

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 40852/2021

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
9/3/26	[REDACTED]
DATE	SIGNATURE

In the matter between:

CHUKWUKA SOBECHI OKAFOR N O

Applicant

(In his capacity as the appointed Executor in the Deceased

Estate of Ngozi Romanus Okafor)

Estate Number: 026194/2019

and

THE STANDARD BANK OF SOUTH AFRICA LIMITED

1st Respondent

(Registration Number: 1962/000738/06

THE MASTER OF THE HIGH COURT

2nd Respondent

JUDGMENT

ALLY, AJ

- [1] This is an opposed application for the rescission of a default judgment¹ granted by Mokose J on 27 May 2022.
- [2] On the day of the hearing, the applicant was 'represented' by the younger brother of the Executor of the Estate and the first respondent by Adv. N. Phambuka. I enquired about the basis on which Okafor Junior was representing the deceased Estate and was told that the Executor is in Nigeria and is ill. I explained that the deceased estate could not be represented by Okafor Junior and that I would stand the matter down so that arrangements could be made for the applicant to be represented or for the applicant to appear.
- [3] At the adjourned hearing, the Executor of the deceased estate was in attendance virtually from Nigeria. After a brief discussion regarding representation, I ruled that it would be in the interests of justice for the applicant, as Executor, to make representations to the Court. He could not explain why the applicant's attorneys had withdrawn or why they were not present.
- [4] It should be noted that the applicant did not file heads of argument as is directed by this Division's Practice Manual nor was a practice note filed.
- [5] However, the first respondent having enrolled the matter and having filed a practice note and heads of argument, the matter proceeded.
- [6] At the outset it must be stated that the applicant had applied for condonation, in the event that the application was out of time. The first respondent did not formally object to condonation being granted but left the decision to the Court. I deemed

¹ CaseLines: Section: 0000-1 - 2

it in the interests of justice to condone the late filing of the application and proceeded to hear the matter.

- [7] Before proceeding to hear the applicant, I indicated to the first respondent's Counsel that there was a matter decided in the Western Cape Division² which was similar to this one and that I would allow Counsel to have a look at the case and make submissions.
- [8] Counsel for the first respondent took the opportunity to read the judgment and submitted that the present matter before this Court is distinguishable in that in the **Nkhahle**³ matter, the matter was at the stage of default judgment and the matter before this Court was at the stage where default judgment has been granted and the court is dealing with an application for rescission and according to this submission, as I understood it, the Section 29⁴ procedure as read with Section 30 is not applicable.
- [9] Section 29 of the Administration of Estates Act provides as follows:

"(1) Every executor shall, as soon as may be after letters of executorship have been granted to him, cause a notice to be published in the Gazette and in one or more newspapers circulating in the district in which the deceased ordinarily resided at the time of his death and, if at any time within the period of twelve months immediately preceding the date of his death he so resided in any other district, also in one or more newspapers circulating in that other district, or if he was not ordinarily so resident in any district in the Republic, in one or more newspapers circulating in a district where the deceased owned property, calling upon all persons having claims against his estate to lodge such claims with the executor within such period (not being less than thirty days or more than three months) from the date of the latest publication of the notice

² Standard Bank of South Africa Limited v Nkhahle & Others 2021 WCHC [26 April 2021]

³ *supra*

⁴ Administration of Estates Act 66 of 1965, as amended

as may be specified therein.

(2).....”

[10] Section 29 must be read with section 30 which provides as follows:

“No person charged with the execution of any writ or other process shall-

(a) before the expiry of the period specified in the notice referred to in section twenty-nine; or

(b) thereafter, unless, in the case of property of a value not exceeding R5 000, the Master or, in the case of any other property, the Court otherwise directs,

sell any property in the estate of any deceased person which has been attached

whether before or after his death under such writ or process: Provided that the

foregoing provisions of this section shall not apply if such first-mentioned person could not have known of the death of the deceased person.”

[11] Counsel for the first respondent submitted supplementary heads of argument⁵ dealing with the implications of section 29 and 30 of the Administration of Estates Act on this particular case after the court had given him as the well as the applicant the opportunity of submitting such supplementary heads of argument. The applicant did not take up this opportunity.

[12] Counsel for the first respondent submits in the said supplementary heads of argument, firstly, that the first respondent's claim was founded in common law, secondly, that the **Nkhahle** decision was incorrectly decided and thirdly, the **Nkhahle** decision is not binding on this Court.

[13] The first submission of Counsel for the first respondent can be dealt with quickly. If one has regard to the Order⁶ of Mokose J, prayer 3 makes specific reference

⁵ CaseLines: Section V1

⁶ *supra*

to section 30(b) and therefore the common law argument by the first respondent can be rejected out of hand on this basis.

- [14] The second submission of Counsel for the first respondent is that the **Nkhahle** judgment is incorrectly decided. In this regard, Counsel submits that the court in **Nkhahle**, misinterpreted sections 29 and 30 of the Administration of Estates Act. Counsel submitted that Binns-Ward J impermissibly read section 30(a) into section 30(b) for the reason that “or” is used after section 30(a). However, Counsel for the applicant has misunderstood the judgment of Binns-Ward J. If one has regard to both subsections, both relate to selling of the property and what must be done before selling of the property can be authorised.
- [15] The third submission relating to the **Nkhahle** matter not being binding on this Court is well taken but if this court is of the view that the law as expressed by Binns-Ward J is good then this court may take the view that the decision is correct and follow it. However, I am of the view that this matter must be dealt with as one relating to rescission and not whether the first respondent should have followed the prescripts of Section 29 as read with section 30 of the Administration of Estates Act.
- [16] Accordingly, this court needs to consider whether the applicant has made out a case of rescission on the papers. The first ground relied on by the applicant is that the notice for default judgment was not served on the applicant. However, if one has regard to the facts at the time of the hearing of the application for default judgment, then it is plain to see that the notice for default judgment was served on the address⁷ which was also the *domicilium citandi et executandi* that the applicant had provided in the acceptance of trust as executor form⁸.
- [17] The applicant also relied on not receiving a Section 129 notice in terms of the National Credit Act⁹. In this regard the first respondent submits that the Section 129 notice was delivered by registered post¹⁰ as was incumbent on an applicant, applying for default judgment, to do. This court is satisfied that the first

⁷ CaseLines: Section D1

⁸ CaseLines: Section U1

⁹ Act 34 of 2005, as amended

¹⁰ CaseLines: Section U23 – U26

respondent complied with their obligations in terms of the **Sebola**¹¹ case as well as the **Kabyana**¹² case.

- [18] The requirements for a rescission of judgment in terms of Rule 31(2) (b) which seems to be the provision relied upon by the applicant is:

"A defendant may within 20 days after acquiring knowledge of such judgment apply to court upon notice to the plaintiff to set aside such judgment and the court may, upon good cause shown, set aside the default judgment on such terms as it deems fit."

The following requirements¹³ can be gleaned from the Rule and this is in respect to 'good cause shown':

- 18.1. the applicant must give a reasonable explanation for the delay;
- 18.2. the application must be *bona fide* and not made merely for delaying the plaintiff's claim;
- 18.3. the applicant must show he/she has a *bona fide* defence to the plaintiff's claim.

- [19] On a conspectus of the evidence before this court, it is my view, that the applicant has provided a reasonable delay which delay is a short one in the circumstances. However, thereafter applicant's case objectively speaking disappears. During the hearing the applicant's request was to be given more time rather than showing the court that he has a defence to the claim for default judgment. The applicant wanted more time to make arrangements for payment to the bank. It must be stated that the applicant's legal representatives, on the face of it, seem to have let the applicant down.

- [20] Accordingly for the reasons set out above, the applicant has failed to convince this court that he is entitled to have the abovementioned judgment rescinded and the application must therefore fail.

¹¹ Sebola v Standard of South Africa Limited & Ano 2012 (5) SA 142 CC

¹² Kabyana v Standard Bank of South Africa Limited 2014 (3) SA 56 CC

¹³ Grant v Plumbers (Pty) Ltd 1949 (2) SA 470 (O) 476-477

[21] In respect of costs there is no reason why costs should not follow the result and that costs must also be on the attorney and client scale as catered for in the agreement.

[22] In the result, the following Order shall issue:

- a). the application for rescission is dismissed;
- b). the applicant is to pay the costs of this application on an attorney and client scale.


ALLY. G
ACTING JUDGE OF THE HIGH COURT
PRETORIA

Electronically submitted therefore unsigned

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 9 March 2026.

Date of hearing: 2 and 4 September 2025

Date of judgment: 9 March 2026

For the Applicant:

In person

iamsirchucks@gmail.com

For the First Respondent:

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