REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 122825/2023

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

Date: 29 January 2023

In the matter between:

ITUMELENG TLHABANYANE Applicant

and

THE STANDARD BANK OF SOUTH AFRICA LIMITED Respondent

JUDGMENT

---

[1] DE VOS AJ

[1] The Standard Bank of South Africa ("the Bank") and Mr Tlhabanyane entered into a home loan agreement. Mr Tlhabanyane defaulted and the Bank issued summons against Mr Tlhabanyane. Mr Tlhabanyane did not file a plea. The Bank warned Mr Tlhabanyane that it would place him under bar. Mr Tlhabanyane's debt grew from R

220 000 (being six months of non-payment) to more than R 1 million (being 25 months of non-payment). The Bank gave Mr Tlhabanyane notice of its intention to place him under bar, but Mr Tlhabanyane did not respond. The Bank placed Mr Tlhabanyane under bar and eventually the Bank launched an application for default judgment. Only at this stage, after almost 18 months of silence, did Mr Tlhabanyane respond. The response was an application to uplift the bar in terms of Rule 27, which served before this Court. This Court dismissed Mr Tlhabanyane's application to uplift the bar with costs. Mr Tlhabanyane now asks this Court to grant leave to appeal against that decision as Mr Tlhabanyane contends that there are reasonable prospects that another Court would come to a different conclusion.

[2] Mr Tlhabanyane requests the Court to consider its finding on good cause. Mr Tlhabanyane contends that the Court did not sufficiently consider the impact COVID had on his ability to file a plea. The difficulty is that COVID commenced in April 2020, this is three months after Mr Tlhabanyane's plea was due. The explanation for the lateness is not rational, let alone reasonable. In any event it does not cover the entirety of the delay.

[3] Mr Tlhabanyane also relies on ineffective legal representation. Mr Tlhabanyane states that only when he was confronted with the default judgment application did he consult with his current attorneys, who informed him of the notice of bar. The applicant pleads, in generalised terms, that he left the issue to his former attorneys. The problem with this explanation is two-fold. First, the applicant provides only this conclusion and pleads nothing in support of this contention. There are no foundational facts presented to the Court and only the conclusion that his former attorneys were entrusted to deal with this matter. The Court is not told whether the applicant made any inquiries about the summons hanging over his head, his non-payment of more than a year or the pending litigation. The Court is not told when the applicant changed from his former attorneys to his present attorneys. The explanation is not reasonable and leaves the Court with more uncertainty as to the applicant's seriousness in wishing to have this matter finalised. Second, a party cannot hide behind the remissness of his attorney.[1] In this case, the applicant has failed to show any moment of action to counter the 18 months of inaction – or

[1] Chetty v Law Society, Transvaal 1985 (2) SA 756 (A) at D-E; Salojee and Another v Minister of Development 1965 (2) SA 135 AA at 141

pleaded a case sufficiently to be able to lay the blame at the feet of his previous attorneys.

[4] Mr Tlhabanyane also asks the Court to consider its approach to his right to access to courts. The applicant has not challenged the constitutionality of Rule 27. Nor has he cited the correct respondents in order to do so. The Court is being presented with an allegation that the rule limits the applicant's right of access to courts through a mere assertion. More would be required. Particularly in light of the principle expressed by O'Regan J in *Giddey*[2] that "for courts to function fairly, they must have rules that regulate their proceedings". Those rules will often require parties to take certain steps "on pain of being prevented from proceeding with a claim or defence".[3] In fact, the example provided by O'Regan J is that of Rule 27: "A common example is the rule regulating the notice of bar in terms of which defendants may be called upon to lodge their plea within a certain time, failing which they will lose the right to raise their defence". Many of the rules of Court require compliance with fixed time limits, and a failure to observe those time limits may result, in the absence of good cause shown, in a plaintiff or defendant being prevented from pursuing their claim or defence. The Court has been presented with no reason not to apply the approach set out by O'Regan J. The applicant has, even at the stage of leave to appeal, not provided any substance to the constitutional argument, save to assert the exercise of the right. On this basis, the Court concludes that there is no prospect another court would come to a different conclusion.

[5] Lastly, Mr Tlhabanyane contends that the Court erred in its approach to costs. The Court held that costs ought to follow the results in this matter. Mr Tlhabanyane has not provided a basis to contend the Court erred in the application of its discretion in this regard.

[6] For all these reasons the Court concludes that there are no prospects that another Court would come to a different conclusion.

[7] As to costs, the costs should follow the results. The Court has been provided with no reason to depart from this position. Mr Tlhabanyane has had multiple opportunities

---

[2] Giddey NO v JC Barnard and Partners (CCT65/05) [2006] ZACC 13; 2007 (5) SA 525 (CC); 2007 (2) BCLR 125 (CC) (1 September 2006) para 15

[3] Id

to avoid this outcome. The Bank approached Mr Tlhabanyane on correspondence and through its Easy-Sell process. The Bank gave Mr Tlhabanyane several opportunities to prevent being placed under bar. It was only when the Bank launched its default application that Mr Tlhabanyane acted. Mr Tlhabanyane approached this court, as *dominis litis*, in a suit which has been wholly unsuccessful. In these circumstances, the Bank is entitled to its costs.

Order

[8] As a result, the following order is granted:

a) The application is dismissed.

b) The applicant is to pay the respondent's costs.

I de Vos

Acting Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email.

Counsel for the applicant:	**P Makhambeni**
	P Mbana
Instructed by:	SA Maninjwa Attorneys
Counsel for the applicant	**P Long**
Instructed by:	Rampsay Webber
Date of the hearing:	26 January 2024
Date of judgment:	29 January 2024