

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 80911/2015

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

Date: 8 November 2021 E van der Schyff

In the matter between:

ABSA BANK LTD

APPLICANT

and

R B SEKGALA

RESPONDENT

JUDGMENT

Van der Schyff J

- [1] This application for default judgment was enrolled before me in the unopposed motion court on 20 August 2021. The matter has a complicated history. Default judgment was granted on 18 November 2015. The judgment was rescinded, however on 7 September 2017. A plea was never filed, although the applicant was

for some reason under the impression that a plea was filed. The applicant filed a notice in terms of Rule 35(1), (6), (8) and (10) requesting the respondent to discover, but the respondent failed to do so. The applicant subsequently brought an application to compel. This application was set down for hearing on 21 October 2019. The respondent appeared at the hearing and averred that no plea was filed and that he can thus not be compelled to discover. The matter was postponed *sine die* for a plea to be filed. The respondent failed to file a plea. On 1 November 2019 an email was sent to Mr. Sekgala wherein he was informed that the applicant would proceed to serve a notice of bar within 5 (five) days if a plea is not filed. No plea was filed and the matter was enrolled again with the applicant seeking default judgment. On 18 August 2021 Mr Sekgala, however uploaded, email correspondence directed to the same email address from which the applicant communicated with him, dated 15 November 2019, to which he attached a notice of intention to defend and an exception to the plaintiff's particulars of claim. At the hearing on 20 August 2021 applicant's counsel submitted from the bar that the applicant's attorneys of record have no record, or recollection, of the email containing the exception. In the meanwhile, a notice of bar, dated 14 November 2019 was served on the respondent on 19 November 2019.

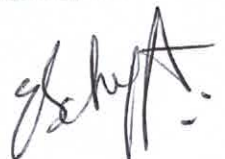
- [2] It is common cause that the exception was not set down. It is stated in the exception that the defendant excepts to the plaintiff's particulars of claim because it does not disclose a cause of action. This exception was filed electronically more than 2 months after the default judgment was rescinded. It is evident that the exception was brought out of time. Rule 23 (1) provides that an exception must be delivered within the period allowed for the filing of any subsequent pleading. However, the correct procedure would have been to address this irregular step in terms of Rule 30 of the Uniform Rules of Court. I am aware that counsel argued that the applicant's attorneys of record do not have any record of receiving the exception. However, no affidavit was filed in this regard. The applicant's attorneys of record corresponded via email with the respondent, a lay person, and he cannot be faulted for using the same email address for service of the exception.

- [3] A procedural conundrum was created by the fact that the notice of bar was served after the exception was sent to the correct email address. In formulating the order below, I had regard to the following:
- i. This matter has a very long and protracted history and needs to be finalised;
 - ii. The respondent is opposing the application for default judgment;
 - iii. The respondent never enrolled the exception for hearing and after the effluxion of more than two years it lapsed;
 - iv. When the exception was emailed to the applicant's attorneys of record, whether it was out of time or not, the notice of bar has not yet been served;
 - v. Section 173 of the Constitution provides the High Court with the inherent power to protect and regulate its own process taking into account the interests of justice.
- [4] I am of the view that it is in the interest of justice that the parties are assisted to finalise this matter as soon as possible. On the applicant's papers it is evident that the respondent has already missed more than 93 instalments on his loan.
- [5] I apologise to the parties for the delay in relaying this judgment and order.

ORDER

In the result, the following order is made:

1. The application for default judgment is dismissed;
2. Costs are costs in the cause;
3. The respondent is to file a plea within 5 days of this order been granted;
4. The parties are authorised to serve all further pleadings and applications, inclusive of an application in terms of Rule 46A, electronically.



E van der Schyff
Judge of the High Court