/LVS

IN THE HIGH COURT OF SOUTH AFRIC
(NORTH GAUTENG HIGH COURT, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ~~YES~~/NO.
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO.
(3) REVISED.
DATE 6/9/10 SIGNATURE

DATE: ~~6~~ 7 SEPTEMBER 2010
CASE NO: 15859/09

In the matter between:

SA TAXI SECURITISATION (PTY) LTD **FIRST RESPONDENT**

SA TAXI FINANCE (PTY) LTD **SECOND RESPONDENT**

Vs

MBANDLULULI JERRY NTULI **APPLICANT**

JUDGMENT

BOTHA, J

This is an application for the rescission of a default judgment granted against the applicant on 2 June 2009. The applicant also asks that a warrant of execution be set aside, that a debt review process initiated by him be resumed, and that the first respondent's action be stayed in the mean time.

The applicant alleges is that he initiated the debt review process on 13 November 2008 when he approached a debt counsellor. The counsellor accepted his application and on 20 February 2009 a restructuring proposal was made. On 3 March 2009 the respondents, without responding to the proposal, served a notice to terminate the debt review. On 10 April 2009 a summons issued on 24 March 2009, was served on him. The debt counsellor advised him that he need not enter appearance to defend and that the Registrar of the High Court would be notified that the matter was pending the Johannesburg Magistrate's Court. Such a notice was filed on 18 April 2010. The notice of application for debt review had been filed with the Johannesburg Magistrate's Court on 26 March 2009.

He also referred to correspondence between the debt counsellor and the first respondent.

He submitted that the first respondent acted in bad faith by circumventing the debt review process.

He submitted that the first respondent acted contrary to section 88(3) and 130(3)(e) of Act 34 of 2005 by obtaining default judgment.

In the answering affidavit the first respondent's deponent made the point that the applicant had entered into three agreements in respect of three vehicles with the first respondent. All three agreements were cancelled. He alleges that all the jurisdictional facts for a cancellation of the debt review in terms of section 86(10) were present. He pointed out that the applicant did not comply with his own restructuring proposals. He denied that the first respondent was *bona fide* and point out that the notice of termination was only sent after four months.

Mr Moremogolo who appeared for the applicant set out the scheme of Act 34 of 2005 and argued that it did not allow for a credit provider to obtain judgment against a consumer whilst a debt review process is still under way.

Mr Mollentze, who appeared for the respondents, argued that the first respondent had properly terminated the debt review in terms of section 86(10) and that the application should therefore be dismissed.

The applicant must show good cause. His explanation for his failure to enter appearance is supported by the fact that his debt counsellor did send a notice of debt review to the High Court, which was received on 17 April 2009, in which notice was given of the review that was pending in the magistrate's court.

In **Standard Bank of South Africa Ltd v Kruger and Standard Bank of South Africa Ltd v Kruger 2010(4) SA 635 (SGJ) at 644 G** it was held that it was not competent for a credit provider to terminate a debt review once it is pending before the magistrate's court. Both cases forming the subject matter of the judgment were cases where the consumers had applied for debt review before summons was issued. See also **BMW Financial Services (SA) (Pty) Ltd v Donkin 2009(6) SA 63 (KZD) at 70 G.**

That being the case the first respondent was precluded by section 130 (3)(c)(1) to obtain judgment.

In the circumstances the application must succeed.

In view of the conclusion that judgment should not have been obtained, I am of the view that the respondents should pay the applicant's costs.

The following order is made:

1. **Prayers 1, 2, 3, 4 and 5 of the notice of motion are granted.**
2. **The respondents must pay the applicant's costs.**

CBotha

C. BOTHA
JUDGE OF THE HIGH COURT