



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 28108/2018

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
DATE 26/4/2024	
NAUDE AJ	

In the matter between:

MOLOKO BENEDETTE RABOSIWANA

Plaintiff

and

CHANGING TIDES 17 (PTY) LTD

Respondent

This matter has been heard in terms of the Directives of the Judge President of this Division dated 25 March 2020, 24 April 2020, and 11 May 2020. The judgment and order are accordingly published and distributed electronically.

JUDGEMENT

NAUDE AJ:

1. The applicant applied for the rescission of a judgment granted on the 26th of September 2018. In the heads of argument the applicant replied on Section 23 (A) (2) (a) of the Superior courts Act 10 of 2013 and Uniform Rule 31 (6) (b). The Section and the Rule reads as follows:

“RESCISSION OF JUDGMENT WITH CONSENT OF PLAINTIFF OR WHERE JUDGMENT DEBT HAS BEEN PAID:

“(1) ...

(2)(a) Where a judgment debt, the interest thereon at the rate granted in the judgment and the costs have been paid, whether the consent of the judgment creditor for the rescission of the judgment has been obtained or not, a court may, on application by the judgement debtor or any other person affected by the judgment, rescind that judgment.

(b) The application contemplated in paragraph (a) –

(i) must be made on a form which corresponds substantially with the form prescribed in the rules;

(ii) must be accompanied by reasonable proof that the judgment debt, the interest thereon and the costs have been paid;

(iii) must be accompanied by proof that the application has been served on the judgment creditor, at least 10 business days prior to the hearing of the intended application.

(iv) may be set down for hearing on any day, not less than 10 business days’ after service thereof; and

(v) may be heard by a judge in chambers.

(c) A court may make any cost order it deems fit with regard to an application contemplated in paragraph (a). “

Rule 31(6)(b):

“31(6) (b) A judgment debtor against whom a default judgment has been granted, or any person affected by such judgment, may, if the judgment debt, the interest at the rate granted in the judgment and the costs have been paid, apply to the court to rescind the judgment, and the court may on such application by the judgment debtor or other person affected by the judgment, rescind the judgment.”

2. Both the applicant and the respondent in their affidavits, approached the application incorrectly. They dealt with it with reference to Rule 31 (2)(b) or Rule 42 (1)(a). This entailed the applying for and opposing condonation for the late filing of the application initiated in November of 2022. Both parties in their affidavits and heads of argument dealt with the delay in launching the application and good cause.
3. During the argument of the application it became common that the incorrect approach had been taken by both parties. I afforded both parties an opportunity to refer me to further authority following the hearing. Only the respondent assisted in confirming that there was no specific authority on the recently introduced rule.
4. There was no opposing argument raised to my view that an application under this rule was not time sensitive. The purpose of the rule was to assist debtors who had settled their debts to participate in commercial activity without the burden of a

negative credit rating. The applicant stated she wanted to get rid of a credit bureau entry against her name.

5. The rule would never be applied where the rescinded order would lead to the continuation of the original action. The time when the application was made would as a general rule not impact any right of a plaintiff. It follows that there is no reason for the court to make a finding whether the application was launched within the time prescribed by the rules or a reasonable time.
6. There was further no reason to establish whether there was a bona fide defense or good cause.
7. I now consider whether the applicants' application falls within the ambit of Rule 31(6) (b). The applicant did not file a replying affidavit. After judgment was granted the applicant found a purchaser for the property that served as security for the loan upon which judgment had been granted.
8. The applicant opportunistically relies on a letter sent during the cancellation of a bond in favour of the former bond holder on the 13th of October 2022. The relevant portion of the letter stated:

"We refer to the abovementioned and confirm that the Bond Cancellation was registered on 04/11/2021.

No further installments are due to SA Homeloans in respect of the above bond account."
9. On behalf of the applicant it was argued that the letter amounted to a confirmation that the debt had been settled. I read the letter to confirm that no further bond repayment installments with regard to a bond account had to be made. It did not

go as far as to say that the debt had been settled by the realization of the security for a loan agreement. The balance of the debt on which judgment had been granted was still owed by the applicant.

10. The applicants' incorrect interpretation of the bond cancellation letter was further exposed as opportunistic where she had continued to make payment in terms of a signed acknowledgement of debt. She initially agreed to pay R 6000 per month. This was later reduced by agreement to R 2000 per month. She continued to pay the reduced installment after receiving the bond cancellation letter.

11. No allegation was made that the judgment debt, interest or costs had been paid.

12. I come to the conclusion that there is no proof that the applicant has settled the debt interest and costs as required by the rule.

13. The respondent requested that costs be granted on an attorney and client scale. Apart from the fact that no such scale exists, the respondent's opposing affidavit in the application was not premised on the correct legal position. The respondent referred to authority in the opposing affidavit that did not assist. The respondent premised its opposition amongst other grounds that a bona fide defense was not set out. The respondent further postulated that good cause or sufficient cause needed to be shown. This opposition did not contribute to the adjudication of the application.

14. I am aware that if no reference was made to the scale of party and party costs that the default position is the lowest scale.

I make the following order:

1. The application is dismissed

2. The respondent is to pay the party and party costs of the application.



NAUDÉ AJ