

REPUBLIC OF SOUTH AFRICA



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

CASE Number: 2021-39526

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
15 August 2025	

In the matters between:

THE EXECUTIVE AUTHORITY OF

SOUTH AFRICA

First Applicant

THE MINISTER OF THE PRESIDENCY

Second Applicant

and

RERANI NETSHILEMA

Respondent

JUDGMENT

H F JACOBS, AJ

[1] On 17 July 2024, Mentz AJ granted an order to strike out the defendants' defence with costs on an attorney and client scale. The defendants did not appear that

day, and thus the order was granted in their absence. This is an application brought by both defendants for the rescission of that order.

[2] The application to strike out was made following an order granted on 5 December 2023 by Leso AJ to compel a response to a rule 35(3) notice issued by the plaintiff, requesting further and better discovery by the defendants, which the defendants failed to comply with. Consequently, the defendants were in default of the order to compel issued by Leso AJ and their appearance at the proceedings before Mentz AJ last year.

[3] The nature of the plaintiff's claim needs to be addressed before I consider the application for rescission. The plaintiff has three claims. Claim A relates to the payment of R2,800,000.00, which represents the difference between her remuneration paid by the defendants from January 2014 to July 2021 at salary level 09, when she asserts she was entitled to payment at salary level 11 during that period.

[4] Claim B is an alternative claim to Claim A for the same amount but as damages. Claim C seeks an order declaring that the plaintiff is entitled to be described in her record of employment with the defendants as "*Assistant Private Secretary To The President Of The Republic Of South Africa*"(sic). Currently, her title is recorded as "Admin Assistant."

[5] The defendants raised two special pleas in response to the plaintiff's claims. One of these pleas was based on the failure to adhere to the notice requirements imposed by Act 40 of 2002. The defendants' plea on the merits challenges the factual assertions made by the plaintiff and the legal conclusions drawn in the formulation of the plaintiff's claims.

[6] Regarding the replication, the plaintiff challenges the defendants' defences, and, according to a minute of the pre-trial conference held on 12 July 2022, the parties agreed to a trial lasting between two and four days, during which both the merits and the quantum of the claims could be resolved.

[7] In the defendant's founding affidavit, their current attorney of record explains that the matter was previously handled by the State Attorney represented by Ms Mahlafore, who resigned on or about 28 February 2023. Ms Mahlafore was responsible for attending to the matter on behalf of the defendants until her resignation. Ms Mahlafore was, therefore, responsible as attorney of record to respond to the plaintiff's Rule 35(3) notice, which gave rise to the order by Mentz AJ and the earlier order of Leso AJ.

[8] The defendants' current attorney of record manages the matter as a caretaker until another attorney of record replaces Ms Mahlafore. Around August 2024, the State Attorney received an enquiry from the Presidency regarding the case's progress and soon found out that a court order dismissing the defendants' defence had been granted. Following this, an investigation was launched. Further enquiry revealed that the State Attorney could not find a handing-over report from Ms Mahlafore. Communication was then made with the plaintiff's attorney of record, which ultimately resulted in the notice of motion in the rescission application and the founding affidavit being served on 29 October 2024. As a result, it took the defendants from August 2024 until the end of October 2024 to initiate this application for rescission.

[9] The timeline derived from the papers clearly indicates that the judgment was not granted in error, and the relief sought cannot, therefore, be granted under Rule 42(1)(a). Rule 42(1)(b) and (c) do not apply to the present matter and are likewise

inapplicable. The relief sought can only be considered under the common law requirements for rescission of default judgments, which include providing a reasonable and acceptable explanation for the default and demonstrating that, on the merits, the defendants have a bona fide defence which, prima facie, has some prospect or probability of success. Ultimately, it must be concluded, after considering all relevant facts and circumstances, that it would be in the interests of justice to order rescission.

[10] In my view, it cannot be concluded that the defendants were in wilful default. The explanation provided by the representative of the State Attorney, who currently oversees the matter, offers a reason for the default. The explanation may seem minimal when considered against the timeline. However, without an explanation or participation in the explanation by Ms Mahlafore, the defendants cannot be held responsible for the somewhat vague explanation, and what they can present by affidavit will always remain somewhat ambiguous, given the circumstances of the case.

[11] The plaintiff contends that the rescission the defendants seek, if granted, would effectively prevent her claim. I disagree. Apart from the further and better discovery she requested, the matter is trial-ready. Judgement can only be granted after hearing evidence, and nothing prevents the defendants, even without a plea, from appearing at the hearing and disputing her claim. I have been informed by counsel for the defendants that they can comply with the order of Mentz AJ within five days.

[12] There is merit in the plaintiff's complaint that she has now been denied justice since 12 November last year, when she could have obtained judgment in her favour by default if it were not for this application for rescission. But her prejudice can

be alleviated if not eradicated by an award of interest at the time of judgment and compensation for the costs she had to incur. The cost order I intend to make will ease her burden in that regard.

[13] Under the circumstances, I make the following order:

1. The order issued by Mentz AJ on 17 July 2024 is rescinded.
2. The defendants are given five days from the date of this order to comply with the order of Leso AJ of 5 December 2023.
3. The defendants are ordered to pay the costs of this rescission application and the application before Mentz AJ on a scale as between attorney and client, with costs to be taxed on scale B.



H F JACOBS
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand-down is on the 15th of August 2025 at 10h00.

DATE OF HEARING: 12 AUGUST 2025

DATE OF JUDGMENT: 15 AUGUST 2025

APPERANCES

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