



IN THE HIGH COURT OF NAMIBIA

Case Title: Namibia Road Assistance and Breakdown Services CC and others v First National Bank of Namibia	Case No: HC-MD-CIV-MOT-GEN-2021/00283
	Division of Court: HIGH COURT(MAIN DIVISION)
Heard before: TOMMASI, J	Date of hearing: 03 December 2021
	Date of order: 03 March 2022 Reasons: 18 March 2022
Neutral citation: <i>Namibia Road Assistance and Breakdown Services CC v First National Bank of Namibia</i> (HC-MD-CIV-MOT- GEN-2021/00283) [2022] NAHCMD 124 (18 March 2022)	
Results on merits:	
The order: Having heard Mr Van Wyk on behalf of the applicant (s) and Mr Samuel Eksteen, the 3 rd respondent in person and appearing on behalf of 1 st and 2 nd respondents, and having read the Application for HC-MD-CIV-ACT- OTH-2019/03986 and other documents filed of record: IT IS HEREBY ORDERED THAT: 1. The respondent's application in terms of rule 61 is granted. 2. The applicants' notice of motion dated 19 July 2021 (Application for Condonation)	

and the notice of motion dated 12 July 2021, applicants' document styled Rescission of Judgment Founding Affidavit inclusive of all annexures thereto dated 19 July 2021 are herewith set aside as it constitutes irregular proceedings as contemplated in Rule 61, with costs.

3. The matter is removed from the roll and regarded as finalised.

Reasons for orders:

[1] The respondent applied for the notice of motion dated 19 July 2021 and the notice of motion dated 12 July applicant's document styled "Rescission of Judgment Founding Affidavit' inclusive of all annexures thereto dated 19 July 2021 be set aside as it constitutes irregular proceedings as contemplated in Rule 61, with costs. The application was opposed.

[2] The applicant filed a Notice of motion in terms of Rule 14(1), (2,) (3) (a), (b) & (c), 4, 5, 6, 54 (1), 2(a) and (b) of the High Court Rules on 19 July 2021. The said notice has a total of 48 prayers. The wording of the application is disjointed, repetitive and not comprehensible but an attempt is made herein to provide some of the prayers below:

- a) The court to rescind, set aside and declare void ab initio the default judgment issued on the 15th September 2018.
- b) The court to order the respondent to submit to court, the writ of execution list that indicates the properties that was attached by Windhoek Deputy-Sheriff) on the 18th September 2018. The applicant lists and give details of 11 trucks and trailers.
- c) The court to order the Respondent to submit the provisional and final sequestration order issued on the 15th September 2018.
- d) The Respondent to submit the name of the trustee appointed in terms of Section 19(1), (a), (c), (d), (e), and (1) bis and 3(a), and (b), in terms of the Insolvency Act, 1936 (Act No. 24 of 1936).
- e) The respondent to submit, compliance in terms of Section (63), (66-81), of the Close Corporation Act, 1988 (Act No. 26 of 1988), reads with in terms of the Insolvency Act, 1936 (Act No. 24 of 1936) (*sic*).
- f) The court to order the return of the goods which the Deputy Sheriff attached and declare the attachment unlawful.

g) Order the respondent to reimburse the applicant the difference between the value of the property (N\$15,873,172-15) attached and the judgment debt which is N\$249, 011-17 and damages in the sum of N\$35,900,000-00, and the amount of N\$51, 773, 172-15 for “deformation” of character, security for cost, business damages, loss of income, emotional and spiritual distress.

[3] The Founding Affidavit is a garbled, incomprehensible and repetitive. It is extremely difficult to extract from it what the applicant is trying to say. The applicant avers that the documents were drafted by a legal practitioner from South Africa who is unable to appear before the court. It was not clear whether the “legal practitioner” is admitted to practice but it is clear from the documents that the drafter thereof is not proficient in English nor is he/she acquainted with the rules of this court. What is clear however is that the applicants never defended the action and were aware that default judgment was granted in favour of the respondent on 24 August 2018. The applicants are of the view that the respondent is responsible for the downfall of the businesses since it attached the vehicle(s) when there remained only a relatively small amount left to pay.

[4] The only meaningful construction of the application is that it is an application for the rescinding and or setting aside of the default judgment. The application however does not comply with Rule 16 or Rule 103 of the High Court. No security has been furnished and this requirement was not waived by the respondent nor did the court dispense therewith. The application was not brought within the time stipulated in Rule 16 in that it was brought almost 3 years after default judgment was granted and no bona fide defence made out in the affidavit. There also has been no allegation made that; the judgment was erroneously granted, that there is an ambiguity or a patent error or omission; or, that the order was granted as a result of a mistake common to the parties.

[5] There is no causa for the claim for damages and the incorporation of a claim of damages and the filing of an equally incomprehensible document titled particulars of claim filed simultaneously with the application, takes the matter no further. The various other claims, inter alia, the return of the items, ordering the respondent to provide a list of properties to be attached and reimbursing of the applicants the difference in value of the attached properties and amount they were sold for are equally absurd.

[6] It cannot be expected of this court to wade through pages of illogical documents in order to make out a case for the applicants. In light of the reasons advanced this court concluded that the applicants' notice of motion dated 19 July 2021 (Application for Condonation) and the notice of motion dated 12 July, 21, applicants' document styled Rescission of Judgment Founding Affidavit inclusive of all annexures thereto dated 19 July 2021 ought to be set aside as it constitutes irregular proceedings as contemplated in Rule 61 and that the applicants herein should be held accountable for the costs of the application.

[7] In the premises the above order was made.

Judge's signature	Note to the parties:
	Not applicable
Counsel:	
Applicant	Respondent
<p style="text-align: center;">S Eksteen Applicant in person</p>	<p style="text-align: center;">Y Campell Instructed by JC van Wyk Attorneys</p>