



IN THE NORTH GAUTENG HIGH COURT, PRETORIA  
(REPUBLIC OF SOUTH AFRICA)

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED. ✓
DATE	14.03.11
SIGNATURE	<i>[Signature]</i>

CASE NO. A235/10

**AFGRI OPERATIONS LTD**

APPELLANT

V

**BOTHA, FREDERIK JACOBUS**

RESPONDENT

16/9/2011

APPEAL  
CORAM

FROM MAGISTRATES' COURT  
LOUW J & SAPIRE AJ

**JUDGMENT**

Sapire AJ

This is judgment on an appeal against the order of a magistrate rescinding a judgment entered in favour of the Appellant, against the Respondent in accordance with the provisions of section 57 of the Magistrates Court Act.

The section reads

**“57 Admission of liability and undertaking to pay debt in instalments or otherwise**

(1) If any person (in this section called the defendant) has received a letter of demand or has been served with a summons demanding payment of any debt, the defendant may in writing-

- (a) admit liability to the plaintiff for the amount of the debt and costs claimed in the letter of demand or summons or for any other amount;
- (b) offer to pay the amount of the debt and costs for which he admits liability, in instalments or otherwise;
- (c) undertake on payment of any instalment in terms of his offer to pay the collection fees for which the plaintiff is liable in respect of the recovery of such instalment; and
- (d) agree that in the event of his failure to carry out the terms of his offer the plaintiff shall, without notice to the defendant, be entitled to apply for judgment for the amount of the outstanding balance of the debt for which he admits liability, with costs, and for an order of court for payment of the judgment debt and costs in instalments or otherwise in accordance with his offer,

and if the plaintiff or his attorney accepts the said offer, he shall advise the defendant of such acceptance in writing by registered letter.

(2) If, after having been advised by the plaintiff or his attorney in writing that his offer has been accepted, the defendant fails to carry out the terms of his offer, the clerk of the court shall, upon the written request of the plaintiff or his attorney accompanied by-

- (a) if no summons has been issued, a copy of the letter of demand;
- (b) the defendant's written acknowledgment of debt and offer and a copy of the plaintiff's or his attorney's written acceptance of the offer;
- (c) an affidavit or affirmation by the plaintiff or a certificate by his attorney stating in which respects the defendant has failed to carry out the terms of his offer and, if the defendant has made any payments since the date of the letter of demand or summons, showing how the balance claimed is arrived at-

- (i) enter judgment in favour of the plaintiff for the amount or the outstanding balance of the amount of the debt for which the defendant has admitted liability, with costs; and
- (ii) order the defendant to pay the judgment debt and costs in specified instalments or otherwise in accordance with his offer and such order shall be deemed to be an order of the court mentioned in section 65A (1).

(3) When the judgment referred to in subsection (2) has been entered and an order made, and if the judgment debtor was not present or represented when the judgment was entered by the clerk of the court and the order made, the judgment creditor or his or her attorney shall forthwith advise the judgment debtor by registered letter of the terms of the judgment and order.

[Sub-s. (3) substituted by s. 2 of Act 81 of 1997.]

(4) Any judgment entered in favour of the plaintiff under subsection (2) shall have the effect of a judgment by default.”

The Appellant claimed to be a creditor of the Respondent, and following the procedure of the section just quoted, applied for, and obtained entry of

judgment, against the Respondent without the issue of summons. After paying the bulk of the amount of the judgment, but leaving a substantial amount unpaid, the Respondent applied for its rescission. Despite opposition by the Appellant the magistrate rescinded the judgment and ordered that costs be taxable on a scale between attorney and own client. Against this order, and ancillary orders made by the magistrate, appellant gave notice of this present appeal.

The notice of appeal enunciated a number of arguably serious reasons, why the magistrate should not have rescinded the judgment. In heads of argument filed shortly before the time appointed for the hearing of the appeal, the appellant gave notice conceding that no appeal lay against the magistrate's order rescinding the judgment entered in terms of the section.

The rationale for this apparently was that the order rescinded was a default judgment, against an order for the rescission of which no appeal lay. In view of this concession, logically the appeal fell away. The appellant did not seek during the hearing of the appeal to go back on, the concession so made.

In making, the concession however appellant gave notice that it would seek an order that the court of appeal attach riders to the magistrate's order rescinding the judgment. The riders, the appellant urged, the court a quo should have attached to its order rescinding the judgment. There is no ground upon which this court can accede to this request. If, as conceded by the Appellant, no appeal lies against the rescission of the judgment, the Court of appeal has no jurisdiction to alter or vary the order of the magistrate.

On receiving notice of appellant's concession, the Respondent abandoned all the subsidiary or ancillary orders, which the magistrate had made in connection with the rescission. These unlike the order for rescission itself had been appealable. With Respondent's abandonment, nothing remained for adjudication by this court.

The matter should have ended there, with the parties removing the matter from the roll. This did not happen, principally, because the Appellant

pressed for the addition of the riders to the rescission order, which remained intact.

Respondent largely succeeded in these proceedings and the Appellant must pay the costs.

I propose the following order,

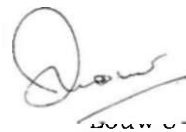
1. The Appeal is dismissed
2. Appellant is to pay the Respondent's costs



Sapire AJ

ACTING JUDGE OF THE HIGH COURT

I agree and it is so ordered



Judge of the High Court

JUDGE OF THE HIGH COURT