

**REPUBLIC OF SOUTH AFRICA**



**SOUTH GAUTENG HIGH COURT  
JOHANNESBURG**

**CASE NO: 11451/13**

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

.....  
DATE

.....  
SIGNATURE

In the matter between:

**KELSEY BIENOSE**

Applicant

and

**52 HOPKINS STREET CC**

First Respondent

**THE CITY OF JOHANNESBURG  
METROPOLITAN MUNICIPALITY**

Second Respondent

---

**JUDGEMENT**

---

**CARSTENSEN AJ:**

1. The Applicant, Kelsey Bienose, seeks a rescission of judgement

granted in the absence of the Applicant on the on the 29<sup>th</sup> of July 2013 in terms of which the Applicant was ordered to vacate residential premises.

2. The Applicant states that he did not receive the notice of set down in order to explain his absence of wilful default and also states that the owner of the premises is not 52 Hopkins Street CC, but rather Fifty Two Hopkins Street CC.
3. The judgement was indeed entered into the name of 52 Hopkins Street CC.
4. In the notice of intention to oppose the eviction application, the Applicant appointed an address of 21 Loriwa Court, 50 Esselent Street, corner Court Street, Hillbrow, Johannesburg.
5. The notice of set down was indeed served by candidate attorney Surtee at that address. Consequently, there was proper service.
6. In addition, the Applicant does not explain why, after serving the notice of intention to defend, he did not file an answering affidavit in the eviction application from the 19<sup>th</sup> of April 2013 until the 9<sup>th</sup> of July 2013 when, on his version, he attended court.
7. In regards to the defence, the Applicant admits having entered into an oral agreement of lease with Fifty Two Hopkins Street CC, who is in fact the legal registered owner of the property with registration number 1991/0136618/23. This was the registration number used in

the main application for eviction and consequently, I am satisfied that in the eviction application this would not have amounted to a defence.

8. Consequently, the Applicant has shown no prospects of success in respect of his defence.

9. In the premises, I make the following order:

9.1. the application for rescission is dismissed with costs.

---

**P L CARSTENSEN  
ACTING JUDGE OF THE  
HIGH COURT**

HEARD: 13 OCTOBER 2014  
DELIVERED: 17 OCTOBER 2014

COUNSEL FOR APPLICANT: IN PERSON  
INSTRUCTED BY:

COUNSEL FOR RESPONDENT: ADV. G REBELO  
INSTRUCTED BY: FULLARD MAYER MORRISON  
ATTORNEYS

(jmt.17.10.14)