

IN THE HIGH COURT OF LESOTHO
(Commercial Division)

In the application of:

MOSELI EMMANUEL MATHOLOANE 1ST APPLICANT

ADELINA NTSOAKI MATHOLOANE 2ND APPLICANT

AND

NEDBANK (LESOTHO) LIMITED 1ST RESPONDENT

DEPUTY SHERIFF (MT LIPHULO) 2ND RESPONDENT

JUDGMENT

Coram : **L.A. Molete J**
Date of Hearing : **05th August, 2014**
Date of Judgment: **20th August, 2014**

SUMMARY

Application for stay of execution – Judgment entered by consent – Right of execution creditor to levy execution – Court not competent to order payment by instalments where parties do not agree on settlement terms – Rules nisi discharged.

ANNOTATIONS

CITED CASES

STATUTES

BOOKS

[1] The Applicants herein applied to court on an urgent *ex parte* basis for an order to stay execution of a judgment obtained by consent before my sister Madam Justice Chaka-Makhooane.

[2] The brief background to this litigation is that 1st Respondent sued both Applicants who are married in community of property for a total sum of M1,564 880-88 in respect of a house loan agreement. The matter was defended.

[3] However, after a number of postponements of the matter which commenced in October 2012 the defendants consented to judgment in the amount of M696,788-48. This was entered by Her ladyship Chaka-Makhooane J on the 28th November 2013. The balance which was still in dispute was deferred to a later date for evidence to be led. The court then left it to the parties to negotiate the terms of settlement of the admitted sum.

[4] Some correspondence was exchanged by the attorneys, but over a period of some six months no agreement had been reached and no payment was forthcoming from defendants with the result that on the 27th June 2014, a writ was issued against defendants. This prompted the application for

stay; in which they also sought an order for payment of the debt in instalments out of their earnings.

[5] The Respondents anticipated the rule and wanted the matter to be determined sooner by the court. The argument advanced by Respondents was that Applicants had ample time to propose terms of settlement, and knew sometime prior to the issuance of a writ that should they not come up with a reasonable offer a writ would be issued. They argued that Applicants had concealed certain facts from the court, which would have led the court to refuse the application in the first place.

[6] Argument was heard on the 21st July 2014, and the parties were ordered to go back and renegotiate terms. It was postponed to the 5th August but no agreement had been reached, and on that date both parties agreed that the court must make a ruling on the matter.

[7] It transpired that the Respondents had proposed to settle the debt by instalments of M7000-00 per month that was refused by the respondents. Applicant then raised the offer to M10,000-00 per month, which the Respondents still found unsatisfactory and the parties then required the court to make a ruling.

[8] In considering the matter this Court took into account the following relevant facts;

(a) That the judgment was consent judgment and Applicant did not seek rescission thereof.

(b) That in the event of failure of a negotiated settlement the Respondent would be entitled to issue a writ and the court is not

empowered to make the order that “the applicants be allowed to settle their debt in instalments out of their earnings.”

- (c) That no payment whatsoever was made in a period of over six months after the liability was admitted.
- (d) That in answer to a petition for sequestration, the Applicants disclosed an agreement entered into with a third party in terms of which they paid M100,000-00 in July; and expected to pay subsequent monthly instalments of M40,000-00 each until December 2014.

[9] In the premises; this Court will give an order as follows;

- (a) The interim interdict and *rule nisi* granted in favour of the Applicant on the 1st July 2014 is discharged.
- (b) Costs are awarded to the Respondents.

L.A. MOLETE
JUDGE

For the Applicants : Ms Kao-Theoha
For 1st Respondent : Mr T. Mpaka

