REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 21586/2020
REPORTABLE: NO
OF INTEREST TO OTHER JUDGES: NO
REVISED.

In the matter between:

THOVHAKALE TSHINONDIWA	Applicant
and	
SA TAXI DEVELOPMENT FINANCE (PTY) LTD	Respondent

JUDGMENT

MAKUME J:

[1] This is an application for rescission of a default judgment and for the return of a motor vehicle attached by the Sheriff pursuant to that judgment.

[2] It is common cause that the parties concluded a credit agreement on the 18th October 2016 in terms of which the Respondent leased to the Applicant a Toyota Quantum 2.7 Sesfikile 16s with engine number 2TR9107689. On the 17th October 2017 an addendum was concluded by the parties in terms of which the motor vehicle mentioned above was replaced by another Toyota motor vehicle.

[3] The Applicant breached the credit loan agreement as a result the Respondent issued summons where after it repossessed the motor vehicle after default judgment was granted.

[4] The summons as well as the Section 129 was sent and served at the chosen *domicilum et executandi* address as it appears in the agreement.

[5] This application is based on two grounds firstly that no Section 129 demand letter was sent to the Applicant. Secondly that the summons was never received by the Applicant as it was served at an incorrect address.

[6] The application is in terms of Rule 42 of the Uniform Rules of Court. That rule requires that the Applicant in order to succeed must demonstrate that the judgment was

6.1 erroneously granted in the absence of the Applicant.

6.2 that such judgment is ambiguous or there is a patent error or omission to the extent of such ambiguity.

6.3 Lastly that the judgment was granted as a result of a mistaken common to the parties.

[7] It is trite law that Rule 42 is designed to correct expeditiously an obvious wrong judgment or order (See: **Kili and Others vs Msindwana** in re: **Msindwana v Kili and Others 2001 (1) ALL SA Law Report (TK) page 339**).

[8] The Applicant's case is that the Section 129 letter as well as the summons should have been served at Flat [....] E[....] G[....], Corner Albert and Delvers Streets, Johannesburg which address appears on an unsigned addendum documents and not at [....] L[....] M[....] Corner Bree and Loveday Streets, Johannesburg which is the Applicant's chosen *domicilum* as appears on the credit loan agreement.

[9] Applicant's counsel maintains that the issue in this application is whether the Respondent knew that the Applicant was now staying at [....] E[....] G[....]. Secondly that this court does not have the jurisdiction or authority to deal with the dispute concerning the amount owed by the Applicant to the Respondent in terms of the agreement.

[10] The argument and submissions advanced by counsel for the Applicant in support of Applicants contention are legally untenable.

[11] Ms Stevenson for the Respondent argued that the application should be dismissed for failure to comply with the requirements of Rule 31(2) (b) regarding the making out of a bona fide defence. That Rule requires good cause to be shown by the Applicant for rescission. The onus is on the Applicant to establish the existence of good cause for the court to exercise its discretion and set aside the judgment.

[12] The words “good cause” have been interpreted to mean that:

a) The Applicant must give a reasonable and acceptable explanation for the default.

b) The Applicant must prove that the application is *bona fide* and not made with the intention to merely delaying Plaintiff’s claim.

c) Applicant must show that he has a bona fide defence to Plaintiff’s claim.

[13] In this matter the Applicant has failed to prove that he has a valid defence. He referred the court to a letter of complaint that he addressed to the Ombudsman and says that is where the *bona fide* is. A reading of the letter by the Applicant demonstrates that she is asking for answers as to why the Respondent was no longer deducting the instalment from her account. That is not a *bona fide* defence.

[14] Applicant has failed to make allegations setting out the nature of her defence and the facts upon which such defence is based. He has not made any averments which if proved at the ensuing trial would entitle her to succeed in opposing the action.

[15] Service of the summons was effected at the Applicant’s chosen *domicilum* being 93 Lawson Mansion. Various decisions of the high court have stated that a chosen *domicilum* address is a contractual one and should be adhered to. The courts have also found that if a *domicilum citandi* has been chosen, service there will be good even though the Defendant is known not to be living there. (See: **United**

Building Society v Steinbach 1942 WLD 3; **Hollards Estate v Kruger 1932 TPD 134; Gerber vs Stolze 1951 (2) SA 166 T**; **Loryn (Pty) Ltd v Solarsh Tea & Coffee 1984 (3) (W)**).

[16] The Applicant has failed to establish her pleaded case. Consequently, I have come to the conclusion that Applicant has failed to show good cause as is required by Rule 31(2) (b) nor the Common Law.

[17] In the result I make the following order:

ORDER

[1] The application is dismissed.

[2] The Applicant is ordered to pay the Respondent's taxed party And party costs.

DATED at JOHANNESBURG this the 06 day of MAY 2022.

M A MAKUME
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

DATE OF HEARING	:	3 MAY 2022
DATE OF JUDGMENT	:	6 MAY 2022
FOR APPLICANT	:	ADV SHOLE
INSTRUCTED BY	:	MESSRS N.N. THOVHAKALE INC.
FOR RESPONDENT	:	ADV STEVENSON
INSTRUCTED BY	:	MESSRS MARIEN-LOU BESTER INC.