



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### Nomsa Nkata v First Rand Bank Limited and Others

CCT 73/15

Date of hearing: 19 November 2015

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#### MEDIA SUMMARY

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*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

On Thursday 19 November 2015 at 10h00 the Constitutional Court will hear a matter concerning the interpretation of provisions of the National Credit Act. These provisions allow debtors who face legal action due to non-payment under a credit agreement to reinstate the agreement by paying all amounts that are overdue as well as the default charges and reasonable costs associated with reinstatement.

The applicant, Ms Nkata, is a businesswoman living in the Western Cape. The first respondent, First Rand Bank Limited (Bank), is a bank that provided Ms Nkata with mortgage finance in 2005 and 2006 to buy a house. After Ms Nkata had fallen behind in her payments, the Bank took legal action. On 28 September 2010 the Registrar of the Western Cape High Court granted default judgment against Ms Nkata, and authorised the Sheriff to attach and sell the house to recover the outstanding debt. The Bank and Ms Nkata later reached a settlement agreement, which delayed the sale subject to certain conditions. She caught up on her payments in March 2011 and tried to rescind the default judgment against her. The High Court refused her application for rescission and Ms Nkata fell behind on her payments again. Following numerous failed debt review applications, the Bank sold the house to the third respondent, Kraaifontein Properties Eiendomme, on 23 April 2013.

Ms Nkata again approached the High Court for relief. In January 2014 the High Court ruled that the original credit agreement between Ms Nkata and the Bank had been reinstated by 8 March 2011. This prevented the Bank from selling her house. The sale of the house was set aside.

The Bank appealed to the Supreme Court of Appeal. In March 2015 the Court decided in the Bank's favour. It held that Ms Nkata could not have reinstated her agreement, because her house had already been sold in a sale of execution.

Before the Constitutional Court, Ms Nkata contends that her house should not have been sold because she successfully reinstated the credit agreement by paying the amounts owing in March 2011, in accordance with the Act. She further argues that she did not receive proper statutory notice of the default proceedings against her in 2010. The Bank contends that reinstatement did not occur. It argues that this is because Ms Nkata failed to pay legal fees and other charges debited to her account, in addition to the amount she owed. In any event, the Bank contends that the credit agreement could not be reinstated after the default judgment and attachment in 2010.

The Socio-Economic Rights Institute of South Africa is appearing as a friend of the Court. It contends that the credit agreement was reinstated by the operation of law before the house was sold.