

SOUTH AFRICA / JUDGMENT

Standard Bank of South Africa Limited: Vehicle And Asset Finance Division v Bahlodi Cameron (Pty) Ltd (57768/2014) [2015] ZAGPPHC 467 (12 June 2015)

[2015] ZAGPPHC 467

COURT

North Gauteng High Court, Pretoria

BEFORE

H K Kooverjie

CASE / FILE NUMBER

57768/2014

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG

DIVISION, PRETORIA)

CASE

NO: 57768/2014

DATE:

12 JUNE 2015

In

the matter between

THE

STANDARD BANK OF
SOUTH AFRICA LIMITED:

VEHICLE
AND ASSET FINANCE
DIVISION.....Applicant
And
BAHLODI
CAMERON (PTY) LTD
(Reg

No: 2006/001996/07).....Respondent

JUDGMENT

KOOVERJIE AJ:

A. NATURE OF THE APPLICATION:-

1. This rescission application was launched by the Defendant in the main action. For the purposes of this judgment and correctly so, Bahlodi Cameron (Pty) Ltd should have been referred to as the “Applicant” and the Respondent as "Standard Bank of South Africa Ltd Vehicle and Asset Finance Division”, which will be referred to as the “Bank”.
2. This application , although initiated by the Applicant, was pursued upon the insistence of the Bank.

B, BACKGROUND:-

3. A vehicle (Toyota Etios) was financed by the Bank. The vehicle is more fully described as a 2014 Toyota Etios 1..... L, bearing engine number 2..... and chassis number MBJ..... An instalment sale agreement in respect of this

vehicle, was entered into between the parties whereby the Applicant was subjected to stipulated terms and conditions regarding the repayment to be made.

4. The Applicant breached such agreement in that it failed to make regular payments. The total outstanding balance with arrear payments and interest as claimed for in the summons is R166 771,95.
5. Default judgment was granted by the Registrar in terms of Rule 31 (5) of the Rules whereby the following order was made -
 - (a) Cancellation of the agreement;
 - (b) Return of the vehicle;
 - (c) Costs of suit and Sheriff’s fees.
6. By virtue of this order, the Bank had indeed cancelled the agreement and the vehicle was repossessed by it.

C. POINTS IN LIMINE:-

7. The Bank raised various points in limine and requested the Court to dismiss the application namely:

7.1 A proper application, properly deposed by the Applicant to is not before Court;

7.2 The Applicant chose an address which does not fall within the jurisdiction of this Court in terms of Rule 6 (5) (b) (i);

7.3 The Applicant does not identify the Rules of Court upon which it seeks rescission.

D. ANALYSIS:-

8. This Court has taken cognisance that the Applicant was not well informed regarding the procedure in this Court with respect to rescission applications of this nature. On its own admission the deponent confessed that it was not “au fait” with the rules and procedures of Court.

9. In weighing up facts in an application for the rescission of a default judgment, the court must balance the need of an individual who is entitled to have access to court and to have his dispute resolved in a fair public hearing before a Court. Such approach is in accordance with Section 34 of the Constitution.

- No Appearance

10. Neither the deponent Mr Earl Abrahams nor a legal representative for the Applicant attended the hearing.

11. This Court was informed by counsel for the Bank that Mr Abrahams was personally contacted by the Bank's instructing attorney and notified of the hearing. The attorney of the Applicant had since withdrawn as attorney on record.

12. A letter confirming the aforesaid was submitted from the bar by counsel for the Respondent.

13. This Court is satisfied that Mr Abrahams was aware of these proceedings.

- Grounds for Rescission

14. It is trite law whether the Applicant relies on Rule 31 (2) (b), the Rules of Court or the common law - “sufficient or good cause” must be shown in order to satisfy the Court. These phrases have been considered to be synonymous and interchangeable[1].

15. In order to show good cause is necessary:

The Applicant should at least have a reasonable and acceptable explanation for the default; and

The Applicant should show the existence of a bona fide defence, that is one that has some prospect or probability of success[2].

16. In Harms v ABSA Bank Ltd t/a Volkskas 2006

(4) SA 527 (T) at 530

Moseneke J (as he then was) referred to De Witts Auto Body Repairs (Pty) Ltd v Fedgen Insurance Co Ltd 1994 (4) SA 705E at 708G where Jones J reiterated that an application for rescission should be not an enquiry to penalise a party for failure to follow the Rules and procedures laid down for civil proceedings in our Courts.

The primary question should always be whether or not the explanation default gives rise to a probable inference that there is a bona fide defence? In this regard the interest of both parties should be weighed accordingly.

17. Having considered the facts in this matter, this court is aware that the Applicant must satisfy both of the requirements aforesaid. For instance a party that has no prospects of success on the merits will fail no matter how reasonable and convincing the explanation for his default is[3].

18. Even if this court accepts the explanation proffered by the Applicant on the papers that he did not receive the summons it must further satisfy this Court that he has a bona fide defence with some prospect of success.

19. Insofar as the merits are concerned, the Applicant relies on "negotiating a settlement" with the Bank in respect of the outstanding payments. There is no evidence on the papers to substantiate such a settlement between the parties.

20. Furthermore the Applicant's conduct by not pursuing this application itself is a further factor this court would take into account when weighing up whether it has a bona fide defence.

- Applicant's case

21. On the papers, the Applicant raised the following issues in dispute:

21.1 The Applicant claims that the arrears on his account was paid;

21.2 There was an accepted "settlement" negotiated with the Bank;

21.3 The Applicant had not received a copy of the summons and was thus not in a position to defend it.

- Bank's case

22. The Bank contended that it had property applied for default judgment as the attempt to settle the arrears was only made after the matter was referred for default judgment.

23. In any event the Applicant remains in debt as it failed to settle the full outstanding balance.

24. The Bank has no knowledge of an “accepted settlement” There appears no record written or oral that such settlement was indeed negotiated with a Bank official.
25. The Bank contended that summons was duly served in accordance with the Rules of Court, Rule 4 (1) (a) (iv) and (v) - by leaving a copy at the address chosen by the Defendant as well as affixing a copy to the main door of the business address.

E. FINDINGS:-

26. The Court finds that the Applicant has failed to show good cause. It has not presented a defence that is sustainable and can be considered to be bona fide. In particular, no evidence was presented regarding the purported settlement negotiations. Such enquiry would include: with whom at the Bank was such settlement made; What were the basis of the settlement; and where was this settlement made?

Consequently the application would not succeed.

F. COSTS:-

27. Counsel for the Bank particularly requested that the costs include the cost of 12 December 2014, where the matter did not proceed and counsel was instructed to appear on such date.
28. The Court file does not make reference to the aforesaid. I am therefore inclined to consider only the costs for the application set down for 4 June 2015.

G. ORDER:-

The following order is made:

- (1) The application is dismissed with costs, which includes the costs of the application set down for 4 June 2015.

H K KOOVERJIE ACTING JUDGE OF THE HIGH COURT

DATE OF HEARING: 8 June 2015

JUDGMENT

DELIVERED: 12 June 2015

FOR THE APPLICANT: No appearance

ATTORNEYS FOR THE APPLICANT: Newtons

FOR THE RESPONDENT: Adv T J Jacobs

ATTORNEYS FOR THE RESPONDENT: Iqbal Mohamed Attorneys

J Silber v Orzen Wholesalers (Pty) Ltd 1954 (2) SA 345 at 352H-353A

[2] Chetty v Law Society of Transvaal 1985 (2) SA 756 (A) at 764J, 765A-D

[3] Chetty v Law Society supra at 765D-E

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Prepared on 12 October 2026 · Esheria