

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO THE JUDGES: YES/NO
(3) REVISED.

CASE NO: 3714/2022

LINK NUMBER: 4345476

RAF REF: 546/12637996/10/0

In the matter between:

ROAD ACCIDENT FUND

APPLICANT/DEFENDANT

And

BETTY NAOMI SETHOLE

RESPONDENT/PLAINTIFF

JUDGEMENT

GAISA AJ

INTRODUCTION

[1] This is an application brought by the Defendant, the Road Accident Fund (RAF or the Fund), for the rescission of a default judgment granted in favour of the Plaintiff, Betty Naomi Sethole, on 1 March 2023. Defendant seeks to have the judgment set aside on the grounds that it was erroneously sought and granted in the absence of Defendant

[2] The Plaintiff opposes the application.

[3] The facts are largely common cause between the parties.

[4] The Court appreciates the insightful and engaging submissions from both parties' legal representatives, which greatly assisted in adjudicating this matter.

LEGAL FRAMEWORK:

[5] The application is brought under Rule 42(1)(a) of the Uniform Rules of Court, which allows for the rescission or variation of an order or judgment erroneously sought or granted in the absence of any party affected thereby.

[6] The Court, in *Nkabinde and Another v Judicial Service Commission and Others*,¹ held that:

“[14] As already indicated, the applicants brought their application for rescission in terms of Rule 42(1)(a). Rule 42(1)(a) reads as follows in so far as it is relevant:

“(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 erroneously...granted in the absence of any party affected thereby.”

An applicant for rescission who brings an application under this Rule must show that the order sought to be rescinded was granted in his or her absence and that it was erroneously granted or sought.”

[7] Rule 42(1)(a) affords this Court wide discretion to deal with applications, such as the instant one in an expeditious and cost-effective manner.²

[8] The Court (Mbha JA), in *Rossitter & others v Nedbank Ltd*, held that:

“[16] The law governing an application for rescission under Uniform rule 42(1)(a) is trite. The applicant must show that the default

¹(CCT122/16) [2016] ZACC 25; 2016 (11) BCLR 1429 (CC); 2017 (3) SA 119 (CC) (24 August 2016)

² *Zweni v Minister of Law and Order* 1993 (1) SA 523 (AD) at 531; *Tshivhase Royal Council v Tshivhase* 1992 (4) SA 852 (A) at 862J – 863A

judgment or order had been erroneously sought or erroneously granted. If the default judgment was erroneously sought or granted, a court should, without more, grant the order for rescission. It is not necessary for a party to show good cause under the subrule. Generally, a judgment is erroneously granted if there existed at the time of its issue a fact which the court was unaware of, which would have precluded the granting of the judgment and which would have induced the court, if aware of it, not to grant the judgment.”³

[9] The defendant submitted that the application is supported by principles of common law which permit rescission on grounds of fraud, mistake, or *justus error*.

FACTUAL BACKGROUND

[10] The Plaintiff instituted action against the Defendant for damages arising from a motor vehicle accident. Defendant failed to appear, and a default judgment was granted in Plaintiff's favour, awarding damages including general damages and loss of earnings.

³Rossitter & others v Nedbank Ltd (96/2014) [2015] ZASCA 196 (1 December 2015) at para [16].

[11] The Defendant contends that it was not aware of the proceedings and that the judgment was granted based on erroneous facts and procedural irregularities.

[12] Specifically, the Defendant argues that the Plaintiff misrepresented the facts and failed to disclose material information to the Court.

RULE 42(1)(a): ERRONEOUSLY GRANTED JUDGMENT

[13] Defendant submits that the judgment was erroneously granted as Defendant was not served with a Notice of Set-Down for the hearing on 1 March 2023. The Defendant further submits that the Plaintiff, despite being aware of this fact, proceeded to obtain a default judgment.

[14] According to Defendant, the judgment amount awarded exceeded the claim amount specified in Plaintiff's particulars of claim, and there was no due process followed for such an amendment, as required by Rule 28 of the Uniform Rules of Court.

[15] Furthermore, Defendant argues that Plaintiff obtained the judgment based on an offer that Defendant never accepted, not reduced to writing or signed.

[16] In support of its case, the Defendant, among others, relies on the principles established in *Nyingwa v Moolman*, where the court highlighted the principle of correcting judgments erroneously granted due to mistakes or factual errors.

COMMON LAW GROUNDS FOR RESCISSION:

[17] Under common law, a judgment can be rescinded if it was obtained due to fraud or a material mistake. Defendant argues that Plaintiff's misrepresentation of facts to the Court amounts to a justus error, warranting rescission of the judgment.

[18] The Defendant contends that it has always acted in good faith and was willing to settle the matter and that the failure to appear was not wilful but due to procedural oversights and miscommunications.

DEFENCE

[19] Defendant asserts that it has a bona fide defence to Plaintiff's claims, particularly regarding the extent of damages and loss of earnings claimed. The Defendant disputes the calculation of the Plaintiff's damages and argues that the Plaintiff did not substantiate the claims with adequate evidence.

[20] I must hasten to dispose of this issue regarding the *bona fide* defence that the Defendant may or may not have in respect of the action and its failure to file the notice of intention to defend and the plea.

[21] In *Lodhi 2 Properties Investments CC v Bondev Developments (Pty) Ltd*,⁴ Streicher JA held that:

“A court which grants a judgment by default like the judgments we are presently concerned with, does not grant the judgment on the basis that the defendant does not have a defence: it grants the judgment on the basis that the defendant has been notified of the plaintiff’s claim as required by the rules, that the defendant, not having given notice of an intention to defend, is not defending the matter and that the plaintiff is in terms of the rules entitled to the order sought. The existence or non-existence of a defence on the merits is an irrelevant consideration and, if subsequently disclosed, cannot transform a validly obtained judgment into an erroneous one.”

[22] Since the existence or non-existence of a defence on the merits is an irrelevant consideration it is not necessary to entertain this issue further.

⁴ (128/06) [2007] ZASCA 85; 2007 (6) SA 87 (SCA) (1 June 2007) at para 27

DID THE PLAINTIFF AMEND THE PARTICULARS OF CLAIM?

[23] The Defendant alleged in its founding papers that no notice of intention to amend was delivered to it. Attached to the answering affidavit is a document titled “*NOTICE OF AMENDMENT IN TERMS OF RULE 28*” and has a date stamp showing that the Defendant received it at its Menlyn office on 1 February 2023.

[24] Rule 28 of the Uniform Rules: Plaintiff’s document is incomplete in that it does not, in terms of Rule 28(2), afford Defendant the opportunity or inform Defendant that Defendant may, if it so wishes, object to the proposed amendment.

[25] Opperman J, *held in Wolhuter N.O. and Others v Mtetwa Investments (Pty) Ltd*,⁵ that:

“[1] The rules in litigation “act as anchors in the tides of injustice, to keep the principles of law afloat.” More real is that court orders must be complied with. The judicial authority in our democracy that is vested in the courts, may not become ineffective.

[2] The consternation, conflict and costs that non-compliance with court orders and the rules of court have caused in civil litigation

⁵(4542/2023; 4543/2023) [2024] ZAFSHC 98 (4 April 2024)

have become a menace in the administration of justice. It affects justice and pollutes the sanctimony of the Rule of Law.

*[3] The ease with which court orders are ignored by litigants and counsel alike, and the Uniform Rules of Court just disregarded, is astounding. In the meanwhile, the justice system battles to maintain veracity because the layperson cannot fathom the delays and the astronomical costs that makes access to justice unreachable. The Constitutional Court remarked in *Grootboom v National Prosecuting Authority and Another* (C696/08) [2009] ZALCCT 15 (18 December 2009) that:*

“[21] The failure by parties to comply with the rules of court or directions is not of recent origin. Non-compliance has bedevilled our courts at various levels for a long time. Even this Court has not been spared the irritation and inconvenience flowing from a failure by parties to abide by the Rules of this Court.”

*[4] Courts have regarded this scourge of non-compliance with such disdain that the following was ruled in *Collett v Commission for Conciliation, Mediation and Arbitration* (2014) 6 BLLR 523 (LAC) in a unanimous judgment of the Labour Appeal Court, wherein Musi AJA held as follows:*

“[38] There are overwhelming precedents in this Court, the Supreme Court of Appeal and the Constitutional Court for

the proposition that where there is a flagrant or gross failure to comply with the rules of court condonation may be refused without considering the prospects of success.”

[26] Compliance with the rules of court or a court directive is mandatory.⁶ The Court, per Bosielo AJ,⁷ said the following:

"21. The failure by parties to comply with the rules of court or directions is not of recent origin. Non-compliance has bedevilled our courts at various levels for a long time. Even this court has not been spared the irritation and inconvenience flowing from a failure by parties to abide by the Rules of this Court."

[27] The Plaintiff did not comply with this requirement in Rule 28(2) of the Uniform Rules, rendering the purported amendment invalid or a nullity. This non-compliance is fatal to the Plaintiff's case as it fundamentally undermines the procedural integrity of the proceedings.

[28] The document attached to the answering affidavit cannot be said to be the notice of intention to amend as envisaged in Rule 28.

⁶ Romeo & Jean Couture (Pty) Ltd and Others v Business Venture Investments NO 1360 (Pty) Ltd (2020/18844) [2024] ZAGPPHC 106 (26 January 2024) at para [12].

⁷ Grootboom v National Prosecution Authority & Another (CCT 08/13) [2013] ZACC 37; 2014 (2) SA 68 (CC); 2014 (1) BCLR 65 (CC); [2014] 1 BLLR 1 (CC); (2014) 35 ILJ 121 (CC) (21 October 2013)

[29] The Court in *Nyingwa v Moolman*⁸ established that non-compliance with procedural rules can invalidate proceedings and that fairness and justice demand strict adherence to procedural requirements.

[30] Similarly, in *De Wet v Western Bank Ltd*⁹, it was held that procedural non-compliance could result in a judgment being set aside. These principles apply squarely to the present case.

[31] The papers before me do not show that this non-compliance was brought to the attention of the judge who granted the default judgement. Neither was it argued at the hearing that such non-compliance was brought to the judge's attention and that it was condoned.

[32] On the requirements of the Rule 42(1)(a) rescission application, per Khampepe J (majority), held, among others that:

“[62] Ultimately, an applicant seeking to do this must show that the judgment against which they seek a rescission was erroneously granted because “there existed at the time of its issue a fact of which the Judge was unaware, which would have precluded the granting of the judgment

⁸ 1993 (2) SA 508 (TK GD) at. 510).

⁹ 1977 (4) SA 770 (T)

*and which would have induced the Judge, if aware of it, not to grant the judgment*¹⁰.

[33] I am satisfied that the Defendant has shown that the judgment against which it seeks a rescission was erroneously granted because there existed at the time of its issue a fact of which the Judge was unaware, which would have precluded the granting of the judgment and which would have induced the Judge, if aware of it, not to grant the judgment.

[34] It appears to me that the correct approach would be the one usually adopted in rescission of judgment applications in circumstances where the applicant does not specify whether the application is brought under rule 31 or rule 42 of the Uniform Rules of the High Court or in terms of the common law. Whilst there may be overlapping, each of these avenues has its own requirements. Ordinarily, a court would consider whether a case has been made out in respect of any one of them before dismissing the application.¹¹

[35] I can think of no reason why that approach should not apply here. The Defendant's rescission application is in terms of Rule 42(1)(a), alternatively the

¹⁰ 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 (CCT 52/21) [2021] ZACC 28; 2021 (11) BCLR 1263 (CC) (17 September 2021)

¹¹ Mutweba v Mutweba 2001 (2) SA 193 (Tkh) at paras 10-2; Nyingwa v Moolman NO 1993 (2) SA 508 (Tk); Bakoven Ltd v GJ Howes (Pty) Ltd 1992 (2) SA 466 (E).

common law. In light of my findings above, there is no need to dwell on the common law route.

[36] I am alive to the fact that rescission does not, however, follow automatically upon all the jurisdictional requirements of rule 42(1)(a) being present. The rule gives the courts the discretion to order rescission or variation, which discretion must be exercised judicially.¹²

[37] 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*, the Court stated (per Khampepe) - footnotes omitted):

“[53] 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.”¹³

¹² Colyn Tiger Food Industries Ltd t/a Meadow Feed Mills (Cape) 2003 (6) SA 1 (SCA) at 7A, referring to Theron NO v United Democratic Front (Western Cape Region) 1984 (2) SA 532 (C) at 536G and Tshivhase Royal Council V Tshivhase; Tshivhase v Tshivhase 1992 (4) SA 852 (A) at 862] - ?863A.

¹³Supra

[38] Broadly speaking, an exercise of a court's discretion is influenced by considerations of fairness and justice, having regard to all the facts and circumstances of the particular case.¹⁴

[39] In *Van der Merwe v Bonaero Park (Edms) Bpk*¹⁵, the court refused to rescind an order despite the jurisdictional facts required by rule 42(1)(a) being present. In *Nkosi v ABSA Bank Ltd*¹⁶ the court exercised its discretion against rescission despite the fact that the applicant had met all the jurisdictional requirements of rule 42(1)(a) because a rescission would have had no practical effect and merely caused delay.

[40] In considering the application for rescission brought by the Defendant, it is imperative to emphasise the critical importance of compliance with procedural rules, particularly Rule 28(2) of the Uniform Rules of Court. Rule 28(2) mandates that any party wishing to amend their pleadings must give notice of the intended amendment to the other party, allowing them the opportunity to object. This procedural requirement ensures fairness and transparency in the litigation process, allowing all parties to respond appropriately to the claims made against them.

¹⁴ Chetty v Law Society, Transvaal 1983 (1) SA 777 (T) at 761D, referred to with approval by the majority the Constitutional Court Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud the Public Sector Including Organs of State 2021 (11) BCLR 1263 (CC) at paragraph [53] footnote [20]

¹⁵ 1998 (1) SA 697 (T).

¹⁶ Unreported, GP case no 53195/2019 (6 June 2023); [2023] ZAGGPPHC 431; 53195/2019 (6 June 2023)

[41] In the present case, the Plaintiff's failure to comply with Rule 28(2) is a fundamental procedural flaw that cannot be overlooked. Plaintiff did not provide Defendant with the requisite notice of the intended amendment, thereby denying Defendant the opportunity to object. This non-compliance renders the purported amendment invalid and any default judgment based on such an amendment must be set aside. The procedural integrity of the court process is paramount, and adherence to the rules of court ensures that justice is not only done but seen to be done.

[42] The principle that a judgment obtained through procedural irregularities should be set aside is well-established in South African jurisprudence. In *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills Cape*¹⁷, the Court held that non-compliance with procedural rules, such as failing to provide notice of an amendment, can result in the rescission of a judgment. The Court emphasised that procedural rules are in place to ensure fairness and that non-compliance undermines the judicial process.

[43] Moreover, the Constitutional Court in *Fose v Minister of Safety and Security*¹⁸, reiterated the importance of procedural fairness and the necessity of allowing parties a fair opportunity to present their case. The Court stressed that procedural rules are designed to ensure that disputes are resolved in a just

¹⁷2003 (6) SA 1 (SCA)

¹⁸1997 (3) SA 786 (CC)

and equitable manner, and failure to adhere to these rules can result in an unjust outcome.

[44] It is also crucial to consider the implications of allowing default judgments to stand when they are based on amounts exceeding those stipulated in the pleadings. The Road Accident Fund (RAF), being a public entity funded by taxpayers' money, has a duty to ensure that its resources are used appropriately and justly. Allowing litigants to obtain orders in excess of what they have pleaded without due process not only depletes public resources unjustly but also sets a dangerous precedent that could encourage frivolous or inflated claims.

[45] The Court in *Promedia Drukkers & Uitgewers (Edms) Bpk v Kaimowitz*¹⁹, highlighted that the courts must guard against setting precedents that undermine the orderly and fair administration of justice. The Court noted that granting relief based on procedural non-compliance could open the floodgates to similar applications, thereby frustrating the harmonious processes of the court.

[46] Furthermore, the Constitutional Court in *Grootboom v National Prosecuting Authority*²⁰ stressed the necessity of strict adherence to procedural

¹⁹1996 (4) SA 411 (C) at 417C

²⁰2014 (2) SA 68 (CC)

rules to maintain the integrity and credibility of the judicial process. The Court emphasized that procedural fairness is a cornerstone of justice and that failure to comply with procedural requirements cannot be condoned.

[47] In light of these considerations, it is clear that the Plaintiff's non-compliance with Rule 28(2) and the subsequent erroneous granting of the default judgment necessitates the rescission of the judgment. The Defendant has demonstrated that the judgment was erroneously granted due to procedural irregularities, which if known to the court at the time, would have precluded the granting of the judgment.

[48] Even if I am wrong on this point, the plaintiff faces another challenge. During the argument, the Fund's legal representative submitted that despite the plaintiff having erroneously submitted to the court that granted the default judgment that there was an offer from the Fund, this according to him, was not the case.

[49] At the hearing of this application the representatives of both parties seemed to agree that an offer by the Fund must be in writing and signed.

[50] The Plaintiff's inability to provide any evidence of a written offer from the Fund or her signed acceptance of such offer. This omission, coupled with Plaintiff's inability to refute Defendant's assertion, casts significant doubt on the

validity of the default judgment granted on 1 March 2023. This omission, in essence, serves as a critical blow to the Plaintiff's case and significantly bolsters the Defendant's application for rescission.

SLOW PACE OF PROSECUTION:

[51] The Court notes with displeasure the slow pace at which the RAF has prosecuted this rescission application. While the RAF's delay in defending the action and filing the rescission application is concerning, the Court must balance this against the need to correct an erroneous judgment and ensure procedural fairness.

[52] Case law underscores the importance of finalising matters expeditiously to prevent prejudice to the parties. In *Bezuidenhout v Patensie Citrus Beherend Bpk*²¹, the Court highlighted the need for swift adjudication to avoid prejudice and unnecessary delay. Similarly, in *Mohlomi v Minister of Defence*²², the Constitutional Court emphasised the detrimental effects of delays on the administration of justice and the rights of the parties involved.

[53] In South African jurisprudence, it is a well-established principle that a rescission application in terms of Rule 42(1)(a) of the Uniform Rules of Court must be brought within a reasonable time. This requirement ensures that the

²¹2001 (2) SA 224 (SCA)

²²1997 (1) SA 124 (CC)

judicial process is not unduly delayed and that the finality of judgments is respected, thereby maintaining the integrity and efficiency of the judicial system. Several key cases highlight this necessity and provide guidance on what constitutes a reasonable time frame for bringing such applications.

[54] In *First National Bank of SA Ltd v Van Rensburg NO and Others*²³, the court emphasised the importance of bringing a rescission application promptly. The court noted that Rule 42(1)(a) is designed to correct judgments that were granted erroneously in the absence of an affected party and that this correction must be sought expeditiously to prevent prejudice to the parties involved and to uphold the administration of justice. The court held that an unreasonable delay in bringing a rescission application could result in the dismissal of the application, even if the judgment were erroneously granted.

[55] Similarly, in *Graham v South African Reserve Bank*²⁴, the Supreme Court of Appeal reiterated that while Rule 42(1)(a) does not prescribe a specific timeframe, the application must be brought within a reasonable time. The court, in this case, underscored that the timeliness of the application is crucial to ensure that the court's resources are not misused and that an undue delay does not unfairly prejudice the opposing party. The court further explained that what constitutes a reasonable time depends on the circumstances of each case,

²³1994 (1) SA 677 (T)

²⁴2003 (4) SA 449 (SCA)

including the reason for the delay and the nature of the judgment being challenged.

[56] The Court in *Government of the Republic of Zimbabwe v Fick and Others*²⁵ also addressed the issue of timely rescission applications. The court noted that the principle of bringing applications within a reasonable time is not merely a procedural requirement but is rooted in the broader principles of justice and fairness. The Court highlighted that delays in seeking rescission can disrupt the finality of judicial decisions and undermine the credibility of the judicial process. Thus, the need for prompt action in bringing rescission applications is imperative to maintain the integrity of the judicial system.

[57] In *Mutebwa v Mutebwa and Another*²⁶, the court elaborated on the discretionary nature of Rule 42(1)(a) and the need for judicial officers to exercise this discretion judicially. The court emphasised that while the rule allows for rescission of judgments granted in error, this discretion must be balanced with the need to avoid opening the floodgates to frivolous rescission applications. The court stressed that a reasonable time frame for bringing such applications is essential to ensure that only genuine errors are corrected without causing undue disruption to the judicial process.

²⁵2013 (5) SA 325 (CC)

²⁶2001 (2) SA 193 (Tkh)

[58] These cases collectively underscore the importance of bringing a rescission application under Rule 42(1)(a) within a reasonable time. They highlight that while the rule provides a mechanism to correct erroneous judgments, it must be applied in a manner that respects the finality of judicial decisions and the efficient functioning of the judicial system. By insisting on prompt applications, the courts aim to balance the rights of the parties with the need for judicial certainty and the orderly administration of justice.

[59] Earlier, in this judgement, this Court noted with displeasure the delay by the Defendant in launching the rescission application. The default judgment was granted on 1 March 2023. Yet, the Fund only brought this application on 19 October 2023, a seven-month lapse of time, despite being aware of the judgment and the procedural errors involved by April 2023 at the latest. Such a delay undermines the efficiency of the judicial process and contributes to the unnecessary protraction of litigation, which may be prejudicial to the Plaintiff and contrary to the principles of expeditious justice.

[60] The delay by the Fund in instructing the offices of the state attorneys serves only to work against other litigants, wastes judicial resources and causes avoidable inconvenience to the opposing party. The Fund, in particular, must exercise greater diligence in its legal proceedings to avoid depleting public funds through such inefficiencies.

[61] The slow pace exhibited by the Fund is unacceptable and warrants the Court's disapproval. It is imperative for the Fund to take urgent steps to avoid such delays in the future to uphold the integrity of the judicial process and prevent prejudice to plaintiffs.

PREJUDICE TO THE PARTIES:

[62] If the rescission is granted, the Fund will be given an opportunity, if it so advised, to object to a Rule 28 notice of intention to amend, which is a fundamental aspect of procedural fairness. Granting the rescission will rectify the procedural irregularity that occurred due to the Plaintiff's failure to comply with Rule 28(2). However, this will inevitably cause further delays and additional costs for the Plaintiff, who has already obtained a judgment in their favour. The Plaintiff will have to re-litigate the matter, potentially prolonging the resolution of her claim and exacerbating her prejudice due to the delay in obtaining the relief she seeks. Without rubbing salt in the wound – and reasoning from cause to effect - it must not be forgotten it is the plaintiff's side that is the cause of this application.

[63] On the other hand, if the rescission is not granted, the Fund will suffer significant prejudice as it was not given the opportunity to object to the proposed amendment, which resulted in an increased claimed amount from R5 million to R5.3 million.

[64] The Plaintiff's non-compliance with Rule 28(2) deprived the Fund, as a defendant, of its right to contest the amendment, leading to a judgment that may not reflect the true extent of the Defendant's liability. Add to that the non-existence of the offer (needless to say acceptance). Upholding such a judgment would undermine the principles of fairness and justice, as it would enforce an order obtained through procedural irregularities.

[65] Balancing the potential prejudice, the Court must consider the importance of procedural compliance and the right of a defendant to a fair trial. While the Plaintiff faces the inconvenience of additional litigation, the Fund's right to defend itself against a significantly increased claim amount, which it was not given a fair chance to consider or contest, is paramount. Therefore, ensuring procedural fairness and adherence to court rules justifies granting the rescission, despite the resultant delay and inconvenience to the Plaintiff.

[66] In this case, despite the Defendant's successful application for rescission, the Court finds it necessary to deviate from the usual principle that costs follow the event.

[67] In this matter, the Court acknowledges the Fund's delay in bringing this rescission application. While the delay is a factor to be considered, the Court

finds that both parties have contributed to the procedural complications and delays in this matter.

[68] Given these circumstances, the Court deems it equitable and just that each party should bear their own costs in this rescission application. This approach aligns with the principle of fairness, as it avoids penalising either party excessively for their respective roles in the procedural issues that have arisen.

[69] This decision is supported by case law, which recognises that in certain circumstances where both parties have contributed to procedural errors or delays, a court may exercise its discretion to order that each party bear their own costs.²⁷

CONCLUSION

[70] The Plaintiff's failure to comply with Rule 28(2) and not securing the offer are critical procedural flaws that cannot be overlooked. This non-compliance renders the purported amendment invalid, and the default judgment based on such an amendment must be rescinded. Procedural rules are the backbone of the judicial system, ensuring fairness and predictability in legal proceedings.

²⁷Steyn v Ronald Bobroff & Partners Incorporated| [2013] ZASCA 51:.. See also Durascaff CC v Essilfie-Appiah(3330/2019) [2022] ZAECMHC 43, and Van Zyl NO v Nedbank Ltd(20832/2019) [2023] ZAWCHC 120.

Compliance with these rules is not merely a formality but a substantive requirement that safeguards the rights of all parties involved.

[71] While the Defendant has demonstrated grounds for rescission, the Court is deeply concerned by the delay in bringing this application. Such a delay is prejudicial to the Plaintiff and contrary to the principles of expeditious justice. The Fund must take urgent steps to prevent such inefficiencies in the future, thereby safeguarding public resources and upholding the principles of justice.

[72] The result of the application reinforces the necessity for all litigants to adhere strictly to procedural rules.

ORDER

[73] In the result, it is ordered that:

73.1. The default judgment granted on 1 March 2023 in favour of the Plaintiff is hereby rescinded and set aside.

73.2 Each party pays its own costs.

A handwritten signature in black ink, consisting of a series of loops and a horizontal line, positioned above a solid black rectangular redaction box.

GAISA, AJ

Acting Judge of the High Court

POLOKWANE; LIMPOPO DIVISION

APPEARANCES

FOR THE PLAINTIFF / RESPONDENT : ADV T MAPHELELA

INSTRUCTED BY : MABUZA MAGADINE INC

FOR THE DEFENDANT / APPLICANT : MR K PHASWANA

INSTRUCTED BY : STATE ATTORNEY

DATE OF HEARING : 19 March 2024

DATE OF JUDGEMENT: 18 June 2024