

SOUTH AFRICA / JUDGMENT

Pule v Erf 1083 Rooihuiskraal (Pty) Ltd (45664/2007) [2017] ZAGPPHC 584 (12 September 2017)

[2017] ZAGPPHC 584

COURT

North Gauteng High Court, Pretoria

BEFORE

Mothle

CASE / FILE NUMBER

45664/2007

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE

NUMBER: 45664/2007

DATE: 12/09/2017

REPORTABLE: NO
OF
INTEREST TO OTHER JUDGES: NO
Inthe matter between: PULE,
LINDA KENNETH
MASIKE Applicant
And
ERF
1083 ROOIHUI SKRAAL (PTY)
LTD Respondent

JUDGMENT**MOTHLE J**

1. This is an application for leave to file a further affidavit in terms of Rule 6(5) (e) of the Rules of this Court. The affidavit is required in support of an interlocutory application for rescission of a judgment granted in favour of the Respondent against the Applicant.
2. The Respondent, also cited as such in the application for rescission of judgment, opposes this application.
3. In support of this application, the Applicants raise two contentions, namely:
 - 3.1 That the lodging of further affidavits should be permitted where necessary for the proper adjudication of a case and that parties should be permitted to have a case adjudicated upon the full facts; and
 - 3.2 That the Respondent failed to demonstrate that should the Court permit any further affidavits, such would cause any prejudice resulting in injustice or unfairness on its part.
4. The Respondent on the other hand contends that the further affidavit requested by the Applicant introduces a new matter which was not foreshadowed in the founding affidavit in support of the rescission application. The Respondent argues further that by admitting this further affidavit, the Court will be allowing the Applicants to introduce new matter which will be against the Rules of this Court.
5. It is trite that the filing of additional affidavits beyond those provided for in terms of Rule 6 may only be effected with leave of the Court. In considering leave to do so, a court has a discretion which must be exercised in the interest of justice. In this case, it is in the interest of enabling finality to the proceedings that this application must be considered. See *Kasiyamhuru v Minister of Home Affairs* 1991 (1) SA 643 (W) and also *Baeck & Co SA (Pty) Ltd v Van Zummeren and Another* 1982 (2) SA 112 (W).
6. The following is common cause:
 - 6.1 This application is an interlocutory application to a rescission of judgment application;
 - 6.2 The rescission of judgment application, whose documents are not before this Court, will be subject to adjudication by another Court;
 - 6.3 The Respondent has not outlined the nature of the prejudice to this Court as he still has to respond to the additional affidavit should the Court allow it; and
 - 6.4 The Applicants are tendering costs of this application which would compensate any prejudice contended by the Respondent.

7. It seems to me the Court adjudicating the rescission application, would be in a better position to decide, within the context of the grounds for the rescission, whether the additional affidavit introduces new matter and whether the Respondent suffers prejudice or is prejudiced thereby.
8. Having regard to what is stated above, it is this Court's view that the Applicant should be allowed to file an additional affidavit as requested, to enable the Court adjudicating the rescission of judgment to consider all facts and decide the matter in the interest

of justice. That would include the Respondent's response to this additional affidavit. Such Court, would be in a better position to also adjudicate on the question of costs.

9. In the premises I make the following order:
 - (i) That the application to file an additional affidavit in terms of Rule 6(5)(e) is hereby granted;
 - (ii) Within 10 days after the filing of the additional affidavit, the Respondent may file an answer thereto. Thereafter the Applicant is granted 5 days within which he may reply to the Respondent's answering affidavit;
 - (iii) The costs of this application will be costs in the cause.

SP MOTHLE

Judge of the High Court.

Gauteng Division, Pretoria

For the Applicant :

Adv. J Bhima

Instructed by :

Clorinda Scalco Attorneys Inc. Attorneys for the Applicant

For the Respondent : Adv. C J Welgemoed

Instructed by :

Van Greunen & Associates Inc. Centurion

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPPHC/2017/584.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/pule-v-erf-unknown-topic-agpphc-2017>

Prepared on 9 October 2026 · Esheria