



home affairs

Department:
Home Affairs
REPUBLIC OF SOUTH AFRICA

BI-57

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Date: 05 June 2017

Submitted for the attention of:

Hon L Mashile: Chairperson of Portfolio Committee for Home Affairs
Hon L Dlamini: Chairperson of the Select Committee on Social Services

REPORT ON THE MATTER OF PETER NGAI YONG VS MINISTER OF HOME AFFAIRS AND THE SUBSEQUENT CLOSURE OF MBOMBELA OFFICE FOR TWO DAYS

1. On 25 October 2016, the Department was served with Combined Summons by a Cameroonian national named Peter Ngai Yong "the Plaintiff" through his attorneys I B Chiloane Attorneys. The summons was issued at the White River Magistrate Court under case number **833/16.(Annexure "A")**
2. The basis of the summons is that the Plaintiff alleges that he was verbally assaulted by one of the Department's immigration officials in front of his students and thus defaming his character. As a consequence, Mr Yong sued the Department R150 000.00 for defamation of character.
3. On **14 November 2017**, the Department sent formal instructions to the State Attorney Pretoria wherein the Department instructed the State Attorney's office to defend the matter and brief Counsel. We attach herein the instruction letter and a proof of delivery as **Annexure "B" and "C"**, respectively for your kind perusal. Please be advised that the Department has 20 days (excluding weekends and holidays) to file a Notice to Defend a matter. This therefore meant that the Department filed its instructions on time.
4. On **9 November 2016**, Plaintiff's Attorneys applied for Default Judgment under case number **833/16**. A default judgment is an application that is done when the Defendant did not defend the matter and thus entitles the Plaintiff to apply to court for judgment to be taken in absentia of the Defendant. As Chairpersons would notice, Plaintiff

to be taken in absentia of the Defendant. As Chairpersons would notice, Plaintiff applied for default judgment on an earlier date before our time frame to defend the matter had expired.

5. At a closer scrutiny of the summons, it is apparent that Plaintiff served the Department with the summons on 25 October 2016, however, the Plaintiff in the application for default judgment, misled the court that the Department was served with the summons on 6 October 2016. (see application for default judgment, **Annexure "D"**).
6. At the time of Plaintiff's application for default judgment, the department was not made aware by the State Attorney nor Plaintiff's attorneys of this application for default judgment against the Department.
7. On 12 December 2016, an application for default judgment was set down (**Annexure "E"**).
8. On 19 December 2016, upon the Department being made aware of aware of the application for default judgment by the State Attorney, the Department immediately instructed the State Attorney to defend this application on the basis that the Department had already instructed the State Attorney to defend the claim on 15 November 2016.
9. The State Attorney never responded to the Department's instructions to defend the claim and oppose the Plaintiff's application for default judgment.
10. Pursuant to that, on 3 April 2017, the Department forwarded the file contents to the State Attorney to support the Department's defence of the Plaintiff's claim and further enable the State Attorney to prepare the Plea.
11. On 6 April 2017, the Department became aware of the fact that the Plaintiff has instructed the Sheriff to attach the Department's goods in Mpumalanga. To this end, the Department forwarded yet another email to the State Attorney dated 6 April 2017 requesting an explanation from the State Attorney on why attachment is taking place when the Department is busy with litigation (**Annexure "F"**).
12. On 11 April 2017, the Department once again forwarded correspondence to the State Attorney requesting an update on the attachment (**Annexure "G"**).
13. On 12 April 2017, the State Attorney responded to the Department's email of 11 April 2017 in which the State Attorney advised that they have engaged the Plaintiff's

Attorneys and the latter promising to revert. In addition, the State Attorney advised that they have in the meanwhile briefed Adv Shai of the Pretoria Bar to prepare an application for rescission of the court order granting the plaintiff default judgment. The State Attorney made an undertaking to liaise with the Sheriff to stay the execution proceedings pending the application for rescission of the court order granting the plaintiff default judgment. What is disconcerting though is the fact that the State Attorney seemed to have been out of touch with this matter as is evident in his response where he is still requesting the details of the Sheriff which details clearly appeared on our previous email of 11 April 2017 which was attached to his response. **(Annexure “H”).**

14. Again, on 12 April 2017, the Department instructed the State Attorney to follow up with the Plaintiff's Attorneys and advise that should the Plaintiff Attorney not revert, they should urgently file for application for rescission of the court order granting plaintiff default judgment. The Department again instructed the State Attorney to engage the Sheriff to stay the execution pending rescission application. **(Annexure “I”).**
15. Once again on 12 April 2017, the Department engaged the Sheriff's office requesting the specific details of the Sheriff who attached the Department's goods in Mpumalanga. The Department copied the State Attorney.
16. On 18 April 2017, the Department once again engaged the Sheriff's office requesting the details of the Sheriff who attached the Department's goods in Mpumalanga. Furthermore, the Department advised the Sheriff's office that this request is aimed primarily at requesting the relevant Sheriff to stay the execution process pending the outcome of the application for rescission **(Annexure “J”).**
17. On 18 April 2017, the Sheriff's office reverted and furnished the Department with the Sheriff's office reverted and furnished the Department with the Sheriff's contact details **(Annexure “K”).**
18. On 18 April 2017, the Department received email correspondence from the office of the State Attorney essentially explaining why there is a default judgment against the Department. According to the State Attorney, the plaintiff issued two sets of summons against the Department, the first one issued under case number 833/2016 and the second issued under case number 834/2016. This is very peculiar and astonishing in that the Department was only served with summons under case number 833/2016 which the Department has been communicating instructions to the State Attorney on and it is the same case number upon which the default judgement

has been granted. For the State Attorney to indicate his seeming confusion on this matter is strange indeed, more so, the Department has to date not been served with case number 834/16. (**Annexure "L"**).

19. On 25 April 2017, the Department noted the State Attorney's email and once again requested to be appraised of the status of the claim as well as the application for rescission of judgment (**Annexure "M"**).
20. On 25 April 2017, the State Attorney advised the Department that Adv Shai is no longer available on brief and requested instructions to brief new counsel. On 26 April 2017, the Department duly instructed the State Attorney to brief Adv B Moeletsi of the Pretoria Bar. (**Annexure "N"**).
21. On 4 May 2017, the Department addressed email correspondence to the State Attorney requesting update on the status of the matter (**Annexure "O"**). On the same day, 4 May 2017, the State Attorney responded advising the Department that they managed to consult with Adv B Moeletsi who advised that the Department needs to prepare an urgent application to stay the warrant of execution. Furthermore, Counsel requested urgent consultation with the Department to elaborate the issue of merits (**Annexure "P"**).
22. Again on 4 May 2017, the Department instructed the State Attorney's office to instructed counsel to proceed with the urgent application to stay the warrant of execution. Furthermore, the Department requested State Attorney to furnish the Department with the date, venue and time for the consultation to enable Department to arrange same with its witnesses (**Annexure "Q"**).
23. On 5 May 2017, the State Attorney responded that Counsel needs to see the witnesses today being 5 May 2017. (**Annexure "R"**)
24. On the same day, 5 May 2017, the Department responded and advised the State Attorney that 5 May 2017 would not be suitable as the witnesses are based in Mpumalanga and needed more time to arrange witnesses to travel to Pretoria. A date of 8 May 2017 was suggested and the State Attorney was requested to advise if it is suitable to Counsel. The State reverted telephonically that the date was suitable.
25. On 5 May 2017, the Department wrote to witnesses in Mpumalanga advising them on the date of consultation and requested them to avail themselves (**Annexure "S"**).

26. On 10 May 2017, after consultation with Counsel, the State Attorney requested instructions from the department to appoint correspondent attorneys from White river, Mpumalanga (**Annexure "T"**).
27. On 12 May 2017, the Department responded and acceded to the State Attorney's request to appoint correspondent attorneys in White River .
28. On 15 May 2017, the Department forwarded a copy of the commissioned confirmatory affidavit or our witness to the State Attorney (**Annexure "U"**).
29. On 19 May 2017, the Department forwarded email correspondence to the State Attorney requesting an update on the status of the matter (**Annexure "V"**). To the Department's dismay, the Department received information that the Mbombela office that the Sheriff has removed the Department's goods. The Department engaged the Sheriff and the Plaintiff Attorney's to return the Department's goods in place of the Department furnishing security of costs in place pending finalisation of the rescission application. The plaintiff's Attorneys acceded to the Department's request and the Sheriff returned the Department's goods.
30. Due to the execution process, the department had to firstly deal with the return of the goods and proceed with an urgent application to stay the warrant of execution by the Sheriff. The Department's application to stay the warrant of execution was set down on 6 June 2017, however, the Plaintiff have since opposed this application. The matter was consequently removed from the roll to the opposed roll. No date has been set yet. In the meanwhile, the Department will only apply for rescission of judgment after it has succeeded in its application for stay of execution of the Sheriff's warrant of execution.

RECOMMENDATION

31. It is recommended that Chairpersons takes note of the status report of this matter.
32. The Chairpersons to also note that the Department is engaging the State Attorney on the handling of DHA related matters and on improving channels of communications.



For DIRECTOR GENERAL