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**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

Case no: **6954/2024P**

In the matter between:

**VINCENT VERMEULEN
SHEREEN VERMEULEN**

**FIRST APPLICANT
SECOND APPLICANT**

and

BENSE BUILDING CONTRACTORS CC

RESPONDENT

Coram: MOSSOP J
Heard: 28 October 2025
Delivered: 28 October 2025

ORDER

The following order is granted:

The application is dismissed with costs, which may be taxed on scale B.

JUDGMENT

MOSSOP J:

Introduction

[1] This is an ex tempore judgment.

[2] The applicants seek the rescission of a default judgment entered against them in favour of the respondent. The rescission application is premised upon the provisions of Uniform rule 42(1)(a), alternatively upon the common law.

The judgment

[3] Default judgment for want of an appearance to defend being delivered by the applicants was granted by the registrar of this court on 30 May 2024 for:

- ‘(a) payment of the sum of R670,340.48;
- (b) interest on the aforesaid sum per annum a tempore morae;
- (c) cost of suit - R650 plus sheriff’s fees.’

(The default judgment)

Condonation

[4] The application is opposed by the respondent, the judgment creditor, who delivered an answering affidavit setting out its objection to the granting of the relief sought by the applicants. The applicants were required to deliver their replying affidavit within 10 days of the delivery of the respondent’s answering affidavit but failed to do so. The replying affidavit was delivered some 35 days late, and the applicants have consequently brought a formal application for condonation for that late delivery.

[5] The explanation advanced in that application need not be mentioned in any great detail, save to indicate that it involves a tale of human misfortunes coupled with an insufficiency of finances. The delay is substantial, but the inconvenience and prejudice occasioned by this failure is slight, if not non-existent.

[6] The application was not opposed by the respondent, and it is accordingly granted.

The background facts

[7] The respondent is a builder of homes and the applicants contracted with it to construct a dwelling for them on land located near Southbroom on the KwaZulu-Natal

south coast. The contract was concluded prior to the onset of the COVID-19 pandemic (the pandemic). The respondent provided a quotation for the work that the applicants wanted done, which was accepted by the applicants. The amount agreed upon was R2 500 000.

[8] The relationship between the parties was, at the outset, apparently convivial and accommodating. Work on the dwelling was commenced by the respondent and was nearing completion, but was not actually complete, when the pandemic struck. The relationship was sufficiently healthy enough at that stage for the applicants to request the respondent that they be allowed to assume occupation of the incomplete dwelling. The rationale for this request was that the applicants did not want to be confined to the cramped accommodation that they were in during the pandemic lockdown. The respondent, represented by its guiding mind, Mr Victor Bense (Mr Bense), was prepared to permit this to occur and so the applicants and their family moved into the partially completed dwelling.

[9] The relationship thereafter soured. It appears that this happened because while the applicants acquired financing from a financial institution to the value of the work to be performed by the respondent, the full amount acquired was not used to fund the construction works. The consequence was that there was a shortfall in the funds available to meet the agreed upon contract price.

[10] The acknowledged shortfall ultimately led to the conclusion of an acknowledgment of debt (the acknowledgment of debt), which was signed by the applicants in favour of the respondent on 15 June 2020.

[11] The acknowledgment of debt recorded that the applicants acknowledged that they were indebted to the respondent in the amount of R670 000, together with interest and costs on the attorney and client scale. Moreover, the parties agreed that

the admitted debt would be repaid in instalments, with the last instalment being due by the applicants on 15 June 2023.

[12] It is common cause, or cannot be seriously disputed, that the applicants did not adhere to the terms of the acknowledgment of debt. Summons was consequently issued by the respondent for the payment of the sum of R670 000. It is the service of this summons which led to the default judgment being taken and to this application for its rescission.

The legal principles

[13] The legal principles governing the rescission of judgments under Uniform rule 42 are not controversial. Uniform rule 42(1)(a) reads 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;’.

[14] In *Kgomo and Another v Standard Bank of South Africa and Others*,¹ the court helpfully summarised the legal principles to be distilled from the extract quoted above as follows:

- ‘1. The rule must be understood against its common law background.
2. The basic principle of common law is that once a judgment has been granted, the judge becomes *functus officio*, but subject to certain exceptions of which rule 42(1)(a) is one.
3. The rule caters for mistakes in the proceedings.
4. The mistake may either be one which appears on the record of proceedings or one which subsequently becomes apparent from the information made available in an application for rescission of judgement.
5. A judgment cannot be said to have been granted erroneously in light of a subsequently disclosed defence which was not known or raised at the time of the default judgment.
6. The error may arise in the process of seeking the judgment on the part of the applicant for default judgment or in the process of granting default judgment on the part of the court.

¹ *Kgomo and Another v Standard Bank of South Africa and Others* 2016 (2) SA 184 (GP) para 11.

7. The applicant for rescission is not required to show, over and above the error, that there is good cause for the rescission.’

[15] The purpose of the rule is to enable the easy correction of an obviously incorrect order or judgment.² An applicant must demonstrate that he or she was not present when the judgment was taken and that it was erroneously granted. As to when an order or judgment may be said to have been erroneously granted, the court in *Naidoo v Matlala NO*³ observed that:

‘In general terms a judgment is erroneously granted if there existed at the time of its issue a fact of which the judge was unaware, which would have precluded the granting of the judgment and which would have induced the judge, if aware of it, not to grant the judgment.’

[16] As regards rescission applications brought at common law, the Constitutional

Court in *Government of the Republic of Zimbabwe v Fick*,⁴ identified the two requirements for rescission to be 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. A failure to meet one of them may result in refusal of the request to rescind.’

It is therefore necessary for an applicant relying upon the common law remedy to establish both of these requirements.

The rescission application

[17] The first applicant deposed to the founding affidavit in the rescission application, with the second applicant filing a confirmatory affidavit. The application was launched on 13 May 2025, almost a year after the default judgment was entered against the applicants on 30 May 2024.

² *Bakoven Ltd v GJ Howes (Pty) Ltd* 1992 (2) SA 466.

³ *Naidoo v Matlala NO* 2012 (1) SA 143 (GNP)

⁴ *Government of the Republic of Zimbabwe v Fick* [2013] ZACC 22; 2013 (5) SA 325 (CC); 2013 (10) BCLR 1103 (CC) (*Fick*) at para 85; see also *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* [2021] ZACC 28; 2021 (11) BCLR 1263 (CC) para 71.

[18] The first applicant stated in the founding affidavit that he was not at home when the sheriff served the summons. His ten-year-old daughter was, as was his domestic helper. He alleged that the sheriff did not engage with anyone in the dwelling, nor did he find a summons there when he later returned home. He stated that he first became aware of the service of the summons when the sheriff returned to his home in order to attach his family's moveable assets in accordance with a writ of execution in 'June/July 2024'. He states that:

'Even then, I was not fully aware of the nature or implications of the matter. I assumed it was an old or mistaken matter that had been resolved, as I had previously corresponded with one of the Defendant's attorneys via email. Unfortunately, those emails were later lost due to unforeseen incidents. I assumed the issue had been dropped or resolved.'

[19] He claimed that he only genuinely appreciated what had occurred in August 2024, when he attempted to enrol his children at school and was told that there was a default judgment against his name.

[20] The first applicant asserts that the judgment was granted by mistake. He accepted, however, that the basis for the judgment was the acknowledgment of debt and that he and the second applicant signed that document. However, because payment of the admitted debt was deferred and interest was chargeable, he asserted that the acknowledgment of debt was a credit agreement as contemplated in the National Credit Act 34 of 2005 (the Act). The respondent was not registered as a credit provider, nor had it complied with s 129 of the Act, and the default judgment was therefore erroneously granted. Had the court granting the default judgment been aware of this, the default judgment would not have been granted.

[21] The first applicant stated that the applicants were not wilful in their default because they were not aware that they were required to do anything. He stated that the sheriff made no effort to properly alert the occupants of his home that he was leaving an important document at the dwelling. As to what may have happened to the summons taped to his front door, the first applicant speculated that because his home is situated three kilometres from the sea and it experienced 'frequent strong coastal winds,' the summons may have been plucked from the front door by the wind. Alternatively, his home is regularly visited by monkeys, and they may have

removed the summons. While he asserted that his domestic assistant had been at home when the sheriff called, no affidavit by her was put up.

[22] The first applicant stated that he first became aware of the default judgment in August 2024, and he then took 'immediate steps'. On an undisclosed date in September 2024, he apparently consulted his attorneys. A rescission application was mooted on 3 September 2024, but a shortage of funds prohibited him from taking any further steps. He rather curiously, and inexplicably, stated that:
'... the matter became dormant.'

[23] Then on 13 January 2025, the first applicant informed his attorneys that the respondent had served a Uniform rule 46 application upon him and the second applicant. The first applicant indicated that the:
'... first available opportunity for a personal consultation with the attorneys was on 26 February 2025.'

[24] A consultation with counsel followed on 7 March 2025. Consultations continued during March and April 2025:
'... and with fees now secured, efforts to finalize the application were pursued diligently.'
The delay was thus not deliberate, nor did it constitute an abandonment by the applicants of the matter. Yet the rescission application was only launched on 13 May 2025.

[25] As to the merits of the matter and his and the second applicant's defence, it appeared to be confined to the quality of the work performed by the respondent and the amounts that it charged the applicants for that work.

[26] That having been said, it is not in dispute that the applicants signed the acknowledgment of debt. The first applicant stated, however, that they only signed the acknowledgment of debt:
'... on the understanding and verbal agreement that all building work would be fully and properly completed, a condition which the Respondent breached.'

[27] After the acknowledgment of debt was signed, there had been a meeting on site convened by the Master Builders Association to consider the applicants complaints with the work performed by the respondent. This, according to the first applicant, resulted in a concession by Mr Bense, representing the respondent, that the true amount owing to the respondent was the sum of R440 000. The applicants paid an amount of R100 000, leaving a balance of R340 000, the payment of which was subject to the respondent completing the outstanding, and defective, works. It did not do so. The applicants accordingly calculated the balance due to the respondent as being R65 271 and they therefore made an offer to it on 28 March 2025 of the amount of R85 000. This was rejected by the respondent. An increased offer of R250 000 was made in April 2025, but this amount was also rejected by the respondent.

[28] Thus, the applicants assert that they have a bona fide defence to the respondent's claim, and that it would therefore be just and equitable for the default judgment to be rescinded.

The respondent's response

[29] Virtually none of what the applicants state is accepted as being true by the respondent.

[30] The respondent states that, at the very beginning of this saga, the applicants acquired finance from a finance institution in the amount of R2,5 million. The respondent, ultimately, invoiced the applicants R2,6 million for the work that it undertook. But by March 2020, only R1,8 million had been paid by the applicants. The respondent agreed that it consented to the applicants moving into the partially completed dwelling at the beginning of the pandemic lock down. At that stage, an amount of R670 000 remained unpaid for work already done. This was the amount that was subsequently mentioned in the acknowledgement of debt. In June 2020, the applicants agreed to sign the acknowledgment of debt and undertook to pay to the respondent the amount of R670 000.

[31] The respondent strongly disputed that the acknowledgment of debt was an agreement in terms of which credit was afforded to the applicants: it was, rather a

recordal of how the applicants would pay their admitted debt to the respondent. The payment of interest was first agreed to only when the applicants defaulted on their payment obligations to the respondent. The original agreement to construct the dwelling did not incorporate any deferred payments or any interest payments.

[32] The respondent stated, and it is not in dispute, that the applicants did not adhere to their payment obligations in terms of the acknowledgement of debt and constantly offered excuses for not doing so. One of the excuses was that the work performed by the respondent was poorly carried out. This then led to a meeting with a representative of the Master Builders Association on 3 February 2022. Mr Hans Stols (Mr Stols) of that organization attended the applicants' home, as did Mr Bense, and Mr Stols subsequently prepared a document narrating what had occurred at the meeting. The document recorded that:

- (a) The applicants agreed that they owed the respondent the amount of R440 000 which amount did not include any interest;
- (b) The applicants made new promises as to when the outstanding amount would be paid the respondent;
- (c) A snag list was drawn up for work to be performed by the respondent; and
- (d) It was agreed that this agreement was reached in order to resolve the matter without the respondent having to rely upon the acknowledgment of debt.

I shall refer to this agreement as 'the new agreement.'

[33] Mr Stols made no assessment of, or determination of, the quality of the work performed by the respondent in the light of the agreement between the parties mentioned above.

[34] The respondent stated that the applicants immediately breached the new agreement. In terms of the new agreement, the applicants were required to pay R200 000 within two weeks of its conclusion. The new agreement was struck on 3 February 2022. R100 000, being half the amount that they were required to pay, was made by the applicants only on 1 March 2022. The other R100 000 was never paid.

[35] The respondent made the submission that the allegedly bona fide attempt by the applicants to rescind the default judgment does not sit comfortably with the

applicants' admissions, already mentioned, that they made offers to settle the default judgment amount, albeit at reduced amounts.

[36] The respondent stated further that the applicants' attorneys were provided with a full set of the pleadings in the action on 14 August 2024, and not during September 2024, as the applicants alleged. After receipt of those documents, there was no suggestion that the applicants disputed the validity of the default judgment. The fact that the applicants accepted the correctness of the default judgment was best demonstrated, according to the respondent, by what occurred after the sheriff repaired to the applicant's home with a writ of execution in order to attach the applicants' moveable property. The sheriff attached certain moveable assets and scheduled a sale in execution for 27 August 2024. A dispute then arose as to whether what was attached was actually the applicants' property, for the first applicant's mother-in-law claimed that some of the assets were hers. Nothing formal was done by the applicants, or the first respondent's mother-in-law, to set aside the attachment or prevent the sale in execution from going ahead as scheduled.

[37] The respondent's attorneys informed the applicants' attorneys that unless the judgment debt was settled, the sale in execution would proceed. In response, the applicants' attorneys indicated that the applicants were intending to make an offer to settle the matter. But no such offer was ever made and, ultimately, the sale in execution proceeded on 27 August 2024. The respondent observed that: 'The applicants did not seek to prevent the sale in execution from proceeding at all and they, in fact, acquiesced thereto.'

[38] The sale in execution realised nothing because no bids at all were received.

[39] The respondent further noted that the applicants alleged that they had received advice on 3 September 2024 to rescind the default judgment. This was almost three full months after they became aware of the default judgment, on their own version.

[40] After the unsuccessful sale in execution, the respondent's attorneys proceeded to issue a Uniform rule 46 application aimed at having the applicant's

immovable property declared specially executable. The applicants received this application on 13 January 2025. The respondent suggested that it was entirely false for the applicants to allege that they could only consult with their attorneys a month and two weeks later. The further comment was offered that the applicants confirmed that active steps were taken to rescind the default judgment on 7 March 2025, yet the rescission application was only launched on 13 May 2025, more than two months later.

[41] As to the first applicant's contention in the founding affidavit that he did not understand the true significance of what was happening, the respondent pointed out that the sheriff's return of service put paid to that contention. The return of service reads as follows:

'I personally served the above mentioned process upon the (sic) SHEREEN VERMEULEN at 3[...] L[...] ROAD, SOUTHBROOM, by handing abovementioned a copy thereof after exhibiting the original and explaining the nature and the content of the said process.'

[42] There was thus personal service upon the second applicant, and she received the sheriff's explanation of what was occurring. The respondent thus submitted that the second respondent must have understood what was happening. The inference to be drawn from this was that if the first applicant did not comprehend what was happening, all he had to do was ask his wife to explain it all. The respondent further submitted that shortly after the warrant of execution was served, the applicants both called the respondent's attorney, who also explained to them the significance of the document served upon them.

[43] Having discussed these facts, the respondent then crystallised its defences to the rescission application. Firstly, it submitted that the applicants had perempted their right to rescind the judgment and, secondly, it submitted that the application had not been brought within a reasonable time.

[44] The issue of peremption is said by the respondent to arise from the following conduct of the applicants:

(a) Between 13 June 2024 and 8 August 2024 no dispute was raised by the applicants over the existence of the default judgment.

(b) The first applicant disputed on 8 August 2024 that some of the goods attached by the sheriff were not his but did not allege that the default judgment had not been correctly obtained or that the sale in execution should be halted. The applicants thus acknowledged that their goods could be sold.

(c) The applicants indicated, via their attorneys, that they wished to settle the matter and were intent on making a settlement proposal. They, in the event, did not make the promised proposal and did not attempt to halt the sale in execution.

(d) The respondents tried to settle the matter by subsequently making two offers, as previously mentioned. That, so the respondent argues, is inconsistent with an intention to seek the rescission of the default judgment and constitutes an act of acquiescence in that judgment.

(e) After the sale in execution, the applicants did nothing until the Uniform rule 46 application was served upon them. Four and a half months later, the rescission application was brought.

[45] Thus, the respondent submits that the applicants may not now attempt to rescind the judgment.

[46] The respondent contended, in its second attack upon the rescission application, that it had not been brought within a reasonable time. It pointed out that the applicant took 11 months to get its rescission application before the court, an inordinately prolonged period of time. The respondent finally submitted that the applicants' explanation did not cover the entire period of the delay.

[47] Having heard argument from counsel this morning, I stood the matter down to consider my judgment.

Analysis

[48] I shall accept that the applicants did not receive the summons affixed to their front door by the sheriff. I make no finding as to why that should be the case, although I find it to be highly doubtful that monkeys may have removed it from where it was affixed. No evidence has been advanced that establishes that there was a particularly strong wind on that day, either.

[49] In my view, I need not come to any conclusion about whether the acknowledgment is a credit agreement that falls under the purview of the Act. My prima facie view is that it does not, but I need not decide the issue because the respondent has raised a point that disposes of the matter.

[50] That point is peremption.

[51] According to the common law doctrine of peremption, a party who acquiesces in a judgment cannot subsequently seek to challenge the judgment in respect of which he has acquiesced. This doctrine is founded on the logic that no person may be allowed to opportunistically endorse two conflicting positions. Thus, one cannot decide not to rescind a judgment and then later decide to rescind it. Elections, once made, cannot be revisited and revoked in favour of another, more beneficial election.

[52] The doctrine of peremption has its origins in appeals.⁵ It was enunciated in *Hlatshwayo v Mare and Deas*,⁶ where Lord De Villiers CJ held that: '... where a man has two courses open to him and he unequivocally takes one he cannot afterwards turn back and take the other.'

[53] Innes CJ in *Dabner v South African Railways and Harbours*,⁷ agreed with this reasoning when he stated that:

'The rule with regard to peremption is well settled, and has been enunciated on several occasions by this Court. 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. But the conduct relied upon must be unequivocal and must be inconsistent with any intention to appeal. And the onus of establishing that position is upon the party alleging it. In doubtful cases acquiescence, like waiver, must be held non-proven.'

⁵ *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 (Council for the Advancement of the South African Constitution and another as amici curiae)* [2021] ZACC 28; 2021 (11) BCLR 1263 (CC) para 101.

⁶ *Hlatshwayo v Mare and Deas* 1912 AD 242 at 249.

⁷ *Dabner v South African Railways and Harbours* 1920 AD 583 at 594.

[54] Five years later in *Standard Bank v Estate van Rhyn*,⁸ Innes CJ 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.'

[55] In a more recent decision, in *Tswelopele Non-Profit Organisation v City of Tshwane Metropolitan Municipality*,⁹ the Supreme Court of Appeal dealt with whether an appeal had been perempted. Cameron JA discussed the doctrine of peremption as follows:

'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": so the conduct relied on must be "unequivocal and must be inconsistent with any intention to appeal"...'.

[56] In *Venmop 275 (Pty) Ltd and Another v Cleverlad Projects (Pty) Ltd*,¹⁰ the court stated that the enquiry into whether peremption has been established does not involve an enquiry into the subjective state of mind of the person alleged to have acquiesced in the judgment but rather involves a consideration of the objective conduct of such person and the conclusion to be drawn therefrom.

[57] In considering whether peremption has been established, the conduct of the party said to have perempted its rights must be evaluated. That evaluation permits a range of evidence to be considered from which acquiescence can be inferred from any unequivocal conduct which, in this instance, is inconsistent with the right to rescind the default judgment.¹¹

⁸ *Standard Bank v Estate van Rhyn* 1925 AD 266; see also *Natal Rugby Union v Gould* [1998] ZASCA 62; 1999 (1) SA 432 (SCA).

⁹ *Tswelopele Non-Profit Organisation and others v City of Tshwane Metropolitan Municipality and others* [2007] ZASCA 70; 2007 (6) SA 511 (SCA) para 10.

¹⁰ *Venmop 275 (Pty) Ltd and Another v Cleverlad Projects (Pty) Ltd and another* 2016 (1) SA 78 (GJ) (*Venmop*) para 25.

¹¹ *Lions Hill Development Company (Pty) Ltd and Others v Investec Bank Limited* [2024] ZAWCHC 390 para 55-59.

[58] Applying the test framed in *Venmop*, I shall also accept that the applicants became aware of the default judgment only once the sheriff served the writ of execution on them at their home. When they discovered what had occurred, they did not protest against the validity of the judgment given against them that permitted the writ of execution to be issued. It can safely be concluded from the fact that they had previously signed the acknowledgment of debt and had then negotiated the new agreement, that they were aware that they were, indeed, indebted to the respondent. The protest against what was seized by the sheriff, was not a protest at the cause of the attachment but rather the ownership of what was attached. Objectively, the applicants showed no signs of moving to attack the default judgment that they now seek to rescind, or the sale in execution.

[59] A failure to prevent the execution of a default judgment inevitably evidences the presence of peremption. This was acknowledged by van den Heever J in *Schmidlin v Multisound (Pty) Ltd*,¹² when the learned judge noted that:

‘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’.¹³

I am in agreement with that reasoning.

[60] Van den Heever J went on to state in *Schmidlin* that:

‘In my view, a litigant cannot purport to eat his cake and have it too in the matter of rescinding a judgement any more than a party to a contract is permitted simultaneously to approbate and reprobate. Public interest requires of the Court’s orders should be certain and final.’¹⁴

[61] As the court in *Schmidlin* alluded to, the law cherishes finality in legal proceedings and to permit endless prevaricating on decisions properly and knowingly made would offend against this principle.¹⁵ Broader policy considerations require that litigants who have unreservedly jettisoned their right to rescind a default judgment:

¹² *Schmidlin v Multisound (Pty) Ltd* 1991 (2) SA 151 (C) (*Schmidlin*).

¹³ *Ibid* 156A-D.

¹⁴ *Schmidlin v Multisound (Pty) Ltd*, *supra*, at 156E-F.

¹⁵ The principle of the finality of litigation is expressed in the maxim *interest rei publicae ut sit finis litium* (it is in the public interest that litigation be brought to finality).

‘... must for the sake of finality be held to their choice in the interests of the parties and of justice’.¹⁶

[62] The issue of peremption, however, does not end there. There are other factors present that determine the attitude of the applicants to the default judgment. Having permitted the sale in execution to proceed, the applicants then attempted to settle with the respondent. The amount of R85 000 was first offered, and rejected, and then the increased amount of R250 000 was offered and, likewise, rejected. All the while, the clock was ticking. Considerable time passed which, again, added further weight to the argument that the applicants did not, or could not, challenge the default judgment. These further factors, taken together, reinforces the conclusion that the applicants acquiesced in the default judgment. Only when these attempts at persuading the respondent to settle at a more beneficial amount to them failed did the applicants commence taking steps to rescind the judgment, approximately 11 months after learning of it.

[63] I, thus, find that the applicants have perempted their right to seek the rescission of the default judgment. That puts an end to the application, and the costs of the application must consequently be paid by the applicants. In my judgment, it would be fair to order them to be paid on scale B.

Order

[64] I accordingly grant the following order:

The application is dismissed with costs, which may be taxed on scale B.

MOSSOP J

¹⁶ *South African Revenue Service v Commission for Conciliation, Mediation and Arbitration and others* [2016] ZACC 38; 2017 (1) SA 549 (CC) para 28.

APPEARANCES

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