

---

REPUBLIC OF SOUTH AFRICA



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

Case No: A2023/043983

- |   |
|---|
| (1) REPORTABLE: NO<br>(2) OF INTEREST TO OTHERS JUDGES: NO<br>(3) REVISED: NO |
|---|

21 November 2023

DATE

SIGNATURE

In the matter between:

**THE LIQUIDATORS (SMALL AND MEDIUM  
ENTERPRISES BANK LIMITED)  
[S.M.E LIMITED OF ZIMBABWE]**

Appellant

and

**MET BANK LIMITED (FORMERLY KNOWN AS  
METROPOLITAN BANK LIMITED OF ZIMBABWE)**

Respondent

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties /their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date for hand-down is deemed to be 21 November 2023.

---

## JUDGMENT

---

### **BOTSI-THULARE AJ: (NOKO J, concurring)**

#### ***Introduction***

[1] This appeal is brought by the Liquidators(appellant), against an order handed down on 7 December 2022 at Randburg Magistrate Court by Magistrate Booysen in favour of Met bank Limited (respondent). The Magistrate's declared the appellant's registration of a Namibian judgment null and void on the grounds that the registration of the judgment did not comply with the provisions of Enforcement of Foreign Civil Judgments Act 32 of 1998 (the Act).

[2] The respondent and/or its legal representatives were not in attendance at the time when the matter was called, the court adjourned and attempts were made by the appellant's representative to establish whether they will be in attendance. The appellant's representatives could not reach the respondent's attorneys. The application proceeded in their absence.

#### ***Background***

[3] During December 2020, the appellant obtained a judgment against the respondent in the High Court of Namibia, where the respondent was ordered to pay R1billion to the appellant together with interest. The appellant approached Magistrate Court, Randburg in terms of section 3<sup>1</sup> of the Act for the registration of the judgment in the Republic of South Africa and the judgment was successfully registered on 26

---

<sup>1</sup> Section 3 provides that "[W]henever a certified copy of a judgment given against any person by any court in a designated country is lodged with a clerk of the court in the Republic, such clerk of the court shall register such judgment in the prescribed manner...".

---

November 2021.<sup>2</sup> The respondent became aware of the registration of the judgment in South Africa and brought an application in terms of section 5<sup>3</sup> of the Act for the rescission of the judgment. The application served before Magistrate Booysen, who then granted the order in favour of the respondent setting aside the judgment.

[4] The record of appeal was incomplete as there were no written reasons and/or transcription of the Magistrate's reasons. The court's intention was to strike the matter off the roll, but counsel contended that the matter may proceed notwithstanding and referred to the judgment in *Penglides (Pty) Ltd and Another v Minister of Agriculture, Forestry and Fisheries and Another* 2022 (5) SA 401 (SCA) read together *Motloung v Sheriff, Pretoria East* 2020 (5) SA 123 (SCA). To this end the appellant was afforded the benefit of the doubt.

### **Issues**

[5] Issues for determination are as follows:

- 5.1. Whether the court of appeal should consider the appeal where the record is incomplete?
- 5.2. If so, whether the appellant has made out case to set aside the judgment and order of the court a quo?

### **Legal principles and analysis**

#### Incomplete record

[6] The appeal from the magistrate's court is provided for in terms of Rule 51 of the Magistrates' Courts Act, 32 of 1944 which provides that:

---

<sup>2</sup> Section 4(1) of the Act provides that "[W]henever a judgment has been registered in terms of section 3, such judgment shall have the same effect as a civil judgment of the court at which the judgment has been registered."

<sup>3</sup> Section 5(1)(a) provides that "[T]he registration of a judgment under section 3 shall, on the application of the judgment debtor, be set aside if the court at which the judgment is registered is satisfied"

(a) the judgment was registered in contravention of any provision of this "Act".

---

(1) Upon a request in writing by any party within 10 days after judgment and before noting an appeal the judicial officer shall within 15 days hand to the registrar or clerk of the court a judgment in writing which shall become part of the record showing—

(a) the facts he or she found to be proved; and

(b) his or her reasons for judgment.

(2) The registrar or clerk of the court shall on receipt from the judicial officer of a judgment in writing supply to the party applying therefore a copy of such judgment and shall endorse on the original minutes of record the date on which the copy of such judgment was so supplied.

(3) An appeal may be noted within 20 days after the date of a judgment appealed against or within 20 days after the registrar or clerk of the court has supplied a copy of the judgment in writing to the party applying therefor, whichever period shall be the longer.

(4) ...

(5) ...

(6) ...

(7) ...

(8) (a) Upon the delivery of a notice of appeal the relevant judicial officer shall within 15 days thereafter hand to the registrar or clerk of the court a statement in writing showing (so far as may be necessary having regard to any judgment in writing already handed in by him or her)—

(i) the facts he or she found to be proved.

(ii) the grounds upon which he or she arrived at any finding of fact specified in the notice of appeal as appealed against; and

(iii) his or her reasons for any ruling of law or for the admission or rejection of any evidence so specified as appealed against.”

[7] There are instances where the parties may agree to proceed with the appeal without the reasons from the magistrate. In *Anti-Corrosion Engineering (Pty) Ltd v Sanlam*<sup>4</sup> the court found that the appeal can be noted and prosecuted without the magistrate’s reasons who in this case has died before giving the reasons. Unfortunately, this would not apply to the *lis* which serves before me.

---

<sup>4</sup> 1975 (1) SA 897 (C) at para 901F-H.

---

[8] The appellant's representative submitted that they have taken steps to obtain written reasons for the Magistrate's judgment but were unsuccessful as the Magistrate said the written reasons were provided and were read into record, and the appellant should apply for a transcript of the hearing. The transcript was sought but to no avail.

Mandamus for the written reasons.

[9] In the matter brought before this court, the appellant confirmed being aware that an option available was to apply for mandamus against the magistrate to furnish reasons but opted to proceed with the appeal hoping that it may not be necessary. After due consideration, this court finds that the failure to make such an application is a fatal omission by the appellant. The position of the appellant is aggravated by the submission made towards the end of the oral arguments that in fact the judgments which were identified as supporting the argument in pursuit of attempts to impress the court to proceed with incomplete records did not countenance this submission. To this end it became unnecessary to interrogate the said judgments.

[10] Having regard to the brief background set out above on the nature of the relief sought it became imperative that the court should consider the basis and the reasons underpinning the decision being appealed against. The industrious attempt by the appellant's counsel to explain from the bar the reasons given by the magistrate could not persuade me that the said reasons are not necessary.

**Conclusion**

[11] In conclusion, having given the appellant the benefit of the doubt I was not persuaded that the appellant has made out a formidable case for the court to proceed with appeal without complete record

**Order**

[12] The appeal is struck off the roll.

---

**MD BOTSI-THULARE  
ACTING JUDGE OF THE HIGH COURT,  
JOHANNESBURG**

**I AGREE AND SO IT IS  
ORDERED**

---

**M NOKO  
JUDGE OF THE HIGH COURT,  
JOHANNESBURG**

**APPEARANCES:**

Appellant 's Counsel: Raymond Heathcote SC  
Marc Cooke

Respondent's Counsel: No appearance

DATE OF HEARING: 09 October 2023

DATE OF JUDGMENT: 21 November 2023