



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

CASE NO: 38313/2018

DELETE WHICHEVER IS NOT APPLICABLE

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

23/06/2024
DATE

[Signature]
SIGNATURE

In the matter between:

NATCORP SPECIALISED LOGISTICS SOLUTIONS (PTY) LTD

Applicant

and

MERCEDES-BENZ FINANCIAL SERVICES SA (PTY) LTD

Respondent

In re:

NATCORP SPECIALISED LOGISTICS SOLUTIONS (PTY) LTD

Applicant

and

MERCEDES-BENZ FINANCIAL SERVICES SA (PTY) LTD

Respondent

JUDGMENT DELIVERED ON 13 JUNE 2024

CP WESLEY AJ

1. In this application the applicant seeks an order that the taxation that took place on 4 March 2021 in terms of which the respondent's Bill of Costs was taxed in the amount of R257 957.47 is rescinded and set aside, *alternatively*, is declared void *ab initio*. The applicant also seeks a cost order against the respondent in the event of opposition.
2. The respondent opposes the application. In its answering affidavit the respondent seeks an order that the application is dismissed with costs.
3. When the application was called in court for hearing on 21 May 2024, there was no appearance for the applicant.
4. The applicant's case is premised on the allegation in its founding affidavit that its attorney, Mr Marius Du Preez of Minnie Du Preez Incorporated, "*did not receive any knowledge of the proposed taxation*", and accordingly that the applicant had no knowledge thereof. According to the applicant, this amounted to a breach of the *audi alteram partem* rule as the applicant was not given an opportunity to be

heard at the taxation. The applicant avers that the taxation was accordingly void and that it does not, in the circumstances, have to disclose a *bona fide* defence in its application in order to succeed. In accordance with this, the applicant has not disclosed a defence in its papers.

5. As submitted by counsel for the respondent, whether or not Mr Du Preez himself had knowledge of the intended taxation is not the issue. The issue is whether proper notice of the intended taxation was given to the applicant by the respondent. Whilst Mr Du Preez may or may not have known of the intended taxation, the allegation that the applicant did not receive notice of the intended taxation is false. In its answering affidavit the respondent demonstrates that the requisite notice of the taxation was served on Mr Du Preez's correspondent attorneys in Pretoria on 31 July 2020, and that the correspondent attorneys then forwarded same to Minnie Du Preez Incorporated on 3 August 2020 by way of email. Notice of the taxation was thus properly given to and received by the applicant's attorneys, and accordingly the applicant as well.
6. The applicants did not deliver a replying affidavit in order to rebut the content of the respondent's answering affidavit as foresaid.
7. In *Gründer v Gründer and another*,¹ it was held that the Common law principles that are applicable to the rescission a default judgment also apply to the setting

¹ 1990 (4) SA 680 (C).

aside of the Taxing Master's allocatur. Although the specific relief that the applicant seeks in this application is the setting aside of the taxation that preceded the Taxing Master's allocatur here concerned, the application is essentially one for the setting aside of the allocatur.

8. The principles that are applicable to an application for the rescission of a default judgment under the Common law were stated in *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills Cape*,² in the following terms (references omitted):

"In order to succeed an applicant for rescission of a judgment taken against him by default must show good cause The authorities emphasize that it is unwise to give a precise meaning to the term good cause. As Smalberger J put it ... :

'When dealing with words such as "good cause" and "sufficient cause" in other Rules and enactments the Appellate Division has refrained from attempting an exhaustive definition of their meaning in order not to abridge or fetter in any way the wide discretion implied by these words The Court's discretion must be exercised after a proper consideration of all the relevant circumstances.'

With that as the underlying approach the courts generally expect an applicant to show good cause (a) by giving a reasonable explanation of his default; (b) by showing that his application is made bona fide; and (c) by showing that he has a bona fide defence to the plaintiff's claim which prima facie has some prospect of success"

² 2003 (6) SA 1 (SCA) at para 11.

9. The false explanation that was given by the applicant for its failure to attend the taxation that took place on 4 March 2021 has already been addressed herein above. By giving a false explanation for its default, the applicant has negated any possibility of the court finding that the applicant has given a reasonable explanation for its default or that the application is made *bona fide*. In addition, even if the applicant had given a reasonable explanation of its default and had shown that its application was made *bona fide*, the fact that it has not even attempted put up a *bona fide* defence in its application is fatal, because “a party showing no prospect of success on the merits will fail in an application for rescission of a default judgment against him, no matter how reasonable and convincing the explanation of his default.”³
10. The application accordingly falls to be dismissed.
11. In argument counsel for the respondent sought a cost order against the applicant on the attorney and own client scale. In answer to a query from the court counsel for the respondent readily conceded that it did not give notice to the applicant that it would be seeking such a cost order against the applicant, whether in its answering affidavit or otherwise. Absent any such notice, the court is not inclined to award costs against the applicant on the attorney and own client scale.

³ *Chetty v Law Society, Transvaal* (1985) 2 SA 756 (A) at 765 D-E.

12. Costs should, however, follow the cause and the respondent is thus entitled to a cost order against the applicant. This cost order will be on the party and party scale.
13. Taking all of the circumstances into account, the party and party cost award to the respondent falls to awarded on Scale C in terms of Rule 69A.
14. In the result I make the following order:
 - 14.1 The application is dismissed.
 - 14.2 The applicant is to pay the respondent's costs on the party and party scale, and on Scale C in terms of Rule 69A.

A handwritten signature in blue ink, which appears to read 'CP Wesley', is written over a solid black rectangular redaction box.

CP WESLEY

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Appearances

For applicant: No appearance

For the respondent: SG Maritz SC

instructed by Strauss Daly Attorneys

Date heard: 21 May 2024

Date of Judgment: 13 June 2024