



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2021/18895

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

14 September 2023

EJ FRANCIS

In the matter between:

AGRILUBES (PTY) LIMITED

Applicant

and

MIDVAAL LOCAL MUNICIPALITY

Respondent

JUDGMENT

FRANCIS J

1. The applicant Agrilubes (Pty) Ltd brought a rescission application to rescind an order that was granted against it in the unopposed motion court on 5 November 2021 in favour of the respondent – the Midvaal Local Municipality.
2. The rescission application was brought in terms of rule 42(1)(a) of the Uniform Rules of Court on the basis that the order was erroneously granted in the absence of the applicant.

3. The default judgment concerned immovable property registered in the Deeds Registry as “Holding 129, Buyscelia Agricultural Holdings, Registration Division I.R., the Province of Gauteng, measuring 2, 1414 hectares (the property)” which the applicant had purchased on 7 March 2019 from one Phillip Opperman.
4. The property was subsequently transferred in the Deeds Registry on 14 October 2019 to the applicant.
5. The street address of the property is 129 Malan Street, Buyscelia, which is near Meyerton and falls within the jurisdiction of the Municipality.
6. It is common cause that on 16 October 2019 a Mr Bronkhorst of the respondent unbeknown to the applicant had investigated the immovable property belonging to the applicant. On 17 October 2019 unbeknown to the applicant Mr Bronkhorst conducted a follow up inspection and met a Mr Opperman.
7. On 16 January 2020 Mr Bronkhorst conducted a third inspection and issued the applicant with a letter of demand.
8. On 16 April 2021 the respondent issued an application for a final interdict against the applicant in respect of the immovable property. The said application was served by the sheriff on 19 July 2021 at Plot 129 Buyscelia N.O. – 129 Kruger Street on one Norman described as the Storeman.

9. After there was no notice to oppose the sheriff served a notice of set down on 29 October 2021 at the 129 Kruger Street, on a receptionist known as Kobie.
10. On 5 November 2021 the court granted an interdict against the applicant on an unopposed basis interdicting it and restraining it from using the property for any purpose other than for agricultural buildings or agricultural land, as permitted and prescribed by the zoning agricultural in terms of the Midvaal Land Use Scheme 2017 for as long as the property is zoned Agricultural. In particular, the applicant was interdicted and restrained with immediate effect from using and/or causing and/or permitting the property to be used for the repair, renovate, cleaning and/or spray painting of diesel tanks. The applicant was ordered to pay the costs of the application on a party and party scale.
11. In November 2021 the applicant become aware of the interdict application and the court order against it. Thereafter negotiations ensued in an attempt to settle the matter which were ultimately unsuccessful in May 2022.
12. The rescission application was issued on 17 August 2022 and is opposed by the respondent.
13. The following issues need to be determined:
 - 13.1 Whether the application for the interdict as well as the notice of set down in regard thereto were properly served by the sheriff on the applicant.

- 13.2 Whether the applicant has satisfied the requirements for the rescission of such application.
14. The applicant contended that the objective evidence, which has not been cogently rebutted by the respondent, demonstrates that both the interdict application as well as the notice of set down in regard thereto was served at 129 Kruger Street when in fact the immovable property is located at 129 Malan Street. Furthermore, the interdict application as well as the notice of set down were served on a person/s not known to the applicant and therefore neither the application nor the set down came to the attention of the applicant. The aforesaid constitutes a simple but important error in the proceedings which led to the erroneous granting of the order. The respondent caused both the application and the notice of set down to be served at the incorrect address.
15. The applicant contended that the only conclusion to be reached is that the court order was erroneously granted in the absence of the applicant. It has demonstrated that it meets the requirements in terms of rule 42(1)(a) for the court order granted erroneously to be rescinded.
16. The applicant contended further that it has provided a full and reasonable explanation for default of its appearance; demonstrated that the application is made in good faith and that it has a *bona fide* defence which *prima facie* carries some prospects of success.
17. The respondent contended that it is apparent from the sheriff's returns of

service that the application for the interdict as well as the notice of set down were served at the applicant's property. The applicant has failed to comply with the requirements of rule 42(1)(a). Consequently, the applicant should have brought a condonation application.

18. The respondent contended further that the applicant has substantively failed to establish why the court should exercise its discretion in its favour.
19. Rule 42 deals with variation and rescission orders. Rule 42(1)(a) provides that the court may, in addition to any other powers it may have, *mero motu* or upon the application of any party affected, rescind or vary an order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby.
20. Since the application is brought in terms of rule 42(1)(a) the issue that arises is whether the order was erroneously granted in the absence of the applicant. In deciding this the court will have to determine whether the application and notice of set down were properly served by the sheriff on the applicant's premises.
21. It is common cause that the interdict application and notice of set down were served at 129 Buyscelia NO.O – 129 Kruger Street instead of at 129 Malan Street Buyscelia which is the applicant's premises.

22. It is clear from the common cause facts that the interdict application and notice of set down was served at an incorrect address which explains why the matter proceeded on an unopposed basis. Had these factors been brought to court that granted the interdict, it would not have granted the application. This is sufficient to show that good cause has been shown which entitles the applicant to the relief that it is seeking namely to rescind the judgment that was granted in its absence. The harm that the respondent had sought to interdict ceased many months before the application was launched and there was no need for the respondent to have launched the said application.
23. An issue was raised that the applicant had not applied for condonation. The explanation given for that was that it had engaged the respondent in an effort to resolve the issue at hand. After they had reached deadlock in May 2022 it then brought the application in August 2022 which is within a reasonable period. There is simply nothing to contradict the applicant's approach in the route that it had followed in an attempt to resolve the issue between them.
24. The application stands to be granted.
25. However I do not believe that this is a matter where costs should follow the results. I have taken into account that there was some infringement that had taken place and that the infringements ceased after it was brought to the attention of the applicant. An appropriate order would be that each party is to pay its own costs.

26. In the circumstances the following order is made:

26.1 The default judgment granted by this court in favour of the respondent against the applicant on 8 November 2021 under case number 18895/21 is rescinded.

26.2 Each party is to pay its own costs.



FRANCIS J

JUDGE OF THE HIGH COURT

FOR THE APPLICANT : S MEYER INSTRUCTED BY ULRICH ROUX
AND ASSOCIATES

FOR RESPONDENT : L MATSIELA INSTRUCTED BY POSWA
INCORPORATED

DATE OF HEARING : 11 APRIL 2023

DATE OF JUDGMENT : 14 SEPTEMBER 2023

This judgment was handed down electronically by circulation to the parties' and/or parties' representatives by email and by being uploaded to caselines. The date and time for hand-down is deemed to be 10h00 on 14 September 2023.