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

CASE NO. 11996/2018

In the matter between:-

NOZIPHO PAULINA TYOBEKA MAKEKE APPLICANT

ID.[...]

and

STANDARD BANK OF SOUTH AFRICA LTD RESPONDENT

JUDGMENT

VORSTER, LI AJ:-

1. This is an application for rescission of a default judgment granted against the Applicant and an order staying the warrant of execution obtained the Respondent pursuant to the granting of the default judgment.

2. The Respondent opposes the application. It is common cause between the parties that the Applicant bought a motor vehicle from the Respondent in terms of a written agreement providing for payment of monthly instalments with a view to finally liquidate the purchase price and interest. It is also common cause that the Applicant breached the aforesaid agreement, resulting in a cancellation of the agreement by the Respondent.
3. The case of the Applicant is that it negotiated with a certain Mr Reddy in the employment of the Respondent to vary the provisions of the agreement as far as payment of instalments are concerned in order to assist the Applicant to retain the vehicle.
4. The Respondent denies all knowledge of the Mr Reddy which the Applicant speaks of and consequently denies the arrangement which the Applicant relies on allegedly into with Mr Reddy.
5. The Applicant's case is that the arrangement with Mr Reddy changed his obligations of payment in terms of the agreement and therefore that the cancellation was unlawful and the resultant writ of execution issued by Respondent pursuant to the default judgment obtained.
6. Clause 23.3 of the written agreement between the parties provides explicitly that the provisions of the written agreement can only be changed in writing by both parties signing to such variation. Moreover, clause 23.5 explicitly provides that the written agreement signed by the parties is the whole agreement and nothing or no deviations thereof would be of any force and effect unless in writing and signed by the parties. These clauses are customary in agreements between finance houses and clients buying all sorts of goods. The aforesaid provisions of the agreement effectively puts an end to any possible defence the Applicant could have to the action instituted by the Respondent for the relief it claimed. It follows that there is no merit in the application for rescission of judgment and consequently that the writ of execution issued

pursuant to the default judgment must stand and cannot be set-aside.

7. In the result of the foregoing, I make an order that the application for rescission of judgment is dismissed with costs.

LIVORSTER AJ

13 April 2021

Counsel: Appl unknown

Respondent Reece da Costa