



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case No: 99426/2015

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

30/06/21
DATE

[Signature]
SIGNATURE

In the matter between:

ROAD ACCIDENT FUND

Applicant

and

NICOLAAS CLAUDIUS GEY VAN PITTUS

First Respondent

KRITZINGER ATTORNEYS

Second Respondent

SHERIFF FOR PRETORIA EAST

Third Respondent

JUDGMENT

BAQWA J

Introduction

[1] The applicant has brought an urgent application in which it seeks an order for a stay of a Warrant of Execution dated 22 February 2021 pending finalisation of a Rescission Application of an order granted in default in favour of the first respondent by this court on 17 September 2021.

[2] The respondents oppose the application on several grounds which shall be dealt with hereunder.

[3] The applicant has attached to the papers herein a copy of an application for rescission which does not bear the Registrar's stamp and which the respondents allege has not yet been served on them. The applicant's response is that the application for rescission was loaded on case lines in order to receive the Registrar's stamp and date of hearing after which they would effect service on the respondents. It would indeed appear that the respondents have been invited on case lines to the rescission application at 007-2.

Points in *limine*

[4] The respondents have raised points *in limine* in opposition to this application. The first one is that the Commissioner of oaths to the applicant's affidavit commissioned a male person's affidavit even though the deponent is female. The second is that there is no resolution by the applicant authorising the deponent to act on behalf of the applicant. Due to the points in *limine* the respondents submit there is no proper founding affidavit before the court and that applicant did not comply with Rule 6(1).

[5] The respondents cite ***Absa Bank Ltd v Botha NO and Others 2013 (5) 563 GNP***, where it was held that a court should not be placed in a situation where it is

required to speculate as to the gender of the deponent to an affidavit. The applicant's response is that non-compliance by a commissioner of oaths does not per se invalidate an affidavit and that a court could condone non-compliance. See ***WM Mentz & Seuns (Edms) Bpk v Katzake 1969 (3) SA 306***.

[6] In ***Gokaldas v Allah Wala Wholesalers (45779/2017) [2018] ZAGPPHC 631 (23 August 2018)*** at para 12, the court regarded the commission issue as a "mere" technical issue which can be condoned and having considered the matter, I am of the view that where there are more serious issues to consider, such as in this case, litigants must desist from putting form above substance where the relevant defects are not fatal to an application.

Urgency

[7] Regarding urgency, the respondents submit that there is none because the applicant was invited on case lines when the judgment was granted and that the applicant ought to have been aware of at that time. They however concede that a copy of the judgment was only sent to the applicant in April 2021.

[8] What this court has to consider however is urgency in relation to the warrant of execution and the application for rescission.

[9] It is common cause that the first respondent obtained a warrant of execution on 22 February 2021 which the applicant seeks to stay pending the outcome of the application for rescission.

[10] It is also common cause that when default judgment was granted on 17 September 2020, the applicant was operating without a panel of attorneys.

[11] The warrant of execution was served on the applicant on 17 May 2021 after which they appointed the current attorneys of record for purposes of launching the application for rescission.

[12] In the application for rescission the applicant alleges that the first respondent did not make out a case for loss of earnings in his particulars of claim and expert reports supporting the claim and that in terms of *sequelae* there was insufficient connection between the injuries suffered and the loss of earnings. The applicant submits that the court was not placed in possession of the financial reports of the respondent's business pre-accident. As can be expected these allegations are denied by the respondents.

Interdict

[13] What this court has to consider are the factors relevant to granting of an interdict. It what the applicant alleges regarding prospects of success, this court takes cognisance of that but the determination of that fact is for the court which will deal with the application for rescission.

[14] In so far as the application for a stay is concerned the applicant submits that it has a *prima facie* right as a custodian of the public funds against which the first respondent seeks to execute.

[15] Regarding irreparable harm, the third respondent in its inventory has listed the movable assets which the applicant is using to carry out its day-to-day statutory duties.

[16] It is also common cause that the applicant services a critical aspect of those members of the community who are unfortunate to be involved in motor vehicle accidents in the whole country and that the public interest aspect of the case should not be lost sight of.

[17] The respondents have raised points in *limine* which are in essence technical points which in my considered view should not trump public interest.

[18] Whilst the first respondent is entitled to follow his rights and execute against the applicant's property to vindicate those rights, the question must be asked whether the matter has been fully ventilated in court. The applicant has raised what appears to be a *bona fide* defence though it may be doubtful. That is an issue for the rescission application court.

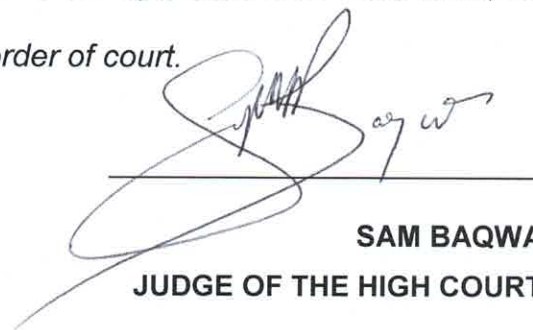
[19] The applicant has also explained how it came about that they were not in court when judgment was granted by default. Whether that explanation will be acceptable to the court hearing the application for rescission is a matter still to be decided by that court.

[20] The effect of interdict staying the warrant of execution can only be that of a delay which is not likely to cause the respondents irreparable harm. On the other hand, execution at this stage is likely to have devastating consequences not only for the applicant but millions of people in the entire country.

[21] In the circumstances I am of the view that the balance of convenience favours the granting of the relief sought.

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

The application is granted and the draft order uploaded onto case lines, as amended, is marked "X" and made an order of court.



SAM BAQWA
JUDGE OF THE HIGH COURT

**GAUTENG DIVISION HIGH COURT,
PRETORIA**

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date for hand-down is deemed to be 29 June 2021.

Appearances:

Counsel for the Applicants

Instructed by

Adv. P Baloyi

SEKATI-SEKATI INC.

Counsel for the first Respondent

Instructed by

Adv. J Bisschoff

PODBIELSKI MHLABA INC.