



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES /NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED
DATE:	5/3/2018
SIGNATURE:	<i>Elias Maenufikke</i>

5/3/18

Case No. 82048/2016

In the matter between:

ZONDO, ELIAS MAENUFIKKE

FIRST APPLICANT

SECOND APPLICANT

ZONDO, NTHABISENG

And

NEDBANK LIMITED

FIRST RESPONDENT

JUDGMENT

MILLAR AJ

1. This is an application for the rescission of a judgment granted by default on 13 December 2016 in favour of the respondent/plaintiff against the applicants/defendants.
2. The applicants appeared in person and were assisted by a sworn interpreter of this court, Mr. M Mogaladi. Both applicants were given the opportunity to address the court. They brought the application for the rescission of the default judgment on 27 June 2017, having become aware of the default judgment and impending sale of their property on 19 April 2017.
3. I heard the application and granted the order that appears at paragraph 10 below and indicated that my written reasons would follow.
4. The applicants raised a number issues:
 - 4.1.1 Firstly, that the summons was not properly served or at all,
 - 4.1.2 Secondly that they were not alerted to the impending legal action by the respondent; and;
 - 4.1.3 Thirdly that had they been aware of the action, they would have advised the respondent of a change in their circumstances and attempted to negotiate.
5. The test to be applied in applications of this nature is one which:

“...involves three essential elements: the applicant must (1) give a reasonable (and obviously acceptable) explanation for his default; (2) show that his application is made bona fide; and (3) show that on the merits he has a bona fide defense which prima facie carries some prospects of success” see Naidoo v Matlala NO 2012 (1) SA 143 (GSJ) at 152 H-I.

6. The applicants contended that they brought the application as soon as they were able to. They had relied on a relative who was a law student and were not aware that there was any time limitation. They denied that the person upon whom the sheriff had served the summons was their daughter and they stated that she had been a lodger on their property in whose room they had subsequently found the summons. That the summons had been served at their premises is accordingly not in doubt. There is at best for the applicant's a doubt about when it was brought to their attention.
7. The applicants did not even attempt to set out a defence to the claim of the respondent. The high watermark of their case in this regard was that their business had been hijacked and that they had needed time to resolve this. This is simply not a defence in law to the claim of the respondent.
8. Even If I accept that the applicants meet the first leg of the test, for the reasons set out above I find that they have not met the other two legs and in the circumstances their application must fail.
9. It bears mentioning that when the matter was called, the applicants indicated that they were unable to proceed in English and required the services of an interpreter. No state

interpreter was available. Since the applicants were unable to afford the services of the interpreter, the respondent agreed to pay those costs subject to reimbursement. I am indebted to the respondent's attorney and counsel in this regard as their assistance facilitated the hearing of the matter.

10. In the circumstances, I make the following order:

10.1 The application for rescission of the judgment granted on 14 July 2015 is dismissed with costs on the scale as between party and party which costs are to include the costs of the interpreter Mr. M Mogaladi.



A MILLAR
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON: 5 MARCH 2018

JUDGMENT DELIVERED ON: 5 MARCH 2018

FOR THE APPLICANTS: IN PERSON

COUNSEL FOR THE RESPONDENT: ADV AP ELLIS

INSTRUCTED BY: BEZUIDENHOUT VAN ZYL & ASSOCIATES INC.

REFERENCE:

G VAN DER MERWE