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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 8847/2021

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

DATE: 1/2/2023

SIGNATURE:

In the matter between:

INVESTEC BANK

Applicant

and

AGGREY KATIECHI MAINA

First Respondent

GLORIA EYAMA MAINA

Second Respondent

JUDGMENT DELIVERED ON 1 FEBRUARY 2023

CP WESLEY AJ

1. In this application the applicant makes three claims against the respondents. Claim 1 is against the respondent's jointly and severally, the applicant seeking in the main an order for the payment of R1 934 113.23 together with interest, an order that Portion 5[...] of Erf 1[...] R[...] Extension 1[...] Township, Registration Division J.R., Province of Gauteng (hereinafter referred to as the Property), be declared specially executable, and certain consequential relief. Claim 2 is against the first respondent only, the applicant seeking an order for the confirmation of the cancellation of an instalment sale agreement, the return of a 2014 Mercedes Benz E250 Auto vehicle, and the

postponement of the enforcement of the first respondent's remaining obligations towards the applicant. Claim 3 is also against the first respondent only, the applicant seeking an order for payment of R58 839.49 together with interest. Individual cost orders are also sought in all three claims. As to the scale of the cost orders sought, in argument the applicant restricted its claim to costs in respect of Claims 2 and 3 to cost orders on the scale as between party and party.

2. In argument the parties were in agreement that the applicant's Claims 2 and 3 should succeed. The appropriate orders will be granted.

3. As to the applicant's Claim 1, in their opposing papers the respondents do not raise a valid defence to the claim. The argument made on their behalf admittedly amounted to a plea *ad misericordiam*, counsel pleading that they be afforded more time to improve their plight. Ultimately, as there is no valid defence to it, the applicant's Claim 1 should also succeed. The terms of the order that falls to be made were argued before me by counsel. I have considered their submissions and all of the attendant circumstances. In this regard, it is to be noted that according to the applicant, the forced sale value of the Property is R2 000 000.00. Provision will be made to give the applicant's more time, but within limits.

4. In the result I make the following order:

CLAIM 1:

4.1 Judgment is granted in favour of the applicant against the first and second respondents, jointly and severally, the one paying the other to be absolved, as follows:

4.1.1 Payment in the amount of R1 934 113.23;

4.1.2 Interest on the aforesaid amount at the rate of 6.85% per annum (being Investec Bank Limited's Mortgage Bond rate currently 7%, minus 0.15), with effect from 21 August 2020, calculated daily and compounded monthly to date of payment, both days inclusive.

4.1.3 The immovable property known as:

PORTION 5[...] OF ERF 1[...] R[...] EXTENSION 1[...] TOWNSHIP
REGISTRATION DIVISION J.R., PROVINCE OF GAUTENG MEASURING 297 (TWO
HUNDRED AND NINETY-SEVEN) SQUARE METRES
HELD BY DEED OF TRANSFER NUMBER T[...]

SUBJECT TO THE CONDITIONS THEREIN CONTAINED AND FURTHER SUBJECT
TO A RESTRICTION OF DISPOSAL IN FAVOUR OF WATERKLOOF ESTATES HOME
OWNERS ASSOCIATION NPC, AS WILL MORE FULLY APPEAR FROM CONDITION
C IN THE TITLE DEED

is declared specially executable;

4.1.4 The Registrar is authorised and directed to issue a warrant of
execution against the immovable property referred to in paragraph 4.1.3 above, in terms
of Rule 46A of the Uniform Rules of Court;

4.1.5 The immovable property referred to in paragraph 4.1.3 above is
to be sold at a sale in execution at a reserve price of R2 000 000.00;

4.1.6 The applicant is granted leave to approach the Court again for a
reviewed reserve price should the applicant require that a reviewed reserve price be set;

4.1.7 Paragraphs 4.1.1, 4.1.2, 4.1.3, 4.1.4, 4.1.5 and 4.1.6
are suspended for a period of three months whereafter the applicant will be entitled to
proceed to enforce same should the first and/or second respondents fail to settle the
arrears amount as envisaged in section 129(3) of the National Credit Act 34 of 2005; and

4.1.8 Payment of the applicant's costs on the scale as between
attorney and client.

CLAIM 2:

4.2 Judgment is granted in favour of the applicant against the first respondent for:

4.2.1 Confirmation of cancellation of the Instalment Sale Agreement, annexure "FA11" to the founding affidavit;

4.2.2 The return of the following goods to the applicant, namely:

2014 MERCEDES BANZ E250 AUTO

ENGINE NUMBER:2[...]

CHASSIS NUMBER: W[...]

4.2.3 The enforcement of the first respondent's remaining obligation after the goods have been sold is postponed *sine die*;

4.2.4 Payment of the applicant's costs on the scale as between party and party.

CLAIM 3:

4.3 Judgment is granted in favour of the applicant against the first respondent for:

4.3.1 Payment in the amount of R58 839.49;

4.3.2 Interest on the aforesaid amount at the rate of 7% per annum with effect from 21 August 2020, calculated daily and compounded monthly to date of payment, both days inclusive;

4.3.3 Payment of the applicant's costs on the scale as between party and party.

**ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

Appearances

Counsel for applicant: Adv J Eastes

Attorney for applicant: Delberg Inc Attorneys

Counsel for respondents: Adv K Mhlanga

Attorney for respondents: Rabambi Attorneys

Date heard: 25 January 2023

Date of Judgment: 1 February 2023