

PERSONALISED LEGAL ASSISTANCE

Professional legal and property consulting

SONNENBERG & ASSOCIATES PROPERTY AND LEGAL ADVICE NEWSLETTER #98

1. Legal Quotes

"You don't know a woman until you've met her in court." [Norman Mailer]

"Speak English. Kiss French. Dress Italian. Spend Arab. Party Caribbean. Study Law." [Raquel Zu]

"I'd agree with you, but then we'd both be wrong." [Harvey Specter, *Suits*]

2. Overheard in court

Lawyer: "Are you sexually active?"

Witness: "No, I just lie there."

3. Inspiring quotes

"From what we get, we can make a living; what we give, however, makes a life." [Arthur Ashe]

"If I cannot do great things I can do small things in a great way." [Martin Luther King Jr]

"We are all broken. That's how the light gets in." [Ernest Hemingway]

4. Constitutional Court judgment gives relief to defaulting property owners

The Constitutional Court decision of *Nomsa Nkata v FirstRand Bank Limited and Others CCT 73/15* dated 21 April 2016 has granted relief to homeowners who fall behind with their bond repayments.

By paying the arrears on the bond account in full, a homeowner can reinstate his credit agreement with the bank, thereby preventing the bank from selling the house in execution.

The case revolved around the **interpretation of section 129(3) of the National Credit Act** (this provision allows debtors who face legal action because of non-payment under a credit agreement to reinstate the credit agreement by paying all amounts that are overdue as well as the default charges and reasonable costs associated with enforcing the agreement).

The court reasoned that, because the **constitutional values of fairness and equality** are the rationale behind the Act, an interpretation of the Act should strike the appropriate **balance between the competing rights of the consumer and credit provider**. The court found that the purpose of section 129(3) is to encourage consumers to pay their overdue debts, default charges and legal costs.

The court also found that, due to the specific factors in the matter (that the bank had not properly discussed costs with the homeowner), that the homeowner had to pay only the arrears owed and not the legal costs the bank had charged. Take note however, that this may change from case to case, depending on the facts.

It follows that consumers in good standing should be rewarded with reinstatement of the credit agreement and the return of their attached property from the bank.

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