

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: A30/2024

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
2025-09-17	
DATE	SIGNATURE

In the matter between:

LESETJA WILFRED LESO

Appellant

and

CHANGING TIDES 17 (PROPRIETARY) LTD N.O.

Respondent

This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for handing down is deemed to be 17 September 2025.

JUDGMENT

POTTERILL J

Introduction

[1] The appeal is before us pursuant to leave to appeal being granted by the Court *a quo* that had dismissed the appellant's application to rescind a monetary default judgment. The appellant is Mr Lesetja Wilfred Leso [Mr Leso] and the respondent is Changing Tides 17 (Proprietary) Ltd N.O. [Changing Tides].

Common cause facts

[2] Judgment was granted by the Registrar of the Court on 28 September 2018 for the amount of R816 433.10 plus interest on the amount at the rate of 10.80 % p.a. calculated and capitalised monthly in advance in terms of a loan agreement secured by mortgage bond.

[3] The summons was served on the incorrect *domicilium* address by means of affixing. It was served at a previous property of Mr Leso in Centurion.

[4] On 25 September 2020 Mr Leso was personally served with a Rule 46A application to declare the property specially executable, in lieu of non-payment. On 3 February 2021, the hearing of the Rule 46A, was attended by Mr Leso. As he had no defence to the Rule 46A the Rule 46A was granted. Mr Leso admitted that he had not serviced the bond and as at January 2021 the arrear amount was in excess of R350 000 with the last payment made on 11 March 2020 of R120 000. The reason for non-payment was that the South African Police Services failed to reinstate him, despite legal action being taken to reinstate him. He informed the Court that he never received the summons.

[5] On 1 July 2021 the warrant of attachment was served. On 28 July 2021 Mr Leso served an application for rescission of the judgment.

[6] On 4 November 2021 Mr Leso brought an urgent application to interdict the sale in execution, but the application was struck from the roll due to the Court finding the application was not urgent. On 5 November 2021 the property was sold to a third party and the property was registered in the name of the purchaser on 28 July 2022.

[7] On 7 February 2023 the application for rescission was dismissed.

[8] Mr Leso did not stay on the property and it was not his primary residence. There was a spaza shop tenant on the property.

Argument on behalf of Mr Leso

[9] It was from the outset conceded that the ground of appeal raised that the section 129 notice in terms of the National Credit Act 34 of 2005 [the NCA] was not served personally is bad in law, was not relied on and abandoned as a ground of appeal.

[10] It was argued that there was conflicting case law as to whether a Registrar of the High Court could have granted a default judgment based on the NCA and that constituted a further ground for rescission or for a reconsideration of the judgment granted by the Registrar.

[11] The crux of the argument however centred around the non-service of the summons. The mere fact that there was non-service rendered the judgment to be a nullity and the judgment was thus erroneously granted and must be set aside.

Argument on behalf of Changing Tides

[12] It was submitted that the majority decision in *Department of Transport and Others v Tasima (Pty) Ltd* 2017 (2) SA 622 (CC) set out that a court order is binding until set aside irrespective of whether it was valid. That is so because judicial orders wrongly issued were not nullities, but existed in fact and had legal consequences. The Court held that a party was bound by an invalid order until it is set aside.¹ From this judgment it follows that the judgment stood, the Rule 46A order and the sale in execution stood all before the rescission was heard and dismissed.

[13] More importantly nothing would be achieved by rescinding the judgment in that Mr Leso had no defence and still has no defence to the claim. In 2018 he had no defence to his non-payment and he could not now raise a defence that did not exist in September 2018.²

¹ *Tasima* par 179

² *Lodhi 2 Properties Investments CC and Another v Bondev Developments (Pty) Ltd* 2007 (6) SA 87 (SCA)

[14] Furthermore, the Full Court was urged to define what would constitute a reasonable period within to bring a Rule 42(1) application as the Rule stipulates no time frame. It was submitted that to now, seven years after the judgment was granted, declare the judgment and all the subsequent steps invalid would not be in the interests of justice.

Reasons for decision

Re-consideration in terms of Rule 31(5)(d)

[15] The court *a quo* made no finding in terms of Rule 31(5)(d), but made a finding upon consideration of Rule 42. In the appeal before us the Rule 31(5)(d) reconsideration of the Registrar's judgment is pleaded in the alternative.

[16] The reconsideration was not argued before the Judge in the rescission application. It was not submitted that the Registrar could not grant a judgment where the cause of action arose from the NCA. The Appeal Court cannot find that the Judge erred on this point if she was not asked to decide this issue.

[17] But, in any event, I am satisfied that the Registrar in 2018 could grant a monetary judgment for a liquidated amount in terms of the NCA. The law thereafter developed that a Registrar cannot grant execution in terms of Rule 46A, because there has to be judicial oversight. This Rule 46A application was granted with judicial oversight. We will accordingly entertain the appeal on the main; that the judgment should have been rescinded in terms of Rule 42 of the Rules. The appeal cannot succeed in terms of Rule 31(5)(d).

Was the judgment erroneously granted

[18] The purpose of the rescission of a judgment is to afford the party seeking rescission to put his or her defence before a Court. It affords the defendant the opportunity to present his defence and argue the merits of the case. It is common cause that in the application for rescission there is no defence put up that will destroy either the monetary claim or the Rule 46A application and execution process. The defence is simply one of that he could not service the bond. There is also evidence that he did own other properties. He was also renting this property out to a person

running a spaza shop. With these specific set of facts the Court orders stood for the default judgment, the application in terms of Rule 46A, the execution and the transfer of the property. The rescission application was only served on 25 July 2021, but did not suspend the proceedings. It was only set-down for 7 February 2023. It is common cause that there was incorrect service of the summons and had the Court had knowledge thereof it would not have granted the default judgment. If that is so the applicant need not show good cause for the rescission application to be granted.

[19] An order of court of law stands until it is set aside. The court order is not a nullity but existed in fact and in this instance had legal consequences.³ It had led to the Rule 46A application being granted in the presence of Mr Leso. It led to the sale of the property and the transfer of the property to a third party. The transfer of the property to the third party was already concluded on 28 July 2022. The urgent application to prevent such sale was struck off the roll. There is thus no arguable and lawful defence with a realistic prospect of success and the rescission application must be dismissed.

Reasonable period

[20] The application for rescission must be brought within a reasonable period where no timeframe is prescribed in the Rule itself. Courts have not determined what constitutes a reasonable time because it would be fact specific. There can be no quibble that Mr Leso knew of the default judgment at the latest when the Rule 46A notice was served on him, or at best for him when he attended the court on 3 February 2021. He only five months later served the application for rescission, but did not prosecute it till 7 February 2023. He did not after his urgent application on 4 November 2021 to interdict the sale prosecute the rescission of judgment, but only did so 15 months later. On these facts, especially where he knew the property was being sold, and in fact was sold, the time frame within which the Rule 42 application was brought is unreasonable.

[21] To summarise, the application for rescission of the judgment was not in these circumstances brought within a reasonable period attending the principle of finality in

³ *Department of Transport and Another v Tasima (Pty) Ltd* 2017 (2) SA 622 (CC)

litigation dictating that the power of the court should come to an end.⁴ Parties must be assured that once an order of court has been made, it is final and they can arrange their affairs in accordance with that order. The public interest in this matter is not served if now, seven years after the fact the matter must be sent back to be reheard on whether rescission should be granted; there is simply no defence to the claim and the prejudice to the third party in whose name the property is registered is immeasurable. The appeal must be dismissed.

Costs

[22] Mr Leso litigated for a long period as a layman. Counsel that appeared in the appeal before us was acting *pro bono*. The summons was served at the wrong address. Taking all of this into account, I exercise my discretion that a fair and reasonable costs order would be, no order as to costs.

[23] I accordingly make the following order:

The appeal is dismissed. No order as to costs.



S. POTTERILL
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I agree



F.M.M. REID
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

⁴ *Zondi v MEC, Traditional and Local Government Affairs and Others* 2006 (3) SA 1 (CC) par [28]

I agree



J.T. LESO

ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

CASE NO: A30/2024

HEARD ON: 3 September 2025

FOR THE APPELLANT: ADV. H. LEGOABE

INSTRUCTED BY: Schalkwyk Dirk Attorneys

FOR THE RESPONDENT: ADV. J. MINNAAR

INSTRUCTED BY: HP Ndlovu Inc.

DATE OF JUDGMENT: 17 September 2025