

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO.: 2022-015113

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

Date: 3 February 2025

E van der Schyff

In the matter between:

HLANGU'S 86 TRADING ENTERPRISES CC

Applicant

and

MAN FINANCIAL SERVICES (PTY) LTD t/a

MAN FINANCIAL SERVICES

Respondent

JUDGMENT

Van der Schyff J

Introduction

- [1] The parties are involved in litigation wherein the respondent ("MAN") is the plaintiff, and the applicant ("Hlangu'86") is the defendant. The matter was enrolled in the

unopposed motion court for hearing on 29 January 2025. MAN sought that default judgment be granted against Hlangu'86.

- [2] It is common cause that a simple summons was issued against Hlangu'86. It was served by the Sheriff of the court on 22 and 25 August 2022. Hlangu'86 entered appearance. It raised an exception against the particulars of claim in March 2023. It did not prosecute the exception but withdrew it in July 2024 when MAN enrolled the exception for hearing. Hlangu'86 failed to file a plea despite being served with a notice of bar on 20 August 2024. The matter was subsequently enrolled for default judgment, and a notice of set down with respect to the default judgment application was served on Hlangu'86's attorneys of record on 19 December 2024. On 28 January 2024, a day before the application for default judgment was to be heard, an application for the upliftment of the bar was issued and delivered.
- [3] When the matter was called in the unopposed motion court, I indicated that I would deal first with the application to uplift the bar, unless MAN would want to file answering papers. MAN's counsel indicated that no answering papers needed to be filed and that she was ready to make submissions. I stood the application down to Friday, 31 January 2025, to deal with the application to uplift the bar and, depending on the outcome thereof, with the application for default judgment.

The litigation

- [4] The parties entered into installment sale agreements in terms of which Hlangu'86 purchased two used MAN trucks from MAN. The parties agreed that MAN retained ownership and that ownership of the trucks would not pass to Hlangu'86 at any time during the existence of the agreement and until Hlangu'86 paid all its financial obligations in full. The parties also agreed that in the event of non-compliance by Hlangu'86, MAN would be entitled to terminate the agreement and, subject to the provisions of the agreement, be entitled to the return and possession of the trucks and demand payment of all arrear installments and finance charges. Hlangu'86 failed to keep up with its monthly installments. After a notice of default was dispatched to Hlangu'86's *domicillium* address, MAN cancelled the

agreements. MAN issued summons seeking confirmation of the cancellation of the agreements, repossession of the goods, damages, interest and costs.

- [5] In the default judgment application before me, MAN initially sought an order confirming the cancellation of the agreements. During argument, MAN's counsel indicated that the contracts have since lapsed due to the effluxion of time. MAN also seeks an order to repossess the trucks. The monetary claims are to be postponed.

The application to uplift the bar

- [6] On a technical level. Hlangu'86 took issue with the notice of bar being served on its attorney of record via email on 20 August 2024, but only filed with the Registrar of the Court on 15 January 2025. Although Hlangu'86 did not file its plea within five days of 15 January 2025, its objection is that the enrollment of the application for default judgment was premature.
- [7] Just as is the case in applications for summary judgment, the rules should be applied strictly to barring parties. Had Hlangu'86 filed its plea within five days from 15 January 2025, the position might have been different. But no such plea was filed. Section 173 of the Constitution allows a Court to regulate its own process. Since the setting down of the application for default judgment is a procedural issue, there is no bar to this court considering the application for default judgment in the absence of a plea, unless the application is determined in the applicant's favour.
- [8] Hlangu'86 also avers that its attorney informed that he never received the notice of bar. Unfortunately for Hlangu'86 no confirmatory affidavit by its attorney accompanied its application. The notice of bar was delivered by email, as the parties agreed to such service, and it was sent to the email address provided. There is, thus, no merit in this contention, particularly if it is considered that Hlangu'86 does not (i) tender any explanation at all for its failure to file a plea timeously and (ii) does not set out any defence to MAN's claims. In light of the

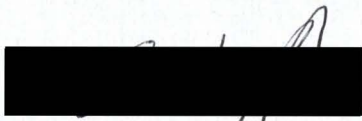
inherent shortcomings of the application, the technical issues raised are neither here nor there.

- [9] Hlangu'86 failed to show good cause for the uplifting of the bar. No explanation was furnished to enable the court to understand how it came about that the plea was not filed timeously or to assess the Hlangu'86's conduct and motives. In the absence of any explanation for the delay, and since no defence was raised, I cannot but agree with MAN's counsel that this application was made solely with the intention of delaying MAN's claim.¹
- [10] A court cannot sculpt a contract for the parties. Hlangu's 86 request to uplift the bar because it now succeeded in obtaining a government contract and can earn income to pay MAN what it is owed in a year's time, necessitates a new agreement to be concluded between the parties. It is not a defence to the existing claims. As a result, the application for uplifting the bar stands to be dismissed. As a consequence, the application for default judgment will be considered, and if MAN succeeds in making out a case for default judgment, an order to that effect will be granted. This will be dealt with in a separate order.
- [11] The parties agreed in the initial agreements that costs would be taxed on attorney and client scale.

ORDER

In the result, the following order is granted:

- 1. The application for the uplifting of the bar is dismissed with costs on an attorney and client scale.**


E van der Schyff
Judge of the High Court

¹ *Smith NO v Brummer NO* 1954 (3) SA 352 (O) at 358A; *Ingosstrakh v Global Aviation Investments (Pty) Ltd* 2021 (6) SA 352 (SCA) at para [21].

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines.

For the applicant:

Mr. Mashamiate

Instructed by:

Mashamaite Attorneys Inc.

For the respondent:

Adv. Z. Marx du Plessis

Instructed by:

VZLR Attorneys

Date of the hearing:

31 January 2025

Date of judgment:

3 February 2025