

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

In the matter between:

Case No: 530/2020

YVETTE GEORGIU

Applicant

And

IEMAS FINANCIAL SERVICES (CO-OPERATIVE LIMITED

Respondent

AND

Case No: 184/2020

YVETTE GEORGIU

Applicant

And

IEMAS FINANCIAL SERVICES (CO-OPERATIVE LIMITED

Respondent

AND

Case No: 212/2020

PHILLIP GEORGIU

Applicant

And

IEMAS FINANCIAL SERVICES (CO-OPERATIVE LIMITED

Respondent

JUDGMENT

BESHE J:

[1] These three matters are similar in most respects and involve similar issues. I therefore propose to deal with them in one judgment. The applicant is the same in two of the matters. In respect of the third matter, the applicant is husband to the applicant in the first two matters. The same relief is sought in all three matters.

[2] The relief sought is the rescission of summary judgments that were granted in the absence of the applicants on the 26 February 2021.

[3] There was no appearance by or on behalf of the applicant today the 2 June 2022 being the date that was appointed for the hearing of the rescission applications. Applicants' attorneys of record withdrew in terms of *Rule 16 (4) of the Uniform Rules* of this court. The applicant was apparently advised of today's court date by her erstwhile attorneys via WhatsApp and electronic mail during January 2022.

[4] The respondent moved for the dismissal of the applications. It is also noteworthy that the applicant did not file any replying affidavits or heads of argument.

[5] It is trite that a court has a discretion to set aside a judgment granted by default or in the party's absence upon good cause being shown by the affected party.

[6] It is settled that the requirements for the granting of rescission of a default judgment application are the following:

(a) The applicant must give a reasonable explanation for his default.

(b) His application must be *bona fide* and not made with the intention of merely delaying the plaintiff's claim.

(c) He must show that he has a *bona fide* defence to the plaintiff's claim. It is sufficient if he makes out a *prima facie* defence in the sense of setting out averments which if established at the trial would entitle him to the relief asked for. See in this regard ***Grant v Plumbers (Pty) Ltd.***¹

[7] The explanation proffered by **Ms Georgiou** for their default is essentially that during February 2020, her husband suffered a heart attack, that his condition deteriorated dramatically during mid-January 2021. That she had to take care of her husband which kept her constantly busy, tending to his needs and monitoring his medical attention. Due to lack of sleep, she was not able to deal with her day-to-day administration. She lost track of what was happening. When her attorney of record forwarded queries relating to the matters, in her mind, she thought the summary judgment had been dealt with in December and as a result did not provide any further instructions to her legal representative. She further states that due to failure to give instructions to her attorney of record he was forced to withdraw from the matter at the last moment and an order was granted in her absence or by default.

[8] As a defence, **Ms Georgiou** states that she did not receive the *Section 129* notices and believes that this constitutes a material defect. She further asserts that the amounts claimed by the respondent are not correct.

[9] It was argued on behalf of the respondent in all three matters that applicants' explanation for the default / absence is vague and sketchy. I am inclined to agree with the respondent that the explanation is not reasonable, especially when regard is had to the fact that applicants' attorney made enquiries about the impending matters (summary judgment applications) and that instructions from the applicants were not forthcoming. There is no explanation why the deponent to the founding affidavit was of the impression that summary judgment had been dealt with in December 2020. Yet, during October 2020 she deposed to an affidavit in support of a postponement of the hearing of the summary judgment application. And, when it is clear that she was in constant contact with the applicants' attorney of record. I am of the view that applicants' explanation for the default / absence is not reasonable.

¹ 1949 (2) SA 472 (O) at 676 – 7. This decision has been followed in a long line of cases.

[10] Judging from the long history of the matter *inter alia*:

Applicants' failure to deliver an affidavit resisting summary judgment before 13 October 2020;

Applicants' seeking an opportunity to furnish security for respondent's claims. However, no security was furnished even though applicants had been granted such an opportunity;

Postponement sought and granted for applicants to deliver an amended plea, the conclusion that the application is not *bona fide* but made with the intention of delaying respondent's claim, is inescapable.

[11] As far as the defences raised are concerned, it is trite that the failure by a plaintiff to issue a *Section 129* notice is not per se a defence. It is even more so in this case in that applicants do not allege that same were not given, but that they were not received. There is ample evidence that the notices were sent via the correct post office. The law in this regard is clear.² Namely that actual receipt of the *Section 129* notice is not a requirement. The notices were also attached to the summons and particulars of claim. It is also not a *bona fide* defence to merely deny being in breach of the agreement or arrears without furnishing some proof of payment. I have no difficulty in finding that the applicants have not shown that they have valid defences.

[12] On the 27 January 2022 the matter was postponed at the applicants' request with costs reserved. I am not aware of any reason why the applicants who were seeking an indulgence and were responsible for the matter not proceeding on that day should not be ordered to pay costs that were reserved on that date.

[13] In the result, the applications for the rescission of summary judgment granted on 26 February 2021 in respect of the following cases:

1. 530/2020;

² See *Sebola and Ano. v Standard Bank of South Africa Ltd and Ano.* 2012 (5) SA 142 CC at [74].

2. 184/2020; and

3. 212/2020 are hereby dismissed with costs on a scale as between attorney and client, such costs to include costs reserved on 27 January 2022.

N G BESHE

JUDGE OF THE HIGH COURT

APPEARANCES

For the Applicants : NO APPEARANCES

Instructed by :

For the Respondent : Adv: S. Sephton

Instructed by : CARINUS JAGGA ATTORNEYS

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GRAHAMSTOWN

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Date Heard : 2 June 2022

Date Reserved : 2 June 2022

Date Delivered : 3 June 2022