

SOUTH AFRICA / JUDGMENT

Grobler v Vermaak (40234/2015) [2016] ZAGPPHC 537 (24 June 2016)

[2016] ZAGPPHC 537

COURT

North Gauteng High Court, Pretoria

BEFORE

AC Basson

CASE / FILE NUMBER

40234/2015

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

24/6/2016

CASE

NO: 40234/2015

Reportable:

no

Of

interest to other judges: no

Revised

In

the matter between:

IJ

GROBLER Applicant

(In

the application for leave to appeal)

and

C

VERMAAK Respondent

JUDGMENT

(Application for leave to appeal)

AC BASSON. J

- [1] This is an application for leave to appeal against my judgement and order refusing rescission of a judgment granted against the applicant (the defendant in the main application) on 16 August 2012.
- [2] I do not intend repeating the reasons for my judgment as they are fully recorded in the judgment handed down on 18 May 2016. Suffice to point out that this court concluded that the applicant had failed to advance a reasonable explanation for the default and secondly that she did not advance a bona fide defence which prima facie has prospects of success.
- [3] The court also held that the applicant did not diligently pursue the rescission application to finality and that almost three years had lapsed before the rescission application finally served before this court. Two rescission applications were filed. The first rescission application was withdrawn two years after the rescission application was filed. After the withdrawal of the first rescission application the applicant waited for more than a year to file the second rescission application. The applicant simply refuses to accept any responsibility for these delays and continues to place the blame on her attorneys. Although it is accepted that the common law does not prescribe timeframes within which a rescission should be brought, it is accepted that such an application should be brought within a reasonable time after judgement. In the present matter more than three years have lapsed since the judgement was granted before the (second) rescission application was finally heard. This time period is marred by numerous unacceptable and largely unexplained delays. The court consequently concluded on the facts that the applicant is the author of her own misfortune.
- [4] I have considered whether an appeal would have reasonable prospects of success. I am not persuaded that there exist reasonable prospects of success on appeal.
- [5] In the event the following order is made:

The application for leave to appeal is dismissed with costs.

AC BASSON

JUDGE OF THE HIGH COURT

Appearances:

For the applicant : Adv. J F Winnerts

Instructed by : Bornman Snyman & Barnard Attorneys

For the Respondent : Adv. A Greylin

Instructed by : Spies Bester Potgieter Attorneys

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