

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO

12/05/2025.....

DATE

SIGNATURE

Case No: 2021/55797

In the matter between:

LIPHOSA, HUMBULANI ROBERT

Applicant

and

THE BODY CORPORATE OF PHILBERTA COURT

Respondent

In re:

THE BODY CORPORATE OF PHILBERTA COURT

Applicant

and

JUDGMENT

BARNES AJ

- [1] This is an application for the rescission of an order for the provisional sequestration of the Applicant's estate granted by this Court on 23 January 2023.
- [2] The Applicant is an advocate of the High Court of South Africa. The Respondent is the Body Corporate of Philberta Court, which obtained the provisional sequestration order against the Applicant. It did so on the basis of two judgments taken against the Applicant coupled with *nulla bona* returns subsequently issued by the sheriff in respect of each.
- [3] The Applicant launched his rescission application against the provisional sequestration order on 24 January 2023.
- [4] The Respondent filed a notice of intention to oppose the rescission application and duly delivered its answering affidavit on 28 February 2023.
- [5] The Applicant failed to deliver a replying affidavit.
- [6] The Applicant further failed to deliver heads of argument in his rescission application or to take any steps to set the application down.
- [7] The Respondent launched an application to compel the Applicant to file his

heads of argument. On 31 January 2024, this Court, per his Lordship Mr Justice Senyatsi granted an order compelling the Applicant to file his heads of argument and practice note within ten days of the date of the order. Judge Senyatsi further granted costs against the Applicant on the attorney and client scale.

- [8] Notwithstanding the above, and in breach of this Court's order, the Applicant failed to deliver his heads of argument and practice note within the stipulated ten days or at all.
- [9] The Respondent proceeded to file its heads of argument and to set the application down for hearing.
- [10] On 9 January 2025, counsel for the Respondent, Ms Putzier, prepared a draft joint practice note, as required by the Practice Manual in this Division, and e-mailed it to the Applicant for his input. The Applicant neither acknowledged receipt of Ms Putzier's email, nor provided input in respect of the proposed joint practice note.
- [11] When the rescission application came before me for hearing on 10 February 2025, the Applicant appeared in person and sought leave to make brief submissions on the merits of his rescission application. In response to questioning from the Court, the Applicant did not deny that he was in breach of the applicable rules or of the order of Senyatsi J and offered no explanation therefor. Nevertheless, I permitted the Applicant to make submissions on the merits of his application.
- [12] Having heard both parties in respect of the rescission application, it is clear to the Court that it is fatally defective in at least two fundamental respects.
 - 12.1 First, while it is not clear whether the rescission application is brought in terms of section 149(2) of the Insolvency Act 24 of 1936 or the common law, it is not necessary for me to decide this in the circumstances of this case. In either

event the Applicant must make out case to satisfy the requirements of “absence of wilful default” and “*bona fide* defence.” The Applicant’s rescission application fails to even address these fundamental requirements. The rescission application is fatally defective for this reason alone.

12.2 Second, the Applicant seeks rescission on the sole basis of a “Notice to Remove Cause of Complaint,” (“the Notice”) which he delivered at the eleventh hour, shortly before provisional sequestration application was due to be heard on the unopposed roll on 23 February 2023. (Notably, the sequestration application was on the unopposed roll because the Applicant had failed to file an answering affidavit). The Applicant contends that faced with the Notice, the Court was obliged to remove the matter from the unopposed roll, and that its failure to do so entitles him to rescission of the provisional sequestration order.

12.3 The Applicant is however not correct. Apart from the fact that the Notice deals with matters which ought to be dealt with by way of Rule 7 of the Uniform Rules of Court, no provision is made in the Rules for the issuing of a Notice to Remove Cause of Complaint in application proceedings.

12.4 Thus Uniform Rule 23 affords a party in action proceedings an opportunity to deliver a Notice to Remove Cause of Complaint failing which an exception may be taken. However, Uniform Rule 6, which governs motion proceedings, makes no provision for the issuing of a Notice to Remove Cause of Complaint.¹

12.5 The Applicant’s Notice was therefore irregular, and did not constitute a basis for the removal of the unopposed sequestration application from the roll. Still less does it constitute a basis for the rescission of the provisional sequestration order. The Applicant’s rescission application is fatally defective

¹ Notably, moreover, Rule 6 specifies which other rules apply to motion proceedings. Uniform Rule 6(12) by way of example provides that “*the provisions of Rules 10, 11, 12, 13 and 14 apply to all applications.*”

for this reason also.

[13] Having regard to the Applicant's patently unmeritorious rescission application, taken together with his repeated failures to comply with the Rules of Court and an order of this Court, it is difficult to avoid the conclusion, contended for by Ms Putzier, that the Applicant instituted the rescission application purely in order to delay the finalisation of the sequestration proceedings against him. In these circumstances, as Ms Putzier correctly submitted, a punitive costs order against the Applicant is warranted.

[14] I accordingly make the following order:

1. The Applicant's rescission application is dismissed.
2. The Applicant is to pay the costs of the application on the attorney and client scale.


BARNES AJ
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

Heard: 10 February 2025

Judgment: 12 May 2025

Appearances:

Applicant:

Adv R Liphosa, in person

Respondent:

Adv R Putzier, instructed by Loock Du Pisanie Inc