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

CASE NO.: 046326-2024

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

Date: 1 August 2025

E van der Schyff

In the matter between

PRIDIN TRADING (PTY) LTD

FIRST APPLICANT

PRINCE DIPHAPANG MOTAKANE

SECOND APPLICANT

and

BOUTIQUE LEASING COMPANY (PTY) LTD

FIRST RESPONDENT

SHERIFF OF THE HIGH COURT FOR

THE DISTRICT OF BRITS

SECOND RESPONDENT

JUDGMENT

Van der Schyff J

Introduction

[1] The first applicant, Pridin, and the first respondent, Boutique, concluded a Master Agreement ('the agreement') on or about 25 April 2022. In terms of the agreement, Boutique leased two Isuzu trucks to Pridin. Pridin's chosen *domicillium citandi et executandi* is '0[...] H[...] Street, Founders Hill, Modderfontein, Gauteng. The second applicant, Mr. Motakane, is the managing director of Pridin.

- [2] Pridin amended its registered address with the CIPC on 24 September 2024 to Unit [...] C[...] B[...], Provincial Road P[...], Steelpoort, Limpopo 1[...].
- [3] On 9 May 2025, Boutique obtained default judgment against Pridin and Mr. Motakane, and a warrant of execution was issued on 12 June 2025.
- [4] In this application, the applicants seek urgent relief in the form of a stay of execution of the order granted on 9 May 2025 ('the order') and an interdict restraining the Sheriff of the court cited as second respondent, from proceedings with the execution of the warrant.
- [5] The issues for determination are:
- i. Whether condonation should be granted for the applicants' non-compliance with the time periods and service prescribed in the Uniform Rules of Court; and, if so,
 - ii. Whether the execution of the order should be suspended and all warrants of execution be stayed pending the finalisation of a rescission application.

The applicants' case

- [6] The applicants acknowledge a single instance of default in payment under the agreement. This default, they submit, was promptly rectified, and since then, they complied with all subsequent obligations. The applicants dispute that Boutique is entitled to the full claim amount or the unilateral cancellation of the agreement without proper notice.
- [7] Mr. Motakane avers that the applicants were not aware of the application for default judgment. They only became aware of the existence of the judgment on 24 June 2025 when the Sheriff attached movable property pursuant to a warrant of execution at the premises located at 1[...] K[...] Avenue, Mooinooi, North West

Province. The attached property includes 4 motor vehicles. These vehicles, and other attached items, however, do not belong to the applicants.

- [8] The applicants contend that the application for default judgment was not served on them in accordance with the provisions of Rule 4 and not at their respective chosen domicillium addresses. The notice of set down was served at Pridin's domicillium address on 17 February 2025 by handing the notice to an unnamed person, and also reflects 'defendant unknown'.
- [9] The applicants contend that the returns of service demonstrate that service was not affected at the correct addresses or in a manner that ensured that the applicants had knowledge of the proceedings. Consequently, they aver that the judgment was erroneously granted in the applicants' absence due to non-service. The applicants claim to have a *bona fide* defence in that the single instance of default was cured and there was no repudiation of the agreement. In addition, the claim amount is excessive as the agreement limits damages to arrears or 15 months' rental, whichever is the lesser.
- [10] The applicants attempted to resolve the matter amicably and sought an undertaking that execution would not proceed pending a rescission application being finalised. Due to the respondents' lack of response, this application was launched. The applicants submit that the urgency of the matter is embedded in the fact that execution would have occurred by the time that this application is heard on the ordinary motion roll. Execution would render rescission moot if the applicants' property is sold.

The first respondent's case

- [11] The first respondent denies that there is any urgency in the matter and contends that this application is nothing more than a delaying tactic intended to frustrate the execution of justice.

- [12] The first respondent, Boutique, claims that Mr. Motakane chose Unit 1[...], S[...] B[...] V[...], Noordwyk, Gauteng, as his domicillium address. The application that resulted in the order granted on 9 May 2025 was served on Pridin's, then, registered address and its chosen *domicillium* address, and on Mr. Motakane's chosen domicillium address. The notice of set down was served on Pridin's chosen domicillium address and Mr. Motakane's chosen domicillium address.
- [13] Boutique states that the default judgment application was served at Pridin's registered address four months before it was amended. Where third parties' property was attached, these parties can invoke Interpleader proceedings. Boutique submits that the applicants failed to set out a *bona fide* defence. The applicants fail to inform the court that **they** repudiated the agreement by returning the vehicles that form the subject matter of the agreement.

Discussion

- [14] It is recorded in the Master Agreement that Pridin's chosen domicillium address is '0[...] H[...] Street, Founders Hill, Modderfontein, Gauteng,' with Mr. Motakane's address reflected as '0[...] M[...] F[...] Street, Midlands Estate'. The Suretyship agreement, however, reflects that Mr. Motakane chose 'Unit 1[...] S[...] V[...], Noordwyk, Gauteng,' as his domicillium address.
- [15] There is, on the papers filed, thus no prospect of success in a rescission application brought on the basis that the judgment was erroneously sought or granted.
- [16] The second question is whether the applicants raise a *bona fide* defence. The applicants allege that the judgment amount is excessive, but do not provide any calculation for the court to evaluate the submission. The first respondent, in turn, filed a Certificate of Balance that constitutes *prima facie* proof of the amount owed.
- [17] I am, however, of the view that the applicants did not meet the threshold for this court, at this stage, to come to any decision on the merits of an application to

suspend the execution of the default judgment granted on 9 May 2025. An applicant who approaches the urgent court needs to make out a case that the application is urgent, and that the condonation sought in relation to service and timelines to which a respondent must adhere, correlates with the urgency of the matter.

[18] In this matter, the applicants were aware of the default judgment and the attachment of property as early as 24 June 2025. They wrote to the respondents on 14 July 2025. Due to the respondents' silence, the applicants then decided to institute urgent proceedings. The papers reflect that the notice of motion is dated 23 July 2025. The respondents were instructed to notify the applicants of their notice of intention to defend by 24 July 2024 and file an answering affidavit by 25 July 2025.

[19] These timelines are usually expected in applications based on extreme urgency. The applicants failed, however, to make out a case that the application is extremely urgent.¹ The applicants failed to show that sufficient reason existed for a departure from the timelines prescribed in Rule 6(5)(b). As a result, the application stands to be struck from the roll for lack of extreme urgency.

ORDER

In the result, the following order is granted:

- 1. The application is struck from the roll;**
- 2. The applicants, jointly and severally, the one to pay the other to be absolved, are to pay the first respondent's costs on scale B.**

E van der Schyff
Judge of the High Court

¹ See the well-known *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another (t/a Makin's Furniture Manufacturers)* 1977 (4) SA 135 (W) 136C-137G.

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. In the event that there is a discrepancy between the date the judgment is signed and the date it is uploaded to CaseLines, the date the judgment is uploaded to CaseLines is deemed to be the date that the judgment is handed down.

For the applicants:

Adv. E. Muller

Instructed by:

Ingrid Mtsweni Attorneys

For the first respondent:

Adv. W. Steyn

Instructed by:

Baloyi Swart and Associates Inc.

Date of the hearing:

29 July 2025

Date of judgment:

1 August 2025