



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 5 December 2024

Status: Immediate

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Munsami v The Standard Bank of SA & Others (122/2023) [2024] ZASCA 167 (5 December 2024)

Today the Supreme Court of Appeal (SCA) dismissed an application for leave to appeal with costs. The application was against the judgment and order of the Gauteng Division of the High Court, Johannesburg per Moultrie AJ (the high court), delivered on 10 October 2022. The high court dismissed the application brought by the applicant, Mr Dayalan Munsami (Mr Munsami), to set aside the sale in execution of his immovable residential property, situated at Lyme Park Extension 4, Johannesburg (the property). The fourth respondent, Mrs Hazel Knowler (Mrs Knowler) bought the property at the sale on 24 June 2021 and took transfer of ownership in November 2022. The sale in execution was pursuant to a summary judgment granted by Mtati AJ (the summary judgment order), on 9 May 2019, in favour of the first respondent, the Standard Bank of South Africa Limited (the bank). The second and third respondents, namely the Sheriff of the high court and the Registrar of Deeds (the Registrar) were cited as interested parties only and were consequently not involved in the application for leave to appeal.

On 20 December 2018, the bank issued a combined summons against Mr Munsami wherein it, amongst others, claimed payment of various debts, including the sum of R2 486 766.52 in respect of a mortgage bond registered over the property. The bank also sought orders declaring the property specially executable and authorising the Registrar to issue a writ of execution regarding the property.

After appearance to defend was filed by an attorney acting on behalf of Mr Munsami, the bank applied for summary judgment in March 2019. Due to the application having been filed before the amendment of Uniform rule 32, the bank was only required to file an affidavit by an authorised official swearing positively to facts averred in the particulars of claim and verifying the cause of action. Despite being legally represented at the time, Mr Munsami did not file an opposing affidavit and consequently did not place any further information before the high court (other than that contained in the particulars of claim), relevant to the exercise of its discretion in terms of rule 46A. The summary judgment was granted

against Mr Munsami on 9 May 2019, inter alia, declaring the property specially executable without setting a reserve price.

Without appealing against the summary judgement order or applying for it to be rescinded, in December 2020, Mr Munsami launched urgent proceedings seeking to stay the sale in execution on the ground that the notice of sale did not include a short description of the property. The property was eventually sold at a public auction to Mrs Knowler for the sum of R360 000 and ownership was transferred to her on 25 November 2021.

On 16 February 2022, Mrs Knowler filed an application for an order evicting Mr Munsami from the property, however, in retaliation, he launched an urgent application in the high court seeking to set aside the sale in execution on the grounds that: (a) the bank had failed to comply with the provisions of Uniform rule 46A; (b) the high court's failure to set a reserve price vitiates the summary judgment and renders it void *ab initio*; and (c) there had been collusion between Mrs Knowler and the bank and that she had acted in bad faith in buying the property for a price well below its market value. He further contended that, although he did not seek to impugn the summary judgment order, he was entitled to the relief simply based on the bank's non-compliance with rule 46A and the prejudice he had suffered as a result of the property having been sold without a reserve price.

On 10 October 2022, the high court dismissed Mr Munsami's application with costs, finding that Mr Munsami was unable to establish collusion between Mrs Knowler and the bank or that she had taken transfer of the property in bad faith with knowledge of the alleged defects in the sale and that Mr Munsami's contention that the bank failed to comply with the provisions of rule 46A because it did not bring a separate application for relief in terms of that rule, was unsustainable. Being satisfied that the relevant allegations contained in the particulars of claim constituted sufficient compliance with the rule, the high court found that the two procedures were effectively married and that the provisions of Uniform rule 46A were substantially complied with

The SCA, in pointing out that Mr Munsami did not apply for leave to appeal against the summary judgment order or apply for it to be rescinded, found that the order remained effectual and immune to challenge by other means, including interdictory relief by another court of equal standing.

The SCA further held that Mr Munsami's argument regarding the alleged defects in the rule 46A application and his reliance on the jurisprudence regarding the court's discretion to set a reserve price for sale in execution of residential immovable property, impermissibly sought to impugn the summary judgment order without appealing against it. The SCA held that a litigant who was aggrieved by an adverse judgment and wished to challenge it could only do so by filing an appeal or, in certain circumstances, applying to have it rescinded.

With regards to the argument that the sale in execution was vitiated by undue collusion between the bank and Mrs Knowles and that the latter took transfer of the property in bad faith, the SCA stated that nowhere in his founding affidavit did Mr Munsami proffer any evidence, or even allege, that there was collusion between the bank and Mrs Knowler or that Mrs Knowler took transfer of the property with knowledge of a fundamental defect in the sale. On this point, the SCA agreed with the high court's finding that those allegations were patently inadequate to justify an inference of collusion or bad faith contended for by Mr Munsami and was therefore manifest that Mrs Knowler could not have known about any alleged defects in the sale.

In the result, the SCA dismissed the application for leave to appeal with costs.

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