

**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

**CASE NO.: 22720/20**

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

Date: 22 November 2024 E van der Schyff

In the matter between:

Phillipus Johannes Roedolf Steenkamp

First Applicant

Pronker Projekte (BK)

Second Applicant

and

Alco Refinery Services (Pty) Ltd

Respondent

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JUDGMENT

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Van der Schyff J

**Introduction**

- [1] This is an application for rescission of an order granted in the applicants' absence on 9 September 2020. The parties are referred to as they are cited in this application.
- [2] The applicants, despite being *dominus litis*, failed to enroll the application for hearing. They also failed to file heads of argument. The respondent subsequently obtained a hearing date and set the matter down. The notice of set down was delivered to the applicant's attorney of record on 23 June 2024. The applicants' attorneys of record filed a notice of withdrawal as attorneys of record on 5 November 2024, eight court days before the hearing date. There was no appearance on behalf of the applicants.
- [3] I had regard thereto that the notice of set down was served on the applicants' erstwhile attorneys of record long before they withdrew as attorneys of record. No papers were filed subsequent to the notice of withdrawal filed by the applicants' attorney of record.<sup>1</sup> The matter continued without the applicants' physical presence. The applicants' case, as set out in the founding affidavit, was considered.
- [4] The background to this rescission application is as follows:
- i. The summons was served personally on the first applicant on 17 June 2020 at the second applicant's principal place of business. It was also served on the first applicant's wife at his residential address on 19 June 2020;
  - ii. Default judgment was obtained on 9 September 2020;
  - iii. A notice of intention to defend was filed on 5 October 2020 after default judgment was obtained;
  - iv. The first applicant became aware of the order on 13 May 2021; and
  - v. The rescission application was filed on 10 June 2021.

### **The applicants' case**

- [5] Mr. Steenkamp, the first applicant, deposed to the founding affidavit. He acknowledges that the summons was served on him personally. He mainly ascribes

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<sup>1</sup> Rule 16(4) of the Uniform Rules of Court.

the timeous filing of a notice of intention to defend to the consequences of the Covid pandemic. He states that he tried to contact his 'usual attorney', but that he was not available. He assumed that due to the lockdown, things were starting slow for some people. He later realized that his attorney was not opening up again and started looking for a new attorney. He was informed that the unopposed roll was 'eight months away.'

- [6] Mr. Steenkamp avers that he believes the claim to be opportunistic. He, at all times, intended to defend the action. Mr. Steenkamp explains that Mr. Hickman, the representative of the plaintiff in the main action, Alco Refinery Services, approached him to build 'some things'. He provided invoices for the work done. Mr. Hickman claimed a share of the money as a fee. Mr. Hickman informed him that he was entitled to such a fee as he was Alco Refinery Services' representative and brokered deals on their behalf. After his invoices were paid, he withdrew cash and paid Mr. Hickman.
- [7] Mr. Steenkamp did not attach any annexures to the founding affidavit. He did not provide any particular information, such as amounts withdrawn or paid to Mr. Hickman.
- [8] Mr. Steenkamp denies ever doing business with Alco Refinery Services. However, he acknowledges that Mr. Hickman was a representative of Alco Refinery Services. He also denies knowing that Mr. Hickman was a representative of COBPRO, Alco Refinery Services' predecessor, and refers to them as competitors. The invoice sent by Mr. Steenkamp, however, contains the details of COBPRO.

## **Discussion**

- [9] It is trite that a party seeking to set aside an order or judgment handed down in their absence must give a reasonable and adequate explanation for its default in defending the matter. Sufficient factual detail must be provided for the court to determine whether the reasons provided are, in fact, adequate and reasonable.

- [10] *In casu*, Mr. Steenkamp's explanation is general and lacks detail. He did not inform the court who his 'usual attorney' was or when he realized the attorney was not reopening the firm. He does not explain when he first consulted with the attorneys who initially acted on his behalf and when he instructed them to defend the claim. More is expected of an applicant who attempts to make out a case that it was not in willful default. Based on the scant facts set out in the founding affidavit and the general bald statements, I find that the applicants did not put forward an adequate and reasonable explanation for their default.
- [11] To worsen the applicants' position, it is evident from the papers filed and the chronology of the matter that the applicants failed to pursue the rescission application actively. They failed to file heads of argument when it was required to enroll the matter. They took issue with the respondent who filed its own heads of argument in addition to two notices to compel the delivery of the applicants' heads in an effort to move this application forward. It was ultimately the respondent who obtained a date for the hearing of the application in the opposed motion court and who delivered the notice of set down timeously to the applicants' attorney of record.
- [12] The second aspect that requires a court's attention when a rescission application is considered, is the question of whether the applicant has shown that he has a *bona fide* defence to the plaintiff's claim. *In casu*, on the papers as it stands, I agree with the respondent that the version put up by Mr. Steenkamp contains discrepancies and contradictions. As a result, I find that the applicants failed to show that they have a *bona fide* defence to the claim.

### **Miscellaneous**

- [13] The answering affidavit was signed and sworn to before a solicitor in the United Kingdom. Ramsbottom J held in *McLeod v Gesade Holdings (Pty) Ltd*<sup>2</sup> that:

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<sup>2</sup> 1958 (3) SA 672 (W).

'There is nothing in the Union Oaths Act or in the regulations which affects the validity of an affidavit made in accordance with the law of a foreign country.'

- [14] In the United Kingdom, practicing solicitors can administer oaths or take affidavits. The founding affidavit is regarded as an affidavit.

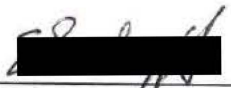
### **Costs**

- [15] The general principle regarding costs is that costs follow success. The issues underlying this application were not complicated or novel. However, to show the court's displeasure at the manner in which the applicants dealt with this application, costs are awarded on scale B.

### **ORDER**

**In the result, the following order is granted:**

- 1. The rescission application is dismissed with costs on scale B.**

  
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 E van der Schyff  
 Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be emailed to the parties/their legal representatives.

For the applicants:

No appearance

For the respondent:

Adv. J. Mouton

Instructed by:

Schindlers Attorneys

Date of the hearing:

19 November 2024

Date of judgment:

22 November 2024

