


IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG NORTH DIVISION: PRETORIA)

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES
9/12/2014
DATE

SIGNATURE

CASE NO: 46279/12

9/12/2014

In the matter between:

P.P. PEFILE

Applicant

- and -

 FIRSTRAND BANK LIMITED
~~MOOWELE WASTE (PTY) LTD et al~~

Respondent

JUDGMENT

CORAM: RABIE J

1. This is an application for leave to appeal against the whole of the judgment and order of this court granted on 10 March 2014 in respect of the application between the two parties in which the applicant applied for the rescission of a judgment granted against him on 13 March 2013. The applicant's application was dismissed.
2. The relevant part of the history of this matter is briefly the following: In terms of a written loan agreement the respondent, Firststrand Bank Ltd, made a loan to the applicant which was secured by a mortgage bond over certain immovable

property of the applicant. The applicant defaulted on his obligations in terms of the loan agreement and the respondent issued summons against the applicant. The applicant opposed the action and the respondent applied for summary judgment.

3. After the respondent had applied for summary judgement the parties entered into settlement negotiations which resulted in an agreement relating to the repayment of the arrears. The applicant failed to comply with his obligations in terms of this further agreement and the respondent again approached the court. The court granted summary judgement against the applicant on 13 March 2013.
4. On 4 May 2013 the applicant applied for the rescission of the judgement against him and for the setting aside of the writ of execution in respect of the immovable property. On 10 March 2014 this court dismissed this application with costs.
5. The present application is for leave to appeal the judgement and order of this court dismissing the aforesaid application for rescission.
6. The criterion which should be adopted in an application of this nature is whether there is a reasonable prospect of success on appeal. (Cf. **Van Heerden v Cronwright and Others 1985 (2) SA 342 (T)**; **Janit v Van Den Heever and Another NNO (No 2) 2001 (1) SA 1062 (W)**). In considering whether there are reasonable prospects that the appeal might succeed I must consider whether there is a reasonable prospect that another Court might hold that this Court erred in respect of its findings. Or, to put it differently, I have to consider whether another court might reasonably come to a different conclusion than the one this

court came to and that there is consequently a reasonable prospect of success on appeal.

7. The respondent based his application on a number of grounds set out in a Notice of Application for Leave to Appeal. I shall now briefly refer to these grounds.
8. In the first paragraph the applicant stated that the respondent's representative misled the court by stating that the applicant had not paid a cent and had no intention to pay. The applicant denied this and referred to three payments made by him. There is no substance in this point. The statement on behalf of the respondent to which the applicant referred, was contained in the answering affidavit which preceded the aforesaid payments. The statement on behalf of the respondent was thus not inaccurate or misleading.
9. In the second paragraph the applicant referred to the track and trace report relating to the section 129 notice to him and stated that he had not signed the report nor had his identity document been attached thereto. There is no substance in this point and the matter had been fully dealt with in this court's previous judgement. According to the track and trace report and the allegations in the respondent's answering affidavit, the applicant had personally received the notice from the post office. The applicant did not file a replying affidavit and has thus not rebutted the respondent's evidence in this regard.
10. In the third paragraph the applicant stated that the address referred to as the one where the aforesaid notice was sent to, was the wrong address. The address

mentioned by the applicant is only slightly different but is in any event of no consequence as he had personally received the notice on 20 July 2012.

11. In the fourth paragraph the applicant referred to Rule 42 which he said he complied with. It appears that the applicant does not understand the provisions of Rule 42 and no more needs to be said about this issue except to add that the Rule does not relate to the filing of documents but rather to the requirements that have to be met in order for an applicant to obtain an order as envisaged in that Rule.
12. In the fifth paragraph the applicant referred to the issue of legal representation and stated that he believed that he should be allowed and afforded legal representation. The applicant represented himself during the application for rescission as well as the present application and at no time sought an opportunity to appoint legal representation. He had ample opportunity to do so but confirmed on each occasion that he was representing himself.
13. In the sixth paragraph the applicant merely stated that it is his belief that he had made out a strong case for the rescission of the judgement against him. This aspect falls to be decided with reference to all the facts of the matter as I shall do below.
14. In the seventh paragraph the applicant stated that the rescission clearly covers Rules 31(5), 42(1), 31(2)(b) and Section 129. The applicant made no submissions relating to these provisions and it is therefore not necessary to refer thereto again.

15. In the eighth and last paragraph of the Notice of Leave to Appeal the applicant stated that regarding the date of 10 March 2014 he "was not informed what this was about even after enquiry from counsel". It is not clear what the applicant is referring to. 10 March 2014 was the day on which the application for rescission was heard by this court. The applicant presented his own case and was clearly aware of what his own application was about.
16. During the hearing of the present application for leave to appeal the applicant did not refer to the aforesaid grounds raised in his application for leave to appeal. Instead he stated that he is surprised that the respondent is still proceeding with the matter since the respondent had indicated to his attorney that they would be prepared to agree to a reasonable repayment plan regarding the arrears. The applicant also stated that he has made payments and was prepared to make further lump sum payments.
17. The applicant did not say that there was an agreement in place with the respondent to the effect that it would not enforce the judgement in its favour. The applicant also did not present an affidavit by his attorney nor was he able to produce any document reflecting the alleged discussions between his attorney and the respondent.
18. With reference to the aforesaid it is clear that the grounds mentioned in the Notice of Application for Leave to Appeal have no merit and that no other court would reasonably come to a different conclusion. The issues of substance

mentioned therein had been fully referred to in the previous judgement of this court and I need not repeat same again herein.

19. Regarding the applicant's submissions during argument I am satisfied that the respondent has remained adamant to execute the judgement in its favour and that there is no reason to grant leave to appeal for this or any other reason. I am also of the view that no other court may reasonably come to a different conclusion in this regard.
20. In respect of the costs of this application it was submitted on behalf of the respondent that the court should show its displeasure with the unwarranted personal attack on the official of the respondent who deposed to the answering affidavit as well as the scurrilous allegation that the attorney of the respondent has been acting in bad faith. In answer to this submission the applicant withdrew his statement that the attorney, the late Mr Petzer, had acted in bad faith.
21. There is absolutely no question that the officials of the respondent did not at any time mislead the court and there is similarly no doubt that the late Mr Petzer at all times acted correctly and professionally and in the best traditions of the attorneys' profession. I am nevertheless of the view that it is not necessary to make a special award of costs especially having regard to the fact that the respondent conducted his own case and may have made unguarded allegations not realising the true import thereof.
22. Lastly, there is the issue of the reserved costs of 14 November 2014 when this application was enrolled for the first time. At a very late stage, at 11:00 on 13

November 2014, the applicant delivered an application for a postponement for the next day's hearing due to his alleged unavailability. The application was postponed in his absence the next day. In my view the applicant should also pay the costs of the respondent relating to the proceedings of 14 November 2014.

23. In the result the following order is made:

1. The application for leave to appeal is dismissed.
2. The applicant is ordered to pay the respondent's costs of the application which costs shall include the reserved costs of 14 November 2014.

A handwritten signature in black ink, appearing to read 'C.P. Rabie', written over a horizontal line.

C.P. RABIE

JUDGE OF THE HIGH COURT

9 December 2014