

**FNB GAVE ME 46 SECONDS TO SETTLE AN ACCOUNT, WAS THIS A JOKE OR PROOF THAT THEY WANTED ME TO LOSE AN INVESTMENT?**

**120 Collins street.**

**History of 120 Collins str, Brixton**

**I wanted to sell this property and a client bought the abovementioned property but unfortunately he never paid occupational rent or water & lights for 4 years and the property was never transferred into his name. He tried to force me to do the transfer, but because I wouldn't allow this, the case went to arbitration in 2009. I won the case.**

**Another company called Abia Property Projects then bought the property for R950 000.00, but unfortunately this client did not qualify for a bond and the sale was cancelled.**

**The bank then informed me that the property will be auctioned again and I sold it this time to a Cash Buyer. The offer was for R735 000.00.**

**The bank (Fnb staff Mr. Rapoo) asked me to send proof of the Purchaser's deposit and proof that he has money in his bank account; he will then cancel the auction. Relevant documents were send by my attorneys to FNB. When this was done, Rapoo informed me that the auction was cancelled.**

**Real facts:- The offer to purchase was signed on the 1<sup>st</sup> of December 2009 and the attorneys informed Rapoo at FNB of the offer.**

**Mr. Naidoo also from FNB claimed he only received the offer to purchase on the 8<sup>th</sup> of December 2009. This is false because the attorneys send the document to the bank prior to this date.**

**Lawrence Mabuza (FNB) phoned me at 9:45 (15 minutes) before the acution and told me that the bank is going ahead with the auction. I was shocked because T. Rapoo told me a few days before that the auction was cancelled. I offered to pay R48 000 in cash to stop the auction but his words were "Mr. Niemand, don't even put a cent into this account, you will lose your money and this clearly indicated to me, that no matter what - I am going to lose this property. Even the attorneys offered to pay in monies but it was rejected by the bank. Lawrence Mabuzo then told me that he will give me an extra 5 minutes to submit the guarantees, but we all knew that it takes at least 2 weeks to get guarantees and my hands were tied. After this incident I did some research and was told by bank employees of various banks that it definitely takes two weeks to deliver guarantees.**

**Jantjes was the Purchaser on the 10<sup>th</sup> of December, but then sold the house immediately to Phiri. This meant that the auction conditions will now fall away and the bank cannot keep Jantjes liable for any monies. (Only in 2013 we realised that both parties gave their residential addresses on the Sherriff's documentation as 24 Thornton rd, Westdene.) Clearly this shows now that this was a planned scam by Phiri and Jantjes.**

**Phiri also never paid occupational rent and water & lights for 3 years. He is renting out the flat let (illegally build) and rooms in the house for a fraudulent monthly income.**

**After 3 years the bank did a 46/11 and took R50 000.00 legal fees from my account.**

**On the 4<sup>th</sup> of October 2012 the High Court gave me back my house (120 Collins) but Mariaan van den Bergh from Van Hullsteyn attorneys told me that FNB informed them not to contact me,**

**I wanted everybody to know how FNB planned to ruin me and I believe this was/ is a personal vendetta and why should I keep quiet. If they can do this to me how many other people are hurt the same way?**

**120 Collins – On the 25 November 2012 the house was auctioned again, but the bank only informed me 46 seconds before the auction was to take place. “46 seconds” and the new owner was PHIRI, the same Phiri who bought the house before!**

**No documents were delivered to my address in Southcrest and that was after having my meeting with Amelia Du Buisson on the 15<sup>th</sup> of September 2009 to change my address for Legal documentation to be delivered.**

**When Carte Blanche asked Wendy Zulu (head of FNB Legal) why they sold the house to Phiri who couldn't pay the necessary fees, she claimed that she (FNB) was not aware that the house was sold to the same man (Phiri).**

**Wendy Zulu also lied about the auction and told Carte Blanche that the emails and sms that were send to me explained clearly that the auction was cancelled and that they will notify me of the new auction date, but as attached documentation we can clearly see that she was lying!**

**Why would they not have known? I found out that the attorneys was aware that it was the same person and surely the bank and the attorneys dealing with this case would have been informed that the Purchaser is Phiri.**

**The bank then realised what they have done and FNB did a 46/11 again. The property was to be sold on auction on the 28<sup>th</sup> of February 2013, but Phiri is now opposing the sale.**

***Now the worst of all is that Phiri has been living on this property for almost 4 years, totally illegal and he has pocketed over R500 000 out of this property by letting rooms out to students in the area. He is also not paying a cent towards Water and Lights and owes***

***approximately R200 000 to the council and has connected the electricity illegally. FNB has not yet managed to do the 46/11 (reversal of the property into my name), but still claims that I am liable for the arrears on the bond +- R270 000 and legally also the outstanding water and lights. How sick is this!! FNB was offered the legal documents by my attorney and Tshepo Rapoo cancelled the auction verbally. We offered R48 000 to cancel the auction and the fact that Lawrence Mabusa told me not to put a cent into the account meant that they had a vendetta against me! They then still auctioned the property!***

2011 09 24

sale will only be cancelled once the full arrears has been paid before 09H55 this morning.

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24/11/2011 09:54:14

**Erf 566 Brixton**

**120 Collins Street, Brixton, Johannesburg: 3 00000 316 0402**

1. I had a mortgage bond registered over the property in favour of First Rand Bank Limited (FNB) under the aforementioned account number.
2. According to the summons issued in this matter, my bond account was in arrears in the amount of R177 448,10.
3. The summons was served on 8 July 1999 and judgment was granted on 22 November 1999.
4. The attachment of the property was issued on 22 March 2000.
5. The first sale in execution was scheduled for 4 May 2000.
6. I had an arrangement with FNB to settle the arrears that I kept and consequently all three sales in execution were duly cancelled. Accordingly, despite falling into arrears from time to time I always settled same to the purported satisfaction of FNB.
7. It is further evident that FNB was so satisfied with the arrangements and with the way in which I dealt with the bond account, that for the period between 11 June 2004 and 13 March 2006, the attachment of the property was uplifted.
8. During or about 2007 the property was sold to a purchaser who took occupation of the property. A dispute arose between the purchaser and I, which resulted in me taking the purchaser to arbitration in an attempt to cancel the sale and to retain possession of the property. During the two year period it took to finalise such arbitration, the purchaser failed to pay any occupational rental or water and electricity. I eventually won the arbitration but as a result thereof the bond account fell into arrears from time to time and during this period of time two sales in execution were scheduled and cancelled due to arrangements being kept by myself.
9. After the cancellation of that sale of the property, a second purchaser signed an offer to purchase for an amount of R950 000,00 on 23 July 2009, but failed to qualify for a bond and the sale was cancelled, the net result being that the bond account again fell in arrears.
10. From the conduct of FNB, it can be deducted that the scheduling, conclusion of an arrangement and cancellation of the sales in execution of the property had become an accepted custom between me and FNB and a precedent was created by FNB. FNB created an expectation with me that come what may, everything will be done in an attempt to reach

an arrangement, before the property was sold in execution, which the *de facto* position clearly shows, would not have benefitted either myself or FNB.

11. Accordingly the sale in execution of the property was again scheduled for 10 December 2009.
12. On 1 December 2009, I through my conveyancer provided FNB with an offer to purchase the property for R735 000,00 cash. My conveyancer further, upon FNB's request, provided FNB with documentary proof that the purchaser had the financial means to pay for the property. Due to the value and possible profit in the property and because I was an estate agent at the time, it was my bona fide intention to sell the property, settle the bond and realize a profit.
13. I was informed by T Rappoo of FNB, after receipt of the offer to purchase, as was the case on several previous occasions that the sale would be cancelled.
14. At this juncture, it is important to note that if the sale proceeded, the mortgage bond with FNB would have been settled and I would have realized a profit of approximately R500 000,00.
15. On 10 December 2009, the day of the purported cancelled sale in execution of the property, I was contacted by Lawrence Mabuza of FNB at 09:45, fifteen minutes before the auction commenced, and informed that the sale of the property in execution was proceeding on that day.
16. I offered to immediately pay an amount of R48 000,00 towards the arrears and in addition, the conveyancing firm likewise offered to pay money into the bond account to stay the sale in execution, but to no avail. Mabuza rejected the offer and instead gave me an extension of 5 minutes to provide FNB with guarantees, failing which the sale would continue. Mabuza's exact words were "Mr. Niemand don't even put a cent into this account, you will lose your money". From this statement of Mabuza, (which I suspect he will deny), it can be deduced that FNB had no intention of allowing me to proceed with the sale of the property or to pay anything towards the arrears and in fact had the *male fide* intention of selling the property and causing me to suffer damages.
17. Needless to say, FNB's request was impossible to adhere to and in contradiction of the offer to purchase, FNB unreasonably refused to wait until the sale agreement's suspensive condition was fulfilled, waived or lapsed, and the property was sold in execution by the Sheriff, Johannesburg North in for an amount of R272 000,00.
18. At this juncture it is important to take note of the following:

- 18.1 It will be argued when necessary that FNB had a legal duty as a registered credit provider to stay the sale in execution, pending the finalisation of the sale of the property. FNB had in addition to limiting their own damages, a legal obligation to prevent me from suffering any damages. FNB acted *male fide* and *contra bonis moris* and caused me severe prejudice.
  - 18.2 The profit I would have realized with the sale of the property was meant and would have been utilised to settle another bond with FNB and to pay for the software development for an invention of myself which FNB was well aware of.
  - 18.3 At the time of the sale in execution and when FNB failed, refused and/or neglected to adhere to their *ex lege* duty, I had a contract with Hardrive Solutions, who in terms of an agreement purchased 125 machines to be utilised in various destinations in Gauteng Province during the FIFA World Cup.
  - 18.4 The profit which I would have realised from that deal has been qualified in the amount of R736 720 110,00 representing consequential damages suffered by myself as a direct result of FNB's failure to adhere to their *ex lege* duty.
19. The property was sold on auction to Mr. Jantjes, who failed to provide the necessary guarantees and was in fact in breach of the sale conditions signed by him and accepted by FNB. Despite not being able to pay for the property and his breach of the sale conditions, Jantjes attempted to sell the property to Phiri who took occupation of the property during or about December 2009.
  20. It is not clear exactly what transaction was concluded between Jantjes and Phiri, but what is clear is that:
    - 20.1 No guarantees or defective guarantees were delivered and the purchase price was never paid.
    - 20.2 No property transfer took place.
    - 20.3 No occupational interest was collected from Jantjes.
    - 20.4 Jantjes and Phiri were associated with each other because they gave the same residential address on the respective conditions of sale.
    - 20.5 The sale conditions were circumvented somehow.



- 20.6 The Sheriff failed to evict Jantjes or Phiri from the property as they were obliged to do in terms of Rule 46(11)(c); and
- 20.7 FNB failed, refused and/or neglected to hold Jantjes responsible for the losses incurred as they were obliged to in terms of Rule 46(1)(b).
21. My rights are reserved in respect of the possible contraventions of Rule 46 that took place during the sale of the property on 10 December 2009.
22. Phiri has been in occupation of the property since December 2009 and since then he has failed to pay any water and electricity neither has he paid any occupational interest. He has illegally constructed and operated both a shop and hairdresser on the property, and has been illegally leasing out the property to students. Phiri has not paid one cent towards the purchase of the property and he has to my utmost detriment been enriched by his possession of the property. I have as a result of Phiri's occupation of the property and the fact that he has been allowed by FNB and the Sheriff to remain in possession of the property, suffered severe damages.
23. I have been advised to lay a complaint with SARS and the Municipality against Phiri.
24. I was informed by Tjepo Rappoo during January 2010, not to worry because Jantjes could in any case not comply with his obligations in terms of the sale and that the sale would in all probability be cancelled in terms of Rule 46(11) after which time I would have been granted 60 days to sell the property. Because of this undertaking provided to me by Mariaan van den Bergh (Van Hulsteyn Attorneys), I did not approach the court to cancel the sale or claim alternative relief.
25. The Rule 46(11) application was served on Jantjes on 22 April 2010, 68 business days after she was *laved in mora* and the final order was granted on 10 June 2010. Despite the order being granted, the following sale in execution was only scheduled for 24 November 2011. It is not clear what transpired between 10 June 2010 and 24 November 2011, but what is clear is that during that time, Phiri was being enriched as aforesaid, Jantjes most probably received rental income and I was being prejudiced.
26. I only found out that the Rule 46(11) was granted several months after the order when I inquired from Mariaan van den Bergh who informed me that she was instructed by FNB not to advise me. At this juncture it is important to note that as early as 25 September 2009 I duly amended my domicilium address with FNB, which amendment was confirmed by Amelia Du Buisson. Despite the amendment aforesaid, FNB continued to serve notices and documents on me at my property, knowing that I was not in occupation of the property and that I would probably not receive it. This is evident from the numerous returns of service of

notices meant for me, served at the property on a Mr. Dlamini. The Sheriff only recorded the amendment of my domicilium address on 14 September 2012.

27. Since 21 December 2009 to 16 July 2011, FNB debited an amount of R25 790,64 in legal fees from my bond account purportedly for the Rule 46(11) application. I have on numerous occasions requested invoices, or bills of costs or taxed allocators, but nothing has been forthcoming. Despite a court order directing that Jantjes was responsible for the legal fees to be paid from the amount held in trust by the Sheriff, the fees were still debited to my mortgage bond.
28. The first time that I became aware that a new date for the auction was arranged, was on 24 November 2011, the date of the auction, when I received an e-mail from Amelia Du Buisson at 09:57 and an SMS from her at 09:54 informing me that the sale will only be cancelled if I pay the full arrears into the home loan account before 09:55 that morning. I was further contacted by Mariaan from Van Hulsteyn Attorneys on that day at 09:55 and told that the sale was in fact proceeding on that date. These facts totally contradict the statement made by Wendy Zulu, the Head of Legal, Risk and Compliance. FNB Home Loans in a letter dated 3 February 2012, directed to Amalia of Carte Blanche who said that on 24 November 2011 "*an e-mail was sent to customer by Amelia Du Buisson confirming that the sale had been set aside and informing him of the new sale date. On the same date our attorneys tried to contact the customer to advise him of the cancelled sale and the new sale date, but there was no response. FNB will never act in such a manner*" It is as a result of the many contradictions and false statements like this one made under oath that I elected to lay perjury charges against several employees of FNB, which is currently being investigated by the Hawks.
29. At this juncture it is important to note that the arrears at this stage included the instalments and interest due for the previous 22 months, since Phiri or Jantjes or Jantjes and Phiri took possession of the property and the legal fees debited from my bond account.
30. It can be deducted from FNB's actions that FNB had no intention of allowing me to retain my property and that FNB in fact had the intention of causing me damages.
31. On 24 November 2011 the property was sold to Phiri, the very same Phiri who has been living and profiting from the property for free, who should at this point in time have been well known to the Sheriff, FNB and Van Hulsteyns.
32. Phiri remained in occupation of the property and is still in occupation of the property. To date, he has not provided the Sheriff with any guarantees, nor has he paid the purchase price. The property has not been transferred to him and he has not paid a cent towards the water and electricity charges against the property. He has in fact reconnected the power illegally, and has not paid any occupational interest. He has been profiting illegally from his

occupation of the property to the absolute severe prejudice of myself and he has been allowed do to so by the Sheriff, FNB and Van Hulsteyns for the past 5 years.

33. Despite the purchase price for the property being due from 24 December 2011, Van Hulsteyns only placed Phiri in *mora* on 1 August 2012, almost eight months after his obligations became due and payable. The Rule 46(11) application was served on Phiri on 11 October 2012 and the final order was granted on 14 November 2012. Yet despite the 46(11) order being granted, Phiri still remains in occupation of the property and is now being assisted by FNB to purchase the property in contravention of Rule 46(10) & (11).
34. Accordingly for the reasons aforementioned, Phiri's offer is rejected.
35. As a result of the actions of the various parties to the sale in execution of the property aforesaid, I have suffered the following damages but not limited to:
  - 35.1 loss of profit – R500 000,00;
  - 35.2 consequential loss of income – R736 720 110,00 (actuarially calculated);
  - 35.3 loss of rental income – to be determined;
  - 35.4 arrear water and electricity account – to be determined;
  - 35.5 loss of value to the property – to be determined;
  - 35.6 interest due to FNB – to be determined; and
  - 35.7 Pain and suffering – undeterminable.
36. Each and every allegation contained in this letter has supporting documentary evidence.