
SOUTH AFRICA / JUDGMENT

Bayport Securitisation (RF) Ltd v Bambiso; Bayport Securitisation (RF) Ltd v Mantsanga; Bayport Securitisation (RF) Ltd v Zixesha (CA27/2017; CA370/2016; CA310/2016) [2020] ZAE CGHC 68 (25 June 2020)

[2020] ZAE CGHC 68

COURT

Eastern Cape High Court, Grahamstown

BEFORE

A Beyleveld, J Roberson

CASE / FILE NUMBER

CA27/2017; CA370/2016; CA310/2016

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IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION, GRAHAMSTOWN)

Case No: CA27/2017

DATE HEARD: 19 JUNE 2020

DATE DELIVERED: 25 JUNE 2020

In the matter between:-

BAYPORT SECURITISATION (RF) LTD

Appellant

and

BONIWE BELINDA BAMBISO

Respondent

Case No: CA370/2016

BAYPORT SECURITISATION (RF) LTD

Appellant

NONKULULEKO MANTSANGA

Respondent

Case No: CA310/2016

ZANYIWE PRINCESS ZIXESHA

Respondent

JUDGMENT

BEYLEVELD AJ

- [1] The litigation in the Magistrate's Court Mdantsane that preceded these three appeals[1] is not an example of genuine socio-economic litigation[2] aimed at protecting economic inequalities and imbalances, nor can it be equated with the struggle of Franz Kafka's character Joseph K[3] against unreasoning and unreasonable authority.
- [2] The motive behind the litigation, if one has regard to the degree of confabulation contained in the affidavits filed on behalf of the Respondents in the Magistrate's Court[4] is nothing other than an attempt, utilizing unwarranted procedural defences, to further delay payment of what is due to the Appellant in terms of default judgments granted in favour of the Appellant pursuant to signed consents to judgments in terms of Section 58 of the Magistrate's Court Act.[5]
- [3] The Magistrate at Mdantsane, and on the application of the Respondents, rescinded the default judgments granted against them.[6]
- [4] Besides minor changes such as amounts, dates, names and the like the allegations contained in the original rescission application papers are for all practical purposes the same.
- [5] If one has regard to the issues raised in all three of the rescission applications[7] and if one has regard to similar litigation which also culminated in appeals before this Court[8], it is apparent that a standard precedent was utilised in all the matters with substantial amounts of copy paste.
- [6] The Magistrate in granting the rescissions and finding in favour of the Respondents did so for a variety of

reasons.

- [7] No useful purpose will be served to enumerate in detail the bases relied upon by the Magistrate in the original three rescission applications for reaching her conclusion.[9]
- [8] The issues raised in this appeal have been dealt with by this Court as well as the Supreme Court of Appeal on various occasions.[10]
- [9] The golden thread that runs through all these Judgments is the acceptance of the essential element required to successfully obtain a rescission of judgment, namely the establishment of good cause for the rescission.[11]

- [10] It is the lack of formulating a bona fide defence in all the rescission applications which is definitive of this appeal.[12]
- [11] Nowhere in the affidavits filed on behalf of the Respondents in the Magistrate's Court applications for rescission of judgment is there evidence that there exists a bona fide defence to the claim which prima facie has some prospect of success.[13]
- [12] Put differently, none of the Respondents in such rescission applications raised the existence of an issue fit for trial.[14]
- [13] The Respondents[15] failed in their papers, not only to establish good reasons for their absence or default but, as indicated above, failed to establish grounds of defence.[16]
- [14] Accordingly the Respondents failed to satisfy the requirement of setting out the grounds of a defendant's defence to the claim.[17]
- [15] Besides the failure on the part of the Respondents to adequately deal with the aspect of delay and the failure to establish a bona fide defence, there also exists no plausible explanation why the Respondents[18] acquiesced in the judgments by effecting payments pursuant to such consents to judgment.[19]
- [16] The default judgments, as indicated above, were all granted pursuant to written consents to judgments. As a general rule, a consent judgment cannot arbitrarily be repudiated or withdrawn.[20]
- [17] It is accordingly clear that the Magistrate erred in rescinding the default judgments and such orders must therefore be set aside.
- [18] In the circumstances the following orders are made in case numbers CA27/2017, CA370/2016 and CA 310/2016:
- (a) The appeal is upheld with costs.
- (b) The Order of the Magistrate is set aside and replaced with the following:

"The application is dismissed with costs."

A BEYLEVELD

Acting Judge of the High Court of South Africa

ROBERSON J - I agree

J ROBERSON

Judge of the High Court

[1] Which were heard together

[2] Our law is replete with examples hereof, particularly since the advent of a new constitutional dispensation – see for instance

Brisley v Drotosky 2002 (4) SA 1 (SCA); Afrox Health Care Bpk v Strydom 2002 (6) SA 21 (SCA); Barkhuizen v Napier

[2007] ZACC 5; 2007 (5) SA 323 (CC); Mpange v Sithole 2007 (6) SA 578 (W); Sebola & Another v Standard Bank of South Africa Ltd & Another 2012 (5) SA 142 (CC) and many others

[3] Franz Kafka, *The Trial* (Penguin Modern Classics)

[4] They were the Applicants in the lower court

[5] No 32 of 1944 as amended

[6] The same Magistrates presided over the hearing of all three applications for rescission namely Ms DJ Marais

[7] The Respondents were all represented by the same attorney

[8] See the decisions in this Division which are listed in Footnote 10 infra

[9] Some of the reasons for granting the rescissions were lack of compliance with Section 129 of the National Credit Act in that there were no track and trace reports; lack of compliance with Section 57 of the Magistrate's Court Act; failure to comply with Section 58 of the Magistrate's Court Act; lack of jurisdiction and a failure to have made the request for default judgment in terms of Rule 11(6) read with Rule 12(5) of the Magistrate's Court Act and a failure to refer the request for default judgment in terms of Section 58 to the Court

[10] Bayport Securitisation (RF) Ltd v Sinandile Unreported Judgment dated 22 March 2019 Case No. 352/16 ECHC; Bayport Securitisation (RF) Ltd v Mtseli Unreported Judgment under Case No. CA13/16 Eastern Cape High Court Grahamstown September 19, Bayport Securitisation (RF) Ltd v Mabali Case No. CA08/2016; v Siwisa Case No. 11/2016; v Gadu Case No. 12/2016 and Bayport Securitisation (RF) Ltd v Sakata

[2019] ZASCA 73

[11] Whether the rescissions were in terms of Magistrate's Court Rule 49(1), 49(3) or 49(8) is of little significance if one has regard to the lack of good cause shown for the granting of the rescission applications (which applications were brought considerably late without an adequate explanation in this regard)

[12] Even in terms of Rule 49(8) where a rescission is sought on the basis that the Judgment was void ab origine, it is still incumbent upon an applicant for rescission to set out a valid and bona fide defence. *Leo Manufacturing CC v Robor Industrial (Pty) Ltd* 2007

(2) SA 1 (SCA) and Bayport Securitisation (RF) Ltd v Sakata supra at para 6

[13] *Colyn v Tiger Food Industries t/a Meadow Feed Mills (Cape)* 2003

(6) SA 1 (SCA)

[14] Sanderson Technitool (Pty) Ltd v Intermenua (Pty) Ltd 1980

(4) SA 573 (A) at 575H to 576A

[15] As Applicants in the rescission applications

[16] Bayport Securitisation (RF) Ltd v Sinandile supra at para 9

[17] Cooper & Ferreira v Magistrate for the District of Humansdorp and Another [1997] 1 All SA 420 (E) at 425j to 426i and Leo Manufacturing CC v Robor Industrial (Pty) Ltd t/a Robor Stewarts & Lloyds 2007 (2) SA 1 (SCA)

[18] In differing degrees

[19] Schmidlin v Multisound (Pty) Ltd 1991

(2) SA 151 (CPD) at 156B where the following was stated: “Acquiescence in the execution of a judgment must surely in logic normally bar success in an application to rescind on the same basis as acquiescence in the very granting of the judgment itself would”.

[20] Such judgments are usually set aside on the basis of a justus error. See Gollach & Gomperts (1967) (Pty) Ltd v Universal Mills & Produce Co (Pty) Ltd 1978 (1) SA 914 (A)

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