

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case number: 98595/2015

Case number : 6475/2017

[1] Reportable:	YES / NO
[2] Circulate to Judges:	YES / NO
Signature: 	Date: 13/08/2025

In the matter between:

ROAD ACCIDENT FUND

APPLICANT

and

SICCARDI MAURO ROMEO

RESPONDENT

JUDGMENT

MAAKANE AJ

INTRODUCTION

[1] The Applicant, who was the Defendant in the main actions, seeks an order rescinding two judgments of this court, obtained by the Respondent against it on **4 August 2017** and **09 May 2018** respectively.

[2] Relief sought has been set out in the notice of motion as follows:

“That the judgment and orders granted in favour of the Respondent under case numbers: 98595/2015 and 6475/17 (consolidated) be rescinded and set aside in terms of the common law.”

[3] The application is brought in terms of the common law. It is opposed by the Respondent on various grounds that I will deal with later in this judgment.

BACKGROUND

[4] The Respondent, Plaintiff in the main actions, instituted two delictual claims against the Applicant claiming damages for bodily injuries he allegedly sustained in two separate motor vehicle accidents. These

according to him, occurred on **08 October 2014** (“the first accident”) and **27 April 2016** (“the second accident”) respectively.

[5] In respect of the first accident, Respondent instituted a claim under Case No: 98595/2015. The Applicant defended the action and for this purpose appointed Matabane Inc, a firm of attorneys based in Pretoria. The matter was set down for trial on **2 August 2017** and served before Pretorius J. The issue of quantum was separated from that of merits and postponed *sine die*. At the end of the trial the court in its judgment ruled that the Applicant was liable for 100% of the Respondent’s proven damages. It is common cause that the Applicant was throughout the proceedings on that day, still represented by the said attorneys as well as counsel, Adv. Mogale.

[6] On **30 January 2017**, Respondent instituted another action against the Applicant under Case No: 6475/2017. This was in respect of the second accident. Applicant again defended the action and for this purpose appointed a firm of attorneys, Pule INC. The matter was set down for trial on **9 May 2018** and served before Thobane J. Once again, the issue of quantum was separated from that of merits and postponed *sine die*. Following a trial, the court in its judgment ordered that the Applicant was liable for 100% of the Respondent’s proven damages. Again, in respect of this claim, the Applicant was during the trial represented by the said attorneys, as well as Counsel, Adv. Ndou.

[7] On **27 July 2021** following an application, Vuma J ordered that the two actions be consolidated for determination of the issue of quantum. Prior to the matter going on trial, the Applicant made a monetary offer in full and final settlement of the Respondent's claims. This offer was rejected by the Respondent. The matter was therefore set down for trial on **22 July 2022** and served before Van der Schyff J. The court granted judgment in favour of the Respondent for payment of the capital amount of R3 390 492-00. This amount was in respect of loss of earnings, general damages as well as various other related relief claimed.

[8] On **18 January 2024**, Applicant launched this application. In a nutshell, Applicant alleges fraud. More specifically, it alleges that Respondent lodged these claims under fraudulent circumstances using fraudulent supporting documents.

THE ISSUES

[9] The main issues for determination are whether or not:

- I. The Applicant has met and satisfied all legal requirements at common law for the rescission of the two judgments, and in particular the element of fraud.

- II. The application should or stand to be dismissed on any one or more grounds of opposition raised by the Respondent.

PARTIES' SUBMISSIONS

The Applicant

[10] As regards the first claim, Ms Rangata for the Applicant conceded that the motor vehicle accident did take place. She however contended that Applicant did not sustain the injuries alleged in his particulars of claim, namely:

"Severe lumbar spine injury."

[11] She went on and contended that these injuries were long pre-existing, meaning they were not caused by or did not result from the accident. In support of this contention, she referred to and relied on certain medical reports, namely:

- (i) A Labour or Workman's Compensation Form IV.C1.4 completed by Dr Nay in respect of the Respondent being a First Medical Report in Respect of an Accident dated 9

October 2014. According to his medical examination, the Respondent:

“... while loading a patient onto an ambulance, injured [his] lumbar spine.”

and

“Previous lumbar Spine injury 2007/2008”

- (ii) A Medico Legal Report compiled by Dr Joseph Sibanyoni, an Orthopaedic Surgeon obtained on instructions of Applicant’s attorneys Matabane INC. The report is dated **22 May 2017**. In his concluding paragraph he states the following:

*“Patient presented to hospital with back pain but he already had the disc problem from injury sustained in 2008... I am of the opinion that Mr Siccardi was no victim of MVA or PVA but injured his back at work. I am also of the opinion that his future medical expenses are related to injury sustained in **2008** and have nothing to do with the **2014** injury...”*

- (iii) Report compiled by SKW Matima Assessors dated **22/06/2017**. They also, in their concluding paragraph make the following remarks:

*“On perusal of the Netcare Patient Treatment Form for **09th October 2014** under a section entitled “events leading to injury or illness” it is clearly stipulated as follows;*

Bent down to pick up his boots + experienced severe back pain”

As a result of what our investigation uncovered, we believe that the Plaintiff’s claim was lodged under fraudulent grounds and should be handed over to your Forensic Department for Further investigation.”

(iv) A report compiled by the Forensic Department of the Respondent dated **3 November 2023**.

[12] In respect of the second accident, she submitted that such an accident did not occur. The basis for this contention is that the South African Police Services (“SAPS”) at Lenasia South Police Station do not have records of such an accident being reported.

[13] She submitted that although the Applicant was legally represented during the trial of each of the claims on merits, the forensic report was not available. For this reason, they could not have presented the evidence.

[14] On the issue of delay, she conceded that the period of delay of six and or seven years is indeed quite lengthy. She however, contended once again, that the delay was due to the fact that the forensic report was still outstanding.

[15] Finally, she submitted that the Applicant has a *bona fide* defence to the Respondent’s claim, namely that these claims were

launched under fraudulent circumstances, using fraudulent supporting documents, by the Respondent.

Respondent's Submissions

[16] Counsel for the Respondent submitted that there is no merit in the application and that same stands to be dismissed with costs. More specifically, he argued and relied on grounds of opposition which are to the following effect:

- (i) Applicant has failed to satisfy any of the requirements necessary to grant rescission under the common law, and in particular fraud.
- (ii) There has been undue delay on the part of Applicant in launching this application. The delay extends over a period of years, more specifically approximately (6) six and seven (7) years respectively since the granting of the judgments now sought to be rescinded.
- (iii) Applicant is precluded from challenging these judgments because among others, it was in respect of each of the judgments on the merits, legally represented by both an attorney and counsel. Applicant was therefore

throughout, aware of the judgments against it. After consolidation of the matters, Applicant even made an offer of settlement, which Respondent rejected.

- (iv) Over and above that, the suspicion of fraud was already there and Applicant was aware thereof long before the matters went on trial, and or any of the judgments could be granted. The reports on which it is relying, were long there and available. Applicant failed to present this evidence when they had all the opportunity to do so, during the trials.
- (v) Applicant has failed to show good cause, that is giving a reasonable or acceptable explanation for its default. Over and above that, it has failed to show that it has a *bona fide* defence to the Respondent's claims.

LEGAL POSITION

Onus of proof: Fraud

[17] It is trite law that an Applicant who seeks the setting aside of a judgment based on fraud, must allege and prove that:

- (i) The successful litigant was a party to the fraud.

- (ii) The evidence tendered was as a matter of fact, incorrect.
- (iii) The evidence and or misrepresentation was made fraudulently, with the intention to mislead the court.
- (iv) It diverged to such an extent from the true facts that the trial court would, if the true facts had been placed before it, have given a judgment completely different from that which it was induced and misled by the incorrect evidence to give.
- (v) The Applicant was unaware of the fraud and only became aware thereof after the judgement was delivered.

See: **Fraai Uitzicht 1798 Farm (Pty) Ltd v McCulloug and Others (2020) ZSCA 60 at paras 16-17.**

[18] Authorities are clear that where a litigant is aware of fraud, meaning the tendering of fraudulent evidence and or use of fraudulent documents against it, but fails to lead such evidence and or bring this to the attention of the court before the granting of judgment against it, such a litigant will be regarded as the author of its own misfortunes.

[19] In **Port Edward Town Board v Kay and Another** 1994 (1) SA 690 (D&C) the position was summarised as follows:

"If regard is had to the reluctance of Courts to have cases reopened which have been contested in Court and in which a final judgment has been given, even a case where new documents have subsequently come to light, there seems little justification for allowing rescission in the case where a party, knowing that his opponent has fraudulently concealed evidence which he knows to be of decisive importance to a decision of his case, chooses not to adduce such evidence to the Court before judgment.

"In such a case the party's misfortune is as much due to his own improvidence as to the fraud of his opponent. His position is not very different from that of a litigant who, knowing that there is a witness who can lend him material support to his case, neglects to call him."

See also: **Brown and Others v The Financial Services Board and Others** (unreported) WCHC, Case No: 979/2007.

GOOD CAUSE

[20] In addition to all of the above, the Applicant bears the onus to show good cause, which entails to:

- (i) Give a reasonable explanation for its default.
- (ii) Show that the application is done in good faith.

- (iii) Show and demonstrate that it has a bona fide defence which has some prospects of success.

[21] In **Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills (Cape) 2003 (6) SA (1) (SCA)** Jones AJA stated:

"Courts generally expect an applicant to show good cause (a) by giving a reasonable explanation of his default (b) by showing his application is made bona fide, and (c) showing that he has a bona fide defence to the plaintiff's claim which prima facie has some prospects of success."

(At paragraph 11)

See also: **Chetty v Law Society, Transvaal 1985 (2) SA 756 (A)**

[22] Similarly, In **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 confirmed the onus that rests on the Applicant as follows:

"Requirements for rescission of a default judgment are twofold. First, applicant must furnish a reasonable and satisfactory explanation for its

default. Second, it must show that on the merits it has a bona fide defence which prima facie carries some prospects of success. Proof of these requirements is taken as showing that there is sufficient cause for an order to be rescinded. A failure to meet one of them may result in the refusal of the request for rescission."

[23] It is also trite law that where a litigant is aware of legal action against him , but decides not to defend and or oppose and or put his version before court under circumstances where he is in a position to do so, but chooses not to, whatever reason or motive for his failure to do so may be, such a party is in wilful default.

[24] In **Maujean t/a Audio Video Agencies v Standard Bank of SA Ltd 1994 (3) SA (3) 801 (CPD)** the court referred with approval to an earlier decision of **Hendriks v Allen 1928 CPD** where the following was said:

"If he knows that a case is coming on, and whatever his motive, deliberately refrains from entering appearance, then it seems to me there is wilful default. His reason need not be, to my mind, that he knows he has no defence; he may have some other motive, but, knowing that he is summoned to appear, if he deliberately fails to enter an appearance, for whatever motive, it seems to me there is wilful default."

[25] Similarly, the Constitutional Court in Zuma (Supra) drew a distinction between a litigant who is in default because he was not aware of the legal action against him on the one hand, and the one

who is aware but chooses for whatever reason not to take any steps to defend the action on the other. It concluded that the latter is indeed in wilful default. The court put the position as follows:

“Our jurisprudence is clear: where a litigant, given notice of the case against them and given sufficient opportunities to participate, elects to be absent, this absence does not fall within the scope of the requirement of rule 42(1)(a). And, it certainly cannot have the effect of turning the order granted in absentia into one erroneously granted.”

(At paragraph 61)

[26] Additionally, the Constitutional Court also emphasized that a litigant who is aware of legal proceedings against him and believes that he has a *bona fide* defence to the action must present his case and defence during the trial and or hearing of the matter. In other words, he is not entitled to allow judgment to be taken against him and only later try and raise his defence in an application for rescission of judgment. The court held:

“Mr Zuma’s bringing what essentially constitutes his “defence” to the contempt proceedings through a rescission application, when the horse has effectively bolted, is wholly misdirected. Mr Zuma had multiple opportunities to bring these arguments to this Court’s attention. That he opted not to, the effect being that the order was made in the absence of any defence, does not mean that this Court committed an error in granting the order. In addition, and even if Mr Zuma’s defences could be relied

upon in a rescission application (which, for the reasons given above, they cannot), to meet the “error” requirement, he would need to show that this Court would have reached a different decision, had it been furnished with one or more of these defences at the time.”

(At paragraph 64)

See also: Port Edward Town Board (Supra) Brown & Others (Supra)

UNDUE DELAY

[27] At common law as well as Rule 42 (1) of the uniform rules of this court, there is no specific or exact time limit within which an application for rescission of judgment is to be launched. However, the legal position is that this has to be done within a reasonable time after an Applicant comes to know about the judgment against him.

[28] The Authors of Herbstein and Van Winsen: The Civil Practice of the High Court of South Africa: Fifth Edition (Volume 1) summarise the common law position as follows:

“Although Rule 42 lays down no time limit within which rescission of a 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 judgement.

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.

If the applicant is to blame, the court is not likely to order rescission."

(At page 930)

[29] Having said that, it is clear that undue delay in itself is fatal to an application for rescission of judgment, justifying dismissal of same. The reason for this is that the court is entitled in such a situation to draw an inference that the Applicant has acquiesced himself with the judgment and orders against him.

[30] In **Schmidlin v Multisound (Pty) Ltd 1991(2) SA 151 (C)** the court held with regard to undue delay held:

"Delay is however, relevant in this case, not per se, but because that judgment was being executed...Acquiescence in the execution of a judgment must surely in logic, normally bar success in an application to rescind on the same basis as acquiescence in the very granting of the judgment itself would."

[31] In **First National Bank of SA v Van Rensburg N.O. and Others** 1994 (1) SA 677 (TPD) the court once again had to deal with the issue of undue delay, where the rescission of judgment can be dismissed simply on the basis of undue delay where the Applicant relies on either Rule 42 (1) (a) and or the common law both of which require that such an application be launched within a reasonable time. In this regard Eloff JP held:

“Even if it can be said that the order granted by Coetzee J was erroneously sought or contains a patent error, the application should, in my view have been dismissed by reason of the long-time lapse.”

(Van Rensburg (supra) at page 681 B)

[32] Referring specifically to reliance on the common law as in *casu*, Eloff JP expressed himself as follows:

“I turn to the appellant’s reliance on the common law. An interesting argument was submitted to us on the common law, but again the answer is that which I gave in relation to the attempt to invoke Rule 42 (1). As was said in the Genticuro case, if the common law is sought to be invoked the application should be made within a reasonable time. A reasonable time has lapsed and there is no explanation for the delay.”

(At page 681 G-H)

APPLYING THE LAW TO THE FACTS

The Applicant’s onus to prove fraud.

[33] In my view, taking into account the totality of the evidence presented on affidavits, the Applicant has failed to prove any of the requirements of fraud on the part of the Respondent and or that fraudulent documents were used and or evidence adduced all of which induced the court to grant the judgment now sought to be rescinded.

[34] In this regard, it is important to bear in mind that the Respondent in his answering affidavit denies all the allegations of fraud. He went further and, in some detail, set out the general circumstances under which each of the accidents occurred and the nature and extent of the of the injuries he sustained. In respect of the second accident, the occurrence of which Applicant disputes, Respondent went on to provide the registration details of the vehicle involved, ownership thereof, the identity of the driver, names of witnesses, police report and reference number at the Lenasia Police Station. Despite all of these and most importantly, the Applicant failed to file a replying affidavit.

Undue delay

[35] As already pointed, the two judgments sought to be rescinded were granted on **4 August 2017** and **9 March 2018** respectively. On each of these occasions, the Applicant was legally represented by

both an attorney as well as counsel. It was therefore throughout this lengthy period aware of the judgments against it. This application was launched about six and seven years respectively after the dates on which judgments were granted. There is no doubt therefore that this is an unreasonably long period of delay.

[36] The Applicant's contention that the delay was due to the fact that the forensic investigations were still ongoing is rejected. The Forensic Department is still part and parcel of the same organisation, namely the Applicant. The Applicant has financial resources and was in a position to speed up their investigation or even outsource the service if there were capacity challenges.

[37] The suspicion of fraud was long there, even before the first judgment was granted. Applicant was already in possession of reports by Dr Nay, SKW Matima Assessors, as well as Orthopaedic Surgeon Dr Sibanyoni, all of which make mention of the suspicion. In any event, the Forensic Report does not take the matter any further but merely refer to all other reports that Applicant already had, long before any of the judgments could be granted.

Respondent's conduct

[38] I find it necessary to once again look into the Applicant's conduct and, having done so consider and determine, what legal

conclusions or inferences can be drawn therefrom. In particular the following common cause facts are relevant:

- (i) Prior to any of the two judgments being granted the Applicant was already in possession of the three expert reports to which I have referred. In all these reports, a suspicion of fraud had already long been raised.
- (ii) When both judgments were granted, on **4 August 2017** and **9 May 2018** respectively, the Applicant was on both occasions represented by both an attorney as well as Counsel. It failed to lead any evidence of fraud, despite having had an opportunity to do so. In my view this clearly demonstrates that the Applicant had from the beginning, acquiesced itself in the very granting of the judgment against it.
- (iii) Before the matter went on trial before Van der Schyff J on **22 July 2022**, on issue, of quantum the Applicant made an offer in settlement of the Respondents claims. In other words, the offer was intended to fully and finally satisfy the judgments against it. These are the very same judgments that Applicant now seeks to have rescinded.

[39] Having carefully considered the totality of the Applicant's conduct set out above, I am satisfied that the only reasonable inference to be drawn from such conduct, is that it throughout

intended to be bound by the orders of the court, and has therefore acquiesced itself in the judgements against it.

[40] In applying this principle Innes CJ in **Dabner v South African Railways and Harbours 1920 AD 589** expressed himself as follows:

“If the conduct of an unsuccessful litigant is such as to point indubitably and necessarily to the conclusion that he does not intend to attack the judgment, then he is held to have acquiesced in it.”

(At page 594)

[41] In **Standard Bank v Estate van Rhyn 1925 AD 266**, the same Learned Chief Justice (as he then was) again confirmed the principle as follows:

“If a man has clearly and unconditionally acquiesced in and decided to abide by the judgment, he cannot thereafter challenge it.”

See also: **Natal Rugby Union v Gould 1999 (1) SA 432 (SCA)**

[42] Similarly, in **Tswelopele Non-Profit Organisation and Others v City of Tshwane Metropolitan Municipality and others 2007 (6) SA S11 (SCA)** the Supreme Court of Appeal held:

“Peremption of the right to challenge a judicial decision occurs when the losing litigant acquiesces in an adverse judgment. But before this can

happen, the court must be satisfied that the loser has acquiesced unequivocally in the judgment. The losing party's conduct must 'point indubitably and necessarily to the conclusion that he does not intend to attack the judgment...'

See also: **Gentiruco AG v Firestone SA (PTY) Ltd 1972 (1) 589 at 600 A - B**

[43] This being the case, the Applicant's attempt, after an unexplained lengthy period of seven years delay, to try and suddenly challenge the judgments in which it has clearly and unequivocally acquiesced itself is completely misdirected. The application is not *bona fide* and cannot legally be justified.

Good Cause

[44] Having said that, I have no difficulty in finding that the Applicant has failed to show and demonstrate good cause. Over and above that, it failed to demonstrate that it has a *bona fide* defence to the Respondent's claims, which carries some prospects of success.

CONCLUSION

[45] Taking into account all of the factors set out above, I am satisfied that the Applicant has failed to discharge the onus that rests on it, and

or make a proper case justifying the granting of the relief sought. It follows therefore that the application has to fail.

COSTS

[46] It is generally accepted that costs follow the outcome. I do not see any reasons to deviate.

ORDER

Consequently, I make the following order

[47] The rescission application is dismissed with costs, such costs to include costs consequent upon employment of two Counsel.

A handwritten signature in dark ink is visible above a solid black rectangular redaction box. The signature appears to be 'S. MAAKANE'.

SS MAAKANE

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION,

PRETORIA

DATE HEARD : 13 MAY 2025

DATE OF JUDGMENT : 13 August 2025

APPEARANCES

For the Applicant : Ms P.B Rangata (Attorney)

Instructed State Attorney

by Pretoria

For the Respondent : Adv I. Zidel SC

Adv NM Phakama

Instructed

By DE BROGLIO ATTORNEYS Inc

Pretoria