



IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MTHATHA)

Case No: 1650/2010

In the matter between:

ROAD ACCIDENT FUND

Applicant

and

NTOMBEKAYA STEMELE

1st Respondent

REGISTRAR OF THE HIGH COURT MTHATHA
(IN HIS CAPACITY AS TAXING MASTER)

2nd

Respondent

SHERIFF OF THE HIGH COURT

3rd Respondent

EX TEMPORE JUDGMENT

ZONO AJ

[1] The application came before me for re-consideration of a directive made by this Court on 30 November 2023. The directive was made on the basis of a

Certificate brought before the duty Judge on 30 November 2023, in terms of practice Rule 12 of this division.

[2] The Judge made a directive under directions for non-urgent matters and made the following determination: “Insufficient urgency the application should follow the normal route”.

[3] I was invited to re-consider that determination. History of this matter is important to make a proper determination.

[4] Firstly, the applicant seeks an order in the following terms in the Notice of Motion:

1. That the rules of the above Honourable Court pertaining to notice and service be dispensed with and that this application be heard as a matter of urgency in accordance with Rule 6(12) of the rules of Court;
2. That a *Rule Nisi* be issued calling upon the respondents to show cause, if any, on Thursday 8th of February 2024 at 10h00 (or so soon thereafter as the matter may be heard), why an order in the following terms should not be made final, namely that:
 - 2.1 pending the outcome of the applicants rescission application issued on the 23rd of November 2023 to rescind and set aside the Bill of Costs and *allocatur* granted on 17th May 2023 under Case Number 1650/2010 by the Second Respondent, all Writs of execution issued

all sales in execution pursuant to such bill of costs and *allocatur* (including any Writs issued on or about the 8th of November 2023) be stayed and further that the Third Respondent forthwith return all goods attached and removed from the Applicant's offices in terms of all Writs of execution issued under case number 1650/2010 in this Court;

2.2 the costs of this application be borne by any party who may oppose this application.'

2.3 that pending the finalization of the *Rule Nisi* above that the provisions of paragraph 2.1 above will operate as an *interim* interdict with immediate effect.

[3] It is apparent from the papers that the taxation that is the genesis of these proceedings took place on 23 March 2023, alternatively the bill of costs was presented for taxation on 23 March 2023.

[4] On 18 May 2023 the applicant's attorneys were made aware of the *allocator* as it is clear in the letter from the respondent's attorneys dated 18 May 2023 demanding payment of the amount appearing in the *allocator*. No response to that letter had been forthcoming.

[5] The applicant does not explain why it did not respond to the letter demanding payment. Equally, it does not state the reasons or give explanation as to what it did to circumvent the consequences of execution.

It is the circumstances like the present that quiescence may be construed to mean acquiescence.

[6] On 23 November 2023 that the applicant launched an application for rescission of the taxed bill of costs and *allocatur*. That application was made in recognition of the fact that a taxed bill of costs and completed *allocator* are legally followed by the Writ of Execution, if they are not satisfied.

[7] The applicant still did not incorporate a relief in the rescission application that would seek to interdict the issuance of Writ and execution of the taxed bill and *allocator*.

[8] A Writ of Execution, which was long coming, was issued on 08 November 2023. Nothing was done by the applicant even at this instance.

[9] Notably, when an application for rescission of judgment was launched on 23 November 2023, the Writ of Execution had already been issued.

[10] On 22 November 2023, the Sheriff visited the applicant's offices armed with a Writ of Execution and proceeded to attach and remove applicant's assets. Nothing was done by the applicant even at this instance. On 28 November 2023 a second visit was made by the Sheriff to further attach and remove applicant's assets. This is what triggered this application according to the applicant.

[11] The history set out above demonstrated a lackadaisical attitude on the part of the applicant. It was apathetic to the consequences of its failure to pay, from

the time a demand for payment was made in May 2023. A Writ was issued, correctly so, and that happened before the institution of the rescission application. Even at the time of the rescission no attempt was made for interdicting the execution of the Writ.

[12] Therefore, I find that this is a self-created urgency as the applicant waited until the attachment of its assets is effected.

[13] In the result I make the following order:

1. The application is hereby struck off the roll.
2. The applicant is hereby directed to pay the costs occasioned thereby.

A.S. ZONO

ACTING JUDGE OF THE HIGH COURT

Appearing for the applicant: Advocate A. R. Duminy
Office of the State Attorney
MTHATHA.

Appearing for the respondents: No appearance

Heard on: 05 December 2023

Delivered on: 06 December 2023