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**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 33915/2020

(1) REPORTABLE: YES / NO.

(2) OF INTEREST TO OTHER JUDGES: YES / NO.

(3) REVISED.

DATE: 8/8/2025

SIGNATURE

In the matter between:

P[...] S[...] M[...]

(ID: 6[...])

Applicant

and

R[...] T[...] M[...]

(ID: 7[...])

Respondent

JUDGMENT

ML HASKINS, AJ

1. The parties herein were married to one another on 7 August 1997, at Polokwane, in community of property. Four children were born of the marriage between the parties.
2. On or about 29 July 2020, the Respondent issued a summons wherein a decree of divorce, together with an order for forfeiture was sought.
3. The Applicant defended the action and filed his subsequent pleadings.
4. On or about 21 October 2021, after the Applicant had failed to make full and proper discovery, the Respondent issued an application to compel in terms of which an order compelling discovery was obtained.
5. On 4 May 2022, this Court granted an order in terms of which the Applicant was compelled to discover.
6. The Applicant, who was then represented by attorneys, failed to discover as he was ordered to do in terms of the order of 4 May 2022.
7. The Respondent again approached this Court and obtained an order striking the Applicant's plea on 21 September 2022.
8. Subsequently, the divorce proceedings were then enrolled by the Respondent for 19 January 2023 on the unopposed roll before Tolmay J, who requested further evidence relating to certain property issues.
9. The unopposed divorce was then postponed, and a supplementation of papers was sought. It seems that there was a supplementary affidavit filed by the Respondent on 18 March 2023 and deposed to by her on 18 March 2023 and in terms whereof she dealt with the evidence in support of the forfeiture claim and the claims in respect of the immovable properties.
10. The divorce was again enrolled for hearing on 3 April 2023, when the matter then came before Acting Judge Strijdom who granted the unopposed divorce.

11. Before dealing with the contents of the order issued by Strijdom AJ, it is necessary to note that in the Respondent's particulars of claim in the divorce action, the Respondent claimed:

"...1. A decree of divorce.

2. An order that the Defendant forfeits any benefit from the marriage in community of property.

3. The Defendant is employed by the Department of Rural Development and Land Reform. By virtue of the said employment, the Defendant is a member of the Government Employees Pension Fund ('GEPF'), reference number: 9[...] ('the Fund'). The Plaintiff is entitled to 50% of the Defendant's pension interest in the Fund as defined in Section 1 of the Divorce Act. The Fund is ordered to pay 50% of the pension interest to the Plaintiff in terms of Section 37D(4) of the Pension Funds Act.

4. That the Defendant is ordered to pay:

*4.1 maintenance contribution for **M[...]’S LIVING EXPENSES** in the amount of **R7,664.57** per month ...*

*4.2 a contribution of 50% of all the excess medical costs not covered by the Plaintiff's medical aid incurred in respect of and reasonably required by **M[...]**, ...*

*4.3 maintenance contribution for **R[...]’S LIVING EXPENSES** in the amount of **R6,948.00** per month ...*

*4.4 a contribution of 50% of all the excess medical costs not covered by the Plaintiff's medical aid incurred in respect of and reasonably required by **R[...]** ...*

*4.5 50% contribution towards **R[...]’s** annual university tuition fees ...*

*4.6 a once-off 50% payment in the amount of **R28,000.00** towards the total **outstanding debt** of **R[...]’s University Tuition fees** for the 2020 academic calendar year ...*

*4.7 a contribution of 50% of costs in respect of **R[...]**'s school / academic textbooks ...*

*4.8 maintenance contribution for **R[...]’s LIVING EXPENSES** in the amount of **R6,948.00** per month ...*

4.9 a contribution of 50% of all the excess medical costs not covered by the Plaintiff's medical aid incurred in respect of and reasonably required by R[...]2, ...

4.10 50% contribution towards **R[...]2's annual University Tuition ...**

4.11 a once-off 50% in the amount of **R6,000.00** towards the total **outstanding debt of R[...]2's annual Tuition fees ...**

4.12 a contribution of 50% of costs in respect of **R[...]2's school / academic ...**

5. Costs of suit, only if defended.

6. Further and/or alternative relief."

12. The order granted by Strijdom AJ included that it was ordered that:

"1. A decree of divorce be granted.

2. The Defendant shall forfeit any benefits from the marriage in community of property.

3. The Plaintiff shall retain her pension interest in respect of her pension with the Government Employees Pension Fund with member number: 9[...] as her sole and exclusive property.

4. The Defendant shall retain his pension interest in respect of his pension with the Government Employees Pension Fund with member number: 9[...] as his sole and exclusive property.

5. The Defendant shall retain the immovable property situated at Portion Number 178 (a Portion of Portion 4) of Honingnestkrans Farm ... and all furniture and effects contained therein as his sole exclusive property and shall be solely liable for any and all costs in respect of the transfer and/or further endorsements thereof after the date of this order.

6. The Defendant shall retain the immovable property situated at Portion Number 135 of Piet Potgietersrust Town and Townlands Farm 44 ... as his sole exclusive property and shall be solely liable for any and all costs in respect of the transfer and/or further endorsements thereof after the date of this order.

7. The Defendant shall retain the immovable property situated at Erf Number 1[...] Lebokwakgomo-F ... in Limpopo Province ... and all furniture

and effects contained therein as his sole exclusive property and shall be solely liable for any and all costs in respect of the transfer and/or further endorsements thereof after the date of this order.

8. *The Plaintiff shall retain the immovable property situated at Portion Number 11 of Erf 2[...], Philip Nel Park ... and all furniture and effects contained therein as her sole exclusive property ...*

9. *The Plaintiff shall retain the immovable property situated at Erf Number 7[...] Piet Potgietersrust Ext 1 ... situated at Limpopo Province ... and all furniture and effects contained therein as her sole exclusive property ...*

10. *Each party shall sign the necessary documents to transfer the respective properties into the other party's name ...*

11. *Any and all vehicles in the individual names of the parties shall be kept as their respective sole and exclusive property.*

12. *All other assets as owned and in the possession of the parties not specifically detailed herein ... shall be retained by each party respectively.*

13. *Each party shall be liable for the payment of all existing liabilities incurred before and during the subsistence of the marriage in the name of such party as at the date of the granting of this order.*

14. *The Defendant is ordered to pay:*

14.1 *maintenance contribution for M[...] M[...] M[...]’s living expenses in the amount of **R7,664.67 (Seven Thousand, Six Hundred and Sixty-Four Rand and Sixty-Seven Cents) per month ...***

14.2 *a contribution of 50% of all the excess medical costs not covered by the Plaintiff’s medical aid incurred in respect of and reasonably required by M[...] ...*

14.3 *the costs of Kgomotso occupational therapy ... in respect of M[...] ...*

15. *The Defendant is ordered to pay the Plaintiff’s costs of suit.”*

13. Although there may have been an amendment of some sorts of the particulars of claim which is not apparent, it is not clear why the relief which was claimed in the Respondent’s summons differs drastically from the relief which was granted by Strijdom AJ in the decree of divorce obtained on an unopposed basis.

14. It is alleged by the Respondent in an answering affidavit deposed to by her attorney that the Applicant herein attended Court when Tolmay J dealt with the case and it is further stated in the answering affidavit, *inter alia*, as follows:

“...6.12 On 3 April 2023, the matter came before Judge Strijdom who granted the order after hearing evidence from both the Applicant and the Respondent even though the Applicant’s plea was struck out.

6.13 As such, the Applicant had ample opportunity to partake in this matter even after his plea was struck.

6.14 This order was not granted in his absence and despite his presence and submissions to the Court, the Court deemed it fit ann(sic) appropriate to grant the order as sought ...”

15. No replying affidavit seems to have been filed by the Applicant.

16. The Applicant brought this application in terms of Rule 31, *alternatively* Rules 30, 35 and 6 of the High Court Rules to cancel, rescind, amend and/or suspend the final decree of divorce obtained by the Respondent before Honourable Acting Judge Strijdom on 3 April 2023.

17. The Applicant has proceeded in the proceedings unrepresented and in person, and he also appeared in person when the matter was argued.

18. Although the Applicant filed a document purporting to be a notice of motion, it seems that a document which purports to be an notice of motion is in the form of a summons and, in fact, the Applicant in the document informs the Respondent that he thereby institutes action and an application, seeking relief / an order on the grounds set out in the founding affidavit.

19. The Applicant, annexed to his “*application*” as an annexure “B” a founding affidavit particulars of claim. It is certainly not clear exactly what the relief is which the Applicant has sought in these proceedings, and the documentation is wrong and confusing.

20. In what appears to be a founding affidavit and is named such, the Applicant states that his application here is in terms of Rule 31, *alternatively*, 30, 35 and 6 to cancel / rescind / amend / suspend a final divorce order issued by Judge Strijdom AJ in the High Court of South Africa, Gauteng Division, Pretoria on the 3rd of April 2023, and to condone any late submission due to defects.

21. The Applicant then deals with the decree of divorce, clause for clause, seeking to illustrate why such clauses ought to be replaced and then the Applicant states¹ that “*as a result of the above defects*”, it is in the interest of justice in terms of Rule 31, alternatively, Rule 30A, 35 and 6 to cancel, rescind, amend, suspend, or remove the operation of the Final Divorce Order to comply with the constitution and the law on dissolution of civil marriage that apparently existed over 25 years fairly. The Applicant also indicated and alleged that “*it is in the interests of justice that the Respondent provides for a top-up amount to ensure a fair share of pension funds in line with the Pension Fund Act on civil marriage in community of property*”.

22. The Applicant then, in heads of argument, attempted to make out certain arguments, which do not appear to be always supported in totality by that which has been alleged in the affidavit of the Applicant.

23. The Respondent contends that the Applicant has brought the present application mistakenly relying on Rules 31, alternatively Rules 30, 35 and 6 of the High Court Rules to cancel, rescind, amend and/or suspend the final decree of divorce obtained by the Respondent, as these rules do not at all deal with the cancellation, rescission, amendment and/or suspension of the Court order.

24. The Respondent furthermore argues:

22.1 an application for rescission of the Court order can only be made in terms of Uniform Rule 31(2), Rule 42 or the common law;

22.2 that no such application has been made before this Court;

¹ Para. 24, p. 060-102

22.3 that because the decree of divorce was neither granted by default, nor in absence of the Applicant, nor in error, the Applicant cannot rely on Rule 31(2) or Rule 42(1)(a) of the Uniform Rules of Court;

22.4 the Applicant, so the Respondent contends, in terms of Rule 42(b) and (c), has neither illustrated any ambiguity or error or mistake common to the parties and, as such, these rules are not applicable.

25. Consequently, the Respondent contends, any rescission application contemplated by the Applicant can only be made in terms of the common law which must be brought within a reasonable time and must also illustrate good cause.

26. The Applicant has not brought the application within a reasonable time and does not set out any good cause, according to the Respondent.

27. Counsel for the Respondent correctly points out that the Applicant is apparently seeking the rescission of, or some other related relief in regard to the order of Strijdom AJ, but not the order that struck out his plea and, accordingly, if any rescission whatsoever were to be granted, it would leave the Applicant in a position that he in any event cannot proceed to trial in the action as his defence and plea has been struck out.

28. It is trite that in seeking a rescission of judgment under the common law, good cause must be shown for seeking such rescission and such an application must be brought within a reasonable time from the time of becoming aware of the order which is sought to be set aside.

29. The test for “good cause” requires that an Applicant set forth a reasonable explanation for the default and a *bona fide* defence. Regarding the issue of “good cause shown” in an application for rescission, counsel for the Respondent relied upon the oft quoted judgment of **Chetty v Law Society Transvaal**, 1985 (2) SA 756 (A) at 746J to 765, wherein it was stated:

“The Appellant’s claim for rescission of judgment confirming the rule nisi cannot be brought under Rule 31(2) or Rule 42(1), but must be considered in

*terms of the common law, which empowers the Court to rescind a judgment obtained on default of appearance, provided sufficient cause therefore has been shown (see **De Wet & Others v Western Bank**, 1979 (2) SA 1031 (A) at 1042 and **Childerley Estates Stores v Standard Bank SA Limited**, 1924 OPD 163). The term ‘sufficient cause’ (or good cause) defines precise or comprehensive definition for many and various factors are required to be considered (see **Carin S Executors v Gaam**, 1912 AD 1818 at 186 per Innes JA), but it is clear that in principle and in the longstanding practice of our Courts two essential elements ‘sufficient cause’ for rescission of judgment by default are:*

- (i) the party seeking the relief must present a reasonable explanation for his default; and*
- (ii) that on the merits such party has a bona fide defence which, prima facie, carries some prospect of success (**De Wet’s** case supra at 1042; **PE Bosman Transport Works Committee & Others v Big Bosman Transport (Pty) Ltd**, 1980 (4) SA 799 (A); **Smith NO v Brummer NO & Another, Smith NO v Brummer**, 1954 (3) SA 352 (O) at 357-8).”*

30. The Respondent through counsel has, correctly in my view, submitted:

28.1 the Applicant was not in default as he was present in Court when the order was granted and, accordingly, the common law cannot find application;

28.2 the Applicant further placed no defence before the Court relating to his non-compliance with the application to compel or to the divorce proceedings which would satisfy the criterium of “good cause”.

31. Reference was made to the Constitutional Court judgment of **Zuma v Secretary of the Judicial Commission of Enquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State & Others**, [2021] ZACC 28, where the Constitutional Court restated the two requirements for the granting of an application for rescission that need to be satisfied under the common law as being the following:

29.1 first, the Applicant must furnish a reasonable and satisfactory explanation for its default;

29.2 second, it must show that it has a *bona fide* defence which *prima facie* carry some prospect of success on the merits.

32. A failure to meet one of them may result in refusal of the request to rescind, according to the said Constitutional Court judgment.

33. It appears from the papers filed in the matter herein, and appears to be common cause, that at all times the Applicant was aware of the proceedings and, in fact, also attended the proceedings. The Applicant confirmed this in the Court when appearing to argue this application. The Court order which the Applicant seeks to have dealt with, was not obtained in his absence and was not obtained by default.

34. The opposition to the relief sought by the Applicant is further summarised as follows in the answering affidavit:²

“2.2.1 The application is defective and irregular;

2.2.2 Relief sought is unclear; and

2.2.3 matter is res iudicata.”

35. The Respondent, in the answering affidavit deposed to by her attorney, raises that the Respondent is uncertain as to which case she is called to meet as the relief sought does not comply with the Rules of Court, nor is it based on the common law. It is said that the Applicant laid no basis whatsoever for the relief he seeks and has brought the application almost two (2) years after the granting of the order he seeks to rescind. The delay has not been explained, and this delay of almost two (2) years is excessive.

36. The Respondent, in the answering affidavit, complains of the manner in which the Applicant has brought these proceedings “*on notice of motion*” where such notice

² Para. 2.2, p. 063-4

of motion neither complies with the short or long form prescribed by the rules. There is non-compliance with the Rules of Court, according to the Respondent.

37. The relief being sought by the Applicant, as is contended on behalf of the Respondent in the answering affidavit, is that the “*notice of motion*” does not set out what relief is sought, and certain averments are not even made under oath.

38. It is very unclear on what basis the relief is being sought as no case is made out and none of the rules relied upon finds application. The Applicant has enclosed a draft order seeking a decree of divorce on terms he wants it to be, but the Respondent complains of being severely prejudiced in not knowing what case she has to answer or to meet.

39. Whereas no proper application for rescission of the order is before the Court, *alternatively* no case is made out therefor, an order of Court issued by Strijdom AJ remains.

40. The decree of divorce has been granted in the form of the order of Strijdom AJ. A different order cannot simply be issued by this Court replacing the order of Strijdom AJ (as he then was). If a basis therefor existed and if the order were considered by the Applicant to be an incorrect one erroneously granted, then an appeal would have probably been a more appropriate procedure and not the type of procedure brought by the Applicant herein.

41. Whilst the application was being argued by the Applicant in person, this Court invited the Applicant to make the submissions that the Applicant wanted to make in support of his argument, whilst the Applicant was informed that this Court would only have regard to affidavits placed before it and evidence before it, and accordingly, that argument raised by the Applicant which was not supported by facts on affidavit, would not be relevant in considering the outcome of the application.

42. Unfortunately, the Applicant did make a variety of submissions which, like his heads of argument, are not supported by evidence in these proceedings.

43. It is so that this Court has a measure of sympathy for a litigant in person. The Applicant is obviously entitled to bring proceedings as such even if they may be technical or complex, but the failures and misdirections of the Applicant as referred to hereinbefore, have resulted therein that the application herein is not procedurally correct and cannot succeed.

44. There is no reason why the costs ought not to follow the result. The application is defective, unsubstantiated, without merit and the Respondent has been successful in her opposition thereto. The Applicant ought accordingly to be ordered to pay the costs of the Respondent.

45. In the premises, the order I make is as follows:

1. The application brought herein by the Applicant is dismissed.
2. The Applicant is ordered to pay the Respondent's costs on scale B.

ML HASKINS, AJ
Acting Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 30th day, June 2025

Judgment delivered: 11th day, July 2025

APPEARANCES:

For the Applicant: In person

For the Respondent: Adv. KA Slabbert (Wilson)
Instructed by:
Zaharieva Inc.