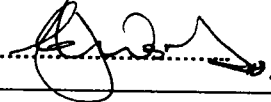


IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

4/5/16

CASE NO.: 57807/2013

In the matter between:

(1)	REPORTABLE: <del>YES</del> / NO
(2)	OF INTEREST TO OTHER JUDGES: <del>YES</del> / NO
(3)	REVISED.
4/05/2016	
	

THULANI NGCOBO

Applicant/Defendant

and

STANDARD BANK OF SA LIMITED

First Respondent

SHERIFF OF THE HIGH COURT

Second Respondent

---

JUDGMENT

---

VAN DER WESTHUIZEN, A J

1. The applicant in the present matter before me is the first respondent in the main application where the respondent is the applicant for the rescission in terms of the provisions of Rule 42(1)(a) of the Uniform Rules of Court relating to an order allegedly granted by default in the absence of the applicant for rescission.
2. The present applicant applies in terms of the provisions of Rule 30(2)(c) of the Uniform Rules of Court for an order setting aside that application for rescission on the basis that it constitutes an irregular step.
3. There is no appearance on behalf of the applicant for rescission (the respondent). Due notice of the set down of this application in terms of

Rule 30(2)(c) was given to the respondent. The Sheriff served the Notice of Set Down on the respondent on 5 April 2016.

4. In his application for rescission under Rule 42(1)(a) the respondent applied that the issuing of a Warrant for Delivery of Goods, issued by the registrar of this court on 27 May 2014, be rescinded.
5. It may be prudent to set out the circumstances that led to the application in terms of the provisions of Rule 30(2)(c).
6. The applicant in this application and the respondent concluded during January 2012 a written Instalment Sale Agreement relating to a certain motor vehicle.
7. The respondent defaulted in terms of the said Instalment Sale Agreement whereupon the applicant instituted an action against the respondent during February 2014.
8. A notice of intention to defend that action was filed by the respondent. The applicant applied for summary judgment which application was resisted by the respondent. At all times the respondent acted in person.
9. After hearing argument by both parties, summary judgment was granted on 14 May 2014 against the respondent. On the same day the respondent noted his intention to apply for leave to appeal the order granting summary judgment.
10. During or about 25 June 2014, the respondent lodged an application for the rescission of the issuing of the Warrant for Delivery of Goods. This occurred prior to leave being granted to appeal against the summary judgment order. The applicant retaliated by lodging this application on 5 August 2014.

11. By agreement between the parties, the respondent's rescission application (and presumably this application in terms of Rule 30(2)(c)) was postponed *sine die*.
12. Prior to the lodging of the application for rescission, the respondent requested reasons for the granting of the summary judgment order and which reasons were provided by 26 June 2014. Leave to appeal to the full bench against the summary judgement order was granted by the court on 20 November 2014. The formal notice of appeal was lodged on 11 December 2014.
13. In terms of the provisions of Rule 49, the respondent was obliged to apply for a date for the hearing of the appeal within 60 days of the lodging of the notice of appeal. The 60-day period expired on 12 March 2015. No request for a date for the hearing of the appeal was lodge by that date. On the respondent's failure to timeously request a date for the hearing of the appeal, the appeal lapsed in terms of the provisions of Rule 49.
14. The respondent has not proceeded with the appeal, neither with his application for rescission, and the applicant set the application in terms of Rule 30(2)(c) down for adjudication.
15. There is no merit in the application for rescission of the issuing of the Warrant for Delivery of Goods for what follows.
16. The issuing of a Warrant for Delivery of Goods is not a judgment or order as contemplated by Rule 42(1)(a).<sup>1</sup> It is process issued by the registrar of this court and not "by a court".

---

<sup>1</sup> See in this regard the discussion by the learned author of *Superior Court Practice*, Second ed. Volume 2, p. D1-567 and the authorities there referred to of what constitutes an order or judgment of court.

17. Accordingly, the respondent's application in terms of Rule 42(1)(a) constitutes an irregular step and stands to be set aside.
18. It follows that the application in terms of Rule 30(2)(c) must succeed.
19. I grant the following order:
- (a) The Notice of Motion: Rescission of Order in terms of Rule 42(1)(a) dated 25 June 2014 is set aside;
- (b) The respondent is ordered to pay the costs of this application.

  
C J VAN DER WESTHUIZEN  
ACTING JUDGE OF THE HIGH COURT  
GAUTENG DIVISION

On behalf of Applicant:	J A du Plessis
Instructed by:	Hack Stupel & Ross
On behalf of Respondents:	No appearance
Instructed by:	