



IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

CASE No: 1430/2015

(1)	<u>REPORTABLE: YES/NO</u>
(2)	<u>OF INTEREST TO THE JUDGES: YES/NO</u>
(3)	<u>REVISED.</u>
Yes.	
Date:25/04/2025 Signed.....	

In the matter between:

OCCUPIERS/ RESIDENTS OF RAMAHLADI PARK

APPLICANT

AND

MINISTER OF RURAL DEVELOPMENT AND
LAND REFORM

1ST RESPONDENT

BLUEDOT PROPERTIES

2ND RESPONDENT

POLOKWANE LOCAL MUNICIPALITY

3RD RESPONDENT

In re:

**MINISTER OF RURAL DEVELOPMENT AND
LAND REFORM
BLUEDOT PROPERTIES**

1ST APPLICANT

2ND APPLICANT

And

**THE UNIDENTIFIED UNLAWFUL OCCUPIERS OF
PORTION 42 OF FARM KALFONTEIN 100LS**

1ST RESPONDENT

POLOKWANE LOCAL MUNICIPALITY

2ND RESPONDENT

Delivered : 25 April 2025

This judgment was handed down electronically by
circulation to the parties' legal representatives by e-mail.

The date and time for hand down of the judgment is
deemed to be **25 April 2025 at 10:00 am.**

Date heard : 13 February 2025

Coram : MASHIFANE AJ

JUDGMENT

MASHIFANE AJ

INTRODUCTION

1. This is an application for rescission of default judgement and the orders granted against the applicants referred to in the judgment as

Unidentified Unlawful Occupiers of Portion 41 of the from Farm Kalkfontien 1001LS on the 31 July 2025 by Phatudi AJ, as then he was. In addition, the applicants seek an order condoning the late launching of this application. Both applications are opposed by the second respondent. The application is brought in terms of Rule 42 (1) (a) of the Uniform Rules of this court.

2. On the 31st of July 2015, the respondents applied and were granted the following orders:
 - (1) The Unidentified Unlawful Occupiers are evicted from the properties Known as **Remainder of Portion 41 and 224** or any other portion of the **Farm Kalkfontien 100LS** on the **07 September 2015, Polokwane, Limpopo Province.**
 - (2) Interdicting and restraining the First Respondent or any person forming part of the group, from taking occupation of **Remainder of Portion 41 and 224 of Farm Kalkfontein 100LS;**
 - (3) Authorising the sheriff and/ or his deputy to execute the order on the **28 September 2015**, should the First Respondent not remove the corrugated iron housing structure and shacks erected on the farm by them and vacate the property or/any other persons claiming rights and /or interest through or under them.

BACKGROUND

3. The second respondent is the lawful registered owner of portion 41 of Farm

Kalfointein. As early as January 2015 some individuals forming part of the Applicant (applicants) bought and were allocated residential stands on portion 41 of the farm from Mojaelo Traditional Council and proceeded with construction of their houses. The first and second respondent approached the court with an eviction application and same was granted on the 31st of July 2015. In addition, the court authorised the sheriff to execute the order on the 28.09.2015 should the unlawful occupiers do not remove the corrugated iron housing structures and shacks they erected on the farm.

4. The first and second respondent never executed the court order until March 2020 when the second respondent issued a notice to the applicants informing them the existence of the High Court eviction order and that the continuation of the demarcation and sale of pieces of land was unlawful. On the 18 May 2020 the second respondent issued a second notice making reference to the court order and residents were advised of a decision to strictly secure access points to the invaded site and that only people already residing on the invaded portion were allowed access. In both notices the second respondent neither request the occupiers to vacate the property nor inform them of the intention to execute the order.
5. It appears that on numerous occasions the second respondent and the applicants have been attempting to resolve the dispute amicably but in vain. The second respondent has acquired services of a security officers who do not allow the applicants to bring into the property things such as furniture and building materials.

ISSUES IN DISPUTE

6. There are three issues which the court is called upon to decide, firstly the second respondent challenges the locus standi of the applicants, secondly, the applicants applied for condonation of the lateness of their application which the second respondent is opposing and lastly, whether the applicants have complied with the requirements of Rule 42 (2) (a) of the uniform rules of this court.

Locus standi

7. The second respondent's contention is that the applicant does not have a *locus standi* in that there exist no legal persona or entities with the name occupiers/ Residence of Ramahlodi Park. The applicant's submission is that they identified and described themselves as Occupiers / Residents as some of them have been staying on the property since 2015 and since March 2020 they have been holding meetings with the second respondent. They decided to institute the application as a collective and provided list of the individual occupiers.
8. The respondents issued and obtained an order against the Unidentified Unlawful Occupiers of Portion 41 of Farm Kalkfontien 100LS and the order was never served on any of the unidentified occupiers. The Unidentified Unlawful Occupiers then decided to bring this application identifying themselves as Occupiers/ Residents of Ramahlodi Park. It is not disputed

that Ramahlodi Park refers to portion 41 of farm Kalkfontien.

9. The applicants brought this application because the court order is indirectly enforced or used by the second respondent to subject them to what they find to be inhumane treatment. The applicants are therefore, affected by the judgment and the change of the way they were identified in the main application does not affect their *locus standi* in these proceedings.
10. Rule 42 is open to anyone who is affected by the order or judgment erroneously sought or erroneously granted in his or her absence. The applicants did not only identify themselves but went further to show their interest which are being infringed by the conduct of the second respondent.
11. The Constitutional Court explained in **Giant Concerts Concerts CC v Rinaldo Investments (Pty) Ltd 2013 (3) BCLR 251 CC at [41]** as follows:
 - “e. Standing is not a technical or strictly defined concept. And there is no magical formula for conferring it. It is a tool a court employs to determine whether a litigant is entitled to claim its time, and to put the opposing litigant to trouble.*
 - f. Each case depends on its own facts. There can be no general rule covering all cases. In each case, an applicant must show that he or she has the necessary interest in an infringement or a threatened infringement. And here a measure of pragmatism is needed.”*
12. The applicants have demonstrated and proved that their rights and interest

are being infringed by the second respondent using the court order as a shield. If they are affected by the execution of the order, then they do have substantial interest in the order. I accordingly find that they do have necessary locus standi to bring the application.

Condonation

13. Rule 42 does not provide the period within which an application under the rule should be launched however, same must be brought as soon as possible from the date on which the applicant became aware of the judgment or order. The applicants argued that they only became aware of the judgment around May 2020 when the second respondent served them with incomplete court order. They argued further that the court should take notice of the impact of lockdown and the fact that parties engaged in negotiations to solve the dispute to such an extent that the second respondent made an offer to the applicants to buy the allotments they are occupying.
14. The Counsel for the second respondent argued against the condonation. He requested the court to assume and accept that the order could have been served on the applicants before the end of the month of July 2015 though there is no return of service of the order to support the submission. The second respondent does not know whether the court order was brought to the attention of the applicants or any other person acting on their behalf before March or May 2020. I am not persuaded by this submission. The second respondent ought to know when the judgment was served on the occupiers.

15. In their book titled Civil Practice in the High Court: fifth Edition the authors

Of Hebebrand and Van Walsen summarises the Rule 42 as follows:

"Although Rule 42 lays down no time limit within which rescission of judgment should be sought, delay or acquiescence in the execution of the judgment would normally bar success in an application to rescind as it will be regarded as acquiescence in the granting of the judgment. The court will normally exercise its discretion in favour of an applicant who through no personal fault, was not afforded an opportunity to oppose the orders granted against him and who having ascertained that such an order has been granted takes expeditious steps to have the position rectified. This is in line with the common law position".

16. The delay in this application can only be calculated from March 2020 as the date from which the applicants became aware of the judgment and the orders. What is left for the court to consider is the length of the delay and the reasons for and against the applicants on the delay from March 2020.

17. The applicant, in their replying affidavit avers that they did not sit back with the order and do absolutely nothing. There were engagements with the second respondent the purpose of which was to find an amicable solution. The other contributing factor which this court cannot overlook is the impact by the Covid 19 pandemic. I do accept that delay caused by Covid 19 during the period 2020-2021.

18. The second respondent, instead of executing the order, waited for more than four years to bring to the attention of the applicants the contents of the court order. There were negotiations between the applicants and the second respondent, initiated by the second respondent, creating impression that the second respondent is not intending to execute the court order but to settle the matter with the applicants and in the alternative, to obtain a court order authorising demolition of the houses.

19. There is a duty on the party in whose favour a default judgment was granted to, within a reasonable time, bring to the attention of the affected parties, the judgment and its orders. Court orders are sought and granted for a purpose and therefore, cannot be archived to be enforced sometime in future when the judgment creditor finds it necessary or comfortable to do so if that is allowed, it will amount to abuse of court process. I should not be misunderstood to say that with lapse of time judgments become invalidated.

20. It does not appear to this court that the granting of the condonation will in any way be prejudicial to the second respondent. There appears no intention on the part of the second respondent to enforce the order and in any event the fixed date set by the court to execute the order has long passed.

21. The second respondent did not only fail to execute the order within the stipulated time frame or fixed date but failed to prevent further occupation by some of the applicants. The facts of this case support the granting of the

condonation and same is accordingly granted.

LEGAL FRAMEWORK: RULE 42 (1) (a)

22. The application is brought in terms of Rule 42 (1) (a) of Uniform Rules of the Court which provides for the rescission or variation of a judgment erroneously sought and granted in the absence of any party affected by the judgment.

23. Rule 42 (1) (a) provides as follows:

*“[1] The court may, in addition to any other power it may have, mero muto or upon the application of any party affected rescind or vary;
(a) An order or judgement erroneously sought or erroneously granted in the absence of any party affected thereby.”*

24. It is required of an applicant who places reliance on rule 42 (1) (a) for rescission, show firstly, that there was an order granted against him or her, that he or she is affected by the order, secondly order sought to be rescinded was granted in his or her absence, and lastly, that same was erroneously sought or erroneously granted. The enquiry end once these requirements are met. Satisfaction of these requirements does not necessarily mean that the judgment should be rescinded. It only empowers the court to exercise its discretion whether to rescind or not and in doing so the court must take into account considerations of fairness and justice and that discretion must be exercised judicially.

25. In case of **Zuma v Secretary of Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State and Others 2021 (11) BCLR 1263 (CC)**, the

Constitutional Court summarised the legal position under the provision of Rule 42 as follows:

"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 the 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." [**my emphasis**]

26. The applicants submit that the case of Zuma (**supra**) and in particular paragraph 53 thereof is applicable in this matter. Their submission is further that they have direct and substantial interest in the matter. On the contrary the second respondent submit that paragraph 90-91 in Zuma finds application and the matter should be treated as *res judicata*.

27. The reference or reliance on paragraph 90-91 by the respondents is with due respect misplaced. The Constitutional Court considered whether it would have been in the interest of justice to reconsider its decision. The Court was therefore, considering if provisions of Section 17 (2) (f) of the Superior Courts Act could be triggered. Proceedings under the Section 17 (2) (f) implies only when the court is requested to reconsider its decision which is not case in this matter.

28. The facts in this case are distinguishable from that of Mr. Zuma in that he was

aware of the proceedings against him and elected not to take part. In this matter is not in dispute that the applicants were not served with the application for eviction and the judgment was obtained in their absentia. This triggers provisions of Rule 42. In simple terms Rule 42 (1) (a) is applicable if the applicant was not aware and present when the order was sought and granted due to no service of application or summons commencing action.

29. The second respondent submitted further that the rescission of the impugned judgment will serve no purpose in that the applicants are unlawful occupiers and court will still in the future arrive at the same conclusion. The lawfulness of the applicants' occupation of the land is not in dispute. In eviction proceedings the enquiry does not end with determination of the ownership and unlawfulness. Section 4 (7) of the Prevention of Illegal Eviction and unlawful Occupation of Land Act, 19 of 1998 provides as follows:

"if an unlawful occupier has occupied the land in question for more than six months at the time when the proceedings are initiated a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so after considering all the relevant circumstances, including, except where the land is sold in a sale of execution pursuant to a mortgage, whether land has been made available by a municipality or other organs or another landowner for the relocation of the unlawful occupier, and including the rights and needs of the elderly, children, disabled persons and households headed by women"

30. Eviction order is by its nature an infringement of a person's constitutional

right to housing and security, is for that reason that Section 4 of the PIE Act empowers the court to grant the order only if it is just and equitable after taking into account the circumstances of the occupier. In an application for default judgment such circumstances, to the extent known by the applicant should be brought to the attention of the court. The circumstances include the standard of living of the occupiers.

31. In the absence of the information placed before the court for it to arrive at the conclusion that it was just and equitable to grant the eviction order I do not agree with the second respondent's argument that the rescission of the impugned order will not serve any purpose as the court will still arrive at the same conclusion. The failure to serve the applicants with the application for eviction order denied them an opportunity to place before the court their circumstances which the court would have been obliged to take into consideration before granting the eviction order.

32. It would appear from the orders that the court was not made aware of all the relevant circumstances of the applicants who were already residing on the property. The order makes no reference to buildings or houses but only shacks and corrugated iron structures. I doubt if the court would have granted the same order if it was made aware of the fact that some of the occupiers were already well settled for more than six months and have built modern houses on the farm.

33. I am therefore satisfied that the applicants have shown that the judgment

they seek to rescind was erroneously sought and erroneously granted in their absence and must be rescinded.

34. An argument was put forward by the second respondent's counsel that the Constitutional Court has already taken a decision on this matter in the case of **Mamahule Communal Property Association and Others V Minister of Rural Development and Land Reform (CCT179/16 [2017] ZACC 12; 2017 (7) BCLR 830 (CC) (5 May 2017))**. The Court in that matter declared the occupation of the farm Kalkfontein 1001 LS by Mamahule Communal Property Association, the Mamahule Traditional Authority and Occupiers to be Unlawful. This fact is put beyond dispute.

Cost

35. The standing principle is that the cost follows the event, but the court retain a discretion to deviate from this principle depending on the circumstances of the case and having considered the circumstances of this case in particular the manners in which the respondents conducted themselves, I find no reason why the respondents should not bear the costs of this application.

Conclusion.

36. Considering the totality of the evidential material before me, the legal principle applicable as provided by the case law and submissions by the counsels on behalf of both parties, I make the following orders:

- a. The application for condonation for the late filing of this application is granted.

- b. That the second respondent's *point in limine* that the applicants lack *locus standi* is dismissed.
- c. The Court order granted on the 31st of July 2015 under the same case number is rescinded.
- d. The respondents are ordered to serve the notice of motion and its annexures on the applicants' attorneys of record within 30 days of this order.
- e. The applicant (s) are granted a leave to serve and file their answering affidavit(s) within 20 days from the date of receipt of the notice of motion and its annexures.
- f. The second respondent is ordered to pay costs of this application on party and party scale B.



MASHIFANE AJ

**Acting Judge of the High
Court, Limpopo Division**

Polokwane

Appearances:

For the applicant: Adv M Tshisikule

Instructed by NG Dlamini Attorneys Inc

And

For the Respondent : Adv ME Manala

Instructed by Digoba and Associates Inc.