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

Case no: 18276/2021

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

09.05.23

In the matter between:

NEDBANK LIMITED

Plaintiff

and

MALUSI, PRECIOUS LUMKA

Defendant

NEUTRAL CITATION: *Nedbank Ltd vs Malusi* (Case No: 18276/2021) [2023] ZAGP JHC 444 (9 May 2023)

JUDGMENT

DELIVERED: *This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail and publication on CaseLines. The date and time for hand-down is deemed to be 16h00 on 9 May 2023.*

MOULTRIE AJ

- [1] The plaintiff seeks a default money judgment in respect of amounts due and owing pursuant to the defendant's breach of a written loan agreement concluded by the parties, and for an order declaring the immovable property held as security for the defendant's indebtedness to be specially executable.

- [2] The defendant delivered notices of intention to defend the action and to oppose the application for special executability, but failed to deliver a plea or any answering papers. Some days before the hearing, correspondence was uploaded onto Caselines in which the defendant sought the postponement of the matter so that she could seek legal assistance.
- [3] When the matter was called at the hearing (which took place virtually in view of the directive issued by the Deputy Judge President on 13 January 2023) and the defendant did not appear, she was contacted by the court staff, following which she appeared in person on the virtual platform. The defendant then informed me that she was no longer seeking a postponement, and that she only opposed the order declaring the property to be specially executable.
- [4] In the circumstances, the plaintiff is entitled to a money judgment in the sum of the updated certificate of balance handed up by the plaintiff.
- [5] Since the loan agreement provides for a variable interest rate of 1.5% above the plaintiff's "*Prime Rate*" (which is defined as "*the prime overdraft rate of interest charged by Nedbank from time to time, which is Nedbank's publicly quoted prime lending rate as certified by any Nedbank manager, whose authority need not be proved*"), it would in my view be inappropriate to fix the interest rate as at the date of the updated certificate, as sought in the plaintiff's draft order.¹ The order for interest should instead reflect the wording of the loan agreement, with the result that the rate will continue to vary pursuant to changes in the Prime Rate until such time as the debt is finally discharged.
- [6] I should add that the loan agreement provides for the payment of enforcement costs by the defendant on the attorney and own client scale.
- [7] With regard to the order for special executability, I take into account the following factors:
- (a) the defendant confirmed that she and her family are no longer residing at the property and that it is not their primary residence, and she is

¹ I note that section 1(1) of the Prescribed Rate of Interest Act, 55 of 1975 (in terms of which the rate of interest is fixed "*as at the time when ... interest begins to run*" – see *Davehill (Pty) Ltd and Others v Community Development Board* 1988 (1) SA 290 (A) at 300I – 301C), does not apply.

seeking to rent it out as an investment asset; and

- (b) in any event the defendant confirmed at the hearing that she had made no payments in respect of instalments or in reduction of the outstanding balance due under the loan account for over a year.

[8] It is clear that there remains no real prospect that the considerable arrears will be paid off in the absence of a sale of the property in execution, and that there is no alternative means by which the defendant could satisfy her indebtedness other than execution against the property.

[9] The plaintiff sought the determination of a reserve price for the sale in execution. Having considered the various valuations and the outstanding municipal charges, I am of the view that a reserve price of R940,000.00 would be appropriate.

[10] Judgment is granted in favour of the plaintiff against the defendant for:

1. Payment of the sum of R1,976,514.64.
2. Interest on the above amount at the plaintiff's publicly quoted prime lending rate from time to time plus 1.50% per annum from 1 January 2023 to date of payment.
3. The following property is declared executable:

A unit consisting of:

(a) Section number 3 as shown and more fully described on Sectional Plan No. SS2237/2005 in the scheme known as PAMUSHA in respect of the land and building or buildings situate at DOUGLASDALE EXTENSION 66 TOWNSHIP LOCAL AUTHORITY: CITY OF JOHANNESBURG, of which section the floor area, according to the said sectional plan, is 173 (ONE HUNDRED AND SEVENTY THREE) square metres in extent; and

(b) an undivided share in the common property in the scheme apportioned to the said section in accordance with

the participation quota as endorsed on the said Sectional Plan.

held by Deed of Transfer No. ST32934/2013 and subject to the conditions as set out in the aforesaid Deed of Transfer

situated at[...], DOUGLASDALE EXT 66 ("**the property**")

4. The Registrar is authorised to issue a Warrant of Execution for the attachment of the property.
5. The Sheriff of the High Court is authorised to execute the warrant of attachment herein.
6. The defendant may in terms of the provisions of section 129(3)(a) of the National Credit Act 34 of 2004 at any time before the plaintiff has cancelled the agreement re-instate the agreement by paying the amounts referred to in paragraph 7 below and the Defendant may not re-instate the agreement in terms of section 129(4) after the sale of the property.
7. The defendant may prevent the sale of the property if she pays to the plaintiff all of the arrear amounts owing to the plaintiff, together with the plaintiff's permitted default charges and reasonable costs of enforcing the agreement up to the time of re-instatement, prior to the property being sold in execution.
8. The arrear amounts, enforcement costs and default charges referred to in paragraph 7 above may be obtained from the plaintiff.
9. The defendant is advised that the arrear amount is not the full amount of the Judgment debt, but the amount owing by the defendant to the plaintiff, without reference to the accelerated amount.
10. A copy of this order is to be served personally on the defendant as soon as is practical after the order is granted, but prior to any sale in execution.
11. A reserve price in the amount of R940,000.00 is set for the sale of the property in execution.

12. Costs on the scale as between attorney and client.

RJ Moultrie AJ

Acting Judge of the High Court
Gauteng Division, Johannesburg

DATE HEARD: 16 January 2023

JUDGMENT: 9 May 2023

APPEARANCES

For the Plaintiff: J Minnaar, instructed by Hammond Pole Attorneys

For the Defendant: In Person