

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

6/05/2016

CASE NO.: 67930/2015

Not reportable

Not of interest to other judges

Revised.

In the matter between:

NTULI, AARON TAGANA

First applicant

NTULI, SIBONGILE PAULINE

Second applicant and

and

FIRSTRAND BANK LIMITED

First respondent

SHERIFF OF THE HIGH COURT, PRETORIA

NORTH EAST

Second respondent

VAN NIEKERK, HENDRIK

Third respondent

JUDGMENT

VAN DER WESTHUIZEN, A J

1. During April 2005 the first respondent afforded the applicants a mortgage loan to enable them to purchase property known as Portion 2 of Erf [...] Villieria Township Registration Division J.R., Province of Gauteng.

2. However, the applicants defaulted on their obligations in terms of the loan agreement and the first respondent foreclosed on the mortgage loan during July 2008 and obtained judgment by default against the applicants on 30 September 2008.

3. Ultimately, on 9 June 2015 and pursuant to the aforementioned judgment, the Sheriff sold the property in execution to the third respondent.

4. The applicants thereafter applied for an order declaring that the loan agreement had been reinstated and setting aside the sale in execution of the aforesaid property. The first respondent resisted this application on the premise of the judgment of the Supreme Court of Appeal in *FirstRand Bank et al v Nomsa Nkata*.¹

5. When the matter was called on Tuesday, counsel for the applicants indicated that the Constitutional Court had in a recent judgment, in the aforementioned case, overturned the judgment of the Supreme Court of Appeal. Counsel for the first respondent sought that the matter stands down to enable him to obtain clear instructions from the first respondent in view of the said recent judgment.

6. There was no appearance on behalf the second and third respondents.

7. When the matter was re-called, counsel for the applicants and first respondent were agreed that the applicants were entitled to an order declaring that the loan agreement had been reinstated and agreed that the date of reinstatement was 13 May 2013.

8. Counsel for first respondent conceded that in view of the re-instatement of the loan agreement, the applicants were entitled to an order setting aside the sale in execution of the aforementioned property in line with the judgment of the Constitutional Court referred to above.

9. There was no agreement in respect of the issue of costs. Counsel for the

¹ (213/24) [2015] ZASCA 44 (26 March 2015)

applicants indicated that he had been and still acts *pro bono* for the applicant.

10. I do not intend making an order in respect of costs.

I grant the following order.

- (a) By agreement it is declared that the loan agreement which was concluded between the first and second applicants and the first respondent on 17 April 2005 was re-instated by the applicants in terms of section 129(3) of the National Credit Act, No. 34 of 2005 on 13 May 2013;
- (b) The sale in execution on 9 June 2015 of the immovable property namely Portion 2 of Erf [...] Villieria Township Registration Division J.R., Province Gauteng situated at the street address 435-Twenty First Avenue, Villieria, Pretoria by the second respondent to the third respondent is declared void and set aside.

There will be no order as to costs.

C J VAN DER WESTHUZEN
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION

On behalf of Applicant:	R Wilson
Instructed by:	Stan Fanaroff & Associates
On behalf of First Respondent:	A P Ellis
Instructed by:	PDR Attorneys