IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

……………………… ……………………

DATE SIGNATURE

CASE NUMBER: 2014/27574
HEARD: 9 MARCH 2016
DELIVERED: 18 MARCH 2016

In the matter between:-

MATSHITSE, RAMONTSHENG JOSEPH — Applicant

and

THE STANDARD BANK OF SOUTH AFRICA LIMITED — Respondent

JUDGMENT

HERTENBERGER, AJ:

[1] This is an application for rescission of a default judgment. The matter has its origin in a credit agreement entered into by the parties for the financing of the purchase of a Mercedes Benz motor vehicle. The Applicant did not make all payments as required by the agreement, which resulted in summons being issued and default judgment being granted in favour of the Respondent, who then repossessed the motor vehicle. Upon the sheriff's attachment of the motor vehicle, the Applicant launched an urgent application to prevent the sale of the motor vehicle, pending the outcome of the rescission application, which relief was granted by agreement.

[2] The application for rescission herein is brought on the basis of what can best be described as a shotgun approach, the Applicant relying on Rule 42(1)(a) of the Rules of this court and in the alternative on the Common Law.

[3] I am of the view that the Applicant's reliance on Rule 42(1)(a) is flawed. On the facts of the matter, the Applicant in his founding affidavit raises defenses to the Respondent's claim, which relate to the letter in terms of section 129 of the National Credit Act no 34 of 2005 that was sent to him by registered mail by the Respondent. The Applicant argues *inter alia* that the letter did not comply with the requirements of the Act and had this been brought to the attention of the Judge considering the application for default judgment, the judgment would not have been granted. The difficulty with this view is that one simply cannot rely upon the fact that the Judge granting default judgment and who is thus presented with a summons, but no plea in the matter setting out the Defendant's defence thereto, to foresee the defence that could be raised. The aforesaid does not render the judgment erroneously granted. This view is supported by the Supreme Court of Appeal in *Lodhi 2 Properties Investments CC and Another v Bondev Developments (Pty) LTD 2007 (6) SA 87 (SCA).*

[4] This leaves the Applicant's reliance on the Common Law in order to rescind the judgment. One of the requirements that must be met is that there must be a reasonable explanation for the default. The Applicant became aware of the pending action against him at the very latest on the date that summons is served on him on 14 August 2014. He calls the Respondent's attorney and arranges a meeting, which is held on 10 October 2014. In anticipation of the meeting the Applicant makes several payments to settle the arrears, but remains indebted to the Respondent as he does not maintain the regular payments, which would in any event have been due. Much is made by the Applicant of the fact that none of the arrears are owing as at date of the meeting, however the fact that the he has again fallen into arrears with payments leaves one to believe that he does not take his obligations under the agreement seriously. He attends the meeting with the Respondent's attorney in order discuss payment of the "new" arrears, but then fails to adhere to the payment plan that was discussed. The Respondent's attorney addresses a e-mail to the Applicant in which she confirms this and also advises that her client has proceeded with steps to take judgment. The Applicant maintains that the Respondent's attorney told him that he need not deliver a notice of intention to defend, yet the correspondence annexed to the answering affidavit completely dispels this allegation. He learns of the judgment in January 2015 upon the Sheriff attaching and removing the motor vehicle at his home. Still the Applicant is not jolted into action. He launches the urgent application already alluded to above only in May 2015 where the parties agree to the relief claimed in the urgent application. The application now before me is served on the 23rd of October 2015, which is 14 months after service of summons. The justification proffered by the Applicant in this regard is that he could not launch the application due to financial constraints, however he had sufficient funds to launch an urgent application in May, which Application was superfluous to say the least. A rescission application would have had the same effect as the order in the urgent application. I simply cannot accept the conduct of the Applicant as reasonable under the circumstances. He appears to be playing hide and seek with his creditor, adopting the attitude that the matter would be resolved simply by waiting. This is not the conduct of a man who wishes to make good his default and I am left with the sense that it is not in the interest of justice to allow this matter to continue.

In the result the following order is made:

(1) The application for rescission is dismissed, with costs.

R HERTENBERGER
ACTING JUDGE OF THE HIGH COURT
OF SOUTH AFRICA - JOHANNESBURG

APPEARANCES

COUNSEL FOR APPLICANT:	ADV. M CAJEE
APPLICANT'S ATTORNEYS:	BICCARI, BOLLO MARIANO INC.
COUNSEL FOR RESPONDENT:	ADV. J C VILJOEN
RESPONDENT'S ATTORNEYS:	STUPEL & BERMAN INC.