

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

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

DATE 14/10/2024

SIGNATURE.....

CASE NO: 6740/2024

In the matter between:

INDEPENDENT DEVELOPMENT TRUST

Applicant

and

BAKONE PRIDE (PTY) LTD

First Respondent

JNM CONSTRUCTION (PTY) LTD

Second Respondent

JUDGEMENT

Gaisa AJ**INTRODUCTION**

[1] This is an urgent application, Part A, brought by the Independent Development Trust (IDT) seeking to stay the execution of an order granted against it on 3 September 2024 under case number 6740/2024. The order in question was granted in favour of the respondents in the applicant's absence. The applicant also seeks rescission of that order in Part B of this application.

[2] The matter concerns a dispute arising from a construction contract for the Seleteng Community Library project. The respondents obtained a default judgment against the applicant for payment of R2,309,113.16. The applicant contends that this amount is not fully due and payable, and that it has a *bona fide* defence to the claim.

URGENCY

[3] The applicant has made out a case for urgency. There is a real risk that the respondents may proceed to execute the order imminently, given their refusal to grant an indulgence to suspend execution. If execution proceeds, a substantial amount of public funds may be paid out prematurely, which the applicant argues

may not be recoverable if it succeeds in its rescission application. The potential prejudice to the public purse justifies hearing this matter on an urgent basis.

LEGAL FRAMEWORK FOR STAY OF EXECUTION

[4] Rule 45A of the Uniform Rules of Court allows the court to suspend the operation and execution of any order for such period as it deems fit. As stated in **Stoffberg N.O and Another v Capital Harvest (Pty) Ltd**¹ this rule is a restatement of the courts' common law discretionary power to regulate its own process. The guiding principle is that execution will be suspended where real and substantial justice requires it.

[5] The basic principles for granting a stay of execution, as outlined in many cases before the courts are:

- 5.1. a court will grant a stay where real and substantial justice requires it or where injustice would otherwise result.
- 5.2. the court will be guided by factors usually applicable to interim interdicts.

¹ (21302021) [2021] ZAWCHC 37 (2 March 2021)

5.3. the applicant must show a well-grounded apprehension of execution and that irreparable harm will result if execution is not stayed.

5.4. irreparable harm will usually result if there's a possibility the underlying causa may be removed.

[6] Furthermore, as stated in **Van Rensburg NO and Another v Naidoo NO and Others, Naidoo NO and Others v Van Rensburg NO and Others**:²

“[51] Apart from the provisions of Uniform rule 45A a court has inherent jurisdiction, in appropriate circumstances, to order a stay of execution or to suspend an order. It might, for example, stay a sale in execution or suspend an ejectment order. Such discretion must be exercised judicially. As a general rule, a court will only do so where injustice will otherwise ensue.”

ANALYSIS

[7] Applying these principles to the present case, I find that the applicant has demonstrated sufficient grounds for a stay of execution:

² (155/09, 455/09) [2010] ZASCA 68; [2010] 4 All SA 398 (SCA) ; 2011 (4) SA 149 (SCA) (26 May 2010)

[8] **Prima facie right:**

8.1. The applicant has shown a *prima facie* right by demonstrating reasonable prospects of success in its rescission application. It has provided a plausible explanation for its default, namely that it was engaging with the respondents on potential settlement and had filed an answering affidavit, albeit late due to a diarising error.

8.2. More importantly, the applicant has raised potentially meritorious defences to the respondents' claim, including disputes over the amounts claimed and work allegedly not approved by the client department.

[9] **Irreparable harm:**

The applicant faces a real risk of irreparable harm if the stay is not granted. A substantial amount of public funds (over R700,000) is in dispute. If this amount is paid out and the applicant later succeeds in its rescission application and defence of the main claim, it may not be recoverable. This potential loss of public funds constitutes irreparable harm.

[10] **Balance of convenience:**

The balance of convenience favours granting the stay. While the respondents have an interest in prompt payment for work allegedly completed, this must be weighed against the public interest in ensuring proper adjudication of claims involving state funds. The prejudice to the respondents in a temporary delay in payment is outweighed by the potential prejudice to the public purse if funds are paid out prematurely and later found not to be due and cannot be recovered.

[11] **No alternative remedy:**

The applicant has no other satisfactory remedy. A mere application for rescission does not automatically stay execution of the order. Without a stay, the applicant would be compelled to pay out funds that may later be found not to be due, with no guarantee of recovery.

[12] While it is not necessary to determine the merits of the rescission application conclusively at this stage, I am satisfied that the applicant has shown reasonable prospects of success. The explanation for the default appears to be reasonable, and the defences raised do not appear, at this stage, to be frivolous or vexatious.

[13] The disputes over the amounts claimed and work allegedly not approved raise complex factual issues that arguably should not have been determined on motion proceedings.

CONCLUSION

[14] Having regard to all the circumstances, I am satisfied that it is in the interests of justice to grant the stay of execution pending the hearing of the rescission application. This will preserve the *status quo* and prevent potentially irrecoverable public funds from being paid out prematurely, while still allowing for the full merits of the dispute to be properly adjudicated.

ORDER

1. This application is enrolled and heard as an urgent application in terms of Rule 6(12) and the ordinary prescribed time limits, forms, and services provided in the Rules are dispensed with.

2. Pending the final determination of PART B of this application:

2.1 The execution of the order granted on 3 September 2024 under case number 6740/2024 is hereby stayed.

3. The costs of this application are reserved for determination in the rescission application.



N. GAISA
ACTING JUDGE OF THE HIGH
COURT, POLOKWANE; LIMPOPO
DIVISION

APPEARANCES

FOR THE APPLICANTS
EMAIL

: Adv. Mampa
: adv.mampa@gmail.com
: Mmakola Matsimela Attorneys
: solly@mmakolamatsimela.co.za

FOR THE RESPONDENTS
EMAIL

: Adv.Goosen
:
: C de Villiers Attorneys
: caroline@cdvlaw.co.za
: Du Toit Swanepoel Steyn & Spruyt Attorneys
: ina@dtsss.co.za

DATE OF HEARING : 26 September 2024

DATE OF JUDGEMENT : 14 October 2024

This judgment is handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down of the judgment is deemed to be 14 OCTOBER 2024.

POLOKWANE HIGH COURT