

**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	NO
Of Interest to other Judges:	NO
Circulate to Magistrates:	NO

Case No: 4845/2023

In the matter between:

MATJHABENG LOCAL MUNICIPALITY

Applicant

and

**RUSTIC STONE AND SLAB CC
REG NR: 2006/056279/23**

Respondent

HEARD ON: 18 APRIL 2024

JUDGMENT BY: MHLAMBI, J

DELIVERED ON: 5 AUGUST 2024

- [1] On 14 September 2023, the respondent, as the plaintiff in the action, issued a summons against the applicant, as the defendant, for the payment of R83 062.00, which the applicant paid in protest to secure a clearance certificate for the transfer of immovable property. The applicant was of the view that the said amount, which referred to services or fees due to the respondent, was not payable as the claim had prescribed.
- [2] On 2 November 2023, I granted a default judgment against the applicant because it failed to file a notice of intent to defend despite being served with a summons. The applicant wishes to rescind this judgment in accordance with the provisions of Rule 42(1)(a) of the Uniform Rules of Court. The Rule

provides that the court may, in addition to any other powers it may have, *mero motu* or upon the application of any party affected, rescind or vary an order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby.

- [3] The applicant's main contentions are that the respondent failed to properly plead prescription in its particulars of claim and the application for default judgment. It was contended that the affidavit in support of the default judgment failed to allege when the prescription began to run and the date of its completion. It merely stated that the respondent sought to recover the amount that had prescribed for the services that were rendered from 17 May 2007 to 23 August 2013.¹ The default judgment, based on the above, was erroneously granted.²
- [4] The applicant contended, furthermore, that the clearance figures that were furnished in terms of section 118(1) of the Systems Act reflected amounts for municipal service fees, surcharges on fees, property rates, and other municipal taxes, levies, and duties during the two years preceding the date of the application for the certificate. The non-disclosure by the respondent that a portion of the clearance figures constituted rates and taxes, which would only prescribe after 30 years, and that El Toro Trucking was the debtor, resulted in the court granting the default judgment.³ This submission is misplaced as will be shown below.
- [5] In its affidavit in support of the default judgment, the respondent set out the nature and extent of its claim against the applicant and attached proof of payment of R90 235.78. This amount included R83 062.92 that was owed by a previous tenant, known as "El Toro Trucking," for the period of 2007/04/17 to 2013/08/2. Attached to the affidavit were two copies of the municipal clearance figures with an extract of the arrear period, the latter showing the periods and

¹ Paras 14-16 of the applicant's heads of argument.

² Para 34 of the founding affidavit.

³ Paras 18-20 of the applicant's heads of argument.

amounts due to the applicant by the respondent and El Toro in respect of stand 000[...].

- [6] The municipal clearance figures⁴ indicated an owner's account, number 111[...], that reflected two subtotals of R6 427.15 and R83 062.92. The latter amount was styled "*Huurder Bedrae*" or tenant fees while the former was titled "*Totaal Eienaarsrekening*". The total amount payable (including administration and clearance certificate fees) was R90 235.78. The tenant fees were reflected in the application for default judgment⁵ as referring to account 120[...] for the period 17/04/2007 and 26/08/2013 that related to EL Toro. It is undisputed that both accounts had a bearing to stand 000[...], owned by the respondent.
- [7] In the founding affidavit, the applicant stated that, in terms of section 11(d) of the Prescription Act 68 of 1969, the general rule is that a debt prescribed after three years.⁶ In addition, section 11(a)(iii) of the Act provided that any debt in respect of any taxation imposed or levied by or under any law shall prescribe after 30 years.⁷ Rates charges only prescribed after 30 years.⁸ However, the applicant was of the view that the clearance figures issued to the respondent were part levies and part service fees⁹ for the two years preceding its application for a clearance certificate.¹⁰
- [8] According to the applicant, the clearance figures issued to the respondent had not prescribed, and it was within its rights to claim them. Even if it were found that some of the charges had prescribed, the whole debt had not, as the respondent was issued figures for the two years preceding its application for a clearance certificate.¹¹
- [9] The applicant's case is clear: It sought reimbursement of the amount the tenant owed from 2007 to 2013. In *Jordaan v City of Tshwane Metropolitan*

⁴ Annexure "DA 2" to the default judgment.

⁵ Annexure "D3".

⁶ Para 45.

⁷ Para 47.

⁸ Para 49.

⁹ Para 48.

¹⁰ Para 46.

¹¹ Para 51.

Municipality,¹² the Constitutional Court held that section 118(3) of the Systems Act was limited by prescription to municipal taxes going back 30 years and that the prescription period with regard to other municipal charges is limited to three years. The amount owed by the tenant, which represented the R83 062.92 paid by the respondent, was unenforceable as charges, unlike rates and taxes, had a prescription period of three years. Alternatively, the applicant did not show that the amount represented rates and taxes.¹³

[10] The applicant's contention that the judgment was erroneously granted is without substance: "*The court would not have granted the judgment because the applicable prescription period in respect of some of the judgment award is 30 years.*"¹⁴ There was no error in granting the default judgment. The applicant's rescission application in terms of Rule 42(1)(a) is misplaced.

[11] It is trite that the successful party is entitled to the costs. On 4 April 2024, the application, which was placed on the unopposed roll, was postponed to enable the applicant to file a replying affidavit. It is only fair that it should bear the costs of that postponement.

[12] In the result, the following order issues:

Order:

The rescission application is dismissed with costs which shall include the costs of postponement on 4 April 2024.

MHLAMBI, J

¹² 2017 6 SA 287 (CC) para 25.

¹³ *AMA Casa Props 129 (Pty) Ltd v City of Johannesburg and Others* (32217/2019) [2021] ZAGPJHC 661 (9 November 2021); *Buttertum Property Letting (Pty) Ltd v Dihlabeng Local Municipality* [2016] 4 All SA 895 (FB) at para 39.

¹⁴ Applicant's heads of argument.

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