

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO:2023-054508

DATE: 13-02-2025

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

DATE 13 February 2025

SIGNATURE



10 In the matter between

ESKOM HOLDINGS LIMITED

First Applicant

SENLILE MALGAS

Second Applicant

and

NETCARE HOSPITALS (PTY) LTD T/A

Respondent

20 NETCARE 911

J U D G M E N T

BARNES, AJ: This is an application by the Applicants for the removal of this matter (an opposed rescission application) from the roll.

The application is made from Bar and is not brought as a substantive application on notice of motion supported by

affidavit as it ought to have been. Nor is the application accompanied by a tender of the wasted costs for today, as in the Court's view, it ought to have been.

The application for removal is made on the basis that the notice of set down received by the Applicants stated that the matter had been set down on the unopposed roll. It is common cause that this was a typographical error on the notice.

Counsel for the Applicants submitted that but for
10 this error, the Applicants would have been ready to proceed with the opposed application today. This submission is, in the Court's view, wholly unconvincing for the following reasons:

1. The Applicants have failed, without explanation, to file their heads of arguments in this matter, which heads of argument were due as far back as January 2024; and
2. The notice of set down was served on the Applicants as far back as October 2024, albeit containing the
20 typographical error I have mentioned. This however occurred in circumstances in which the only application pending between the parties is this opposed rescission application. In these circumstances if the Applicants were not in fact alive to the error, a simple enquiry would have revealed

it.

The Applicants ought, in the Court's view, to have made this simple and obvious enquiry particularly as *dominus litis* in the matter.

Quite apart from the submissions made very convincingly by counsel for the Respondent, Ms Carstens, a perusal of the documents on CaseLines reveals that the Applicants have, over an extended period of time, failed to prosecute this matter with reasonable diligence.

10 Notwithstanding this, I am, in all the circumstances prepared to give the Applicants a final opportunity to file heads of argument together with an application for condonation. However, I intend to keep the Applicants on a tight reign given their history of tardiness in this litigation.

Furthermore, given the Applicants' failure to bring a formal application for postponement or removal and their failure to tender the wasted costs for today, I intend to make a punitive cost order against them.

In the circumstances, I make the following order.

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O R D E R

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1. The Applicants are directed to file their heads of argument, together with an application for condonation for the late filing thereof, within 5 (five) court days of the date of this order.

2. Should the Applicants fail to deliver their heads of argument as aforesaid, the Applicants' claim will be struck out and consequently:

- (a) the Applicants' rescission application will be dismissed; and
- (b) the Applicants will be directed to pay the Respondent's costs on the attorney and client scale.

3. The Applicants are to pay the wasted costs of today
10 on the attorney and client scale;

4. The application is postponed *sine die*. This is the final postponement in this matter and no further postponement requests will be entertained.

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H BARNES

ACTING JUDGE OF THE HIGH COURT

DATE: 13 February 2025