

SOUTH AFRICA / JUDGMENT

S v Malumane and Another (A92/13) [2013] ZAGPPHC 38 (7 February 2013) [2013] ZAGPPHC 38

COURT

North Gauteng High Court, Pretoria

BEFORE

LI Vorster, Makgoba EM

CASE / FILE NUMBER

A92/13

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IN

THE HIGH COURT OF SOUTH AFRICA

(NORTH

GAUTENG HIGH COURT, PRETORIA)

MagistrateKWA-MHLANGA

Case

No: SC47\2011

High

Court Ref No:

CASE

NUMBER:A92/13

DATE:07/02/2013

THE

STATE V MFANA LANIOS MALUMANE

AND

KLAAS JAN MAHLANGU

REVIEW

JUDGMENT

LI VORSTER (AJ)

1. The applicant applies for the review of a judgment granted by default in the small claims court for the District of Kwa- Mhlanga. The judgment was granted on 21 June 2011 for the amount of R 3000.00 , and the costs of the Sheriff in the amount of R 120,00.
2. It appears that the applicant was not present at court at the date of court as the applicant was absent at court due to medical treatment on that date.
3. The sole ground of which the applicant relies on is the fact that he was not at court, judgment was granted in his absence by default and that he wants his version to be put to the court.
4. That is not a ground for review which the applicant can rely on.

That is clear from the provisions of Section 46 of the Small claims Court Act 61 of 1984.

5. The grounds upon which a decision or proceedings of the small claims court can be taken on review to this court are:-
 - (a) absence of jurisdiction on the part of the court, are :
 - (b) interest in the cause bias malice or the commission of an offence referred to in Part 1 to 4, or Section 17, 20 or 21 of Chapter 2 of the Provision and Combating of Corrupt Act, 2004, on the part of the commissioner, and
 - (c) Gross irregularity with regard to the proceedings.
6. None of these grounds of review are alleged. Consequently, the review cannot succeed. The correct remedy of the applicant is Section 36 of the Small Claims Court Act which provides in Section 36 (a) for an application to rescind or vary any judgment granted in the absence of the person against whom that judgment was granted. That application must be set down for a hearing on a date within six weeks after the applicant obtained knowledge of the judgment.
7. I am uncertain whether that remedy is still available to the applicant, given laps of the period of time between the date of the judgment and today.
8. Consequently the application for a review is dismissed.

LI VORSTER

ACTING JUDGE OF THE HIGH COURT

I AGREE,

MAKGOBA EM

JUDGE OF THE HIGH COURT

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