

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

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DATE
SIGNATURE

CASE NO: 25241/2021

In the matter between:

SOHO NAILS WAXING BEAUTY (PTY) LIMITED

Applicant

And

CGS SHOPFITTERS CC

Respondent

Coram:

Dlamini J

Date of hearing:

14 April 2022 – in a ‘virtual Hearing’ during a videoconference on Microsoft Teams digital platform.

Date of delivery of reasons:

08 September 2022

This judgment is deemed to have been delivered electronically by circulation to the parties' representatives via email and shall be uploaded onto the caselines system.

JUDGMENT

DLAMINI J

- [1] This is an application for rescission of Judgment.
- [2] In its notice of motion the applicant seeks the following relief;-
- 2.1 the default judgment granted on 14 November 2018 against the applicant under case number 25279/2019 be rescinded and set aside;
- 2.2 no order as to costs save in the event that the respondent opposes the application, then in that event, the applicant seeks that the respondent be ordered to pay costs of the application.
- [3] The applicant/ defendant is a Soho retail waxing and beauty (PTY) Ltd, a private company with limited liability duly incorporated in terms of the company law of the Republic of South Africa.
- [4] The respondent is CAS Shoplifters cc, a close corporation duly incorporated in terms of the company laws of the Republic of South Africa.
- [5] The matter has a long history of litigation.
- [6] On 9 July the plaintiff/ respondent issued a summons against the applicant.
- [7] On 14 November 2018, the default judgment was granted against the defendant/ applicant.

- [8] The applicant then brought an application for rescission against this default judgment.
- [9] On 05 August 2019, the applicant's application for rescission was dismissed with costs.
- [10] On 14 August 2019, the applicant launched an application for leave to appeal the order granted on 13 August 2019.
- [11] On 16 August 2019, the applicant launched an urgent application to stay the writ of execution.
- [12] On 27 August 2019, the applicant's first stay of execution application was granted and the writ of execution was suspended pending the applicant's application for leave to appeal.
- [13] On 13 January 2020, the applicant decided to withdraw their application for leave to appeal and instead launched another application to rescind the default judgment granted by Segal AJ in August 2019.
- [14] On 07 September 2020, the opposed rescission application in respect of August 2019 was heard and judgment was reserved by Judge Senyatsi.
- [15] On 10 March 2020, Judge Senyatsi dismissed the rescission of judgment application in respect of the August 2019 order.
- [16] The applicant testifies that it seeks an order that the default judgment granted against it in November 2018 be rescinded. The applicant says that the judgment was granted by default in its absence. The applicant insists that the default judgment was erroneously sought and granted as there was no service of the summons to the applicant.
- [17] The applicant avers that it has a *bona fide* and reasonable explanation for the delay in bringing this application.

- [18] The respondent has raised various points *in limine*. The main point *in limine* is whether this rescission application is incompetent. At the hearing of the application, the parties agreed that this point *in limine* should be disposed of first, as it would have the effect of disposing of this application in its entirety.
- [19] The applicant submits that the respondent has incorrectly relied on and misconstrued Judge Sinyatsi's judgment regarding the rescission application in respect of Judge Segal AJ granted in August 2019.
- [20] The applicant further submits that Judge Senyatsi's Judgment that the rescission of Segal AJ's in August 2019 is incompetent and instead may well be appealable.
- [21] Furthermore, the applicant insists that it's clear from Judge Segal AJ's order granted in August 2019, that the applicant's right to pursue a new rescission application of the default judgment was contemplated by Acting Judge Segal, provided, *inter alia*, that the applicant paid the respondent's costs as referred in the order.
- [22] The applicant submit that Judge Senyatsi's judgment did not set aside and vary Judge Segal AJ's order.
- [23] Finally, the applicant avers that it will be in the interest of justice that the merits of the rescission of default judgment granted on 14 November 2018 be ventilated and heard by this court.
- [24] The respondent submits that this rescission application is incompetent.
- [25] The respondent is of the view that Judge Senyatsi found that Segal AJ's order final and that a further rescission application to rescind the judgment is impermissible.

[26] In the second rescission application, having heard the parties Senyatsi J held as follows at *para* [12];-

"the dismissal of the first application constitutes a judgment. Therefore, I am of the view that another rescission application is competent. In my view, the judgment dismissing the first rescission may well be appealable. The learned Judge continued and said at *para* [19] " If the court hearing the application erred in dismissing it for lack of authority to act, my respectful view is that the judgment is final and maybe appealed against. It follows therefore that the application to rescind is impermissible".

[27] The principle governing the interpretation of judgments was eloquently set out by Sutherland DJP in *Maxwell Mavidzi v Skhumbuzo Majola*¹ at *para* [24] Where he said, "a judgment must be read and interpreted as any other legal document: accurately, holistically, contextually, and not least in importance, fairly".

[28] In *Kevin John Eke v Charles* [2015] ZACC, Mandlanga J set out the interpretation rule as follows at *para* [29];-

"The starting point is to determine the manifest purpose of the order. In interpreting a judgment or order, the court's intention is to be ascertained primarily from the language of the judgment or order in accordance with the usual well-known rules relating to the interpretation of documents. As in the case of a document, the judgment or order and the court's reasons for giving it must be read as a whole in order to ascertain its intention".

[29] In my view, Senyatsi J's judgment is unambiguous. He ordered that the applicant should have appealed the first rescission application. The applicant did file an application for leave to appeal, but for reasons best known to the applicant, the applicant decided to withdraw that appeal. Despite Senyatsi J's judgment, the applicant has now filed another rescission application.

¹ *Mavudzi and Another v Majola* (49039/2021) [2022] ZAGPJHC 575 (10 August 2022)

[30] The applicant's present application has no legal basis and amounts to an abuse of the court process, it has no merit and must be dismissed.

[31] I am satisfied that the respondent's point *in limine* is sustainable and is upheld.

[32] In all the circumstances mentioned above the application for rescission is dismissed.

ORDER

The order that was signed and dated 14 April 2022 is made an order of this court.

DLAMINI J

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

Date of hearing: 14 April 2022

Delivered: 08 September 2022

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