



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 56924/2013

30/10/2016

In the matter between:

THE SHERIFF OF THE HIGH COURT, JOHANNESBURG EAST
and

Applicant

GUDSOUL EVENTS AND PROJECTS (PTY) LTD

Respondent

In re

FIRSTRAND BANK LIMITED

Plaintiff

and

MADIKELEDI MARTHA THINDISA

Defendant

JUDGMENT

MBONGWE, AJ:

[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 an a sale in execution of an attached immovable property. The relevant conditions of sale, signed by both parties on the 28 April 2016 form part of the attachments to the application. This application was considered in chambers.

[2] The reason advanced for the relief sought is set out in the letter of demand dated 20 May 2016 and addressed to the respondent as follows; *"In terms of clause 4.4 of the Conditions of Sale, the balance purchase price of R54 000,00 had to be paid/guaranteed within 21 days from the date of the sale, namely by no later than 19 May 2016. To date hereof and despite requests thereto on 3 and 12 May 2016, no payment/guarantee has been received."*

[3] It is noted that clauses 4.8.1 and 4.8.2 were left blank resulting in the amounts that were to be inserted therein by the applicant/ creditor and thereby made known to the respondent prior to the conditions of sale being signed were unknown to the respondent at the time of signing. That rendered the Conditions of Sale invalid. The applicant was a party in the case of *The Sheriff of the High Court, Johannesburg East v Chetty 2009/3673 [2014] ZAGPJHC 352* wherein the invalidity of the Conditions of Sale due to the non-disclosure of arrear municipality and other arrears amounts payable by the purchaser of the property was pronounced. The reason for the cancellation in the present matter is not directly related to the said non -disclosure, but the Conditions of Sale as they stand remain invalid.

[4] The applicant is an agent of the judgment creditor in this case. It will, therefore, not accord with justice to not grant this application on its own merits for the sake of the judgment creditor, but the court's displeasure resulting from the applicant's continued failure to rectify his conditions of sale needs to be demonstrated.

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

1. An order is granted in terms of prayers 1 and 2 of the notice on motion.

2. The costs relating to the sale of the property to the respondent on 28 April 2016 including the costs of this application are to be paid by the applicant de bonis proprii.

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

M MBONGWE, AJ

ACTING JUDGE OF THE GAUTENG HIGH COURT.