

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO:010362/2024

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

Date: 7 February 2024 E van der
Schvff

In the matter between:

NKOMU DANIEL MABASO 1ST APPLICANT

MKATEKO GLADNESS MABASO 2ND APPLICANT

and

NEDBANK LIMITED RESPONDENT

JUDGMENT

Van der Schvff J

[1] The applicants approached the urgent court for an order to stay the sale in execution of the property described in the notice of motion. The applicants aver that the property is their primary residence, and has been for the last 15 years. The

first applicant is a practicing advocate, and he avers that he will be able to pay the respondent as soon as the attorneys, who are indebted to him, pay him.

- [2] Rule 45A of the Uniform Rules of Court provides that the court may, on application, suspend the operation and execution of any order for such a period as it deems fit. The court's power to suspend the execution of a judgment must be exercised sparingly.¹ The rule is not designed to create a moratorium for an unsuccessful litigant to render orders ineffective.
- [3] *In casu*, the applicant does not take issue with the order declaring the property executable. This court does not sit as a court of appeal, nor is it considering a rescission application. The applicants seek the court's assistance simply because they do not, at this stage, have the necessary finances to settle the debt or a substantial portion thereof. They rely on the hope or expectation that the first applicant will, in the near future, be paid by the attorneys on whose instructions he provided legal work.
- [4] In exercising my discretion, I have to consider that the judgment debt was granted already in July 2023. When the order was granted, the applicants were in arrears of R214 811.39. When the answering affidavit to this application was drafted, the applicants' arrears had escalated to R312 228.43. The respondent indicated that it was willing to postpone the sale in execution if the applicants could pay 50% of the arrears. The applicants cannot pay even 50% of the arrears. Against this background, there is no certainty that the applicants' financial position will improve shortly. The applicants' undertaking that they will pay the amount owing to the respondent when the sale is suspended, although it seems sincere, is without substance.

¹ *Clipsal Australia (Pty) Ltd and Others v Gap distributors (Pty) Ltd and Others* [2009] 3 All SA 491 (SCA) para [18].

[5] The Constitutional Court in *Nkata v FirstRand Bank Limited and Others*² acknowledged credit providers' role in advancing the economy and sometimes the social good. *In casu*, the respondent followed the prescripts of the National Credit Act 34 of 2005. The applicants' misfortune is acknowledged, but in the circumstances no case is made out to exercise my discretion in the applicants' favour. Since the application stands to be dismissed, I am not dealing with the non-joinder point *in limine* raised by the respondent.

[6] It is the general approach that costs follow success. The mortgage bond provides for a costs order on attorney and client scale.

ORDER

In the result, the following order is granted:

1. The application is dismissed with attorney and client costs.

E van der Schyff
Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. It will be emailed to the parties/their legal representatives as a courtesy gesture.

For the applicants:	Adv. D N Mabaso in person
For the respondent:	Adv. E Fürstenburg SC
Instructed by:	Weavind & Weavind
Date of the hearing:	7 February 2024
Date of judgment:	7 February 2024

² 2016 (4) SA 257 (CC) para [93]-[96].