

SOUTH AFRICA / JUDGMENT

Nkoenyane v ABSA Bank Limited (50924/2021) [2024] ZAGPJHC 804 (15 August 2024) [2024] ZAGPJHC 804

COURT

South Gauteng High Court, Johannesburg

BEFORE

TP Mudau

CASE / FILE NUMBER

50924/2021

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

Case

No: 50924/2021

1.

REPORTABLE: NO

2.

OF INTEREST TO OTHER JUDGES: NO

3.

REVISED: YES

15

August 2024

In

the matter between:

NKOENYANE,
ALEX LANCON
APPLICANT

And

ABSA
BANK LIMITED
RESPONDENT

This judgment was handed
down electronically by circulation to the parties'
representatives by email and released to SAFLII.
The date for
hand down is deemed to be 10h00 on 15 August 2024.

Key words: Rescission
application-requirements

JUDGMENT

MUDAU, J:

- [1] This is an application to rescind the court order granted by this Court on 9 December 2021. Judgement by default was granted by the Registrar against the applicant confirming cancellation of a credit agreement between the parties. Also, that a 2013 Mercedes-Benz E63AMG S vehicle (the motor vehicle) with engine number 1[...] and chassis number W[...] be returned to the respondent (Absa bank), alternatively, that it be attached by the Sheriff and returned to Absa bank.
- [2] Properly distilled from the papers, the grounds for this application, are firstly, that the applicant (Mr Nkoenyane) did not receive service of the summons prior to judgment. Secondly, that the signature on the summons is not in compliance with the statute. The complaint being that the failure to depict the name of the signatory to the summons accompanied with the certificate as contemplated by Uniform Rule 18 (1) confirming that the legal practitioner's rights to sign pleadings is irregular. The application is opposed by Absa. After hearing submissions and having considered the matter, I granted an order dismissing the application for rescission with costs on the scale as between attorneys and client.

Background

facts

- [3] On or about 16 July 2020, Absa Bank and Mr Nkoenyane entered into an instalment sale agreement for the purchase of the motor vehicle. On 26 October 2021 Absa Bank demanded rectification of the account and informed the applicant of the extent of his breach. Mr Nkoenyane was also informed that the instalment sale agreement was cancelled because of the extent of the arrears. Mr Nkoenyane as principal debtor had referred himself to debt

counselling but failed to comply with the necessary requirements prescribed by the debt counselling process. Consequently, on 30 September 2021, Absa terminated the debt review process by giving

written notice in terms of section 86 (10) of the National Credit Act ("the National Credit Act").[1]

- [4] In terms of the instalment sale agreement, which is common cause, it was the applicant who agreed that his chosen domicilium address from which he would receive, inter alia, legal process was [...] A[...] M[...], [...] B[...]Street, W[...] H[...], Johannesburg South. On 5 November 2021, the summons was served upon the applicant by the Sheriff at the chosen domicilium address by affixing on the main outer door. On 2 December 2021 ABSA Bank made an application for default judgment. As indicated above, on 9 December 2021, this Court granted judgment in favour of Absa Bank against the debtor requiring return of the motor vehicle.
- [5] On 23 March 2022, Mr Nkoenyane delivered his application for rescission. On 4 October 2022, Absa Bank delivered its answering affidavit in the rescission application. As at the hearing of this application, Mr Nkoenyane has failed to deliver a replying affidavit and has further failed to take any steps to bring the rescission application to fruition. There was proper service and enrolment of this application by the bank.
- [6] Regarding the merits, it is trite that a chosen domicilium citandi is a place chosen by a person where process and judicial proceedings may be served upon such person.[2] Accordingly, it is trite that if a domicilium citandi has been chosen, service there will be good even though a defendant is known not to be living there.[3]
- [7] As for the second complaint regarding the way the summons itself was signed, it is necessary to consider Uniform Rule 18(1) which states:
- "A combined summons, and every other pleading except a summons, shall be signed by both an advocate and an attorney or, in the case of an attorney who, under section 4(2) of the Right of Appearance in Courts Act, 1995 (Act No. 62 of 1995), has the right of appearance in the High Court, only by such attorney or, if a party sues or defends personally, by that party".*
- [8] A combined summons comprises of both the summons portion and the pleading, which is the particulars of claim attached to it. Accordingly, the summons component (or simple summons portion) of the combined summons is a notice and not a pleading. If one has regard to the particulars of claim read together with the simple summons, it is clear therefrom that the same person, namely Mr Jacques Marais signed the summons and particulars of claim. From the words inscribed under Marais's signature on the particulars of claim, he does in fact have rights of appearance in terms of the law.

- [9] The applicant failed to demonstrate that he has a bona fide defence on the merits, which is a prerequisite to an application of this nature. The applicant failed to demonstrate that he has a bona fide defence on the merits. Instead, he launched a frivolous and meritless application. It is for the above reasons that I granted the order dismissing the application with costs on an attorney and client scale as per the underlying agreement between the parties.

TP MUDAU

JUDGE OF THE HIGH COURT

JOHANNESBURG

APPEARANCES:

For the Applicant: Adv N. Allli Instructed by: Jay Mothobi Inc. For the Respondent: In person but did not appear Date of Hearing: 13 August 2024 Date of Judgment: 15 August 2024

[1] 34 of 2005.

[2] See Muller v Mulbarton Gardens (Pty) Ltd 1972

(1) SA 328 (W) at 331H See also Loryan (Pty) Ltd v Solarsh Tea & Coffee (Pty) Ltd 1984

(3) SA 834 (W) at 847D; Ficksburg Transport v Rautenbach 1986

(2) SA 88 (O) at 92E-F.

[3] See Pretoria Hypotheek Maatskappy v Groenewald 1915 TPD 170. See also Hollard Estate v Kruger 1932 TPD 134; Van der Merwe v Bonaero Park (Edms) 1998

(1) SA 697 T at 701C-E.

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Prepared on 10 October 2026 · Esheria