


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 38340/2016

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
8/12/2017	
DATE	SIGNATURE

8/12/17

In the matter between

JAN LODEWYKS

First Applicant

JAN HENDRIK VAN NIEKERK

Second Applicant

and

THE SHERIFF: BOKSBURG

First Respondent

FIRST RAND BANK LIMITED

Second Respondent

JUDGMENT

BRAND, AJ

- [1] This matter concerns the return date for a rule *nisi*, granted by my brother Mabuse on an unopposed basis on 28 October 2016 under case number 84446/2016 in sum for the suspension of a sale in execution of a property that is the primary residence of the Applicants.
- [2] The Second Respondent, still unaware of the order of suspension, proceeded with the sale in execution of the property and in fact bought the property at the sale. Having become aware of the order of 28 October 2016, the Second Respondent saw to it that transfer of the property be placed on hold until the rule *nisi* is either confirmed or discharged, as the case may be.
- [3] The rule *nisi* has since then had what can only be described as a chequered history: anticipated by the Second respondent and set down on the urgent roll for 22 November 2016, it was first stood down until 23 November and then postponed on the urgent roll to 6 December 2016. On 6 December 2016 the rule was extended by agreement until 16 January 2017. On 16 January the rule was further extended to the opposed roll on 27 March 2017. On that day it was finally extended to the date of hearing before me.
- [4] What is before me is whether the rule *nisi* should now be confirmed or discharged.
- [5] At the hearing of this matter the First Applicant, who was previously represented by counsel, failed to appear. The Second Applicant appeared in person and represented himself. The Second Respondent was represented by Mr Minnaar.

- [6] Aware of the perils inherent in self-representation by a layman (complicated in this instance by the fact that the Second Applicant complained of a hearing problem, so that he had difficulty in following submissions by Mr Minnaar and remarks and questions from the bench) this court took care to ensure that the Second Respondent properly understood the nature of proceedings for the day and was able properly to present his case. In this, it must be placed on record, the court was ably assisted by Mr Minnaar, who, while properly presenting the case on behalf of the Second Respondent, went out of his way to ensure fairness toward the Second Applicant. For this conduct, which is in the best tradition of his profession, Mr Minaar is commended.
- [7] That said, and without any further ado, having heard the Second Applicant on his own behalf and Mr Minnaar on behalf of the Second Respondent and having read the papers I have come to the conclusion that the rule *nisi* should be discharged and the underlying application dismissed.
- [8] Mr Minaar advanced a numbber of formaal reasons why the rule should be discharged, including that:
- [8.1] the Second Applicant in fact has no standing to bring this application and move it in court, as he is not the owner of the property in question, but simply an occupant. His remedy lies not in resisting sale in execution of the property (that is the owner's place), but in resisting any attempt by new owners of the property to evict him and other occupants of the house once it has been sold;
- [8.2] the relief granted in terms of the rule *nisi* is in fact not competent, being too vague and far-reaching; and
- [8.3] the basic motivation for the intial granting of the rule, being that the First Applicant herein was not 'invited to' and so was not present at the

summary judgment proceedings at which the order for sale in execution at which the rule *nisi* is aimed has since turned out to be untrue, as the application for summary judgment and notice of set down were both served personally on the First Applicant and he entered notice of intention to defend.

[9] All three these grounds on their own would have been sufficient to discharge the rule *nisi*. However, it is a fourth ground for so doing, which emerged on the day of hearing that in fact is the main reason for my conclusion.

[10] The rule *nisi* in effect suspending the sale in execution of the property was granted in order to afford the Applicants the opportunity to prosecute and conclude two applications they had brought to have the order for sale in execution granted under summary judgment set aside.

[11] These two applications were challenged by the Second Respondent as irregular steps. They have since been set aside as such by my sister Fourie, a month before the hearing of this matter before me.

[12] In that light the *raison d'être* for the rule *nisi* has fallen away and it no longer serves any purpose, other than to frustrate a lawful process.

[13] Accordingly I order as follows:

1. The rule *nisi* issued on 28 October 2016 is discharged.
2. The application is dismissed with costs.



JFD Brand

Acting Judge of the High Court

Appearances:

For the Second Applicant: Self-represented

For the Second Respondent: Mr J Minnaar

Instructed by Hammond Pole Majola Inc