



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

Case Number: 5197/ 2021

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

.....

**E.M. KUBUSHI
NOVEMBER 2022**

DATE: 25

In the matter between:

NOMUSAVIRGINIA DLOMO

Applicant

and

ABSA BANK LIMITED

First

Respondent

KOBUS DE KLERK

Second Respondent

ELAINE DE KLERK

Third

Respondent

MK NAIDOO

Fourth Respondent

JUDGMENT

KUBUSHI J

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand-down is deemed to be 10h00 on 25 November 2022.

[1] The Applicant approached this Court on an extremely urgent basis seeking an order to interdict the sale in execution of the immovable property she occupied together with her children. The sale was scheduled to take place through auction on the morning of 4 November 2022.

[2] The interdictory relief was sought pending the action instituted by the Applicant in this Court under the Case Number: 2022-034699. The Applicant's claim in the said proceedings, was for an order directing the Second and Third Respondents to transfer the property in question into her name and to declare the provisions of the Land Alienation Act 68 of 1981 to be inconsistent with the Constitution and invalid.

[3] The application was served, amongst others, on the First Respondent, the only respondent opposing the application, on 2 November 2022 at around 23h00, with the matter having to be heard on 3 November 2022 at 14h00. The respondents were given until 12h00 on 3 November 2022 to file their respective notices to oppose and to simultaneously file their answering affidavits. The matter was finally enrolled for hearing on 4 November 2022 at 14h00.

[4] The Court was informed during the hearing that the immovable property was sold in execution for R900 000 in the morning before the matter was to be heard. On the protestation of the Applicant's legal representative that the First Respondent should not have proceeded with the sale pending the hearing of

this application because the First Respondent knew or was aware that the application was to be heard on that day, the First Respondent's counsel submitted that the sale was proceeded with because the Court Order pertaining to the said sale was not suspended pending the hearing of the application, as required in terms of rule 45A of the Uniform Rules of Court. In support of the argument counsel referred to the decisions in *Erstwhile Tenants of Williston Court and Others v Lewray Investments (Pty) Ltd and Another*,¹ and *Pine Glow Investments (Pty) Ltd and Others v Brick-On-Brick Property and Others*.²

[5] Consequently, this Court had to consider whether the First Respondent was entitled to proceed with the sale when it knew or was aware that there was a pending application before Court seeking to interdict the sale. This, the Court had to interrogate because with the immovable property sold, there was no longer any dispute between the parties.

[6] Rule 45A provides that the Court may suspend the execution of any order for such period as it may deem fit.

[7] The Court in *Erstwhile Tenants of Williston Court and Others v Lewray Investments (Pty) Ltd and Another* held that no provision of the Superior Courts Act provides for the automatic suspension of the operation and execution of a

¹ 2016 (6) SA 466 (GJ).

² 2019 (4) SA 75 (MN).

decision which is the subject of an application to rescind, correct, review or vary an Order of Court. And, that a person against whom the decision which is the subject of an application for rescission was given, can always approach a Court under rule 45A to suspend its execution pending the finalisation of an application for rescission.³ There is no such provision in the Uniform Rules of Court, as well.

[8] It follows, therefore, that an application to rescind, correct, review or vary an Order of Court does not automatically suspend the operation and execution of a decision or Court Order. Where a decision or Court Order has not been suspended the execution thereof will be carried out even if there is a pending application before Court to rescind, correct, review or vary such a decision or Court Order. A decision or Order of Court can only be suspended by resorting to the provisions of rule 45A.

[9] The principle enunciated here above finds application in this matter, even though the application was to interdict the sale. In order to suspend the sale, the Applicant should have invoked the provisions of rule 45A.

³ Para 20; see also paras 10 – 14 in *Pine Glow Investments (Pty) Ltd and Others v Brick-On-Brick Property and Others* 2019 (4) SA 75 (MN).

[10] It was not in dispute that the sale in execution of the immovable property was based on a valid Court Order. It was, also, common cause that the Applicant had not applied in terms of rule 45A for the suspension of the Court Order underlying the sale in execution. Having not done so, and with the property having been sold, there was no dispute between the parties that sought adjudication by this Court. As such, the application ought to be dismissed.

[11] In the circumstances the application is dismissed with costs.

E.M KUBUSHI
JUDGE OF THE HIGH
COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES:

APPLICANT'S ATTORNEYS:	MARWESHE ATTORNEYS
APPLICANT'S LEGAL REPRESENTATIVE:	MR MARWESHE
FIRST RESPONDENT'S ATTORNEYS:	HAMMOND POLE MAJOLA
INC	
FIRST RESPONDENT'S COUNSEL:	ADV. J MINNAAR.

