

REPUBLIC OF SOUTH AFRICA



NORTH GAUTENG HIGH COURT

PRETORIA

(REPUBLIC OF SOUTH AFRICA)

3/9/13

CASE NO: 39759/2012

In the matter between:

HENNIE JANSE VAN RENSBURG

APPLICANT

AND

- (1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

19/09/2013

[Signature]

ABSA BANK LIMITED

RESPONDENT

JUDGMENT

BAQWA J

- [1] It would appear that summons was served on defendant whilst he was away on business in Botswana and that summons were received by his cleaner on 26 July 2012 and/or 27 July 2012.

- [2] According to the Sherriff's return, summons was served on 19 July 2012. This puts the **dies** in dispute.
- [3] In any event upon defendant's return on 28 August 2012 he took the necessary steps to defend the action by instructing an attorney to defend the action.
- [4] An appearance to defend was entered on 7 August 2012. Default judgment was granted on 8 August 2012.
- [5] Respondent opposes the application and raises a point **in limine** namely, failure to apply for condonation of late filling of application for rescission.
- [6] In terms of Uniform Rule 31(2)(b), a defendant is obliged to lodge an application for rescission of judgment within 20 days of obtaining knowledge of default judgment. Applicant has failed to disclose when exactly he became aware of the existence of the default judgment, the default judgment having been delivered to his attorney on 22 October 2012 outside the 20 day period.
- [7] Regarding the issue of a bona fide defence, applicant alleges that the motor vehicle has been paid in full but he has neglected to attach any documentary proof of payments to his founding affidavit. An applicant cannot merely make a glib statement that he has paid in full without producing the necessary proof of such payments. He has to be specific as to how much , when, where and to whom payment was made and furnish such documentary proof to discount the allegations by proof.

- [8] The requirements for an application for rescission under Rule 31(2)(b) are that:

"8.1. The defendant/applicant must give a reasonable explanation for his or her default;

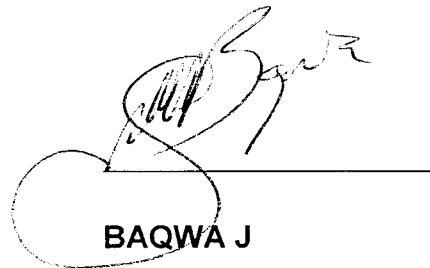
8.2. The defendant's application must be bona fide and not made with the intention of delaying the plaintiff's claim.

8.3. The defendant must show that he has a bona fide defence for plaintiff's action."

- [9] **In casu** applicant has not provided a reasonable explanation for condonation to be granted. Further, he failed to show that he was not in wilful default. Lastly he failed to demonstrate a **bona fide** defence

- [10] In the results the application for rescission of judgment is dismissed with costs.

It is so ordered.

A handwritten signature in black ink, appearing to read 'Baqwa J', is written over a horizontal line. A large, loopy circular flourish is drawn around the signature.

BAQWA J

**(JUDGE OF THE HIGH
COURT)**