



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MTHATHA)**

REPORTABLE

Case No: 429/2020

In the matter between:

MINISTER OF POLICE

APPLICANT

and

MNYAMEZELI JOHN LULWANE

RESPONDENT

JUDGMENT

Notyesi AJ

Introduction

[1] Approximately twenty months ago, calculating from 17 September 2021, Justice Khampepe, writing a majority judgment on behalf of Justices of the Constitutional Court, remarked—

‘Like all things in life, like the best times and the worst of times, litigation must, at some point, come to an end . . .’¹

¹ *Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State and Others* [2021] ZACC 28; 2021 (11) BCLR 1263 (CC) para 1.

[2] In these proceedings, the Minister of Police is asking this Court to rescind an order and judgment which was granted in favour of Mr Mnyamezeli Lulwana, on 27 January 2022, awarding him damages in the amount of R450 000. That was a sequel to his arrest and detention which had spanned from 8 to 19 February 2019. The Minister is relying upon the provisions of Uniform rule 42² and alternatively, the common law. The Minister is contending that the order of 27 January 2022 was erroneously sought and erroneously granted in favour of Mr Lulwana. In the alternative, the Minister contends that the rescission application should succeed under common law for the reason that there is a good cause to do so.

[3] Mr Lulwana submitted otherwise. In his counter submissions, Mr Lulwana contended that the order of 27 January 2022, was properly granted and that it was not erroneously sought and erroneously granted. He further contended that there is no good cause shown for the rescission of the order and that the application for rescission is launched solely to delay the execution of the judgment.

The parties

[4] For the sake of convenience, the parties shall be referred to as simply the 'Minister' and 'Mr Lulwana'. The Minister is the defendant in the main action and Mr Lulwana is the plaintiff.

Issues

[5] The questions to be decided are whether—

- (a) the Minister has made out a case under Uniform rule 42(1); or
- (b) the common law; and
- (c) the costs of the application.

² Uniform rule 42 reads:

- '(1) 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:
- (a) An order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby;
 - (b) an order or judgment in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission;
 - (c) an order or judgment granted as the result of a mistake common to the parties.
- (2) Any party desiring any relief under this rule shall make application therefor upon notice to all parties whose interests may be affected by any variation sought.
- (3) The court shall not make any order rescinding or varying any order or judgment unless satisfied that all parties whose interests may be affected have notice of the order proposed.'

Background

[6] The litigation history between the parties is troubling. On 8 February 2019, Mr Lulwana was arrested and detained by the members of the South African Police Service. He was arrested on allegations that he had committed an offence of kidnapping. He was detained at Ngqeleni Police Station. He remained in custody until released on bail on 19 February 2019. The charges were subsequently withdrawn against Mr Lulwana on 25 September 2020.

[7] On 5 February 2020, Mr Lulwana caused summons to be issued against the Minister for unlawful arrest and detention. The summons was served upon the Minister on 28 July 2020. An appearance to defend was entered on behalf of the Minister by the State Attorney on 5 August 2020. No plea was filed thereafter, prompting Mr Lulwana's legal representatives to file a notice of bar. There was no response to the notice of bar. An application for default judgment was brought against the Minister. On 6 October 2020, the parties agreed to uplift the bar and extend the time period within which the Minister must file the plea. The agreement was made an order of court. A plea was filed.

[8] Following the filing of the plea, pleadings were closed. There was no replication. Mr Lulwana's attorneys issued discovery notices under Uniform rule 35. The notices were served upon the State Attorney who acted on behalf of the Minister. There was non-compliance with the discovery notices. An application to compel was launched on behalf of Mr Lulwana. On 9 February 2021, an order to compel discovery under rule 35 was granted against the Minister.

[9] The Minister failed to comply with the order of 9 February 2021. Mr Lulwana's legal representatives launched an application to strike the defence of the Minister. On 11 May 2021, an order was granted striking out the defence of the Minister. On 18 November 2021, the legal representatives of Mr Lulwana, applied for the allocation of a date for hearing of default judgment and the matter was allocated for hearing on 26 January 2022. The notice of application for allocation of a date of the default judgment was served upon the office of the State Attorney.

[10] The notice of set down for the hearing of the default judgment was also served upon the offices of the State Attorney on 18 November 2021. The notices bear the receiving stamp of the State Attorney. The matter was rolled over on 26 January 2022 for hearing on 27 January 2022.

[11] On 27 January 2022, Mr Lulwana attended court and a default judgment was applied for both merits and *quantum*. The evidence of Mr Lulwana was led at the hearing of the default judgment and whereafter submissions were made to court. After hearing evidence, the Presiding Judge granted an order in the following terms—

- (a) The defendant is liable for damages suffered by the plaintiff resulting from his unlawful arrest and detention from 08 – 19 February 2019 at Ngqeleni Police Station.
- (b) The defendant shall pay to the plaintiff, within thirty (30) days from the date of this judgment an amount of R450 000-00 (four hundred and fifty thousand) for damages suffered by the plaintiff resulting from his unlawful arrest from 08-19 February 2019.
- (c) These damages award shall attract interest at the prescribed legal rate calculated from the date of this judgment to date of payment.
- (d) The defendant shall pay the costs of this default judgment.

[12] Demands for payment of the judgment debt yielded naught and that prompted Mr Lulwana's legal representatives to obtain a writ of execution. On 18 October 2022, the writ was served upon the State Attorney.

[13] On being alerted about the writ, the State Attorney prepared the present rescission application of the judgment. The papers, according to the notice of motion, were prepared by the State Attorney on 18 October 2022 and served upon Mr Lulwana's attorneys on 20 October 2022.

[14] In response, Mr Lulwana's attorneys served and filed their notice to oppose on 27 October 2022. Mr Lulwana's answering affidavit was served and filed on 18 November 2022.

[15] Realising that the Minister was not filing a replying affidavit, on 23 January 2023, Mr Lulwana's attorneys applied for the date of hearing of the rescission application. On 8 March 2023, the matter was allocated a date for hearing on 26 April 2023.

[16] On 9 March 2023, the Minister's legal representatives served and filed their replying affidavit. There was no condonation application. Again, on 25 April 2023, the Minister's legal representatives filed the Minister's heads of argument and practice directives. The heads of argument were accompanied by an application for condonation.

The Minister's contentions

[17] In the founding papers and oral submissions, the Minister contended that the application is brought in terms of Uniform rule 42(1)(a) and (b) and in the alternative, the application is founded on common law. According to the Minister, the order of 27 January 2022 was erroneously sought and erroneously granted on the basis that there was no evidence placed before the Presiding Judge when she issued the order. This is set out in the founding affidavit as follows:

'The pleadings of the respondent have no evidence and/or expert reports in relation to the quantum and it would be in the interest of fairness and justice for a balance account or presentation by both parties in relation to quantum to be presented which will no doubt be of assistance to the court.'³

[18] The Minister has no qualms with the order of 11 May 2021. The Minister accepts that the defence was properly struck out. The Minister does concede that he has no defence on the merits and that the arrest and detention of Mr Lulwana was unlawful. The Minister is challenging the order of 27 January 2022. In this regard, it is contended in the founding papers and oral submissions, that the order was erroneously sought and erroneously granted. The submission is predicated on the grounds that the Presiding Judge failed to consider the lack of evidence to substantiate the claim of damages. In other words, the Minister contended that there

³ Para 23.6 of the founding affidavit at 12 of the record.

was no evidence placed before the Presiding Judge and therefore, the order should be rescinded.

[19] In advancing the alternative relief under common law, the Minister submitted that there is an explanation for the inaction of the Minister until the date of the grant of the judgment on 27 January 2022.

[20] According to the Minister's attorneys, the docket relevant to the arrest of Mr Lulwana was missing. It was only found on 28 March 2021. The deponent to the founding affidavit of the Minister, Ms Zandile Ndukwana, perused the docket and could not find the details of Mr Lulwana. She returned the docket to the police for further information. Subsequent thereafter, she could not attend the matter due to the extreme workload and excessive claims handled by the office of the State Attorney. She then took leave and only returned to work in January 2022.

[21] She returned from leave and uplifted the court file on 5 May 2022. She instructed counsel to provide a legal opinion in the matter. The counsel advised that there should be consultation before the opinion can be given. The members of the police were not available for consultation. The consultation only took place on 11 October 2022.

[22] Subsequent to consultation, the counsel advised that the defence in the main regarding the arrest and detention, would fail for the reasons that the investigating officer did not obtain a warrant of arrest. The arrest and detention of the plaintiff was accordingly conceded to be unlawful. It was on that basis that the order striking the defence was not contested.

Mr Lulwana's contentions

[23] On behalf of Mr Lulwana, it was contended that the application brought by the Minister does not meet the requirements set out in Uniform rule 42 and that the Minister failed to show good cause for the judgment to be rescinded under common law. The contention, on behalf of Mr Lulwana in this regard, was that the Minister has not given a good explanation for the failure to oppose the application for default

judgment. According to Mr Lulwana, the application for default judgment was properly served and that evidence was led at the hearing of the application. The Presiding Judge satisfied herself with the case that was presented. She gave an *ex tempore* judgment after hearing evidence and submissions on behalf of Mr Lulwana. Therefore, it is incorrect to insinuate that the judgment was erroneously sought and erroneously granted.

The Minister's rescission in terms of Uniform rule 42(1)

[24] Uniform rule 42(1) provides:

- '(1) 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:
- (a) an order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby;
 - (b) an order or judgment in which there is ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission;
 - (c) an order or judgment granted as the result of a mistake common to the parties.'

[25] Rule 42(1)(a) empowers the court to rescind an order erroneously sought or erroneously granted in the absence of the party seeking rescission provided that such party is affected by such order or judgment. The prerequisite factors for granting rescission under this rule are the following: (a) the judgment must have been erroneously sought or erroneously granted; (b) such judgment must have been granted in the absence of the applicant; and (c) the applicant's rights or interest must be affected by the judgment. Once those three requirements are established, the applicant would ordinarily be entitled to succeed, *cadit quaestio*. He is not required to show good cause in addition thereto.⁴ The Constitutional Court has affirmed these principles. The Constitutional Court confirmed that Uniform rule 42 is an empowering provision for the court to rescind the judgment.

⁴ *Mutebwa v Mutebwa and Another* 2001 (2) SA 193 para 15-16; *Hardroad (Pty) Ltd v Oribi Motors (Pty) Ltd* 1977 (2) SA576 (W) at 578G; *De Sousa v Kerr* 1978 (3) SA635 (W).

[26] In *Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State and Others*, the Constitutional Court said—

‘It should be pointed out that once an applicant has met the requirements for rescission, a court is merely endowed with a discretion to rescind its order. The precise wording of rule 42, after all, postulates that a court “may”, not “must”, rescind or vary its order – the rule is merely an “empowering section and does not compel the court” to set aside or rescind anything. This discretion must be exercised judicially.’⁵

[27] The discretion conferred under rule 42 is a narrow one. In *Mutebwa v Mutebwa and Another*,⁶ the court held—

‘Although the language used in Rule 42(1) indicates that the Court has a discretion to grant relief, such discretion is narrowly circumscribed. The use of the word “may” in the opening paragraph of the Rule turns to indicate circumstances under which the Court will consider a rescission or variation of the judgment, namely, that it may act mero motu or upon application by an affected party. It seems to me that the Rulemaker could not have intended to confer upon the Court a power to refuse rescission in spite of it being clearly established that the judgment was erroneously granted. The Rule should, therefore, be construed to mean that once it is established that the judgment was erroneously granted in the absence of a party affected thereby, a rescission of the judgment should be granted. In *Tshabalala and Another v Peer* 1979 (4) SA 27 (T), Eloff J adopted this interpretation and said at 30D:

“The Rule accordingly means – so it was contended – that, if the Court holds that an order or judgment was erroneously granted in the absence of any party affected thereby, it should without further enquiry rescind or vary the order. I agree that it is so, and I think that strength is lent to this view if one considers the Afrikaans test which simply says that: “Die Hof het benewens ander magte wat hy mag he, die reg om . . .”

See also *Bakoven Ltd v G J Howes (Pty) Ltd*.’

Was the order granted in the Minister’s absence?

⁵ Above n 1 para 53.

⁶ *Mutebwa v Mutebwa and Another* 2001 (2) SA 193 (TkH) para 17.

[28] The notice of set down for the default judgment was served upon the Minister's attorneys on 18 November 2021. The acknowledgement of receipt stamp bears confirmation of receipt of the notice of set down. In the founding papers, there is no complaint that there was no service of the papers prior to the hearing of the application for default judgment. In these circumstances, the Minister was aware that the default judgment is set down and that an application would be sought and, if the court is satisfied, granted. I may add that the Minister's legal representatives were also served with the application for the allocation of a date of hearing. Uniform rule 42(a) exists to protect litigants whose presence was precluded or in instances where notice of proceedings to a party is required and judgment is granted against such party in his absence without notice of the proceedings having been given to him, such judgment is granted erroneously.

[29] In these proceedings, the Minister is not contending that he was not aware of the proceedings of 27 January 2022 when the judgment was granted and therefore, it cannot be contended that the judgment was sought erroneously in his absence.

Was the order erroneously sought and erroneously granted?

[30] The Minister had contended that the order of 27 January 2022 was granted without hearing evidence. This contention turns out to be inaccurate and made without supporting facts, for the reason that the evidence of Mr Lulwana was led and the court only granted the order after such hearing of evidence. In this regard, the Minister did not dispute the allegations of Mr Lulwana that he gave evidence. The contentions of the Minister were predicated on speculative allegations, which are contained in the founding affidavit. I do quote the relevant paragraphs of the founding affidavit:

'The pleadings of the respondent have no evidence and / or expert reports in relation to quantum and it would be in the interest of fairness and justice for a balanced account or presentation by both parties in relation to quantum to be presented which will no doubt be of assistance to the court.'⁷

⁷ Para 23.6 of the founding affidavit at 12 of the record.

[31] It is well to remember that the deponent of the founding affidavit had earlier predicated the case of the Minister on these allegations—

‘The submission is that this order was erroneously granted alternatively there was an omission to take into consideration the lack of evidence placed before the court and the following grounds are submitted for consideration . . .’

[32] In response to the Minister’s allegations, Mr Lulwana had averred—

‘I deny that there is no evidence or expert reports in relation to my quantum, save to say this Honourable Court granted the order in question after inter alia the Court heard my evidence in relation with my personal circumstances and bad condition in custody.’

[33] The Minister’s replying affidavit simply fails to respond to the above detailed answer proffered by Mr Lulwana on the allegation that evidence was led and instead, in the reply, the deponent to the replying affidavit makes a bare denial. In this regard, I do quote the response as appearing in the replying affidavit:

‘The contents hereof is denied and the respondent is put to proof thereof.’

[34] I accept Mr Lulwana’s version and found credence in his allegations for the reason that, in his particulars of claim, he had asked damages in the amount of R700 000 and the court granted him a sum of R450 000 for the unlawful arrest and detention over a period from 8 to 19 February 2019. I have no doubt that the court had exercised its discretion on the presented facts and evidence in this regard. The Minister, in the founding affidavit, has not suggested that the amount awarded to Mr Lulwana, was excessive and that the court did not exercise its discretion.

[35] For the above reasons, I come to the conclusion that the judgment was not erroneously sought and erroneously granted and the result is that the rescission under rule 42 must fail.

Rescission under common law

[36] As an alternative to rule 42(1), the Minister pleads rescission on the basis of the common law, in terms of which an applicant is required to prove that there is

‘sufficient’ or ‘good cause’ to warrant rescission. There is ample authority on what good cause means. Good cause depends on whether the common law requirements for rescission are met, which requirements were espoused in *Chetty v Law Society, Transvaal*.⁸ The requirements for the rescission of a default judgment are twofold – first, the applicant must furnish a reasonable and satisfactory explanation for its default and secondly, it must show that on the merits it has a bona fide defence which prima facie carries some prospect of success. Proof of these requirements are taken as showing that there is sufficient cause for an order to be rescinded. A failure to meet one of them may result in refusal of the request to rescind.⁹

[37] This application is woefully lacking in any form of explanation. There is no explanation for the Minister’s inaction from 18 November 2021 up until the judgment was granted on 27 January 2022. The explanation for the inaction provided on behalf of the Minister is profoundly poor and should not be accepted. In a total conspectus, the impression that must be gathered about the Minister’s case, is that, from the inception, it was carelessly and clumsily handled by the office of the State Attorney. The litigation history in this matter is unsatisfactory. I draw the inference from the following—

- (i) The saga commenced on 8 July 2020 when summons was received by the State Attorney;
- (ii) A notice of appearance to defend was filed and thereafter the drama characterised by a state of neglect and carelessness unfolded;
- (iii) A notice of bar was ignored and that resulted in a court order dated 6 October 2020 for the enforcement of delivery of the plea;
- (iv) The discovery notices under Uniform rule 35 were ignored and that resulted in the issuing of an order to compel on 6 February 2021;
- (v) On 11 May 2021, the Minister’s defence in the main action was struck out for the reasons that there was a continued non-compliance with the order compelling the discovery under Uniform rule 35;

⁸ *Chetty v Law Society, Transvaal* 1985 (2) SA 756 (A) at 765A-E.

⁹ Above n 1 para 71.

- (vi) The notice of allocation for a date of hearing of the default judgment was served upon the State Attorney on 18 November 2021 – there was no response nor explanation for the non-response to the notice;
- (vii) The notice of set down for the hearing of the default judgment was served upon the State Attorney on 18 November 2021 – there was no response nor explanation for the absence in court on 27 January 2022;
- (viii) Whilst the default judgment was granted on 27 January 2022, the application for rescission was only launched on 18 October 2022 after a threat of execution against the Minister;
- (ix) Mr Lulwana served the answering affidavit on 18 November 2022;
- (x) Once the rescission application was launched, the Minister, again, became supine and filed no replying affidavit nor took steps to pursue the rescission application;
- (xi) On 23 January 2023, Mr Lulwana's legal representatives applied for a date in the opposed motion court for the hearing of the matter;
- (xii) A notice of set down was served upon the Minister's legal representatives on 8 March 2023 after the date was allocated by the Registrar;
- (xiii) The Minister's replying affidavit was only delivered on 9 March 2023;

and

- (xiv) The applicant's heads of argument was only filed on the date of hearing on 26 April 2023.

[38] I have no doubt in my mind that with the state of affairs highlighted above, the case was negligently handled on behalf of the Minister and there is simply no satisfactory explanation for the state of affairs and the failure to attend court when the judgment was granted.

[39] The deponent to the Minister's founding affidavit, merely contended that:

'During the time that I had perused the docket and eventually transmitted same to client, the file was not attended to due to the extreme workload and excessive claims as against the offices of the state attorney. I was never made aware of any court orders as against the applicant and during the December shut down. I was on leave

from my work duties. Upon my return in January of 2022, I was advised that a further application had been served and that a court order had been obtained.'

[40] I have found no explanation about the Minister's response covering the period between 18 November 2021, when the notice of set down for hearing of the default judgment was served and 27 January 2022, when the judgment was granted. There is simply paucity of information about the Minister's action or his legal representatives from the date of receipt of the notice of set down and the date of hearing of the application for default judgment. In these circumstances, there can be no satisfactory explanation.

[41] The deponent to the Minister's founding affidavit made another startling allegation, which, on its own, shows that the matter was carelessly and negligently handled. She avers, in the founding affidavit—

'I then attended at court and uplifted the court file and on 5 May 2022, I requested counsel to provide a legal opinion in the matter based on the fact that my preliminary perusal of the docket initially did not indicate the name and/or details of the accused.'

[42] In my view, the assertion made by the deponent shows that whilst she returned from her holiday on an undisclosed date in January 2022, she allowed three months to pass by without taking any action about this matter. If the deponent was a diligent legal practitioner, she would have observed that a default judgment was granted on 27 January 2022 and immediately, take steps to remedy the situation.

[43] I am also not satisfied that the Minister has established a bona fide defence that would entitle him, irrespective of the poor explanation to a rescission of the judgment of 27 January 2022. The averments made in the founding affidavit shows no defence of whatsoever nature. The deponent avers:

'The consultation provided much needed information regarding the entire arrest and detention of the respondent and as such, the defence in the main regarding the arrest and detention may fail as the investigating officer did not obtain a warrant of arrest for the respondent, it was the respondent who presented himself at the SAPS for questioning when he was arrested.'

[44] I may well add that during oral submissions, it was conceded, on behalf of the Minister, that Mr Lulwana's arrest and detention, was indeed unlawful. The Minister also did not challenge the award of damages in an eloquent manner. The rescission application was merely founded on the basis that there was no evidence placed before the Presiding Judge when the order sought to be rescinded was granted. This has already been demonstrated to be incorrect and inaccurate submissions.

[45] For the above reasons, I conclude that the Minister has no bona fide defence to Mr Lulwana's claim. The application was launched to delay the execution of the judgment. I am fortified in this regard by the conduct of the Minister's legal representatives. A writ of execution was served on 18 October 2022 and the application for rescission was immediately prepared and served on 20 October 2022. Once the application was served, the Minister's legal representatives, completely lost interest in the application for rescission. Mr Lulwana's legal representatives had to champion the hearing of this application, taking initiatives to apply for the date of hearing and prepare the file.

[46] It should be borne in mind that the discretion to rescind the judgment must always be exercised judicially and is primarily designed to enable courts to do justice between the parties. 'Good cause' means that:

(a) The defendant has a reasonable explanation for the default. Wilful default is normally fatal but gross negligence may be condoned. "Wilful" default in this context connotes knowledge of the action and its legal consequences and a conscious decision, freely taken to refrain from entering an appearance, irrespective of the motivation.

(b) The application is *bona fide* and not made with the mere intention to delay the plaintiff's claim.

(c) The defendant can show that he has a *bona fide* defence to the plaintiff's claim and that he has a *bona fide* intention to raise the defence if the application is granted.

The court may also take into account the prejudice to the parties.

The *bona fide* defence needs to be established *prima facie* only and it is not necessary to deal fully with the merits of the case or to prove the case. It is sufficient to set out the facts, which if established at the trial, would constitute a good defence.

The defence must have existed at the time of the judgment. The court has a wide discretion in evaluating “good cause” in order to ensure that justice is done between the parties. A good defence can compensate for a poor explanation and *vice versa*.¹⁰

[47] In my view, the Minister’s application simply fails at all levels and therefore, the Minister is not entitled to rescission under the common law as well. This Court is unable to exercise its discretion and grant the rescission application on the facts presented.

[48] I need to remark about the founding affidavit submitted on behalf of the Minister. The affidavit is slovenly drawn and the allegations are inelegantly set out. It lacks material allegations which are necessary to sustain relief for the grant of a rescission application. Some reliefs sought in the notice of motion, are not supported in the founding affidavit. I do consider as well the history of litigation on behalf of the Minister in this matter, such history shows the mismanagement of the case. I have noted the complaint by the deponent of the affidavit that there is an overload of work within the office of the State Attorney. I also accept that the State Attorney is faced with a high volume of litigation, however, the state of affairs reflected in this case, cannot be allowed.

[49] I must point out, though, that the counsel, who appeared for the Minister in this matter, is not responsible for the drafting of the papers. The counsel had informed this court, at the commencement of the hearing, that she was only briefed at the last moment for appearance. I must commend Ms *Mashiya* who appeared for the Minister at the last moment, she presented a well-structured submission and her submissions were mostly helpful. She was meticulous in her presentation.

[50] It was brought to my attention, during the hearing that the papers were prepared by the office of the State Attorney without the involvement of counsel or their senior attorneys. It may well be that the papers were prepared under pressure, more so that there was a threat of execution. The intention may have been to halt the pending execution. Even if it is so, that should not be an excuse for carelessness.

¹⁰ Civil Procedure in the Superior Courts, Issue 54: Harms, B-206(2).

[51] I may pin hope and faith that great care would be taken in the future.

Conclusion

[52] For all the reasons stated above, the application for rescission should fail. The general rule that costs should follow the results would apply. I have not been persuaded differently. The application must fail with the Minister to pay the costs.

Order

[53] In the result the following order is made:

- (1) The application for rescission of the judgment is dismissed with costs.

M NOTYESI

ACTING JUDGE OF THE HIGH COURT

Appearances

Counsel for the Applicant	:	Ms <i>Z N Mashiya</i>
Attorneys for the Applicant	:	The State Attorney Mthatha

Counsel for the Respondent	:	Mr <i>Mqokozo</i>
Attorneys for the Respondent	:	B Qakumbana Inc Attorneys Mthatha

Date Heard	:	25/04/2023
Date Delivered	:	09/05/2023

