

"FA9"



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

(1)	REPORTABLE
(2)	OF INTEREST TO OTHER JUDGES;
(3)	REVISED:
(Date)	28/8/2018

[Signature]

CASE NO. 2017/28737

In the matter between:

RAMMUTLANA BOELIE SEKGALA

Plaintiff

and

THE BODY CORPORATE OF KINGFISHER CLOSE

Defendant

In re:

THE BODY CORPORATE OF KINGFISHER CLOSE

Plaintiff

And


RAMMUTLANA BOELIE SEKGALA

Defendant

JUDGMENT


M L SENYATSI AJ:

[Handwritten mark]

- [1] This is an application for rescission of judgment granted by this Court and secondly to amend, correct or rescind paragraph 5 of the urgent court order dated 13 June 2017 by this Court.
- [2] On the 13 June 2017 this Court granted an order in terms of which the Warrant of Execution of judgment obtained by default was stayed pending the application of the rescission of judgment. In the same order, the Court interdicted the Respondent and the Sheriff of this Court for Halfway House – Alexandra from attaching or removing any assets of the applicant, pending the application which is the subject of this application. The order stated that the applicant was to pay the first respondent's costs, which order is now challenged.
- [3] The respondent obtained judgment by default against the applicant on 21st April 2017 for the sum of R119 119-18 together with interest at the rate of 16.55% per annum from date of judgment to date of final payment.
- [4] The applicant avers that he was not in wilful default and that his new address at 801 Montecello Estate, Cnr Tambotie and Gardens Roads, Summerset Ext 20 Midrand had been made known to the respondent.
- [5] The applicant argues further that although the return of service shows to it was served at his new residence, on the alleged date of service, he was not at home and had not instructed any gardener to do maintenance of his garden as he
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was visiting his mother in Limpopo. His house was locked and he suspects that the service was effected at the security gate as he lives in a gated area.

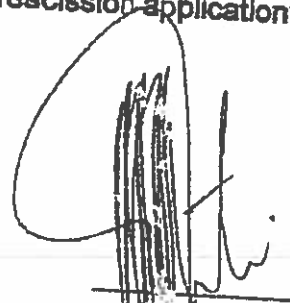
- [6] The applicant contends furthermore that the person alleged to have received the summons at his residence, namely Mrs S Tshidi, who is ostensibly his worker, is unknown to him as he does not have a female worker at his residence. He also shows in his papers other addresses where the summons is alleged to have been served and states for instance that he has no worker by the name of Mr T Ramphela at his business address. He contends that he was therefore not in wilful default as he had not received the summons.
- [7] The applicant also attacked returns of service of the sheriff and I will not go into details of his attack.
- [8] He contends that he has a *bona fide* defence to the claim and raises various grounds of his defence to the main action. One of the grounds of his defence is that the claim against him is based on the Sectional Titles Scheme Management Act 8 Of 2011 which Act came into effect on 7 October 2016. He contends that the respondent is only entitled such amounts as proven only with effect from 7 October 2016 and from 2014 as it claims in its papers.
- [9] As regards the cost order on the 13 June 2017, he contends that he was a successful party in the interdict and that there was no basis for a cost order against him. He argues that, at worst, the cost order ought to have been in his favour or to have been the costs in the rescission application. I turn to agree with the applicant on this point.

- [10] The law is settled that the applicant bears the burden of showing that he was not in wilful default and that he has a bona fide defence to the claim in the application for rescission of judgment. I will not restate the principles in this judgment.
- [11] It is not necessary at this stage to make a determination of the merits of his defence as this will be ventilated at trial.
- [12] I have considered the papers filed of record, the submissions made by the applicant and those made by counsel for the respondent and the various authorities referred to in the submissions. I am more particularly indebted to the applicant for referring to various authorities in support of his arguments as he was unrepresented. His understanding of the processes is commendable. In so doing, I am not taking anything away from the respondent's counsel and thank him for the authorities he asked me to consider.
- [13] I am satisfied that the applicant has successfully discharged the burden of showing that he was not in wilful default. I am also persuaded that the applicant has shown that he has a bona fide defence to the claim.
- [14] As regards the cost order complained of, I have already indicated that I agree with the grief by the applicant that the cost order ought not to have been made against him when the interdict was granted in his favour.
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ORDER

[15] The following order is made:

- a) The judgment obtained by default on 21 April 2017 against the applicant is hereby rescinded;
- b) The applicant is granted leave to defend the claim;
- c) Paragraph 5 of the order of this court dated 13 June 2017 is hereby amended to read: "The costs of the application will be costs in the rescission application".
- d) The respondent is ordered to pay the costs.



M L SENYATSI

**JUDGE OF THE HIGH COURT,
GAUTENG DIVISION, PRETORIA**

DATE OF HEARING: 17 May 2018

DATE OF JUDGMENT: 31 August 2018

FOR THE APPLICANT:

Mr R B Sekgala

Personal appearance

Adv N G Louw

**Rorich Wolmarans and Luderitz
Inc.**

Pretoria

FOR THE RESPONDENT:

INSTRUCTED BY:

COUNSEL FOR RESPONDENT: Adv N Riley



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