



**THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA MAIN SEAT**

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

06 October 2025

DATE

.....
SIGNATURE

**APPEAL CASE NO: A68/ 2024
CASE NO: 596 / 2021**

In the matter between:

**MEC FOR COMMUNITY SAFETY,
SECURITY AND LIASON,
PROVINCE OF MPUMALANGA**

APPELLANT

And

**MAKANYOGA GENERAL
BUSINESS ENTERPRISE CC**

RESPONDENT

In re:

**MAKANYOGA GENERAL
BUSINESS ENTERPRISE CC
(Registration no: 2002/018224/23)**

PLAINTIFF

And

MEC FOR COMMUNITY SAFETY SECURITY

AND LIASON PROVINCE MPUMALANGA

DEFENDANT

J U D G M E N T

MADAVHA AJ:

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for the hand-down is deemed to be 06 October 2025 at 10H00.

INTRODUCTION

[1] This is an appeal against an order made by Roelofse AJ of this Division (court *a quo*), dismissing an application for rescission of judgment that was granted against the appellants on 24 October 2022. The appeal is with leave by the Court *a quo*.

BACKGROUND

[2] The judgment sought to be rescinded was based on a debt. The basis of that debt dates back to when the appellant advertised a tender for security services. The tender contract was awarded to the respondent. In the summons issued on 22 February 2021, the respondent claims to have provided the required services, of which it was only partially paid. It therefore issued summons against the appellants for breach of contract, seeking payment of the outstanding monies.

The appellant entered an appearance to defend on 8 March 2021 and filed a plea on 29 April 2021.

[3] The appellant served a Rule 28 notice and the amended plea on the respondent on 16 May 2021, and a discovery affidavit on 23 July 2021. The respondent sought better discovery, and an order to compel such was obtained on 23 September 2021. Having failed to comply with the discovery order, the respondent applied to strike out the appellant's defence, which was granted on 7 February 2022. The respondent subsequently applied for default judgment, which was granted on 24 October 2022. This order was served on the appellants on 26 October 2022. Dissatisfied with the default judgment, the appellants applied for rescission, but this application was not filed within the time limits specified by the rules.

[4] In explaining the delay in launching the rescission application, the officer attached to the office of the State Attorney, Mbombela, who deposed to the applicant's founding affidavit, alleged that she joined that office in August 2022 and that at the time, they only had three attorneys handling over 5,000 files. She further alleged that the office was short-staffed and struggling to cope with the workload. The draft application for rescission was sent to the client on 22 November 2022; however, it was difficult to contact the client for consultation and to finalise the application. According to the Uniform Rules, the application for rescission was required to be brought by no later than 23 November 2022. It was, however, only brought five days later because of the delay referred to above.

[5] In response, the respondent's case was that the appellant was ordered to pay an amount of R75 545 258.32 plus 7% interest calculated from 5 January 2021 to the date of final payment, and that on 14 December 2023, the said amount was

paid in full and on 19 January 2024, interest on the principal debt was also paid in full. The respondent contended further that the appellant brought the rescission application in terms of Rule 31(2)(b), which provides that the application must be made within 20 days of obtaining knowledge of the judgment. Finally, a good cause must be shown by the appellant why the judgment should be rescinded. The respondent further alleged that the appellant failed to bring the application within the prescribed time frame and further failed to make a proper case for condonation of the delay in bringing the application.

[6] Having heard arguments from both sides, the court *a quo* dismissed the application for rescission. It is against this decision that the appellant noted the present appeal. The appellant raised various grounds on which they allege rescission ought to have been granted, amongst them that:

- 6.1 The court *a quo* erred in law/or in fact in finding that no good reasons were advanced to support application for condonation.
- 6.2 The court *a quo* erred in dismissing the application for condonation and ordering the applicant to pay an amount of R75 432 258.32
- 6.3 The court *a quo* should have found that:
 - a) Averments made on behalf of the appellant, in support of the condonation and rescission application were undisputed.
 - b) It is in the interest of justice that the application for condonation be granted because the application was only five days late.
 - c) Lack of evidence for the alleged service rendered by the respondent permits the granting of application for condonation as the respondent will receive unduly enriched at the expense of the applicant and that
 - d) The applicant is an organ of state in charge of public funds and acting through its employees and on its own.

[7] Before addressing the issues raised, it is essential to outline the legal principles governing the rescission of judgments.

LEGAL FRAMEWORK

- [8] The appellant argues that rescission should have been granted under Rule 31(2)(b) of the Uniform Rules of Court or at common law. The test for rescission at common law is trite, namely that good cause must be shown. To establish good cause, an applicant needs to provide a reasonable explanation for the default and demonstrate a *bona fide* defence.
- [9] In *Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector, Including Organs of State and Others*,¹ the Constitutional Court restated the two requirements for granting an application for rescission that need to be satisfied under the common law as being the following: First, the applicant must furnish a reasonable and satisfactory explanation for its default. Second, it must show that it has a *bona fide* defence which *prima facie* carries some prospect of success on the merits. Proof of these requirements is taken as showing that there is sufficient cause for an order to be rescinded. Failure to meet one of these requirements may result in the refusal of the request to rescind.
- [10] *Silber v Ozen Wholesalers*² remains the authority for the proposition that an applicant's explanation must be sufficiently full to enable the court to understand how the default came about and assess the applicant's conduct. In explaining the default, the applicant must demonstrate that they were not in wilful default. If the case the applicant makes out on wilful default is not persuasive, that is not the end of the inquiry; the applicant's case may be rescued if a *bona fide* defence is demonstrated.

EXPLANATION OF DEFAULT

¹ [2021]ZACC 28

² 1954 (2) SA 345 (A) at 353

[11] The appellant submitted that the delay in launching the rescission was due to their office being swamped with work, and that after the application was drafted, they could not obtain further instructions from the client. The application was only brought five days after the expiry of the time frames stipulated in the rules, and the delay was not wilful on the part of the appellant.

[12] The appellant submitted that the respondent would not suffer any prejudice if the rescission is granted. However, the appellant will be prejudiced if the order is not rescinded, in that the respondent is claiming for services not rendered. In considering whether the appellant was in wilful default, I bear in mind what was said in *Harris v ABSA Bank Ltd Volkskas*³ that:

“Before an applicant in a rescission of judgment application can be said to be in “wilful default” he or she must bear knowledge of the action brought against him or her and of the steps required to avoid the default. Such an applicant must deliberately, being free to do so, fail or omit to take the step which would avoid the default and must appreciate the legal consequences of his or her actions. A decision freely taken to reform from filling a notice to defend or a plea or from appearing would ordinarily weigh heavily against an Applicant required to establish sufficient cause.’

[13] It is evident from the facts of this case that the appellant’s delay lasted only five days, and the reasons for the delay cannot be considered unreasonable. The appellant is a State organ, and established channels must be followed when opposing matters, unlike when litigation is against an individual. The fact that the State Attorney could not contact the client to finalise the application is an explanation I find reasonable and probable, given the workload of the officer assigned to handle this matter. I cannot conclude that the delay was unreasonable or that it failed to provide an explanation for the delay. In the circumstances, I find that the Court *a quo* ought to have found that there was no unreasonable delay in launching the rescission application.

³ 2006 (4) SA 527 (T) at paragraph 8.

BONA FIDE DEFENCE

[14] The second stage of the inquiry is whether the appellant has raised a bona fide defence to the respondent's claim. In *Harris*⁴ (*supra*), Moseneke J stated thus:

‘(10) A steady body of judicial authorities has held that a court seized with an application for rescission of judgment should not, in determining whether good or sufficient cause has been proven, look at the adequacy or otherwise of the explanation of the default or failure in isolation. “Instead, the explanation, be it good, bad or indifferent, must be considered in the light of the nature of the defence, which is an important consideration, and in the light of all the facts and circumstances of the case as a whole.”

[15] It is the appellant’s case that it has a *bona fide* defence on the merits. That defence is that the respondent is seeking payment for services not rendered. According to the contract, the respondent was required to service sites as per the appointment letter and the service level agreement and not as per the bid document. According to the appellant, the respondent was not appointed for the number of security guards it is claiming, as it does not have an appointment letter for the number of guards claimed. It is, however, a fact that this defence has been struck off as per the court order dated 7 February 2022. The appellant, therefore, has no *bona fide defence* since the defence has been struck off.

[16] The appellant does not meet the second stage of the inquiry; their defence has been struck off, and as at the time of the hearing of this appeal, the said defence remained struck off.

ANALYSIS

⁴ *Supra* at paragraph 10.

[17] It is trite that an applicant for rescission must demonstrate the existence of a substantial defence and not necessarily a probability of success. It is sufficient that, in his defence, he presents a *prima facie* case that raises triable issues. Now that the appellant's defence has been struck off, I cannot find that the appellant has a *bona fide* defence. Although I have found that their delay in filing the rescission application is reasonable, they do not pass the second stage of inquiry; they lack a defence. It is also not disputed that the debt claimed, along with its interest, has been paid in full by the appellant.

CONCLUSION

[18] In the circumstances, I find that the Court *a quo* did not err in dismissing the appellant's application for rescission. Although I find that the appellant's delay was not wilful, the appellant does not have a *bona fide* defence with prospects of success, and as such, the default judgment granted stands.

ORDER

[19] In light of the above, I propose making the following order:
Appeal is dismissed with costs.

MB MADAVHA

ACTING JUDGE OF THE HIGH COURT

I agree and it so ordered


TV RATSHIBVUMO
DEPUTY JUDGE PRESIDENT

I agree.


SM MSIBI
ACTING JUDGE OF THE HIGH COURT

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DATE OF HEARING:

08 AUGUST 2025

DATE OF JUDGMENT:

06 OCTOBER 2025