



**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

(1) REPORTABLE: YES / NO

(2) OF INTEREST TO OTHER JUDGES: YES / NO

(3) REVISED

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE

**CASE NO: 52908/2018**

**DATE: 31 JANUARY 2022**

In the matter between:-

**MAMOLATELO ALFRED SELOTA**

Applicant

and

**ADV KC CHUENE**

Respondent

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**JUDGMENT**

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**SKOSANA AJ**

[1] The applicant, an attorney of this court of the firm MA Selota Attorneys, has brought an application for rescission of the judgment and/or order handed down by the Honourable Justice Fisher on 03 December 2018 in which an order was issued for the respondent to pay an amount of R774 000-00 to the plaintiff together with interest thereon at the rate of 18,5% per annum from the date of demand until date of payment as well as the costs of suit.

[2] The application is opposed by the respondent who is a practicing advocate of this court with his offices situated at Standard Bank Chambers, Pretoria.

[3] The relevant factual background to this case is the following:

[3.1] The applicant runs an attorney's practice consisting mainly of Road Accident Fund claims. During the period from July to October 2015, the applicant briefed the respondent as an advocate for professional legal services in regard to such claims.

[3.2] After performing such services, the respondent rendered his invoices to the applicant to the total amount of R774 000-00. The

applicant failed to pay such invoices until the respondent realized that his claim against the applicant might prescribe as it was almost 3 years since the invoices had been rendered. The respondent then served a letter of demand on the applicant.

[3.3] On 03 August 2018, the respondent served an application on the applicant in which he sought the payment of the aforementioned amount. On 08 August 2018, the applicant served a notice of intention to oppose such application on the respondent. However, the applicant did not deliver an opposing or answering affidavit. Consequently, on 03 December 2018, the default judgment was granted as indicated above.

[3.4] On 11 December 2018, the respondent served on the applicant a letter of demand to which the default court order was attached. Nothing came of this. It must also be mentioned that a notice of set down had also been served on the applicant before the default judgment was granted.

[3.5] The present application for rescission was only instituted in May 2019 apparently as a reaction to execution attempt by the Sherriff against the applicant.

[4] The cardinal requirements for an application for rescission under Rule 31 of the Uniform Rules is that the applicant must show good cause for his default or failure to defend the proceedings and also show that he has a *bona fide* defence against the claim. In the present case, the applicant has also sought condonation for the late filing of the application, which was only filed in May 2019 instead of February 2019, being a delay of about 3 months.

[5] The applicant's reason or failure to oppose the application is essentially that he had been waiting for taxation of the respondent's invoices. This ground is fallacious in view of the fact that the applicant had not only been properly served with the application and filed the notice of opposition but had also received the notice of set down. The averment that he was personally not present at his firm when the process was served is of no moment.

[6] The above also applies to his application for condonation. With regard to condonation, the applicant simply mentions the following:

[6.1] That when the order was obtained in December 2018, his attorney had already left for December holidays and he needed time to collate information before bringing this application. His explanation is not only scanty but also unreasonable and unsatisfactory.

- [6.2] The applicant is himself an attorney but did not even have the courtesy of writing a letter to the respondent with regard to the delay. There is also no indication of the nature of information that he was collating and why it had not been done before the order was obtained.
- [6.3] There is immense prejudice to the respondent who has been owed a huge sum, which undoubtedly affects the running of his own practice.
- [7] The applicant has also shown no *bona fide* defence or any prospects of success in opposing the main application. The contention that there may be a dispute of fact is unsustainable. In his own version, the applicant owes the fees to the respondent for almost 5 years now.
- [8] Taxation of the fees of the advocate is not requirement before such fees become due and payable. All that is required is that the fees must be reasonable and this is assessed by the relevant regulatory body for advocates. Nowhere does the applicant allege that he queried the fees of the respondent either at the time when the invoices were rendered or before the default judgment was granted. It is clear that the complaint

raised against the fees is not only an afterthought but also an attempt to further delay the payment and enforcement thereof.

[9] I also find no substance in the alleged agreement to pay after the cases have been completed. The applicant has not even indicated as to whether those cases to which the amount relates were finalized at any given time since the legal services were performed in 2015. It would also be unsound to conclude such an agreement as there may be appeal processes. Notwithstanding the cases were already pending more than 6 years ago, the applicant gives no account whatsoever as to the current status of the cases and does not explain why taxation, if relevant at all, has not occurred.

[10] Regard being had to the facts placed before me, I have no doubt that the default judgment was properly granted. No legally recognized basis has been shown for rescinding it.

[11] Consequently, it is my considered view that there is no merit in the present application. The respondent did not persist in seeking a costs order on a punitive scale but rightly submitted that the applicant must be mulcted with costs.

[12] In the result, I make the following order:

The application is dismissed with costs.

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DT SKOSANA

ACTING JUDGE OF THE HIGH COURT

Appearances:

Counsel for the Applicant:

Ms B Matlhape

Instructed by:

RAMMUTLA-AT-LAW INC.

Counsel for the Respondent:

Adv V Mabe

Instructed by:

Sello B Letsoalo Attorneys Inc.

Date heard:

26 January 2022

Date of Judgment:

31 January 2022