

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 2017/46904

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO


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SIGNATURE

DATE: 6 September 2021

In the matter between:

RAHME, TERENCE MICHAEL

First Applicant

RAHME, KRISTIN ADELE

Second Applicant

And

**THE STANDARD BANK OF SOUTH AFRICA
LIMITED**

Respondent

In re:

**THE STANDARD BANK OF SOUTH AFRICA
LIMITED**

Applicant/ Plaintiff

And

RAHME, TERENCE MICHAEL

1st Respondent/Defendant

RAHME, KRISTIN ADELE

2nd Respondent/Defendant

JUDGMENT – APPLICATION FOR LEAVE TO APPEAL

- [1] The applicants seek the court's leave to appeal against the judgment of the court handed down on 3 September 2019.
- [2] The application for leave to appeal follows a Summary Judgment Application granted in favour of the respondents. The court granted an order against the applicants (1) authorising the payment of the accelerated debt due, (2) declaring the sale in execution of the property registered in their names; and (3) authorised the sale in execution of the property.
- [3] On 1 April 2021, the applicants launched an application for Leave to Appeal against the judgment and order on several grounds.
- [4] Uniform Rule 49 regulates applications for leave to appeal. In this instance, Rule 49(1)(b) is applicable and states that:

When leave to appeal is required and it has not been requested at the time of the judgment or order, application for such leave shall be made and the grounds therefore shall be furnished within fifteen days after the date of the order appealed against: Provided that when the reasons for the court's order are given on a later date than the date of the order, such application may be made within fifteen days after such later date: Provided further that the court may, upon good cause shown, extend the aforementioned periods of fifteen days

- [5] Evidently, as Ms Aswegen contended, the application for leave to appeal was launched disproportionately out of time. The application was not accompanied by an application for condonation. There was no explanation, and there were no reasons furnished for the delay in bringing it. I agree with Ms Aswegen that the application cannot begin to get off the starting blocks.
- [6] There are costs considerations that follow as a result, for which the applicants must now be held account for.

[7] I must mention that the applicants were assisted by one Mr Tyron Azar. His address is cited as the correspondence address in their application. Mr Azar, was the representative nominated by applicants to represent them during the summary judgment application. He was present during the hearing of the application for leave to appeal which was held virtually, but did not appear to address the court when the matter was called.

[8] Instead, Ms Makoko, a member of the Independent Bar appeared on their behalf. She advised the court that she was briefed the day before the hearing by another law firm not on record and, therefore does not act on Mr Azar's instructions. The court requested the details of the law firm from Ms Makoko. Despite undertaking to do so to the court, and follow up requests by the Court's Registrar, she did not provide the details. In the absence of the verification, the impression is that Ms Makoko may have directly taken the brief and may not be able to verify if as an advocate she holds a Fidelity Fund Certificate as required by the Legal Practice Council Rules.

[9] In addition to the above, it also appeared that Ms Makoko did not acquaint herself with the matter or the applicable rules. She could not advance reasons why she and her instructing attorneys persisted with the hearing of the application in the face of the glaring defects.

[10] The relevance of the above issues has implication for costs which must be regrettably be borne by the applicants. The applicant may also have no recourse if those representing them were negligent in the handling of their matter. It follows that the application for leave to appeal falls to be dismissed with costs.

[11] **Accordingly, I make the following order:**

a. The application for leave to appeal is dismissed with costs



SIWENDU J

Judge of the High Court

Gauteng Division, Johannesburg

This Judgment was handed down electronically by circulation to the parties' and or parties representatives by email and by being uploaded to CaseLines. The date and time for the hand down is deemed to be 10h00 on 6 September 2021

Date of Hearing: 30 August 2021

Date of Judgment: 6 September 2021

Appearances:

For the Applicant: Ms Makoko

For the Respondent: Adv S Aswegen

Attorneys: Stupel & Berman Inc