

THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA



CASE NUMBER: 39049/2013

DATE OF HEARING: 10 OCTOBER 2016

DATE OF JUDGMENT: 14 OCTOBER 2016

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

14-10-2016
DATE

[Signature]
SIGNATURE

In the matter between:

NOSABELO RAMOROKA

Applicant

and

KARABO RAMOROKA

Respondent

CORAM: Avvakoumides AJ

JUDGMENT

AVVAKOUMIDES, AJ

INTRODUCTION

- [1] This is an application for the rescission of a judgment taken by default against the applicant (defendant in the main action). The cause of action, on the face of the particulars of claim, appears to be based on an oral agreement allegedly concluded between the parties in terms of which the respondent transferred the sum of R1 000 000.00 to the applicant in order for her to invest on behalf of the respondent.
- [2] The cause of action is not formulated properly in the particulars of claim and in fact, no cause of action appears to have been made out in such particulars, save and except that the applicant is alleged to have refused to pay back the investment amount plus interest accrued thereon. What perturbs me about this application and the allegations contained in the papers is that the bulk of the monies allegedly invested, belong to a minor child, who is the child of the respondent.
- [3] The minor child was not joined to the proceedings or in any representative capacity. There is no curator appointed. The monies originate from the proceeds of a life policy. I have four main concerns with the litigation. The first is that the applicant does not appear to be a registered Financial Services Provider and secondly that the interests of the minor child are not protected. Thirdly, there is mention of two wills made by applicant's late husband who was also the father of the respondent. Lastly the draft order appears suspicious to me. There is no indication whether the order was granted by a

court or the registrar. The wording thereof is odd and in my view, something is amiss.

THE DELAY IN BRINGING THE APPLICATION

- [4] There was a long delay in bringing the application. The applicant does however set out reasons for the delay and, given the prevailing circumstances, I am satisfied that the delay was justified. It is in any event, in my view, it is in the interests of justice that the issues be ventilated in a court in due course, given my concerns.

BONA FIDE DEFENCE

- [5] The applicant's version is that she was appointed as the guardian of the minor child and thus the monies intended for the child must be protected by her. The respondent's version is the direct opposite. Moreover, the respondent is the natural mother of the minor child and, in the absence of any exclusionary reason the respondent remains the natural guardian of the child.
- [6] The applicant alleges that the respondent cannot be trusted with the monies and arrangements will have to be made to safeguard the monies of the child. The default judgment was applied for, allegedly because the applicant (defendant) had failed to file a plea. There is no indication who had filed an appearance to defend the action on behalf of the applicant. I am accordingly

satisfied that the applicant has set out sufficient reasons for the judgment to be rescinded, given the prevailing circumstances.

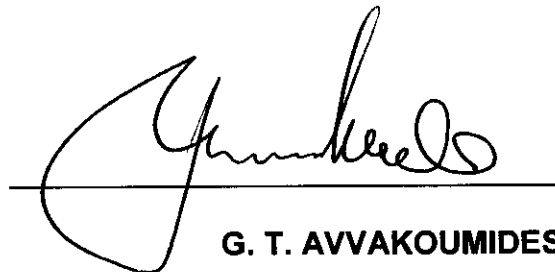
PREVIOUS RESERVED COSTS

- [7] The applicant has previously applied on an urgent basis for an order staying the execution steps pending the rescission application. Both counsel requested me to order that the costs of that application to be costs in the cause. I have no difficulty with such request.

ORDER

- [8] In the premises I make the following order:

- [8.1] The default judgment is hereby rescinded.
- [8.2] The costs of this application shall be costs in the cause.
- [8.3] The reserved costs in respect of the urgent application on 18 June 2014 shall be costs in the cause.



G. T. AVVAKOUMIDES

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

DATE: 14 OCTOBER 2016

Representation for Applicant:

Counsel: H. C. Van Zyl

Instructed by: Wianca Fourie

Representation for the Respondent:

Counsel: V. M. Magwane

Instructed by: Mapulana Maponya Inc.