



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO.	<input checked="" type="checkbox"/> YES
(2) OF INTEREST TO OTHER JUDGES: YES/NO.	<input checked="" type="checkbox"/> YES
(3) REVISED.	<input checked="" type="checkbox"/> YES
27/10/2014 DATE	 SIGNATURE

Case No: 7819/2009

Date heard: 27 October 2014

Date of judgment: 27 October 2014

In the matter between:

WISEMAN SINOTHI MKHONZA

Applicant

and

ABSA BANK LIMITED

1st Defendant

THE SHERIFF: CENTURION EAST

2nd Defendant

JUDGMENT

A.M.L. PHATUDI J:

[1] The applicant is the defendant in the main action. The defendant in the main action instituted this application for rescission of judgment granted after the hearing of the summary judgment application.

[2] Both parties were legally represented when the application for summary judgment was heard. Both parties made submissions before the said court. After hearing the said submissions by counsel, summary judgment was granted.

[3] The defendant's/applicant's recourse ought to have been an appeal against the said summary judgment. The defendant's/applicant's name has been called out three times outside of court but to no avail. In the absence of any response from the call out, and having noted the withdrawal of the applicant's attorneys of record, it is clear that there will be no appearance on behalf of the applicant

[4] Having read the application and having heard the respondent's counsel, I am of the view that the applicant has been ill advised. The application for rescission of judgment is not a proper procedure to follow

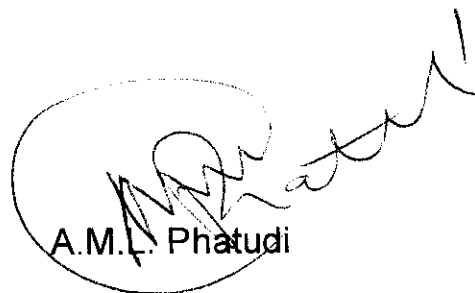
after the granting of the summary judgment. The application for rescission is therefore a non-starter in this instance.

[5] With regards to costs, costs follow the event. The respondents succeed with the defence hereto and they are entitled to their costs. However, Ms Lottering pleads for costs on a punitive scale as the agreement made provisions thereto.

The following order is thus made.

Order:

The applicant's application for rescission of judgment is dismissed with costs on attorney and client scale.



A.M.L. Phatudi

Judge of the High Court

On behalf of the Applicant:

MB Tshabangu Inc

404 Ancore Building

Robert Sebokwe Street

Sunnyside

Pretoria

(Withdrawn)

No Appearance in person

On behalf of the Respondent:

Hack Stupel and Ross

2nd Floor

Standard Bank Chambers

Church Square

Pretoria

Adv. U Lottering