

**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 129431/2023

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

29 October 2025

In the matter between:

MARIA BUSISIWE MYANGO

First Applicant

(In both her personal and capacity as the executrix
of the estate of the Makulani Julias Myango)

THANDO MYANGO

Second Applicant

ZANELE MYANGO

Third Applicant

OCCUPIERS OF ERF 3[...] MOROKA TOWNSHIP

Fourth Applicant

and

INTIBANE PROPERTIES (PTY) LTD

First Respondent

DR SIMON KOOPEDI

Second Respondent

CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY Third Respondent

SHERIFF SOWETO WEST

Fourth Respondent

WATT-PRINGLE AJ:

1. This is an application for rescission of an eviction order granted by default by Coppin J on 29 May 2023 under case number 22/2544¹ and for an order granting the applicants leave to file an answering affidavit in the eviction proceedings within 20 court days from the order.
2. Before I deal with the merits of this matter, I place on record that the manner in which documents filed of record were uploaded onto CaseLines is shambolic. This, coupled with the absence of a sufficiently detailed index to all papers filed of record in multiple applications makes it nigh impossible to find one's way through the documents, or even to know whether all documents filed of record are accounted for on CaseLines.²
3. This application is brought pursuant to rule 42, alternatively the common law.
4. Insofar as this application relies on the common law basis of "sufficient cause", the requirements of that remedy are an adequate explanation for the applicant's default and that the applicants have a bona fide defence to the eviction application, which has prospects of success.³
5. The applicants are the occupiers of a residential property, Erf 3[...], Moroka Township ("the property"). The first applicant is cited both in her personal

¹ It would appear that the case number on the order of Coppin J is different to the case number in the papers (22/2544) which gave rise to that order. I sought in vain for a copy of the court order in the uploaded papers.

² By way of example, under "Pleadings", the only documents uploaded are two copies of the same second respondent's answering affidavit, second respondent's heads of argument (which obviously do not constitute pleadings) and a notice of motion dated 11 December 2023 which contains the prayers in Part B which I am required to deal with. This arbitrary use of CaseLines is exemplified by the 'pleadings' section, under various arbitrary headings.

³ Chetty v Law Society, Transvaal 1985 (2) SA 756 (A) at 764J – 765C

capacity and as executor of the estate late Makulani Julias Myango (“the deceased”).

6. The first respondent is an entity which is the current owner of the property and the party in whose favour the eviction order was granted by Coppins J. The second respondent is the previous owner from whom, so it is alleged, the property was “*purchased*” pursuant to a verbal agreement concluded by the first applicant’s late parents, one of whom is the deceased, prior to its transfer to the first respondent. The applicants’ alleged defence to the eviction application which resulted in the order for their eviction hinges on this alleged agreement.
7. Since the property constitutes immovable property subject to the Alienation of Land Act 68 of 1981, the purported sale of the property would on the applicants’ version be of no legal force or effect by virtue of section 2 of the Act. It is also common cause that the property was never transferred pursuant to any such agreement, and that the first respondent is now the registered owner of the property.
8. It therefore appears on the face of it that the applicants have not established any legal right before me to remain in occupation of the property. Whether they manage to do so in the affidavit they seek leave to deliver is another matter, on which I for obvious reasons express no view.
9. I now turn to the applicants’ reliance on rule 42 and that the order for eviction was erroneously sought and erroneously granted.
10. The relevant chronology is as follows. The applicants had appointed an attorney, Mr Gudlhuza of SP Gudlhuza Attorneys Inc. to represent them in the

eviction proceedings. The applicants also signed an answering affidavit in that application on 20 June 2022, which unbeknown to them, was never filed on their behalf. Mr Gudlhuza was suspended from practice as a legal practitioner on 6 December 2022, notice of set-down of the eviction application was served on Mr Gudlhuza as attorney of record on 8 April 2023 and the eviction order was granted on 29 May 2023 in the absence of any appearance for the applicants. There was an attempt to execute the order on 24 July 2023. Mr Gudlhuza was struck from the roll of legal practitioners on 3 August 2023.

11. It is apparent that neither the applicants, nor the first respondent which was the applicant in the eviction application, were aware of Mr Gudlhuza's suspension. This was the position when the first respondent's legal representatives sought judgment by default before Coppins J. It goes without saying that the learned judge too was unaware of Mr Gudlhuza's suspension.
12. It is on this basis that the applicants rely on rule 42 for their claim for rescission of judgment.
13. In *Rossitter v Nedbank Ltd* 2015 JDR 2629 (SCA) the Supreme Court of Appeal conveniently summarised the relevant principles applicable to an application such as this:

"The law governing an application for rescission under Uniform rule 42(1)(a) is trite. The applicant must show that the default judgment or order had been erroneously sought or erroneously granted. If the default judgment was erroneously sought or granted, a court should, without more, grant the order for rescission. [3] It is not necessary for a party to show good cause under the subrule. [4] Generally a judgment is erroneously granted if there existed at the time of its issue a fact which the court was unaware of, which would have precluded the granting of the judgment and which would have induced the court, if aware of it, not to grant the judgment. [5] There can be no doubt that if

the registrar had been made aware of the procedural defect in the rule 31(5)(a) notice, default judgment would not have been granted. In Lodhi 2 Properties Investments CC v Bondev Development (Pty) Ltd 2007 (6) SA 87 (SCA), Streicher JA held that if notice of proceedings to a party was required but was lacking and judgment was given against that party such judgment would have been erroneously granted.”⁴

14. First respondent’s attorney who appeared before me did not contest the proposition that had Coppin J been informed that the notice of sit down had been served on the applicants erstwhile attorney after he was no longer permitted to practice, the learned judge would not have proceeded to decide the matter in the absence of the applicants. Nor that, had first respondent’s legal representative appearing before Coppin J been aware of these facts, there would have been a duty to disclose these facts to the court.
15. It follows that the order was both erroneously sought by the first respondent and erroneously granted by Coppin J in ignorance of the fact that there had been no proper notice to the respondents in that matter.
16. The application for rescission must accordingly succeed.
17. I now turn to the issue of costs.
18. It is apparent that one of the reasons for the matter being heard in the absence of the applicants was that, once they had signed an answering affidavit, they failed to take any interest in the matter, despite the months of apparent inaction. They furthermore based the application for rescission on the obviously

⁴ The footnotes in this passage are:

[3] Bakoven Ltd v G J Howes (Pty) Ltd 1992 (2) SA 466 (E) at 471G.

[4] National Pride Trading 452 (Pty) Ltd v Media 24 Ltd 2010 (6) SA (ECP) at 597I-598B.

[5] Erasmus: Superior Court Practice 2 ed (Revision Service 1, 2015) Vol 2 at D1-567. See also Naidoo v Matlala NO 2012 (1) SA 143 (GNP) at 153C.

baseless ground that they had a defence to the eviction application when clearly, on the affidavits before me, they do not.

19. Conversely, the first respondent, on becoming aware of the fact that Mr Gudlhuza had been suspended from practice when the set-down was served on his office, ought to have appreciated that rescission would follow on the grounds set out above.
20. As for the second respondent, he delivered an answering affidavit in which he, with some justification, complained that his joinder was a misjoinder, but not content with taking that point, and despite there being no relief sought against him save in the event of his opposition, he launched into the merits both in his answering affidavit and in argument before me.
21. In the circumstances, all three parties contributed to needless costs being incurred both by themselves and by the other parties. I am therefore not inclined to hold any of the parties liable for the costs of any other party.
22. In the circumstances I make the following order:
 1. The order granted by Coppel J on 29 May 2023 under case number 22/2544 is hereby rescinded.
 2. The applicants are given leave to deliver answering affidavits within 20 court days of this order.
 3. There is no order as to costs.

REGISTRAR

**CE WATT-PRINGLE
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Electronically submitted therefore unsigned

Delivered: This judgement 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 hand-down is deemed to be 29 October 2025.

Date of hearing: 28 May 2025
Date of judgment: 29 October 2025

Appearances

Counsel for the Applicant: M Mavhungu

Attorneys for the Applicant : Sithi & Thabela Attorneys

Attorney for the First Respondent: S Twala of S. Twala Attorneys

Attorney for the Second Resppondent: Brian Khanyile of Khanyile MB Attorneys