

SOUTH AFRICA / JUDGMENT

Minister of Police and Another v Yekani; In Re: Yekani v Minister of Police and Another (43463/2015) [2017] ZAGPPHC 399 (14 July 2017) [2017] ZAGPPHC 399

COURT

North Gauteng High Court, Pretoria

BEFORE

Holland-Müter

CASE / FILE NUMBER

43463/2015

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)

Not

reportable

Not

of interest to other judges

Revised.

14/7/2017

CASE

NO: 43463/2015

In the

matter between:

THE
MINISTER OF
POLICE 1st
Applicant
THE
NATIONAL COMMISSIONER OF
POLICE 2nd
Applicant
and
ALBERT
FIKILE
YEKANI Respondent

In re: ALBERT
FIKILE
YEKANI Plaintiff
THE
MINISTER OF
POLICE 1st
Defendant
THE
NATIONAL COMMISSIONER OF
POLICE 2nd
Defendant
WRITTEN

REASONS FOR JUDGMENT

- [1] This matter came before me on 25 May 2017 as an application for the rescission of a default judgment granted by Basson J on 20 May 2016 against the two applicants. See "IER-1".
- [2] After hearing arguments by both counsel for the applicants and the respondent, I refused the application for rescission of judgment and indicated that written reasons for such refusal would be given if requested. The applicants now requested such reasons.
- [3] Summons was issued 9 May 2015 by the Registrar of this court and forwarded to the Sheriff, Pretoria Central for service thereof. See "IER-2". Annexed to the summons was a letter of demand on behalf of the respondent by his attorneys of record. See "IER-5".
- [4] Summons was served on both applicants on 15 May 2015. See "IER-3&4".
- [5] The applicants aver that there was non-compliance of section 2(1) &
- (2) of the State Liability Act, Act 20 of 1957 in that a copy of the summons was not served within 7 days thereafter on the Office of the State Attorney.
- [6] When no notice of intention to defend was forthcoming from the defendants (the applicants in this application), the respondent had the matter set down for default judgment for 20 May 2016. See "IER-6". It is noted that this notice of set down (

"IER-6") was served on the Offices of both applicants and of the State Attorney. See p 38. There can be no argument that the applicants or the State Attorney did not know of the application for default judgment. The explanation now tendered by Colonel Roodt (deponent to the application for rescission of judgment) that the documents went astray between the various offices of the police handling the matter in my view not sufficient to find that the default judgment was obtained erroneously to warrant a rescission in terms of Rule 42(1)(a) of the Uniform Rules of Court. All three offices on behalf of the applicants were informed of the pending application.

- [7] The question as to the "mistake" by the plaintiff in the main action not filing the letter of demand within the prescribed 6 months but some three (3) months late does not entitle the applicants for rescission automatically upon proof of mistake. It has been held on numerous occasions in the past that the failure by State Departments to specifically raise this failure timeously, precludes the State to raise this defence at a later stage. I am of the view that the current matter is one of those where the applicants are precluded to rely at this stage on this aspect. This must be pleaded specifically. See *Labuschagne v Minister van Justisie* 1967(2) SA 575 (A) at 583 D-G.
- [8] Turning to the provisions of Rule 31(I)(b) of the Uniform Rules I am of the view that the default by the applicants were not satisfactory addressed to warrant a rescission of the default judgment. Ongoing misplacement of the relevant summons between the offices of the 151 respondent, as clearly stated to by the deponent Roodt, is to their own detriment and the court cannot allow such administrative oversights to continue. The fact that the notice of set down was apparently not referred to the deponent's office in my view does not warrant the relief sought. See *Colyn v Tiger Foods Industries Ltd v Meadow Feed Mills (Cape)* 2003(6) SA 1(SCA) par [11] at 9 E-G.
- [9] The question as to a bona fide defence is nullified firstly by the prosecutor's refusal to prosecute and secondly in view of the averment by the then suspect that the vehicle belonged to his brother
- mindful that the recovered fire arm was well hidden and also that the initial "suspicion" held by the arresting officer was for a stolen vehicle, that being clarified twice by members of Aeroton Vis of the Police on the day of the incident not to betruer.
- [10] I am therefore of the view that the application for rescission cannot succeed and the application is therefore dismissed with cost. I indicated during arguments by the two counsels that the lack of proper administration in the offices of the applicants and that of the State Attorney by not responding to this matter timeously warrants the cost order on an attorney and client scale. It is almost daily that the courts have to deal with rather poor administration from these offices to the delay of justice in many instances.

J HOLLAND-MÜTER A/J

GAUTENG DIVISION, PRETORIA

2017

GAUTENG DIVISION PRETORIA

DATE: 2017-05-25

In the matter between

MINISTER OF POLICE & OTHERS Applicant

versus

ALBERT YEKANI Respondent

JUDGMENT

HOLLAND-MUTER (AJ): · In this matter, case number 43463/2015 , it is the matter of the plaintiff, Albert Yekani v The Minister of Police, Natinal Commissioner of Police, second defendant . It was a default judgment granted by my sister Basson. There is now an application before this court for rescission of judgment. If necessary I will give proper reasons, but at this stage the application is dismissed with costs. Costs to be on an attorney and client scale.

.....

(GAUTENG DIVISION, PRETORIA)

CASE NUMBER: 43463/2015

THE MINISTER OF POLICE 1ST APPLICANT

THE NATIONAL COMMISSIONER OF SAPS 2ND APPLICANT

ALBERT FIKILE YEKANI RESPONDENT

ALBERT FIKILE YEKANI PLAINTIFF

THE MINISTER OF POLICE 1ST

DEFENDANT

THE NATIONAL COMISSIONER OF SAPS 2ND DEFENDANT

REQUEST FOR WRITTEN REASONS FOR JUDGMENT/ORDERS

BE PLEASED TO TAKE NOTICE THAT Applicants hereby request the written reasons for the judgment and the order granted by the Honourable Justice Holland- Müter (AJ) on 25 May 2017.

DATED and SIGNED at PRETORIA on the 7TH of JUNE 2017

APPLICANTS' ATTORNEYS

STATE ATTORNEY - PRETORIA

Ground Floor, Salu Building

316 Thabo Sehume (Andries) Street

Cnr Francis Board (Schoeman) and

Thebo Sehume (Andries) streets

Private Bag X 91

PRETORIA

0001

Ref: 3980/2016/Z52

Tel:

(012) 309 1500 / 1630

Fax:

(012) 309 1649/50 I 086 640 1943

Dx: 298 PRETORIA

Enq: Mr M Makhubela

Email: Memakhubela@iustice.aov.za

TO: THE REGISTRAR OF THE HIGH COURT

AND

TO: RESPONDENT'S ATTORNEYS

SPRUYT, LAMPRECHT & DU PREEZ ATIORNEYS

Tel:

(011) 475 4224

Fax:

(086) 516 1818

C/o SCHOEMAN ESTERHUIZEN ATTORNEYS

570 FEHRSEN STREET

3RD FLOOR, STEVEN HOUSE

BROOKLYN, PRETORIA

Tel:

(012) 433 6320

Fax:

(086) 640 8400

Ref: J SCHOEMAN/J234

RECEIVED COPY HEREOF:

DATE: 8/6/17

TIME:12:00

RESPONDENT'S ATTORNEYS

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/2017/399.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/unknown-plaintiff-v-unknown-defendant-rescission-of-judgment-agpphc-2017-43463-2015>

Prepared on 9 October 2026 · Esheria