

SOUTH AFRICA / JUDGMENT

Kedibone v Standard Bank of South Africa Ltd (60518/14) [2015] ZAGPPHC 869 (18 December 2015) [2015] ZAGPPHC 869

COURT

North Gauteng High Court, Pretoria

BEFORE

S Madiba

CASE / FILE NUMBER

60518/14

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REPUBLIC OF SOUTH
AFRICA

IN THE HIGH COURT OF
SOUTH AFRICA

(GAUTENG DIVISION,
PRETORIA)

CASE

NO: 60518/14

DATE:

18 December 2015

In the matter between:-

RAKUBA

JAQUILINE

KEDIBONE Applicant

and

THE

STANDARD BANK OF SOUTH AFRICA

LIMITED Respondent

JUDGMENT

MADIBA (AJ)

INTRODUCTION

1. The Applicant seeks rescission of the default judgment granted on the 13th January 2015 under case number 60518/14. The order sought to be rescinded by the Applicant is the following:-
 - i) Applicant to pay sum of R108 474.67 together with interest calculated thereon and as well as monthly insurance and assurance premiums.
 - ii) Portion [...], Erf [...], Vosloorus Extension 28 Township, registration division IQ, the Province of Gauteng, held under the certificate of right of lease hold T 66/1993 belonging to the Respondent be declared specially executable and the Registrar of the Honourable Court be authorized and directed to issue a warrant of execution against Respondent's movable property.

CONDONATION

2. The Applicant applied for condonation for the late filing of her application for rescission. The reasons advanced are that she could

not do so as the court file was incomplete. The time period that lapsed is minimal before the lodging of her papers. It was

impossible for the Applicant to lodge her application with the incomplete court file. It took time for the applicant to get

hold of a complete court file.

The standard for considering an application for condonation is the interest of justice. Whether to grant condonation depends upon the facts of and circumstances of each case. The factors to be considered may include, the nature of the relief sought, the extent and nature of the delay and the reasonableness of the explanation for the delay.

The lodging of this application depended on the Applicant having access to the complete court file to enable her to properly prepare.

There is a slight delay which is not prejudicial to the Respondent as the period that lapsed is minimal. Good cause was shown and the application stands to succeed.

3. The application for condonation is granted as the explanation given is reasonable under the circumstances.

FACTUAL

BACKGROUND

4. The Applicant and Respondent entered into a home loan agreement for the amount of R30 000.00. As a security the Applicant signed a continuing cover mortgage bond in favour of the Respondent. The Applicant fulfilled all the obligations in terms of the home loan agreement and fully settled the debt owed to the Respondent.
5. On the 8 September 2014, the Respondent caused summons to be issued against the Applicant in the sum of R73 000.00. On enquiry by the Applicant during September 2014, she was advised by the Respondent that its claim was premised on arrears owing under a second loan agreement which Applicant allegedly concluded with the Respondent.
6. The Applicant denied ever concluding the second home loan agreement with the Respondent. The Applicant left the Respondent premises after the enquiry with an impression that the matter will be investigated and any legal proceedings against the Applicant would be stayed pending investigations by the Respondent.
7. The Respondent's submission is that it concluded a second home loan agreement with Applicant to the value of R73 000.00. Applicant authorized payment of R73 000.00 into her daughter's Capitec account. The investigations by the Respondent it is contended, revealed that the signature on the home loan agreement and the one authorising payment into the account of the Applicant's daughter resembles that of the Applicant.
8. Default judgment was obtained against the Applicant on the 13th January 2015 and a warrant of execution against the Applicant's immovable property was served on the Applicant on the 12th February 2015. Applicant's contention is that she denies ever entering into an agreement with the Respondent. She further contended that she has never authorized any person to receive any amount of money on her behalf.

ISSUE TO BE DECIDED

9. Whether the Applicant has shown a good cause and a bona fide defence to the Respondent's claim for the rescission application to be granted. In order for the Applicant to succeed with her application for rescission, the following requirements as set out in S.
 - v. Grant v. Plumber (PTY) Ltd page 49 (3) SA at page 471 are to be satisfied:-
 - i) Applicant must explain absence of wilfulness;
 - ii) The applicant's application must be bona fide and not made with the intention to delay the Respondent's claim;

iii) A bona fide defence is to be shown to the Respondent's claim.

ABSENCE OF WILFULNESS

10. The Applicant's explanation is that on receipt of the summons, she attended the offices of the Respondent to dispute the claim against her. She got the impression that the matter will be investigated and an outcome of the investigation communicated to her. Applicant did not enter notice to defend on the understanding that legal action will be stayed pending the outcome of the investigation.
11. It is apparent from the Respondent's answering affidavit that it is admitted:-
 - (i) that the Applicant did attend to the Respondent's offices to enquire about the summons issued.
 - (ii) The Respondent did investigate the Applicant's contentions.

The Respondent did however not dispute the Applicant's impression that legal action would be stayed pending investigation.

12. In Koekemoer
- v. Viljoen 1921 TPD 129 the court held that an Applicant will not be held in wilful default if she acted on a bona fide but mistaken belief. The court in Hasset v de Vries Stryger (2008) JOL 22434 at page 4 held Applicant to have shown absence of wilfulness where she agreed with her legal representative that legal action will be stayed and the legal representative denying it.
13. The explanation proffered by the Applicant is reasonable under the circumstances. The Applicant took reasonable steps by enquiring about the claim after receiving the summons. The application by her is therefore bona fide and has not been made with the intention to delay Respondent's claim.

BONA FIDE DEFENCE

14. Applicant's defence is that the second home loan be declared null and void as it was concluded without her knowledge and authority. The authenticity of the Applicant's signature on the said agreement is disputed. It is not enough for the Respondent to merely state that it is Applicant's signature on the second loan agreement as it looks similar to her previous signature. The issue of the signature can only be resolved through expert evidence.

It is sufficient for the Applicant to set out facts that would constitute a defence at the trial.

15. Should it be proved that indeed the signature that appears on the second home loan agreement does not belong to the Applicant, that will be the end of Respondent's claim. The onus is on the Applicant to show good cause for the rescission of the default

judgment granted against her.

16. There exists a substantial defence which the Applicant desires to raise in the trial if her application is granted. The Applicant has shown good cause for the relief she seeks and that she has a bona fide defence to the Respondent's claim. Consequently the Applicant has made out a case for the rescission and her application is to succeed.

COSTS

17. Costs follow the successful party. Applicant is granted costs for this application.

ORDER

18. Accordingly, the following order is made,
- a) The application for rescission of default judgment is granted.
 - b) Respondent to pay costs.

ACTING JUDGE OF THE HIGH COURT

S MADIBA

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