



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

CASE NO: 2022 - 12595

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO

DATE
SIGNATURE

In the application by

MBALATI, DZUNISANI ALDWORTH

Applicant

and

CSG SECURITY PROJECTS (PTY) LTD

Respondent

In re

CSG SECURITY PROJECTS (PTY) LTD

Plaintiff

and

MBALATI, DZUNISANI ALDWORTH

Defendant

JUDGMENT

MOORCROFT AJ:

Summary

Reconsideration of order granted by Registrar in terms of rule 31(5)(d) – condonation in terms of rule 27 - Good cause – reasonable explanation for four-month delay and bona fide defence – explanation not reasonable - application dismissed

Order

[1] In this matter I make the following order:

1. *The application is dismissed;*
2. *The applicant is ordered to pay the costs of the application.*

[2] The reasons for the order follow below.

Introduction

[3] This is an application for the rescission of a judgement granted by the registrar of this Court on 6 July 2022. The applicant relies, erroneously, on uniform rule 31(2)(b), alternatively on rule 42, and further alternatively on the common law.

[4] The judgement sought to be rescinded was granted by the registrar and the application should be made under rule 31(5)(d). The rule provides that a party dissatisfied by the judgement may set the matter down for reconsideration by the court. Nothing turns on the reference to the incorrect rule as the requirements of good cause apply in applications under rule 31(5)(d) just as they apply in applications under rule 31(2)(b) and the common law.

The same twenty-day period applies¹ to rule 31(2)(b) and 5(d) while under the common law the application must be brought within a reasonable time.

[5] The courts have refrained from an exhaustive definition of good cause as any such definition might hamper the discretion of the court.² The court will however not come to the assistance of an applicant who was in wilful default or was grossly negligent: The applicant must not merely seek to delay the claim of the plaintiff but must be acting in good faith.

[6] Good faith requires a reasonable explanation for the delay or the failure to respond to a summons or application, and a *bona fide* defence. Granting a rescission when the applicant has no defence to the plaintiff's claim would be an exercise in futility and would merely delay the claim of the plaintiff and the application would not be *bona fide*.

[7] The applicant did not file a replying affidavit in response to the respondent's answering affidavit and the averments made in the answering affidavit are not challenged.

The applicant's condonation application: The explanation for the delay

[8] The applicant did not file his application within 20 days from becoming aware of the judgment and seeks condonation for the late filing. The applicant became aware of the default judgement on 15 July 2022. The application therefore ought to have been launched by mid-August 2022. The application was served on 19 December 2022, four months later.

[9] In the founding affidavit the applicant states that after becoming aware of the judgment in July 2022 he tried to settle the dispute and for this reason he did not apply for a rescission. These negotiations broke down.

The applicant provides no details about these negotiations and settlement attempts, and the respondent denies that there were settlement negotiations other than a settlement offer and counter offer made and rejected in writing on 11 August 2022. On the same day the applicant intimated that he would apply for rescission of the default judgment.

¹ The subrule reads as follows: "Any party dissatisfied with a judgment granted or direction given by the registrar may, within 20 days after such party has acquired knowledge of such judgment or direction, set the matter down for reconsideration by the court."

² See *Silber v Ozen Wholesalers (Pty) Ltd* 1954 (2) SA 345 (A) 353A and the various cases referred to by Van Loggerenberg *Erasmus: Superior Court Practice* D1-365 *et seq.*

[10] A party seeking condonation for a delay is required to give a full explanation covering the whole period of the delay.³ The applicant only gives a cursory explanation for the period 15 July to 11 August 2022, and no explanation whatsoever for the period August to December 2022. For this reason the application must fail. The application was neither brought within the 20-day period referred to in rule 31 nor within a reasonable time as required by the common law.

Bona fide defence

[11] The applicant is not required to prove his defence (either in the sense of a full onus or an onus of rebuttal) but must make averments that if established at trial would constitute a defence. The applicant's averments are however not to be read in isolation but with the averments made by the respondent.

[12] The applicant alleges that the oral agreement relied upon by the respondent was an agreement between the respondent and DNG Energy (Pty) Ltd, the company that he is the director and owner of. The agreement was for the provision of guarding services at his home address rather than at the company's premises. This defence was raised for the first time in the rescission application and was never raised during the currency of the agreement or after its cancellation. The invoices were made out to the applicant and not to the company, and were accepted as such by the applicant.

[13] The applicant also alleged that the provisions of the National Credit Act, 34 of 2005 was not complied but this argument was abandoned during argument. This concession was properly made as the applicant did not make any averments in the founding affidavit to support the argument.

[14] I am not satisfied that the applicant has disclosed a *bona fide* defence.

Rule 42(1)(a)

³ *Van Wyk v Unitas Hospital and Another (Open Democratic Advice Centre as Amicus Curiae)* 2008 (2) SA 472 (CC) paras 20 to 22.

[15] The applicant also relies on an allegation that the judgement was erroneously sought or granted in terms of rule 42(1)(a). This argument can be rejected on the basis of the argument made out in the applicant's heads of argument and the common cause facts.

[16] The summons was served on 22 April 2022 at the business address of the applicant. He is the owner of the DNG Energy (Pty) Ltd and the summons was served on a staff member, being the person encountered by the sheriff when the sheriff attended at the office of the applicant to serve the papers and was then identified by him as the receptionist and the person apparently in charge of the premises. The applicant was absent from the office at the time and it was never brought to his notice.

[17] The application was properly served in terms of the rules of court⁴ and the phrase "*apparently in charge of the premises*" in rule 4(1)(a)(ii) does not require service on the most senior person who works at the business, such as the chief executive officer or managing director of a company. A receptionist or clerk may be in charge or apparently in charge of the premises for the purposes of service. Process may not be served for instance on a bystander who happens to be on the premises, but service on a receptionist or other staff member is (depending on the facts of course – each case must be considered on its own merit) usually good service.

[18] This of course does not mean that the summons necessarily came to the attention of the intended party. I accept that the summons did not come to the applicant's notice immediately after service and that he only learned of the judgment in July 2022.

⁴ Rule 4(1)(a)(ii) provides for service of process on a person "*by leaving a copy thereof at the place of residence or business of the said person, guardian, tutor, curator or the like with the person apparently in charge of the premises at the time of delivery, being a person apparently not less than sixteen years of age. For the purposes of this paragraph when a building, other than an hotel, boarding-house, hostel or similar residential building, is occupied by more than one person or family, 'residence' or 'place of business' means that portion of the building occupied by the person upon whom service is to be effected;*"

Conclusion

[19] In conclusion I find that the applicant has not shown good cause for rescission under rule 31(5)(d) or the common law, and that the application must fail. I therefore make the order in paragraph 1 above.

J MOORCROFT
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **29 FEBRUARY 2024**

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ATTORNEYS

DATE OF ARGUMENT:

22 FEBRUARY 2024

DATE OF JUDGMENT:

29 FEBRUARY 2024