

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 20449/2021

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

Date: 10 November 2023

E van der Schyff

In the matter between:

CHANGING TIDES 17 (PTY) LTD N.O.

APPLICANT

and

P D. RALUTANDA

RESPONDENT

JUDGMENT

Van der Schyff J

[1] The abovementioned matter was enrolled on the opposed motion roll. The respondent was self-represented. The 'nature of the application' is reflected in the 'joint practice note', drawn up by the applicant, as 'Default Judgment in conjunction with an opposed Rule 46A application.

[2] From the papers filed, the following chronology emerges:

- i. Summons was served on 8 May 2021;

- ii. Notice of application for default judgment was served on 9 December 2022;
- iii. The parties concluded a settlement agreement on 26 May 2021;
- iv. The respondent signed a 'consent to judgment' on 26 May 2021;
- v. Notice of the Rule 46A application was served on the respondent's son on 1 July 2022;
- vi. A notice of intention to "dispute the claim" was filed on 15 July 2022;
- vii. A document purporting to be an answering affidavit was filed on 15 July 2022;
- viii. A replying affidavit was served on the respondent on 17 October 2022;
- ix. The respondent filed a notice to set aside irregular proceedings on 3 November 2023.

[3] I canvassed the consequence of the fact that the respondent filed a notice of intention to defend on 15 July 2022 with counsel. This was relevant since the matter was enrolled for default judgment without the respondent being placed under bar. Counsel submitted that the notice of intention to defend relates to the Rule 46A application despite stating "that the defendant intends to file and serve notice to dispute the claim". Counsel submitted that the court should not be overly technical. In the absence of a comprehensive answering affidavit, it is not evident whether the respondent takes issue only with the Rule 46A application or with the application for default judgment *per se*. I find it a *contradictio in terminis* to refer to this as an opposed application for default judgment.

[4] It should also be stated that the respondent purported to file an answering affidavit to the Rule 46A application. The document is not commissioned, but counsel indicated that regard can be had to its contents as an affidavit. Counsel accepted

that the respondent is a layperson. The applicant filed a replying affidavit in answer to the document filed by the respondent.

- [5] The respondent avers that she made regular monthly payments, paying even more than required in terms of the agreement, until she lost her employment. She contacted S.A. Homeloans and requested them to extend the bond. They allegedly did not revert to her.
- [6] On 3 November 2023, the respondent filed a notice titled 'Motion to set aside irregular proceedings'. She reiterated that the plaintiff repeatedly refused to accept payments less than the installment amount. She claimed and attached a payment confirmation that she made a lump sum payment of R120 000.00 on 14 January 2020, which is not reflected in the statement provided by the applicant.
- [7] In considering whether to grant an order in terms of Rule 46A of the Uniform Rules of Court, the court is obliged to have regard to s 46A1)(b):

'A court shall not authorise execution against immovable property which is the primary residence of a judgment debtor unless the court, having considered all relevant factors, considers that execution against such property is warranted.' (My emphasis.)

- [8] In terms of rule 46A(8), a court may, amongst others, postpone the application on such terms as may be appropriate, dismiss the application, or order the execution against the primary residence of a judgment debtor if there is no other satisfactory means of satisfying the judgment debt. (My emphasis.)
- [9] I find myself unable to decide the matter on the papers filed. An uncommissioned statement cannot be regarded as an affidavit. To do so might prejudice both parties. I have to take cognisance of the fact that the respondent is a layperson. It is in the interest of justice to provide the respondent with the opportunity to place her version properly before the court. Since the respondent indicated that she

could not afford legal representation, I attempted to secure *pro bono* representation for her.

[10] Mr. A Stander from the attorney's firm Barnard Inc. indicated he is willing to consult with and assist the respondent. To not unduly prejudice the applicant, I deem it fit to retain the matter and postpone it until a proper answering affidavit is filed. The respondent also indicated that she recently succeeded in obtaining employment, and Mr. Stander may well enter into negotiations with the plaintiff on her behalf.

[11] As for costs, the costs occasioned by this postponement will be costs in the cause.

ORDER

In the result, the following order is granted:

- 1. The application for default judgment and the Rule 46A application is postponed *sine die*, costs are costs in the cause;**
- 2. The matter is retained by Van der Schyff J;**
- 3. The respondent is to file a comprehensive answering affidavit within 15 days of the date of this judgment;**
- 4. The applicant may supplement its replying affidavit within the period provided for in terms of the Uniform Rules of Court after receipt of the answering affidavit;**
- 5. The respondent is to contact Mr. Andries Stander from Barnard Inc. within three days of the granting of this order;**
- 6. When all papers are filed, the parties must arrange for a date for the matter to be heard by Van der Schyff J through her registrar, Mr. Tshetlho;**
- 7. If the respondent fails to file an answering affidavit within the period allowed for, the applicant may arrange a date for the matter to be heard by Van der**

Schyff J or any other judge appointed by the Deputy Judge President to deal with the matter;

8. Service of any papers on any party may be affected using the parties' designated email addresses. If Mr. Stander comes on record, he will provide an email address for service. If the respondent remains unrepresented, documents must be served at the email address r[...];

9. The applicant must ensure that Mr. Stander of Barnard Inc. is invited to the CaseLine's file.

E van der Schyff
Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. It will be emailed to the parties/their legal representatives as a courtesy gesture.

For the applicant:	Adv. J. Minnaar
Instructed by:	HP Ndlovu Inc.
For the respondent:	In person
Date of the hearing:	6 November 2023
Date of judgment:	10 November 2023