

SOUTH AFRICA / JUDGMENT

Transsec 2 (RF) Limited v Zulu (29221/2018) [2018] ZAGPPHC 620 (24 August 2018)

[2018] ZAGPPHC 620

COURT

North Gauteng High Court, Pretoria

BEFORE

Modisa

CASE / FILE NUMBER

29221/2018

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH
AFRICA

GAUTENG DIVISION, PRETORIA

(1)

NOT

REPORTABLE

(2)

NOT OF

INTEREST TO OTHER JUDGES

(3)

REVISED.

CASE

NO: 29221/2018

24/8/2018

In

the matter between: TRANSSEC
 2 (RF)
 LIMITED
 Plaintiff /
 Applicant
 (formerly
 Transsec 2 (Pty) Ltd , registration Number [...]
 And
 MAHLOMUZA
 JOSEPH
 ZULU
 Defendant /
 Respondent

JUDGMENT

MODISA AJ:

- [1] The Plaintiff (hereinafter referred to as “the Applicant”) brought an application for summary judgment against the Defendant (hereinafter referred to as " the Respondent") wherein an order is sought for confirmation of termination of agreement , return of the 2015 Toyota Quantum Sesifikile 16 - Petrol with Engine number 2TR9020122 and Chassis number AHTSX22P507021799 to the Plaintiff forthwith, expenses incurred for removal , valuation, storage and sale of the vehicle as well as costs to be taxed on attorney and client scale;
- [2] The summary judgment application is opposed by the Respondent ;
- [3] The summary judgment application emanates from a combined summons which was issued by the Applicant on or about 26 April 2018 pursuant to the fact that the Respondent having fallen in arrears to an amount of R49 207.44 (Forty Nine Thousand Two Hundred and Seven rand and Forty Four Cents) ;
- [4] The Respondent raised certain points in limine in respect of the Applicant's verifying affidavit.

Non-compliance with the regulations governing the administering of an oath or affirmation

- [5] Counsel for the Respondent submitted that the Applicant's verifying affidavit does not comply with the regulations of the Justices of the Peace and Commissioner of Oath Act No. 16 of 1963 read with regulation R.1258 of 21 July 1972 in that it was not properly commissioned having regard to the lack of the following words:

" (a) Whether he knows and understands the contents of the declaration·

(b) Whether he has any objection to taking the prescribed oath; and

(c) Whether he considered the prescribed oath to be binding in his conscience"

- [6] The Respondent relied on the judgment of Absa bank Ltd v Botha No. & Others[1];
- [7] The facts in the Absa Bank judgment relied upon by Counsel for the Respondent are distinguishable from the facts in casu ;
- [8] It is clear that the verifying affidavit was signed by the deponent on 14 June 2018, that the deponent has acknowledged that she knows and understands the contents of the affidavit and it was also signed by the commissioner of oath one Merllynn Du Plessis, an attorney who signed same in her ex officio capacity;
- [9] In any event, the Court has a discretion to refuse an affidavit which has not complied with the Regulations subject to whether there has been substantial compliance with the Regulations[2];
- [10] In my view, there was substantial compliance with the Regulations;
- [11] I therefore exercise my discretion in favour of the Plaintiff moreso having regard to the finding that the provisions of the Regulations
- are directory merely and not peremptory[3];

Lack of authority

- [12] The second point in limine which has been raised by the Respondent is that the deponent to the verifying affidavit in her capacity as Legal Manager of the Applicant does not have the necessary authority to depose to the affidavit on behalf of the Applicant;
- [13] The Respondent also contents that there is no resolution attached to the verifying affidavit and the deponent was never involved with the Respondent during the course of his dealings with the Respondent. According to the Respondent , the deponent does not have any personal knowledge of this matter;
- [14] Counsel for the Respondent also relied on the decision of Mall (Cape) (Ply) Ltd v Merino Ko-operasie Bpk[4];
- [15] The Court in Mall (Cape)(Ply) Ltd supra[5] held that it is not necessary in every case to attach a resolution;
- [16] Counsel for the Applicant submitted that the Respondent should have invoked the provisions of Rule 7 of the Uniform Rules of Court if he intended to challenge the authority of the deponent in this case. He relied heavily on the decision of Ganes and Another v Telecom Namibia Ltd[6];
- [17] I agree with Counsel for the Applicant that failure by the Respondent to invoke the provisions of Rule 7 is fatal to the objection of lack of authority;

[18] I also agree with Counsel for the Applicant with the submission to the effect that the deponent has the required knowledge to depose to the affidavit in support of the summary judgment application which knowledge she obtained from the files and records of the Applicant which are in her possession and under her control and of which the contents thereof she has familiarised herself with;

[19] I was referred to the judgment of Rees & Another v Investec Bank Ltd[7];

[20] In the result the deponent does have authority and personal knowledge to depose to the verifying affidavit;

Bona fide defence

[21] I now turn to the issue of whether the Respondent has a bona fide defence or not;

[22] The Respondent deny that he is owing any amount whatsoever ;

[23] The Respondent attached certain payment notifications as proof of payment which were computed initially, to be in the amount of R40 740.00 for the period 31 May 2018, 03 June 2018 and 08 June 2018;

[24] Counsel for the Respondent informed the Court that the correct amount should not have been R 40 740.00 but rather an amount of R 30 170.00. Nothing turns on this aspect;

[25] Counsel for the Respondent raised an objection in open Court for the handing up of the certificate of balance on the grounds that it was inadmissible evidence. The certificate of balance is admissible evidence and the objection is not upheld;

[26] The fact of the matter is that a certificate of balance which was handed up by Counsel for the Applicant at the day of the hearing of this matter constitute prima facie prove that the Respondent is indeed in arrears with his monthly instalments;

[27] The said certificate of balance mentioned in the preceding paragraph is dated 17 August 2018 and paragraph 2 thereof reads as follows:

" I confirm that as at the date of issuing of summons , the Defendant was in arrears with his monthly instalments due to the Plaintiff in the amount of R 49 207.44. His current arrears are R 70 592.71"

[28] In the light of the Supreme Court of Appeal Judgment of Rossouw & Another v Firststrand Bank Ltd[8] I accepted the certificate of balance at the time when it was handed up at Court;

[29] The issue of non-compliance with the National Credit Act was not pursued in argument. In any event the notice was sent to the Respondent's

chosen domicilium and if he changes his address it is his duty to inform his creditors that he had done so;

[30] In my view , the Respondent does not have a bona fide defence and all the points in /imine which have been raised must also fail;

[31] Accordingly the following order is made:

1. Confirmation of termination of agreement ;
2. Return of the 2015 Toyota Quantum Sesifikile 16 - Petrol with Engine number 2TR9020122 and Chassis number AHTSX22P507021799 to the Plaintiff forthwith,
3. Expenses incurred for removal , valuation, storage and sale of the vehicle;
4. Attorney and client costs to be taxed.

MODISA AJ

HIGH COURT OF SOUTH AFRICA

DATE OF HEARING :

20 AUGUST 2018

DATE OF JUDGMENT:

24 AUGUST 2018

APPLICANT/ PLAINTIFF'S COUNSEL: ADV C.J.S KOCK

APPLICANT/ PLAINTIFF'S ATTORNEY: MARIE-LOU BESTER INC

RESPONDENT/DEFENDANT'S COUNSEL: ADV R LOIBNER

APPLICANT/ PLAINTIFF ATTORNEY : MACHOBANE KRIEL INC

[1] See : 2013 (5) SA 563 (GNP);

[2] See : Absa Bank V Botha NO supra at 566 [8]

[3] See : Ex Parte Du Toit 1962 (1) SA 445 (ECO) AT 445 C--H

[4] See : 1957(2) SA 347 (CPD) at 3510

[5] See : page 352 A-8

[6] See : 2004 (3) SA 615 (SCA) at para [19]

[7] See : 2014 (4) SA 220 (SCA) para [15]

[8]See : 2010

(6) SA 439 (SCA) at 454 [48]

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Prepared on 13 October 2026 · Esheria