



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

CASE NO: 86762/2016

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| (1) | REPORTABLE: NO |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED. |
| | 1/3/18 |
| | DATE |
| | SIGNATURE |

1/3/18

In the matter between:

ROGER IAN HENRY

Applicant

and

FIRSTRAND BANK LIMITED

Respondent

JUDGMENT

MIA, AJ

[1] The applicant seeks an order setting aside the judgment granted in the above matter on 9 March 2017. Mr Joynt appearing for the applicant submitted that the application for condonation, the late filing of the answering affidavit was not opposed as it was in the interest of justice that the matter be fully ventilated. The only issue before this court was the issue of rescission of judgment granted by default before Mabuse J.

- [2] The respondent had issued summons in the above Honourable Court on 4 November 2016 claiming the sum of R103 089.32 arrears on the applicant's bond account alleging that the account was outstanding for a period of 17.10 months. The respondent claimed the full balance outstanding in the sum of R538 809.05 together with interest thereon at the rate of 8.65% per annum calculated and capitalized monthly in advance from 29 October 2016. The respondent brought an application for default judgment and the issue of service was queried and subsequently default judgment was granted in the absence of the applicant.
- [3] Mr Joynt appearing for the applicant submits that there was no proper service in terms of the rules of this court. The affidavit of Mr Mazibuko explains how service was effected in this regard. The first affidavit¹ of Mr Mazibuko explained: "There was a notice on the door saying that the offices were closed for the festive season and I left a copy under the door." Mr Mazibuko returned to the offices again on the 4th of January 2017 and left a copy under the door again. In paragraph 5 of his affidavit he says "I accordingly brought the Application for Summary Judgment back to the office and informed the attorney on record of my findings."
- [4] In his second confirmatory affidavit Mr Mazibuko apparently clarifies his first affidavit. The affidavit does not appear to be a clarification but explains that he in fact left the affidavit in the post box on the wall of the building under number 74. The two versions are completely contradictory to each other. The second version does not serve to clarify the first. In fact Mr Mazibuko's first version is strange in that if he left the application under the door on the first occasion why was it necessary to return on the second occasion to slip a second copy under the door. If indeed he left a copy under the door how is it

¹ Founding Affidavit, Annexure, "A" page 69 to 71

possible for him then to bring the application for summary judgment back to the office as he stated in paragraph 5 of his affidavit on page 70 of the record.

- [5] Having regard to the internal inconsistency in the first version as well as the inconsistency between the first and second affidavit I am not satisfied that there was proper service. In view of the lack of proper service it is possible that the matter would not have come to the applicant's attention resulting in the judgment being granted by default.

ORDER

- [6] For the above reasons I make the following order:

1. The default judgment granted against the applicant on 9 March 2017 is set aside.
2. The defendant is ordered to file a plea within fifteen days of the grant of this order.
3. The respondent is ordered to pay the cost of this application



S C MIA
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG, PRETORIA

Appearances:

On behalf of the applicant : Mr G Joynt
Instructed by : Gavin Joynt Attorneys, Pretoria

On behalf of the respondent : Adv J Minnaar
Instructed by : Hammond Pole Majola Inc c/o Oltmans
Attorneys

Date of hearing : 1 March 2018
Date of judgment : 1 March 2018