

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



Case number: 25323/2012

Date: 25 February 2015

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHERS JUDGES: YES/NO
(3)	REVISED
25/2/2015	<i>Pretorius</i>
DATE	SIGNATURE

In the matter between:

MILILE MAXOSA LABE

Applicant

And

MEDSCHEME HOLDINGS (PTY) LTD

First Respondent

BONITAS MEDICAL FUND

Second Respondent

SHERIFF NELSPRUIT

Third Respondent

JUDGMENT

PRETORIUS J.

- [1] In this application the court has not received heads of argument from the applicant as required by the practice directive.

The application was set down to be heard by the respondent, who served and filed the heads of argument timeously.

At the hearing, counsel for the applicant applied for a postponement to enable the applicant to pursue the Rule 49(1) of the Uniform Rules of Court application and an appeal against an order granted on 3 April 2013. There is no substantial application for the postponement before court, setting out the reasons for such a postponement.

- [2] The present application was launched in June 2014. There is no indication that the applicant had pursued the Rule 49(1) application at all, since launching the present application.

- [3] The applicant alleges that the Rule 49(1) notice was served on the judge's registrar, but that was not filing in terms of Rule 1 which provides:

“Both filing with the registrar and service on all parties must take place.

The usual practice is to require receipt of a copy of a document that has been delivered to be acknowledged on the original by the recipient.

The original is filed with the registrar”

In this instance it should be the registrar of the court and the document should bear the date stamp of the registrar

[4] The applicant concedes, in the founding affidavit, that the notice in terms of Rule 49(1) was not properly filed at court. The allegation of filing on the judge's registrar is hearsay as there is no supporting affidavit to confirm this allegation. There is thus no Rule 49(1) application before court.

[5] Ms Baloyi, for the applicant requested the court to postpone the application, but could give no cogent reason as to why the applicant had not filed heads of argument or brought a substantial application for postponement.

[6] The background to the application is:

On 3 April 2013 an order was granted against the applicant to make payment of an amount of R1 036 274.40 to the 1st and 2nd Respondents, with *mora* interest thereon at the rate 15.5% per annum from the date of service of the main application.

On 8 April 2013 the applicant served a notice in terms of Rule 49(1) upon the first and second respondents' attorney of record. Rule 49(1)(c) provides that an application for reasons for an order has to be delivered within 10 days from the date the order has been granted, which was 3 April 2013.

- [7] The notice in terms of Rule 49(1) was never filed at court, with the result that the judge who granted the order, did not provide reasons as there was no notice filed at court requesting him to do so. A warrant of execution was issued on 3 April 2014 directing the sheriff to execute against the applicant's property. The applicant then launched this application on 10 June 2014 requesting the court to set aside or suspend the writ of execution and to suspend further actions pending the prosecution of the appeal.
- [8] The applicant submits that the writ of execution is premature as reasons for the judgment had not been obtained to enable the applicant to prosecute an appeal.
- [9] The amount of R1 036 274,40 represents post hospital and medical expenses incurred by the applicant's client, which was paid by the Road Accident Fund into the trust account of the applicant in respect of a third party claim that had been settled. The first and second respondents, who are medical aids, had paid these expenses on behalf of the claimant to the hospitals and medical doctors. The applicant and his client had signed an undertaking to reimburse all these amounts which the first and second respondents had paid for past medical and hospital expenses, as soon as the money was received from the Road Accident Fund.

[10] There is no condonation application for the delivery of a Rule 49(1) notice, nor is there such a notice filed at the court.

[11] The respondents request the court, in these circumstances, to dismiss the application with punitive costs as the applicant could never have succeeded with the application having regard to all the relevant facts.

[12] I must agree with counsel for the respondents that the applicant has shown a callous disregard for rules of the court. He admits that he never filed a Rule 49(1) notice at court, but he still pursues this application. There is no substantial application for the postponement setting out the reasons for such postponement. There is no Rule 49(1) notice filed and therefore the application cannot succeed.

[13] It is abundantly clear that the applicant has disregarded the contents of the Rules of Court, as well as the relevant practice directives. The application was launched by the applicant, but the respondent had to pursue the application by setting it down. The applicant failed to file any heads of argument and sent counsel to court at the eleventh hour to request a postponement without a substantial application for postponement.

[14] These facts are aggravated due to the fact that the applicant is an officer of the court as he is a practicing attorney, but he shows a total

disregard for the rules of court.

Therefore I make the following order:

1. The application for postponement is dismissed;
2. The application, set out in the notice of motion, is dismissed;
3. The applicant to pay the costs of the respondents on a scale as between attorney and client.



Judge C Pretorius

Case number : 25323/2012

Heard on : 23 February 2015

For the Applicant : Adv. I Lingenvelder

Instructed by : MM LABE ATTORNEYS

For the Respondent : Adv. Baloyi

Instructed by : KARL ELS ATTORNEYS

Date of Judgment : 25 February 2015