



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

CASE NO: 26253/2015

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

8 September 2017

In the matter between:

THE STANDARD BANK OF SOUTH AFRICA LIMITED

Applicant

and

NKUNA, OZIAS TUKANE

First Respondent

NKUNA, THEREISA PHUMZILE

Second Respondent

JUDGMENT

STRYDOM AJ:

Background

- [1] This is an application in terms of Rule 30 of the Uniform Rules of Court to set aside the rescission application brought by the Respondents. It was placed before me as an opposed interlocutory in the normal course.
- [2] The setdown was duly served on the Respondents on 14 August 2017 on the Second Respondent. The Respondents are conducting their own defence. At the hearing, the Respondents did not appear and the matter was argued in their absence.

The irregular steps

- [3] The Rule 30 irregular steps complaint of by the Applicant are:
- 3.1 the Respondents failed to appoint an address within 15 km from the office of the registrar
 - 3.2 they failed to provide a date not less than 5 days in which the Applicant could oppose the proceedings
 - 3.3 the failed to set out a date on which the application would be set down if no notice of opposition is received
 - 3.4 the Respondents chose the wrong process as the judgment granted by Mashile J on 7 November 2016 is not susceptible to a rescission.
- [4] The first three complaints are classic examples of irregular steps as it relates to issues of form and not substance and I find that it is irregular steps in terms of Rule 30.¹ The first complaint from the first three complaints is in my view is the only irregular step of substance. I am however not

¹ De Polo v Dreyer 1989(4) SA 1059 (W) at 1061E

convinced that the fourth irregular step is one of form and should be considered as an irregular step but do not make such a finding for the reasons below.

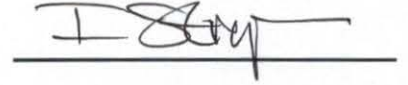
- [5] I shall now deal only with the first three irregular steps. The first three irregular steps are capable of being condoned.² In the matter of Minister of Prisons the court held that it has a general discretion to condone any con-compliance with the Rules ito Rule 27(3). The court came to the conclusion that a summons failing to set out an address as is required by the Rules is not void and can be condoned.
- [6] The Respondents are not before me and I have received no application of any nature to condone the irregular steps and to be granted an opportunity to amend. In fact, the Respondents in their Answering Affidavit deny that there are any irregular steps.³ They basically confirm the appointed address. It needs to be mentioned that the address provided is one in Chloorkop Street, Kempton Park.
- [7] I am of the view that I can take judicial notice that the distance between the office of the registrar of this Court and Chloorkop Street, Kempton Park is more than 15 km.
- [8] In the absence of an application for condonation and particularly in the absence of the Respondents I am of the view that the Rescission application should be set aside with costs. I see no reason why a further punitive costs order should be granted.
- [9] In the light of abovementioned finding it is unnecessary for me to deal with the fourth ground raised by the Applicant in this Application.
- [10] I therefore make the following Order:

² Minister of Prisons v Jangilanga 1983(3) 47 ECD

³ See Page 63 par 9

[10.1] The Rescission application dated 31 January 2017 is set aside;

[10.2] The Respondents to pay the costs on a party party scale.

A handwritten signature in black ink, appearing to read 'I Strydom', is written over a horizontal line.

I STRYDOM

ACTING JUDGE OF THE HIGH COURT

Date of Hearing: 7 September 2017

Judgment Delivered: 8 September 2017

Counsel for the Applicant: Adv M Reineke

Instructed by: Ramsay Webber

Respondents appearing in person