

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

CASE NO: 9105/2021

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|--------------------------------------|------------------------------------------|
| (1)                                  | <u>REPORTABLE: YES/NO</u>                |
| (2)                                  | <u>OF INTEREST TO THE JUDGES: YES/NO</u> |
| (3)                                  | <u>REVISED.</u>                          |
| .....                                |                                          |
| .....                                |                                          |
| DATE: 20 October 2025    SIGNATURE.. |                                          |

In the matter between:

**THE DEPARTMENT FOR SPORTS ARTS AND  
CULTURE, LIMPOPO PROVINCE**

**APPLICANT**

And

**PHOLILE BUSINESS SOLUTIONS CC**

**RESPONDENT**

In re:

**PHOLILE BUSINESS SOLUTIONS CC**

**PLAINTIFF**

And

THE DEPARTMENT FOR SPORTS ARTS AND  
CULTURE, LIMPOPO PROVINCE

DEFENDANT

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JUDGMENT

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**DU PLESSIS AJ:**

**Introduction:**

- [1] Before this Court is an opposed application in terms whereof the applicant seeks to have the merits and quantum orders granted against it, rescinded.
- [2] The Applicant applies for the following relief:
- 2.1 That the order against Applicant/Defendant on the 5<sup>th</sup> of February 2024 be rescinded.
  - 2.2 That the order against Applicant/Defendant on the 6<sup>th</sup> of February 2024 be rescinded.
  - 2.3 That the costs be awarded to the Applicant only in the event of opposition.

- [3] The main issue to be decided is whether the applicant has established that there exists good cause for the rescission of these orders.

**Background:**

- [4] It is common cause that the main matter was set down for hearing on the 5<sup>th</sup> day of February 2024.
- [5] On the said date the applicant failed to appear at the Court and default judgment was granted against the applicant on the merits only.
- [6] The applicant's did not provide an explanation as to why he did not attend Court, he merely stated that he phoned his opponent at 10:09 to inform him that he was on his way to court, but that he was unable to reach the respondent's attorney.
- [7] The applicant only argued that he then went to Court but that the Court was empty upon his arrival.
- [8] It is important to note that the time on which the Court proceedings would commence was stipulated in the notice of setdown as 10am. All practitioners are expected to be present at the time stipulated in the set down in order for the Court to call the matters.
- [9] Due to the fact that the applicant was not present when the matter was called, the Court proceeded to grant the default judgment on the merits.

- [10] The respondents attorney contacted the applicant's attorney and informed him of that default judgment was granted and that the matter was postponed to the following day, 6 February 2024 for the hearing of the quantum.
- [11] The attorneys of the respondent also served the order on the offices of the state attorney. The order informed the attorney for the applicant that the hearing of the quantum of the matter was set down to start at 9am on 6 February 2024.
- [12] The applicant informed the Court that its attorney arrived at Court on 9:30am on the 6<sup>th</sup> of February 2024 and found on the roll on the notice board that the matter was heard at 9am.
- [13] The applicant's attorney contacted the attorney for the respondent and was informed that the hearing of the quantum proceeded at 9am and judgment was granted against the applicant on the quantum as well.
- [14] On both occasions the judgments were therefore granted *in absentia* due to the applicant and its legal representatives' failure to attend Court, despite being informed of the time on which the proceedings would commence.

**Legal Framework:**

- [15] The basis on which this application is brought before this Court, is Uniform Rule 31(2)(b) that provides as follows:

“(b) A defendant may within 20 days after acquiring knowledge of such judgement<sup>1</sup> apply to court upon notice to the plaintiff to set aside such

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<sup>1</sup> My emphasis.

*judgment and the court may, upon good cause shown, set aside the default judgement on such terms it deems fit.”*

[16] The wording of Rule 31(2)(b) makes reference to ‘such judgment.’ In order to understand what ‘such judgment’ is it is necessary to take one step back and look at Rule 31(2)(a).

[17] Rule 31(2)(a) provides as follows:

*“(a) Whenever in an action the claim or, if there is more than one claim, any of the claims is not for a debt or liquidated demand and a defendant is in default of delivery of notice of intention to defend or of a plea, the plaintiff may set the action down as provided in subrule (4) for default judgment<sup>2</sup> and the court may, after hearing evidence, grant judgment against the defendant or make such order as it deems fit.”*

[18] In other words, the reference to ‘such judgment’ in Rule 31(2)(b) refers to a default judgment as set out in Rule 31(2)(a). Such default judgment being granted based on a defendant’s default to deliver a notice of intention to defend or of a plea.

[19] Rule 31(2)(b) is thus not the correct basis upon which the applicant could base this application for rescission of judgment.

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<sup>2</sup> My emphasis.

[20] Uniform Rule 42 also makes provision for rescission of judgements. It provides as follows:

*“(1) The court may, in addition to any other powers it may have, mero motu or upon the application of any party affected, rescind or vary—*

- (a) an order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby;*
- (b) an order or judgment in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission;*
- (c) an order or judgment granted as the result of a mistake common to the parties.”*

[21] This rule makes provision for cases in which the judgment was granted, was sought or granted erroneously and is not applicable to the facts in this application. The applicant can therefore also not rely on this to obtain the rescission of the judgment against it.

[22] Lastly, an application for rescission may be brought in terms of the common law. The common law provides that a judgement debtor aggrieved by an order or judgement granted in his / her absence must bring the application for rescission within a reasonable time, and he / she must show good cause by giving a reasonable explanation for the delay and showing that application for rescission was *bona fide* and showing a *bona fide* defence to the claim with *prima facie* prospect of success.<sup>3</sup>

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<sup>3</sup> Ratshitanga and another v Madima N.O and others (35748/2018)[2023] JHC 76 at 46.

[23] In **Chetty v. Law Society, Transvaal**<sup>4</sup> the Court held as follows:

*“But it is clear that in principal and in the long-standing practice of our Court two essential elements of “sufficient cause” for rescission of a judgment by default are:*

- (i) that the party seeking relief must present a reasonable and acceptable 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....*

*It is not sufficient if only one of these two requirements is met; for obvious reasons a party showing no prospect of success on the merits will fail in an application for rescission of a default judgment against him, no matter how reasonable and convincing the explanation of his default. And ordered judicial process would be negated if, on the other hand, a party who could offer no explanation of his default other than his disdain of the Rules was nevertheless permitted to have a judgment against him.”*

[24] It is therefore necessary for the applicant to adduce evidence satisfying the two requirements as prescribed by the Court.

[25] The applicant explained the events that led up to the judgments to this Court, but does not provide this Court with an explanation why the legal practitioner did not attend the Court for hearing on both the 5<sup>th</sup> - and the 6<sup>th</sup> day of February 2024.

[26] The state attorney was properly served with the notice of setdown for the hearing of the 5<sup>th</sup> of February 2024 and was definitely informed of the time at which the hearing would commence, yet the representative of the applicant chose not to arrive on time to be in attendance.

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<sup>4</sup> Chetty v Law Society, Transvaal 1985 (2) SA 756 (A) at 765 at A – E.

- [27] It is also common cause that the respondent properly informed the state attorney of the judgement which was granted on the 5<sup>th</sup> day of February 2024 and served the order with the date and time of the next set down, being 6 February 2024 at 9am. The respondent also informed the applicant's legal representative of this by way of an email as well as during a telephone conversation on the 5<sup>th</sup> day of February 2024.
- [28] Yet on the 6<sup>th</sup> day of February 2024 the applicant's legal representative once again did not attend Court on time for the commencement of the scheduled hearing. The applicant's legal representative does not provide an explanation for his failure to attend Court as per the order which was served upon him.
- [29] The applicant has not provided a reasonable explanation for his default and when this Court considers the facts before it, it seems as if the only explanation for the applicant's default is its disdain for the Rules of Court and disrespect for the authority of the Court.
- [30] In respect of the second requirement, the applicant had to adduce evidence that it had a *bona fide* defence, which has a *prima facie* prospect of success.
- [31] The applicant argued that the contract between the parties, and upon which the respondents claim relies, has ended by effluxion of time. However, the respondent showed to this Court that the action was based on a different contract – there is a difference in the contract numbers which the parties referred to.
- [32] Despite this, the applicant's plea contains a bare denial and the applicant has not offered any defence to the claim against it in the main case.

- [33] The applicant admitted during argument that the plea contained a bare denial but argued that a bare denial should not preclude the applicant from being granted a rescission of judgment.
- [34] This Court does not agree with the argument of the applicant. The applicant is required to take the Court into its confidence, convincing the Court that it does have a *bona fide* defence to the claim against it.
- [35] The applicant has failed to convince this Court that it has a *bona fide* defence to the action against it. In addition thereto it has also not provided this Court with any explanation for its default.
- [36] On this basis, the Court finds that the applicant has failed to meet the requirements as set out for the rescission of the judgements against it, therefore the applicant is not entitled to the relief claimed.
- [37] The default practice in awarding costs is that costs ordinarily follow the result, but that the issue of costs is in the discretion of the court.<sup>5</sup> This Court finds no reason for the costs to be awarded otherwise.

**Order:**

- [38] **In the result the following order is made:**

1. The application is dismissed with costs.

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<sup>5</sup> Public Protector v South African Reserve Bank 2019 (6) SA 253 (CC) at [224], [227] and [228]; Limpopo Legal Solutions v Eskom Holdings (Soc) Limited 2017 (12) BCLR 1497 (CC) at [20] ("Eskom").



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**S DU PLESSIS**  
**ACTING JUDGE OF THE HIGH COURT,**  
**LIMPOPO DIVISION, POLOKWANE**

**APPEARANCES:**

**FOR THE APPLICANT** : **Adv. Mothibi**

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**FOR THE RESPONDENT** : **Adv. Riley**

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**DATE OF HEARING** : **02 April 2025**

**DATE OF JUDGMENT** : **20 October 2025**