

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 32115/21

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

Date: 4 March 2024 E van der
Schvff

In the application for leave to appeal between:

DENNIS SHOKO APPLICANT

And

NEDBANK RESPONDENT

In re:

NEDBANK LIMITED APPLICANT

and

DENNIS SHOKO RESPONDENT

JUDGMENT

Van der Schyff J

Introduction

[1] This court granted summary judgment against the applicant, Mr. Shoko, on 20 November 2023. Reasons were requested and provided on 22 January 2024. There was no appearance on behalf of Mr. Shoko, although it was indicated that a legal representative was present but had yet to receive formal instructions. Mr. Shoko then issued an application for leave to appeal. Eleven grounds of appeal were raised. When the application was heard on 1 March 2024, Mr. Shoko's counsel indicated that grounds eight and nine are not pursued anymore.

[2] The grounds of appeal Mr. Shoko relies upon are that the court erred in:

- i. Finding that the applicant failed to place sufficient facts before the court to satisfy that he has a *bona fide* defence that is good in law and does not disclose facts supporting the reckless lending allegation;
- ii. Finding that Mr. Shoko failed to indicate that he can satisfy the judgment by any other means;
- iii. Finding that Nedbank is entitled to summary judgment;
- iv. Not finding that a declaration of executability is in conflict with section 26 of the Constitution;
- v. Not finding that there was another way in which Mr. Shoko's indebtedness with Nedbank could be satisfied;
- vi. Not finding that there were other reasonable ways in which the debt may be recovered;
- vii. Not finding that Nedbank's interest in obtaining payment is significantly less than Mr. Shoko's interest in security of tenure where the sale of the property is likely to render Mr. Shoko and his family 'completely homeless' and
- viii. Not finding that Mr. Shoko is employed or has a source of income to pay the debt and, as such, could pay the debt in question.

[3] Since written reasons were provided to explain why the order for summary judgment and the declaration of executability were granted, it is not necessary to

deal with each of the grounds of appeal listed above. Some aspects need to be highlighted, however.

[4] The defence of reckless credit is not born out by the documentation filed of record, as indicated in the written reasons. The averment that Mr. Shoko and his family will be rendered homeless to the extent that they will end up on the street without being able to procure alternative accommodation is also not born out by the averments in the respondent's affidavit filed in opposition to the summary judgment application.

[5] The Constitutional Court stated clearly in *Jaftha v Schoeman; Van Rooyen v Stolz*.¹

‘Another factor of great importance will be the circumstances in which the debt arose. If the judgment debtor willingly put his or her house up in some manner as security for the debt, a sale in execution should ordinarily be permitted *where there has not been an abuse of court procedure*.’

[6] No case is made out, and neither can it be deduced from the papers that Nedbank is acting in bad faith or that there has been an abuse of court procedure.

[7] Mr. Shoko raised the issue of his ability to pay and the existence of a source of income to pay the judgment debts in the affidavit opposing summary judgment and the application for leave to appeal. The only relevant averment in this regard, as highlighted in the oral argument, is that he ostensibly secured a co-tenant who has undertaken to pay R18 000 per month for leasing a part of the farm. This averment was, however, not supported by any confirmatory affidavit, copy of a signed lease agreement, proof of payment, or anything tangible. The averment is, in essence, a general, blanket, unsubstantiated averment. This unsubstantiated averment was considered in the context of the facts and history of this matter.

¹ 2005 (2) SA 140 (CC) at para [58].

[8] Mr. Shoko did not make a case that he could reasonably satisfy the judgment debt. In terms of the order granted, Mr. Shoko's attention was drawn to sections 129(3) and (4) of the National Credit Act 34 of 2005. He was informed that he could still pay the full outstanding amount, without reference to the accelerated amount, before the sale of the property.

[9] The appeal would not have a reasonable prospect of success, nor is there a compelling reason for the appeal to be heard.

Order

In the result, the following order is granted:

1. The application for leave to appeal is dismissed with 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 applicant:	Mr. V Manisi
Instructed by:	Vuyo Manisi Inc.
For the respondent:	Adv. H. Marais
Instructed by:	HACK STUPEL & ROSS ATTORNEYS
Date of the hearing:	1 March 2024
Date of reasons:	4 March 2024