The Sheriff and the purchaser note that the amount set forth in this clause are a Reasonable estimate only.” (Sic)

[4] It is worth mentioning that no figures/amounts are disclosed in clauses 4.7.1 and 4.7.2. This renders the reference to 'reasonable estimates only' superfluous and meaningless. The amount, however, calculated, in respect of alleged Municipal rates due and owing in the sum of R60 984.61 is communicated for the first time to the respondents in the letter dated 11 April 2016, that is, eight months after the Conditions of Sale purportedly became a binding agreement between the parties. This amount constitutes an additional approximately 33% of the agreed purchase price and that owing in terms of the Sectional Titles Act remains undisclosed to the respondents. The non- inclusion of these amounts in the conditions of sale prior to such document being signed renders the Conditions of Sale invalid and unenforceable. (See Sheriff of the High Court, Johannesburg East v Chetty)

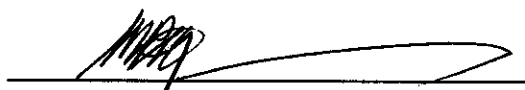
[5] It is curious that the applicant does not state whether, having paid the required 10% deposit and the sheriff's fees, the respondents have subsequently paid the balance of the purchase price. In any event the sought cancellation of the sale in this application is founded on the respondents' non- compliance with the invalid provisions of clauses 4.7, 4.7.1 and 4.7.2. The relief sought is, consequently, untenable.

[6] It is a reality that the judgment creditors in applications of this nature are represented by the sheriffs. It would be unjust for such creditors to bear the brunt where the sheriff acts improperly in the execution of his mandate given in terms of the rules of the court. These creditors ought to be allowed to recover debts due to them and the rules were intended to facilitate such recoveries. However, the sheriff cannot be spared for his failure to abide by the principles applicable to the execution of his mandate; a failure that unfortunately affects members of the

public. It is understandable why the respondents have not been able to fulfil their obligations in terms of clause 4.7, as stated above – the additional amounts they only got to know about subsequent to signing the Conditions of Sale.

[7] In the result the following order is made;

1. The sale in execution in this application is declared invalid and, therefore, cancelled.
2. The applicant is ordered to refund the respondents all monies they paid in respect of the purported purchase of the immovable property concerned.
3. The applicant is ordered to pay the costs.

A handwritten signature in black ink, appearing to read 'M Mbongwe', is written over a horizontal line.

M MBONGWE, AJ

ACTING JUDGE OF THE HIGH COURT.