

IN THE HIGH COURT OF SOUTH AFRICA
(TRANSCAAL PROVINCIAL DIVISION)

NOT REPORTABLE

CASE NO: 27785/2003

DATE: 10/1/2008

In the matter between:

RFM RODRIGUES

APPLICANT

AND

G M PRETORIUS

RESPONDENT

In re:

G M PRETORIUS

PLAINTIFF

AND

H C Shoeman
M J Van Wyngaardt
RFM Rodrigues
H Vermaak

1st DEFENDANT
2nd DEFENDANT
3rd DEFENDANT
4th DEFENDANT

JUDGMENT

MOLOPA J

The Applicant brought an Application for the setting aside of two default judgements, the effect of which are that his defence has been struck out.

The orders in question are respectively the order of Bosielo J dated 29 September 2005 under case no. 27785/ 2003, Annexure A to the Founding Affidavit, the order compelling amongst others the Applicant to discover, and the order of Jooste AJ dated 13 December 2005 under case no. 27785/2003, Annexure B to the Founding Affidavit, the order striking out, amongst others, the Applicant's Plea.

Although the Respondent opposed this application it is clear from correspondence that from the beginning the main issue in contention was the question of costs. From correspondence it cannot be said that the respondent was materially opposed to the setting aside of the Judgements in contention herein, in this regard refer letter from Respondent's Attorneys dated 20/02/2006, Annexure H to the Founding Affidavit at Page 35 of the paginated papers; and a letter in response thereto from the Applicant's Attorneys dated 21/ 02/ 2006, Annexure I to the Founding Affidavit at page 36 of the paginated papers.

It is clear from the correspondence aforesaid that the parties could not agree on the question of costs and hence the Application became somewhat opposed on the merits as well.

However, at the commencement of the hearing of this application, it became clear to me that still, the Respondent was not in principle opposed to rescission, but

In the result, I make the following order:

1. The order granted by Resiel J on 29 September 2005 is rescinded.
2. The order granted by Jooste AJ on 13 December 2005 confined the court to argument on the issue of costs.

3. The Applicant is to pay the costs of the Application on a party and party scale.

It became clear even from the beginning of argument that the parties were ad

4. The Respondent is to pay the wasted costs occasioned by idem/ agreed that judgement should be rescinded. I may state

here that on the papers filed the applicant has in my view made out a proper case for rescission as sought in the notice motion.

However the most contentious issue herein, as already mentioned is the question of costs. It is clear from correspondence that both parties were unreasonable to each other on the question

JUDGE OF THE HIGH COURT

The Applicant seeks an indulgence. It follows in my view that the Applicant should pay the costs of this application. It will in my view be unreasonable to expect the Respondent to pay the costs of the application. However, with regard the wasted costs of 07 June 2006, it was the Respondent who had filed his answering affidavit late, without a condonation application, and for that reason the matter could not proceed, and was therefore postponed at the instance of the Respondent. The Respondent therefore should pay the wasted costs occasioned by the postponement of 07 June 2006.