

REPUBLIC OF SOUTH AFRICA



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

Case No: 2021/54556

Reportable: No
Of interest to other Judges: No
Revised: No

SIGNATURE

Date:

In the matter between:

MM CHARTERED ACCOUNTANTS INC.

Applicant

and

NTOKAZI CONSULTING (PTY) LTD
Respondent

JUDGEMENT

MOOKI J

1 The applicant seeks rescission of a judgement granted in favour of the respondent. The rescission is sought in terms of Rule 42 and Rule 31 (2) (b). The application is opposed.

2 The chronology of events is material to the determination by the court. The respondent issued summons on 8 November 2021. The applicant served a notice to defend on 11 November 2021. There was no plea. The respondent issued a notice of bar on 13 December 2021. The applicant did not file a plea and became ipso facto barred.

3 The applicant made a Rule 27 (1) application] on 17 February 2022. The respondent then applied for default judgement. The matter came before court in the unopposed motion court on 5 April 2022. It was ordered removed to the opposed motion court roll.

4 The last day by when the applicant was to file its opposing affidavit in the default judgement was on 26 April 2022. The applicant did not file its affidavit by that date. The respondent, on 14 June 2022, set the matter down on the unopposed motion court roll. The applicant then filed its affidavit opposing default judgement on 17 June 2022.

5 The applicant indicated in its practice that the the matter was opposed. The matter came before the court in the unopposed roll on 1 July 2022. There was no representation for the applicant when the matter was called. The court granted judgement in favour of the respondent. This is the judgement which the applicant seeks to rescind.

6 The applicant raises various bases for why the judgement ought to be rescinded. I do not consider it is necessary to deal with all those grounds. The respondent ought not to have enrolled the matter as unopposed. That is because the court made an order on 5 April 2022 that the matter be heard in the opposed motion court.

7 The applicant must succeed in having the judgement rescinded. The applicant must, however, pay the costs and do so on an adverse scale. This is because the applicant has been extremely dilatory in undertaking steps required to bring the matter to finality.

8 The chronology referred to in paragraphs 2 to 4 shows the applicant to be dilatory. The applicant did not contest the submission on behalf of the respondent that, for example, the applicant has done nothing to prosecute its Rule 27 (1) application. That application was made on 17 February 2022.

9 It also bears noting that the applicant launched the rescission application only after the respondent had issued a writ of execution. The applicant was ordered, when the court referred the matter to the opposed roll on 5 April 2022, to bear the costs on an attorney and client scale. All these instances show that the applicant was supine in how it deals with the matter.

10 The respondent, on the other hand, is bound by the order of 5 April 2022. The respondent should not have enrolled the matter on the unopposed roll.

11 I make the following order:

- (a) The judgement made in favour of the respondent on 1 July 2022 is rescinded.
- (b) The applicant is ordered to pay the costs on an attorney and client scale.

Omphemetse Mooki

Judge of the High Court

Heard on: 7 February 2024

Delivered on: 11 March 2024

For the Applicant: MG SKHOSANA

Instructed by: ABRAMS MADIRA INC. ATTORNEYS

For the Respondent: PT ZUMA
Instructed by: MOLAI ATTORNEYS