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

CASE NO.: 3066/2019

(1) REPORTABLE: YES/**NO**

(2) OF INTEREST TO OTHER JUDGES: **NO**

(3) REVISED: **NO**

Date: 29 April 2025

Signature:

In the matter between:

LOWANE HANYANI LIVINGSTONE

Applicant

and

NEDBANK

Respondent

JUDGMENT

GROBLER AJ:

1. This is an application for rescission of a default judgment granted in favour of the Respondent against the Applicant on 30 July 2019. The judgment comprised of the following¹:

¹ Prayers set out in the particulars of claim under case number 3066/2019 and the subsequent application for default judgment. Also see par 24 of this judgment.

- “1. Payment of the sum of R438 351.04;*
- 2. Interest thereon at the rate of 8.45% per annum from 2 NOVEMBER 2018 calculated daily and compounded monthly, to date of payment;*
- 3. An Order in terms whereof the immovable property described as ERF 2[...] N[...] EXTENSION 7, REGISTRATION DIVISION H.S PROVINCE OF KWAZULU-NATAL; is declared specially executable, and, to this end, that a Writ of Execution be issued as envisaged in terms of Rule 46(1)(a) of the Uniform Rules of Court;*
- 4. Costs to be taxed on the scale as between attorney and own client.”*

2. The Respondent set the application for rescission of the judgment down for hearing in the opposed motion court on 22 April 2025. The Notice of set down was served on the Applicant's attorney of record per e-mail dated 17 February 2025.
3. The senior Judge who was charged with the allocation of the opposed motion roll allocated the matter to this court on Friday 11 April 2025 and this court issued a practice directive on Monday 14 April 2025 indicating that the Applicant's application was allocated to be heard by this court on 24 April 2025.
4. An undated and unsigned joint practice note was uploaded to the caselines profile, containing the allocated date of hearing of 24 April 2025, the details of both the counsel for the Applicant and the counsel for the Respondent etcetera.
5. The Applicant's attorney of record (TL Seeletso Attorneys) transmitted a letter dated 17 April 2025 by e-mail to the Applicant's attorney of record on the last court day before 22 April 2025. In the context of the order issued below it is necessary to quote the contents of the letter in its entirety:
 - “1. The above matter refers.*
 - 2. We wish to inform you that after perusing the Opposed Roll Dates issued by Grobler AJ we have noted that the above matter has been moved to the 24th April 2025, it is unfortunately to inform you that our*

Counsel reserved the 22nd April 2025 as the date of hearing and that he has court commitments on the 24th April 2025.

3. *We propose that the matter be postponed to a certain date which should be agreed upon telephonically based on the availability of our counsel.*
4. *We have released our Counsel from the 22nd April 2025 date."*
6. The Respondent's attorneys of record transmitted an e-mail in response to the aforesaid e-mail to the Applicant's attorney of record on 22 April 2025 with the following contents:
 - "1. *Kindly find the attached supplementary Heads of Argument.*
 2. *Kindly note it is our instruction to proceed on 24 April 2025.*
 3. *Kindly note that our client is amenable to standing the matter down to 25 April 2025 (as opposed to a postponement), subject to the Judge's discretion wherein your offices will have to request same."*
7. The Respondent's attorneys of record transmitted a further e-mail to the Applicant's attorney of record on 23 April 2025 with the following contents:

" Kindly note that we shall be appearing and moving the matter towards finality tomorrow.

The attempted removal of the matter is both irregular and defective, in that the matter has already been duly allocated to a Judge.

We shall accordingly hand up your letter dated 17 April 2025 to the Honourable Judge during the proceedings tomorrow."
8. The Applicant was in default when the matter was called on 24 April 2025.
9. The Respondent's counsel argued that the Applicant's attempt to unilaterally remove the matter from the roll is abusive as it is designed to cause a delay in the finalization of the matter, that it is highly irregular and that there is no application for a standing down or postponement of the matter. In the circumstances, so the argument went, the matter should proceed in the absence of the Applicant.

The irregularity and abusive nature of the unilateral removal:

10. The Respondent's counsel submitted, and there can be no doubt that the submission is correct, that the unavailability of counsel does not *ipso facto* entitle a party to a postponement.
11. The acceptability of the alleged unavailability of counsel for the allocated date of hearing on 24 April 2025, as a reasonable explanation for the Applicant's attorney's attempt to unilaterally remove the matter from the roll, is questionable in light of *inter alia* the following provisions of the REVISED CONSOLIDATED PRACTICE DIRECTIVE 1 OF 2024 COURT OPERATIONS IN THE GAUTENG DIVISION with effect from 26 February 2024 (amended on 12 June 2024):

"24 THE MOTION COURT

...

Requests for specific dates

24.8. *In instances where attorneys require specific dates to be allocated due to counsel's availability/non-availability or for another valid reason, a CaseLines note to that effect may be made for the registrar's consideration.*

24.9. *Such date requests should be for a date range (e.g., 'last week of June') and not for a specific date; and should be sufficiently motivated.*

...

Final enrolment of opposed motions

...

25.6. *All opposed motions shall be set down by the registrar formally on a Monday and the Judge allocated to hear the matter shall give directions as to which day of that week the matter shall be heard.*

...

Pre-hearing conference required

25.17. *In any opposed motion or special motion, counsel for the several parties must hold a pre-hearing conference and prepare a joint practice note setting out:*

- 25.17.1. The relevant factual chronology.*
- 25.17.2. Common cause facts relevant to the relief sought in the pleadings.*
- 25.17.3. Issues requiring determination.*
- 25.17.4. Relevant portions of the papers to be read.*
- 25.17.5. Whether or not the parties have agreed to forgo an oral hearing.*
- 25.17.6. Whether supplementary submissions are expected in the event that the matter will be heard on paper.*
- 25.17.7. An updated estimate of the duration of the hearing.*
- 25.17.8. Any other matters relevant for the efficient conduct of the hearing, to present to the Judge seized with the matter.”*

12. The Applicant’s attorney did not raise the availability / unavailability of counsel and the setting down of the matter on the opposed roll for the week of 22 April 2025 when the matter was so set down by the Respondent, as he was entitled to do in terms of paragraph 24.8 and 24.9 of the practice directives.
13. The Applicant’s attorney must have known at all relevant times that the matter may be allocated for hearing on any day of the week starting on 22 April 2025 as provided for in paragraph 25.6 of the practice directives.
14. No mention was made in the joint practice note of the availability / unavailability of the Applicant’s counsel on any specific day of the week starting on 22 April 2025, as the Applicant was entitled to do in terms of paragraph 25.17.8 of the practice directives. In this regard there is a well-established and honoured convention that counsel may, in the joint practice note, request the matter to be allocated a specific day of the week, or that the matter be allocated any day other than a specific day of the week due to the availability / unavailability of counsel on any specific day. In cases where such a request is made, counsel are usually accommodated as far as possible.

15. The attempt to unilaterally remove the matter from the roll by TS Seelepe Attorneys is furthermore particularly concerning in light of the judgment handed down less than a year ago on 18 June 2024 in **Seripe v Swanepoel NO and Others** 2024 JDR 2775 (NWM).
16. In that matter the Applicant's attorneys (TL Seeletso Attorneys) also acted for an applicant in a rescission application and also attempted to unilaterally remove the matter from the roll for questionable reasons, which were found to have had no merit.
17. In paragraph [22] of the **Seripe**-judgment, the Court stated that the conduct of Mr Seeletso filled the Court with disquiet. The Court also stated the following in paragraph [22] of the judgment:
"Legal representatives' foremost duty is to the court. It is apposite at this juncture to remind legal representatives of this duty and their role in the proper administration of justice. Our law is replete with authority which enunciates this principle. The reference to 'advocates' in some authorities cited would in my view apply equally to the role of attorneys as well."
18. In paragraph [28] to [30] of the **Seripe**-judgment, the Court considered the Rules of Court and the Practice Directives as a conduit in the achievement of expedient, efficient and cost-effective litigation and referred to *inter alia* **Mukaddam v Pioneer Foods Pty (Ltd)** 2013 (5) SA 89 (CC) at par [31] to [33], **Centre for Child Law v Hoërskool, Fochville** 2016 (2) SA 121 (SCA) at par [17] and **Eke v Parsons** 2016 (3) SA 37 (CC) at 53 A-D.
19. From a consideration of the aforementioned authorities, it is clear that the primary function of the Rules (and Practice Directives) is the attainment of justice in a cost effective and expeditious manner.
20. The Court in the **Seripe**-matter found that the attempt to unilaterally remove the application from the roll was impermissible, irregular and of no force of effect. The Court in fact found (in paragraph [32] of the judgment) that the conduct of Mr Seeletso is unbecoming of a legal practitioner.

21. The Court, however, furthermore found that it would not have served the interests of justice for the rescission of judgment application to be adjudicated in the absence of Mr Seeletso and postponed the matter, but ordered Mr Seeletso to prepare adequately to address the Court on the consideration of an order of costs *de bonis propriis* against him. I have not been able to establish what the final outcome of the matter was.
22. I am accordingly on the basis of the available facts and legal position similarly inclined to find that the Notice of Removal unilaterally uploaded to caselines by the Applicant's attorney of record dated 23 April 2025 is irregular and void *ab initio*.

The Respondent's request to proceed with the finalisation of the matter in the absence of the Applicant:

23. The primary reason for it not being possible to determine the matter at this stage is that all the necessary papers are not before court.
24. The "Index Bundle- Default Judgment & Combined Summons" uploaded to caselines at 000- 1 to 3 refers to the court order presumably granted on 30 July 2019 as item number 20 on paginated pages 103 to 105, but no court order is uploaded to caselines (the last page of the bundle on caselines is the service affidavit that ends on caselines 000- 99).
25. The founding affidavit and replying affidavit (if any) in the application for rescission of the judgment – the very application set down for hearing before me - is not available on the caselines profile. This is perplexing in light of all the practice directives requiring the papers in the matter to be uploaded to the caselines profile at various stages of the process (See *inter alia* par 13.9, par 24.3, par 25.7, Annexure 5.5 etc of the practice directives).
26. I am accordingly unable to accede to the Respondent's request to determine the matter in the absence of the Applicant.

Costs:

27. In view of the order to be issued as set out below, the wasted costs relating to hearing set down for the week of 22 April 2025 should be reserved.

Conclusion:

28. In the premises, the following order is issued:

1. The Notice of Removal filed by the Applicant's attorney of record (TL Seelepe Attorneys) dated 23 April 2025 is set aside as being void *ab initio*;
2. The application is postponed *sine die*;
3. The Applicant's Attorney of record (TL Seelepe Attorneys) is ordered to present reasons on affidavit why TL Seelepe Attorneys should not be ordered to pay the wasted costs relating to hearing set down for the week of 22 April 2025 *de boniis propriis* on an attorney and client scale, such affidavit to be delivered by no later than 15 court days after date of this judgment.
4. The Respondent is authorized to deliver an answering affidavit to the aforementioned affidavit of the Applicant's attorney of record within 10 days from receipt thereof and the Applicant's attorney of record is authorized to deliver a replying affidavit within 5 days from receipt of the answering affidavit;
5. Costs are reserved.

DATED AND SIGNED AT PRETORIA ON THE 29th DAY OF APRIL 2024.

JF GROBLER

Acting Judge

High Court of South Africa

Gauteng Division

Pretoria

Counsel for Respondent: W Roos

Instructed by: VHI Attorneys

Counsel for Respondent: S Leshilo (as per joint practice note) No appearance at the hearing

Instructed by: TL Seeletso Attorneys

Date of hearing: 24 April 2025

Date of judgment: 29 April 2025