




**HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)**

(1)	REPORTABLE: <del>YES</del> /NO
(2)	OF INTEREST TO OTHER JUDGES: <del>YES</del> /NO
(3)	REVISED. OK
22/04/2016	
DATE	SIGNATURE

22/4/16  
Case no. 32080/2014  
32080/14

In the matter between:

**M.C. MHLABA**

Applicant

and

**FIRSTRAND BANK LIMITED**

First Respondent

**SHERIFF OF THE HIGH COURT - CENTURION WEST**

Second Respondent

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**JUDGMENT**

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**RABIE, J**

1. This is an application for rescission of judgement sought by the applicant in respect of a default judgement granted against him on 21 January 2015. The first respondent (hereinafter "the respondent") filed an answering affidavit together with an application for condonation for the late filing of the answering affidavit.

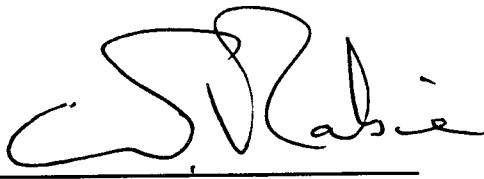
2. The application for rescission was served on 11 May 2015. Notice of intention to oppose the application was served by the respondent on 18 May 2015. The answering affidavit was served and filed on 26 June 2015.
3. Since the answering affidavit was supposed to have been filed on 9 June 2015 but only filed some 17 days later, the respondent filed an application for condonation for such a late filing.
4. The applicant did not file a replying affidavit to the application for rescission nor an opposing affidavit to the application for condonation. The respondent eventually set the matter down on the opposed motion roll of 15 February 2016.
5. On 2 February 2016 the applicant served a practice note and heads of argument per email on the respondent's attorney. These documents were filed outside the time periods allowed for by the Rules of Practice of this court. From these documents it appeared, for the first time, that the applicant was opposing the application for condonation and would move for the rescission of judgement alternatively for the granting of condonation and a postponement for the filing of a replying affidavit. Costs were also claimed against the respondent.
6. The objection to the application for condonation was twofold. Firstly, it was submitted that the Commissioner of Oaths referred to the deponent of the affidavit as "he" while it appears from the affidavit itself that the deponent was a female person. This had the effect, as submitted by advocate Geach SC that no affidavit had been filed and that the application for condonation should be dismissed. Secondly, it was submitted that the case had not been made out for condonation.

7. Confronted with this sudden and belated attack on the affidavit supporting the application for condonation, the respondent filed affidavits by the Commissioner of Oaths and the same deponent confirming that it was indeed the deponent who had appeared before the Commissioner of Oaths and that it was a typographical error to have referred to the deponent as "he".
8. I am satisfied that in so far as there may have been any doubt as to the commissioning of the affidavit supporting the application for condonation, such doubt had been completely removed. As far as the merits of the application for condonation is concerned, I am satisfied that more than a sufficient case has been made out to explain the slight delay in the filing of the answering affidavit and as to why condonation should be granted. Furthermore, the applicant made out no case in respect of any prejudice the applicant may suffer if condonation is granted.
9. As far as the costs of the application for condonation is concerned I am of the view that the opposition thereto was so devoid of substance that in the exercise of my discretion I should award costs in favour of the respondent.
10. It was submitted on behalf of the applicant that in the event of condonation being granted, this court should grant a postponement to the applicant to enable the applicant to file a replying affidavit in the application for rescission.
11. Adv Ellis, who appeared on behalf of the respondent, submitted that the applicant was opportunistic to approach the application in the matter that he did and that he was in fact playing games with the court. Adv Ellis emphasised the fact that the opposing affidavit in the rescission application had been filed during June 2015

and the application during July 2015. Nothing at all was done by the applicant in the next approximately seven months. There was no opposition to the condonation application nor was an application launched in terms of Rule 30. The applicant knew that the condonation application by the respondent would be launched during the hearing of the rescission application, yet it did nothing until a few days before the hearing. Furthermore, no replying affidavit had been filed and it was submitted that the applicant was clearly employing delaying tactics.

12. It was further, inter alia, submitted that the applicant knew that the issue of condonation would in all probability be finalised at the hearing of the main application and that the applicant was simply out to waste valuable resources and to frustrate the applicant.
13. It was further submitted that in reality the applicant had failed to make out a case in the founding affidavit and never had a defence against the original claim by the respondent as plaintiff. It was submitted that the application was a frivolous one with no hope of success and without bona fides. It was submitted that under the circumstances the court should refuse the application for a postponement and dismiss the application for the rescission. Reference was also made to the prejudice which the respondent would suffer if the matter is postponed.
14. Having regard to all the submissions made I am of the view that the matter should be postponed to allow the applicant to file a replying affidavit. In my discretion the costs relating to the application for rescission should be costs in the application for rescission.
15. In the result the following order is made:

1. The late filing of the First Respondent's opposing affidavit is hereby condoned.
2. The Applicant is ordered to pay the First Respondent's costs in respect of the application for condonation for the late filing of the opposing affidavit.
3. The application for rescission is postponed sine die.
4. The costs incurred by the postponement of the application for rescission shall be costs in the cause of the application for rescission.

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

**C.P. RABIE**

**JUDGE OF THE HIGH COURT**