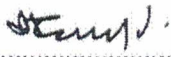


IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 23904/2017

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
14/04/2023	
DATE	SIGNATURE

In the matter between:

SHERIFF OF PRETORIA NORTH EAST N.O.
(Mr A J Visser)

Applicant

and

SA TAXI DEVELOPMENT FINANCE (PTY) LIMITED
(Registration No: 2008/012599/07)

Respondent

In re:

SA TAXI DEVELOPMENT FINANCE (PTY) LIMITED
(Registration No: 2008/012599/07)

Plaintiff

and

VROOM, SYLVESTER JONES

Defendant

JUDGMENT

CRUTCHFIELD J:

[1] This application for the rescission and setting aside of the Taxing Master's allocator is one of multiple matters in which the same issues arise. The parties agreed that this application would serve as the test case, so to speak, in respect of the similar matters.

[2] The applicant, the Sheriff of Pretoria North East NO, claimed the rescission and setting aside of the bill of costs taxed on 10 October 2019 under case number 23904/2017, the setting aside of all process and proceedings issued pursuant to the taxed bill of costs and costs of the application.

[3] The respondent, the SA Taxi Development Finance (Pty) Ltd, opposed the application and sought its dismissal with costs.

[4] Two issues arose for determination, namely; whether a taxed bill of costs can be rescinded and whether the applicant met the requirements of a rescission of the taxed bill of costs at common law.

[5] Whilst the application alluded to it being brought in terms of rule 31(2)(b) of the uniform rules of court ('the rules'), the applicant, in argument before me, relied only upon the common law rescission of default judgments.

[6] The respondent contended that the rules do not permit the rescission of a taxed bill of costs and that the latter can be reviewed only, not rescinded. Furthermore, the respondent argued that the applicant did not meet the requirements of a rescission under the common law. Thus, the respondent contended that the application should be dismissed with costs.

[7] I turn to the issue of whether a claim for the rescission of a taxing master's stamped and signed bill of costs (the '*allocatur*'), is competent or not.

[8] The applicant referred to the unreported decision of *Tommy's Used Spares CC trading as Tommy's Auto Parts v Attorneys Anand-Nepaul and the Taxing Master of the South Gauteng High Court*.¹ The court in *Tommy's* considered the reported case law² and determined in accordance with that case law, that the rescission of a taxed bill of costs was competent.

[9] The relevant law was set out in *Tommy's* with reference to *Gründer v Gründer*, in which the court held that:³

"... Common law principles applicable to the setting aside of default judgments apply also to the setting aside of the Taxing Master's *allocatur*. An order as to costs cannot be enforced without the Taxing Master's quantification thereof, and a quantification done in the absence of one of the litigants ought to be open to challenge on the same basis as are default judgments."

[10] See too in this regard *Barnard v Taxing Master of the High Court of South Africa TPD & Others*.⁴

[11] It is settled that an *allocatur* has the effect of a court order. Moreover, regard being had to the case law, it is settled law that the principles applicable to the rescission of default judgments at common law apply equally to the setting aside of a taxed bill of

¹ *Tommy's Used Spares CC trading as Tommy's Auto Parts v Attorneys Anand-Nepaul and the Taxing Master of the South Gauteng High Court* (Case No 36924/2020) Gauteng Local Division, Johannesburg (1 June 2020) ('*Tommy's*').

² *Gründer v Gründer* 1999 (4) SA 999 (Q) ('*Gründer*'); *Barnard v Taxing Master of the High Court of South Africa TPD & Others* 2005 (2) All SA 485 (T) ('*Barnard*').

³ *Gründer* id at 680J – 681B.

⁴ *Barnard* note 2 above.

costs.⁵ Accordingly, the issue for determination by me is whether on the facts of this matter, the applicant met the requirements for such a rescission.

[12] The requirements for the rescission of a judgment by default of appearance at common law are; firstly, good cause, being a reasonable explanation for the default, secondly, that the application is brought *bona fide* and lastly, that the *bona fide* defence *prima facie* holds a prospect of success. Notwithstanding compliance with these requirements, a court retains a discretion to be exercised judicially on a consideration of the relevant circumstances.⁶

[13] All three requirements must be met before a court can rescind a judgment. The failure by an applicant for rescission to prove any one of the three requirements is fatal to the claim for rescission.

[14] The facts relevant to this matter are largely common cause. The respondent's attorneys of record agreed with the applicant on a preferential rate for the performance by the applicant of the services required by the respondent, prior to the applicant rendering the services. The applicant rendered its invoice dated 29 November 2017 to the respondent's attorney, payment of which was made by the latter in full on 5 December 2017.

[15] Thereafter, correspondence from the respondent's attorney dated 1 February 2018, stated that the respondent made the payment on 5 December 2017 under duress and the respondent disputed the Sheriff's fees and charges in respect of forty-nine (49) accounts rendered by the applicant in respect of returns of service of warrants of execution for the delivery of goods.

⁵ *Gründer* note 2 above.

⁶ *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills (Cape)* 2003 (6) SA 1 (SCA) para 11.

[16] The applicant refused the respondent's attorney's request to amend the disputed accounts. The respondent duly requested that the applicant procure the taxation of the accounts by the taxing master. The applicant failed to do so and informed the respondent's attorney that the latter could proceed with the taxation of the accounts.

[17] The respondent set the taxation down for hearing on 25 October 2018. Both parties were represented at the taxation, which the Taxing Master postponed.

[18] The respondent's attorney, on 11 June 2019, served the respondent's notice of set down of taxation for 11 July 2019, notice of intention to oppose the taxation and the disputed accounts, on the Sheriff's office and on the latter's legal representative, Hendriette Coetzee Attorneys.

[19] On 28 June 2019 Mario Coetzee Attorneys served their notice of appointment as attorneys of record on behalf of the applicant as well as a notice in terms of rule 30 in respect of the disputed accounts (referred to interchangeably as the 'rule 30 notice' or the 'rule 30(2)(b) notice'). Mario Coetzee Attorneys attended the taxation on 11 July 2019 on behalf of the applicant as did the respondent's taxing consultant and attorney. The Taxing Master postponed the taxation in order to consider the rule 30 notice.

[20] On 3 July 2019, the respondent's attorney delivered correspondence recording *inter alia* that they had disputed the Sheriff's 49 accounts, formally and in writing within the permitted 90 day time period,⁷ disputed that the rule 30 notice disclosed a valid complaint and expressed the respondent's intention to oppose the rule 30 proceedings in the event that the applicant proceeded further in terms of rule 30.

[21] The applicant's attorneys did not take any further steps in terms of rule 30.

⁷ Rule 68(3)(b).

[22] On 9 September 2019, the respondent's attorney served a notice of set down of the taxation on 10 October 2019, the notice of intention to oppose the taxation and the disputed accounts on the applicant's attorneys of record. The applicant, in its replying papers, admitted receipt by its attorney of record of the notice of set down, which bore the stamp of the attorney's office dated 9 September 2019.

[23] Correspondence by the respondent's attorney delivered to the applicant's attorney's office on 9 September 2019 recorded that the taxation was set down for 10 October 2019.

[24] The Taxing Master, on 10 October 2019, proceeded to tax the relevant accounts including the applicant's bill of costs under case number 23904/2017, in the absence of the applicant.

The requirements of the rescission: reasonable explanation for the applicant's default in appearance.

[25] The first requirement for consideration is whether or not the applicant proved a reasonable explanation for its absence from the taxation. The applicant proffered the existence of its rule 30 notice as the reason for its failure to attend the taxation and as proof of the absence of wilfulness on its part.

[26] In so far as the applicant alleged⁸ that the respondent did not serve a notice of set down of the postponed taxation after the applicant delivered its rule 30 notice, that allegation was factually incorrect. The notice of set down was served on the applicant's attorney's office and reflects the stamp of that office dated 9 September 2019 as does the respondent's attorney's correspondence delivered on 9 September 2019.

⁸ Caselines 022-13 para 4.20.

[27] The applicant relied primarily upon the respondent's failure to remove the cause of complaint raised in the rule 30 notice and the fact that a court had not ruled yet on the rule 30 proceedings. The applicant argued that the rule 30 notice served to stay all proceedings in the matter until a court determined the issues raised by the rule 30 notice. Thus, the respondent, according to the applicant, was not entitled to proceed with the taxation of the bill until the rule 30 procedure had run its course.

[28] Accordingly, the applicant argued that it was not in wilful default of appearance before the Taxing Master and was well within its rights to absent itself from the taxation.

[29] I deal with the rule 30 notice at this stage only insofar as it was proffered by the applicant as a reasonable explanation for the applicant's absence from the taxation. I do not deal with the merits thereof.

[30] The wording of rule 30 is clear and unambiguous. Rule 30 obliged the applicant, (within ten days of becoming aware of the respondent's alleged irregular step) to deliver a written notice affording the respondent an opportunity to remove the alleged cause of complaint within ten days.⁹ The applicant duly did so.

[31] Given that the respondent failed to remove the alleged cause of complaint within the ten-day period provided in rule 30(2)(b), rule 30(2)(c) incepted and obliged the applicant, within fifteen days after the expiry of the last mentioned ten-day period, to bring an application in terms of rule 30(1) for determination by a court. The applicant failed to launch the application in terms of rule 30(2)(c).

[32] The effect of a failure by an applicant to launch the relevant application in terms of rule 30(2)(c) within the allocated fifteen-day period, in the event of the respondent

⁹ Rule 30(2)(b).

failing to rectify the alleged cause of complaint, is that the rule 30(2)(b) notice lapses and is thereafter of no further force or effect.

[33] Rule 30(4) provides that in the event of a court granting an order in terms of rule 30 proceedings, the party against which the court order is made, is prevented from taking any further step in the cause, (except to apply for an extension of time within which to comply with the court order), pending compliance with the order.

[34] It is evident from the wording of rule 30 that the applicant's delivery of the rule 30(2)(b) notice did not serve to stay this matter pending determination of the rule 30 proceedings by a court. It is only the order of a court in terms of rule 30(4), that results in the stay pending compliance with that court order.

[35] Accordingly, the applicant's argument that the respondent was not entitled to proceed with the taxation consequent on the delivery of the rule 30(2)(b) notice and pending its determination by a court, was without merit.

[36] Furthermore, in the light of the respondent's failure to remove the alleged cause of the applicant's complaint, rule 30(2)(c) obliged the applicant to bring an application in terms of rule 30(1) and place it before a court for determination. The applicant failed to do so. The result thereof was that the applicant's rule 30(2)(b) notice lapsed, subsequent to the fifteen-day time period available to the applicant to bring the application. Thereafter, the respondent was entitled to proceed with the taxation of the relevant accounts.

[37] As to the applicant's argument that only the applicant could set the applicant's invoice down for taxation upon request by the respondent, the applicant invited the

respondent to proceed with the taxation of the applicant's bill and could not object thereafter to the respondent acting accordingly.

[38] As alluded to by me herein, the applicant's rule 30(2)(b) notice did not serve to stay the proceedings and thereby preclude the respondent from proceeding with the taxation. Furthermore, the applicant's failure to issue an application in terms of rule 30(2)(c) consequent upon the respondent's refusal to rectify the alleged cause of complaint, resulted in the rule 30(2)(b) notice lapsing upon the expiry of the fifteen-day period in terms of rule 30(2)(c), on approximately 2 August 2019.

[39] In the circumstances, the applicant's rule 30 notice had lapsed and was of no force or effect as at the date of the taxation on 10 October 2019. The rule 30 notice was not a valid reason for the applicant not to appear at the taxation. Hence, the applicant did not prove a reasonable excuse for its absence from the taxation.

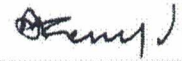
[40] By virtue thereof, the applicant's claim for rescission of the allocatur must fail in that the applicant failed to demonstrate a reasonable excuse for its failure to attend the taxation.

[41] In the light of my conclusion that the applicant did not meet the first requirement of the rescission, I do not deal with the applicant's arguments on its alleged defences.

[42] There is no reason why the costs of this application should not follow the outcome on the merits and an appropriate order in respect of the costs will follow hereunder.

[43] In the circumstances, I grant the following order:

1. The application is dismissed with costs.



CRUTCHFIELD J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION
JOHANNESBURG

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 14.04.2023.

ATTORNEY FOR THE APPLICANT:

Ms L Perel.

INSTRUCTED BY:

Elsie Viljoen & Associates Inc.

COUNSEL FOR THE RESPONDENT:

Ms R Stevenson.

INSTRUCTED BY:

MLB Inc Attorneys.

DATE OF THE HEARING:

3 August 2022.

DATE OF JUDGMENT:

14 April 2023.