



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not Reportable

Case no: **5147/2024**

In the matter between:

**MEC FOR HEALTH FREE STATE PROVINCE
HOD: DEPARTMENT OF HEALTH FREE STATE
PROVINCE**

FIRST APPLICANT

and

SECOND APPLICANT

PROF DT HAGEMEISTER

FIRST RESPONDENT

DR C VAN DERE BIJL

SECOND RESPONDENT

DR M VAN LILL

THIRD RESPONDENT

PROF H BRITS

FOURTH RESPONDENT

DR M BRITS

FIFTH RESPONDENT

DR EM CORDIER

SIXTH RESPONDENT

DR PRF STEINBERG

SEVENTH RESPONDENT

DR MOA BENEDICT

EIGHTH RESPONDENT

Neutral Citation: *MEC for Health, Free State Province & Another v Hagemeister & Others* (5147/2024) [2025] ZAFSHC 309 (25 September 2025)

Coram: JP Daffue J

Heard: 22 May 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and release to SAFLII. The date and time for hand-down is deemed to be 15h00 on 25 September 2025.

Summary: Application for rescission of default judgment - explanation for default riddled with contradictions – no reasonable and acceptable explanation presented – no bona fide defence – respondents entitled to finality – application for rescission dismissed.

ORDER

The application for rescission of the default judgment granted on 30 January 2025 is dismissed with costs, including the costs of counsel on scale A.

JUDGMENT

Daffue J

Introduction

[1] This is yet again an application by a State department for rescission of a judgment granted against it. The court is inter alia called upon to adjudicate whether the applicants have met the standard expected of litigants. In this case, the applicants rely solely on the evidence of a State attorney in order to try and convince the court that the default judgment should be set aside. Neither the Head of the Department of Health, Free State Province (HOD), nor any senior official of that Department filed any affidavits in order to convince the court that they have satisfied the requirements for rescission of judgment.

The parties

[2] The first applicant is the Member of the Executive Council for the Department of Health, Free State Province (the MEC). The second applicant is the HOD of that Department. They are the defendants in the main action against whom default judgment was granted.

[3] The eight respondents are the eight successful plaintiffs in the main action. All of them are medical doctors in the employ of the Department of Health.

[4] In order to avoid confusion, I shall refer to the parties as in the application for rescission of judgment. Occasionally, I may refer to the Department, instead of the applicants.

The relief sought

[5] The applicants seek the following orders:

- a. that the default judgment granted in favour of the respondents on 30 January 2025 under case number 5147/2024 be rescinded;
- b. that leave be granted to them to file their plea within five days of the order; and
- c. costs of the application insofar as it has been opposed by the respondents, although the applicants tendered the costs of the application in the notice of motion.

The judgment by default

[6] On 30 January 2025, Daniso J granted judgment by default in the following terms:

‘Judgment by default is granted in favour of the Plaintiffs against the First and Second Defendants, jointly and severally, the one paying the other to be absolved for:

1. First and Second Defendants shall comply with all obligations under the commuted overtime contract for April 2024.
2. Payment of the following amounts to the Plaintiffs within one month from the date of judgment:
 - i. First Plaintiff – R47 977.80
 - ii. Second Plaintiff – R39 461.57
 - iii. Third Plaintiff – R52 147.43
 - iv. Fourth Plaintiff – R 52 575.64
 - v. Fifth Plaintiff – R28 539.54
 - vi. Sixth Plaintiff – R28 126.32
 - vii. Seventh Plaintiff – R50 891.88
 - viii. Eighth Plaintiff – R45 024.85
3. Interest on the above amounts *a tempore morae* calculated from the date of demand to the date of final payment.
4. Costs of suit on the applicable Magistrates Court Tariff.’

Issue in dispute in respect of the merits

[7] The applicants deny that the respondents are entitled to payment of commuted overtime for April 2024 in terms of commuted overtime contracts entered into between the parties. They do not have any problems with the payment of commuted overtime for the remainder of the financial year from 1 May 2024 and onwards, which have been paid, save in respect of one respondent.

Point in limine: incorrect reliance on rule 31(2)(b) of the Uniform Rules of Court.

[8] The respondents' counsel submitted that the application for rescission of judgment was fatally defective insofar as the applicants incorrectly relied on rule 31(2)(b) to have the default judgment set aside. According to her, default judgment was granted in open court in terms of rule 31(5)(b)(vi). She submitted that the judgment of Rogers J in *Ellis v Eden*¹ in which the learned judge held that rule 31(2)(b) was also applicable to judgments granted by the courts, contrary to judgments granted by the registrar, is wrong. Therefore, so she submitted, the applicants should have pursued a remedy based on rule 42(1), the common law, or the court's inherent jurisdiction, which they failed to do. I do not intend to waste any time on this submission as I am of the view that the application should be considered on the merits. Therefore, the point *in limine* is dismissed.

Litigation history

[9] The following appears from the record:

- a. On 4 June 2024 a letter of demand was sent on behalf of the respondents, responded to on 27 June 2024 by Adv SA Moshodi, the Director of Legal Services of the Department, resulting in the respondents' immediate reply on 17 July 2024 and the presentation of a number of documents in order to prove their case;
- b. no response was forthcoming and on 13 September 2024 summons was served on the applicants;
- c. the *dies* for entering an appearance to defend expired on 12 October 2024, whereupon the application was set down for default judgment to be heard in the unopposed motion court of 14 November 2024;
- d. on 13 November 2024, a day before the hearing and after the unopposed motion court roll has been closed the previous Friday, notices to defend the main action and to oppose the default judgment application were filed – these were signed on 12 November 2024 by Ms B Maranyane, the Acting Head of the State Attorney's office in Bloemfontein;
- e. a discussion ensued on 14 November 2024 between Mr GP Chauke, a State attorney, and counsel for the respondents, whereupon I, the motion court judge at the time, removed the matter from the roll and ordered the defendants (the applicants in this application) to pay the wasted costs by agreement;

¹ *Ellis v Eden; Eden v Ellis and Another* [2022] ZAWCHC 112; [2022] 3 All SA 381 (WCC); 2023 (1) SA 544 (WCC).

- f. by agreement between the parties (which was not made an order of court), the applicants were required to file their plea by 10 December 2024, which they failed to do;
- g. a notice of bar was filed on 11 December 2024;
- h. bearing in mind the period of *dies non*, the applicants were duty-bound to file their plea on/or before 20 January 2025, which they failed to do;
- i. a further default judgment application was set down to be heard in the unopposed motion court of 30 January 2025, when Daniso J, after hearing argument by the legal representatives of the parties, granted default judgment;
- j. the application for rescission of judgment was issued on 27 February 2025 in terms whereof the application was set down for hearing on 17 April 2025;
- k. the respondents filed their answering affidavit timeously;
- l. the applicants filed their replying affidavit on 10 April 2025 only, which effectively meant that there was no time to file heads of argument in terms of the Practice Directives of this Division; consequently, the parties agreed to a postponement to 22 May 2025 when the application was argued.

Requirements for rescission of judgment applications

[10] Rule 42 of the Uniform Rules of Court is not applicable in *casu*. I accept that the court is entitled to consider the relief claimed under the common law.

[11] The test when adjudicating rescission of judgment applications has been reiterated in *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills Cape*.² I quote: 'I turn now to the relief under the common law. In order to succeed an applicant for rescission of a judgment taken against him by default must show good cause (*De Wet and others v Western Bank Ltd supra*). The authorities emphasize that it is unwise to give a precise meaning to the term good cause. As Smalberger J put it in *HDS Construction (Pty) Ltd v Wait*: "When dealing with words such as "good cause" and "sufficient cause" in other Rules and enactments the Appellate Division has refrained from attempting an exhaustive definition of their meaning in order not to abridge or fetter in any way the wide discretion implied by these words (*Cairns' Executors v Gaarn* 1912 AD 181 at 186; *Silber v Ozen Wholesalers (Pty) Ltd* 1954 (2) SA 345 (A) at 352-3). The Court's discretion must be exercised after a proper consideration of all the relevant circumstances." With that as the underlying approach the courts generally expect an applicant to show good cause (a) by giving a reasonable explanation of his default; (b) by showing that his application

² *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills Cape* [2003] ZASCA 36; [2003] 2 All SA 113 (SCA); 2003 (6) SA 1 (SCA) para 11.

is made bona fide; and (c) by showing that he has a bona fide defence to the plaintiff's claim which prima facie has some prospect of success (*Grant v Plumbers (Pty) Ltd, HDS Construction (Pty) Ltd v Wait supra, Chetty v Law Society, Transvaal.*)' (Footnotes omitted.)

The first requirement for rescission: explanation for the default

[12] I accept that I am not dealing with an application for condonation as such, but it is appropriate to refer to what the Constitutional Court had to say about delays caused by litigants and their explanations or lack thereof.

[13] As indicated above, the first requirement to be met is the giving of a reasonable explanation for the default. In this regard it is apposite to refer to the severe criticism by Bosielo AJ, the scribe of the majority judgment in *Grootboom v National Prosecuting Authority and Another*³ (*Grootboom*), in dealing with the condonation application of the National Prosecuting Authority and the Minister of Justice and Constitutional Development. I quote extensively to emphasize the seriousness of the problem:

'[21] The failure by parties to comply with the rules of court or directions is not of recent origin. Non-compliance has bedevilled our courts at various levels for a long time. Even this Court has not been spared the irritation and inconvenience flowing from a failure by parties to abide by the Rules of this Court.

[22] . . . It is crucial to reiterate that both *Brummer and Van Wyk* emphasise that the ultimate determination of what is in the interests of justice must reflect due regard to all the relevant factors but it is not necessarily limited to those mentioned above. The particular circumstances of each case will determine which of these factors are relevant.

[23] It is now trite that condonation cannot be had for the mere asking. A party seeking condonation must make out a case entitling it to the court's indulgence. It must show sufficient cause. This requires a party to give a full explanation for the non-compliance with the rules or court's directions. Of great significance, the explanation must be reasonable enough to excuse the default.' (Emphasis added.)

[14] The court referred in *Grootboom* to the unacceptable explanations for the delays proffered by the respondents and assistant State Attorney in paragraphs 24 to 29 and continued:

³ *Grootboom v National Prosecuting Authority and Another* [2013] ZACC 37; 2014 (2) SA 68 (CC); 2014 (1) BCLR 65 (CC); [2014] 1 BLLR 1 (CC); (2014) 35 ILJ 121 (CC) paras 21-23.

[30] There is another important dimension to be considered. The respondents are not ordinary litigants. They constitute an essential part of government. In fact, together with the office of the State Attorney, the respondents sit at the heart of the administration of justice. As organs of state, the Constitution obliges them to “assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts.”

[31] . . .

[32] I need to remind practitioners and litigants that the rules and courts’ directions serve a necessary purpose. Their primary aim is to ensure that the business of our courts is run effectively and efficiently. Invariably this will lead to the orderly management of our courts’ rolls, which in turn will bring about the expeditious disposal of cases in the most cost-effective manner. This is particularly important given the ever-increasing costs of litigation, which if left unchecked will make access to justice too expensive.

[33] . . .

[34] . . . One gets the impression that we have reached a stage where litigants and lawyers disregard the Rules and directions issued by the Court with monotonous regularity. In many instances very flimsy explanations are proffered. In others there is no explanation at all. The prejudice caused to the Court is self-evident. A message must be sent to litigants that the Rules and the Court’s directions cannot be disregarded with impunity.⁴ (Emphasis added.)

[15] On the inadmissible hearsay version of Mr Chauke, the Department sent the summons and annexures thereto by email to the head of the State Attorney’s office in Bloemfontein on 16 September 2024. Apparently, instructions to defend were issued. There is no evidence as to which official emailed the documents. Mr Chauke decided to vaguely refer to an unidentified ‘legal officer’. Also, there is no proof of sending the email. An email trail is completely missing. Mr Chauke states that due to internal administrative mishaps and a breakdown of the Department of Justice’s IT system, the State Attorney’s office did not receive either the summons, or instructions to defend. I must say that I find it highly improbable that the Department did not seek a written acceptance of the instructions and/or did not follow up on the litigation. It is in the fortunate position that it has an in-house legal advisor, to wit Adv Moshodi referred to above. Surely, Adv Moshodi should have been the link between the Department and the State Attorney’s office. There should have been proper communication between attorney and client.

⁴ Ibid paras 30, 32 and 34.

[16] I have not been informed when the breakdown in the IT system occurred and when was the problem rectified. I also find it highly improbable that the Department would send the summons and annexures, which consists in excess of 80 pages, per email, instead of delivering same by hand. Consequently, there is a total lack of information as to what transpired in the two months from the time that the summons was received to 12 November 2024.

[17] There is no indication who alerted Mr Chauke of the motion court proceedings and/or why the aforesaid notices of intention to defend and to oppose the default judgment were filed only on 13 November 2024. As mentioned, Ms B Maranyane, the Acting Head of the State Attorney's office, signed these documents. No explanation from her has been forthcoming. She failed to file an affidavit to explain when she became aware of the failure to defend the action.

[18] Mr Chauke expressed discontent over his busy schedule. On his version, the particular file was for the first time officially allocated to him by the head of the office on 11 December 2024. Although he appeared in court on 14 November 2024, he apparently did not give any further attention to the case until 11 December 2024. This is unacceptable. Logic dictates that any diligent and reasonable attorney would immediately, and at the latest on 14 November 2024, get urgent instructions from the client in order to properly defend the case and file a plea. At best for the applicants in this case, Mr Chauke should have informed the head of the office immediately of the arrangements so that she could get instructions from the client and allocate the case to an available attorney to deal with the matter urgently.

[19] There is absolutely no indication as to what transpired between 14 November 2024 and 11 December 2024. This is the third month of inaction. The allegation that Mr Chauke only received formal instructions on 11 December 2024 from the head of his office is a lame excuse in the absence of a proper explanation. It is improbable, opportunistic and self-serving, especially as not a word was said by Ms Maranyane. Mr Chauke stated that he failed to diarise the due date of 20 January 2025 and consequently omitted to file a plea. There is no reason why he had to wait till the due date for filing the plea. This is proof of a lack of candour and commitment. The default from beginning to end is wilful and nothing else. The applicants have not once complied with the Uniform Rules of Court. I agree with the respondents that this is both

shocking and highly irregular. It was submitted on behalf of the respondents that even if wilfulness could not be found, the inaction amounted to gross negligence and consequently, the court should in any event not come to the assistance of the applicants.

[20] I reject the Department's version, presented by Mr Chauke, as far-fetched and untenable in the absence of any explanation by the head of the State Attorney's office and any of the applicants, and/or senior officials in the Department, particularly the internal legal advisor, as to the instructions given and what information was conveyed on behalf of the Department to the State Attorney during this time. The first requirement for a successful application, a reasonable explanation for the default, has not been met.

Bona fides in respect of the application and defence

[21] I shall now consider whether the application is bona fide and whether the applicants have put up a *bona fide* defence, carrying some prospect of success. In my view, Mr Chauke was totally indifferent as to what the consequences of the default might be. The application is not *bona fide*. I shall explain.

[22] The point taken by Mr Chauke in the founding affidavit that the High Court does not have jurisdiction insofar as four of the respondents referred the matter to the relevant bargaining council is without substance. The commissioner issued a certificate of non-resolution. There is no doubt that the High Court has jurisdiction. Section 77(3) of the Basic Conditions of Employment Act 75 of 1997 provides that the Labour Court has concurrent jurisdiction with the civil courts to hear and determine any matter concerning a contract of employment.

[23] The eight respondents, all of them medical practitioners in the employ of the Department, participated in the commuted overtime system which has its genesis in the National Policy on Commuted Overtime for Medical and Dental Personnel (the National Policy). Clause 4.2 of the National Policy states that it is necessary for all participants in the commuted overtime remuneration system to complete commuted overtime contracts. All the respondents elected, as provided for in their employment contracts, to work commuted overtime. They signed their commuted overtime contracts for the financial year from 1 April 2024 to 30 March 2025 before the end of

February 2024. These contracts were submitted to the Human Resources Department of the Department of Health timeously as is evident from annexure FA4 to the answering affidavit. On 12 April 2024 only, Dr Rita Nathan confirmed in an email that she had submitted the contracts to the CEO's office. The respondents were not afforded the dignity of having been provided with the contracts signed by the Department. If the Department has delayed the signing of the contracts, the respondents cannot be blamed.

[24] Duty rosters dated 11 April 2024, signed by Dr Nathan, confirmed that the respondents were scheduled to work commuted overtime for April 2024. Contrary to Mr Chauke's version, the respondents pointed out the established practice for rosters to be submitted during the month in question, with no requirement for submitting same in the preceding month. The worksheets, detailing the commuted overtime, approved by Professor Brits, were submitted on 18 April 2024 as requested by Dr Nathan. Although the respondents duly performed the required commuted overtime duties in April 2024 and for the months thereafter, the applicants started remunerating the respondents in accordance with the contracts from May 2024 only. They failed to remunerate the respondents for commuted overtime worked in April 2024, notwithstanding the fact that these professionals delivered urgent and much needed medical services to the public.

[25] Although Mr Chauke tried to submit, based on no factual evidence whatsoever, that the respondents did not work commuted overtime in April 2024, there can be no doubt that they were scheduled and required to work commuted overtime during that month and in fact performed their duties. This was not properly disputed on the papers as could have been expected, bearing in mind the trite authorities.

[26] The respondents' version in paragraph 35 of the answering affidavit was merely flatly denied by Mr Chauke in the replying affidavit without providing any reasons for the denial. It is alleged in paragraph 35 that the HOD scheduled the respondents late in March 2024 to work commuted overtime during April 2024. Also, that the respondents duly performed their duties as scheduled. The HOD did not care to deny this important evidence. As mentioned above, neither the two applicants, nor any senior official in the Department deposed to any affidavits in this application, let alone confirming Mr Chauke's version.

[27] The amounts claimed, and the calculation thereof, have never been disputed. Although the seventh respondent was formally informed on 10 May 2024 that approval for payment of his commuted overtime had not been granted, he did in fact work commuted overtime in April 2024 and was never instructed to stop working. There is no reason why another court may eventually find that he was not entitled to be remunerated for the month of April 2024 for services rendered.

[28] I am satisfied that the applicants failed to show a *bona fide* defence which *prima facie* carry some prospects of success. The vague and generalised assertions by Mr Chauke regarding the merits of the case are insufficient. These are as opaque as a Free State sandstorm.

[29] The applicants rely on unsubstantiated and bold denials. No affidavit has been provided by:

- a. any official within the Human Resources or Finance Departments of the Department of Health to dispute the existence, validity, or receipt of the commuted overtime contracts for the particular period;
- b. any official to deny the scheduling, performance, or approval of the respondents' overtime in April 2024;
- c. any executive or administrative official to contest the accuracy of the duty rosters, worksheets and the correspondence from Dr Nathan.

[30] Therefore, I accept that the respondents presented clear documentary evidence of their entitlement to the payments for April 2024 which have not been denied under oath by any official of the Department. The respondents are medical professionals who rendered essential clinical services to the public in good faith. Their summons, including annexures to prove their case of close to 80 pages, followed upon their comprehensive response as early as 17 July 2024 when all supporting documentation were provided to the applicants. The applicants had no regard for the overtime worked by the medical professionals and went out of their way to delay finalisation. They cannot now rely on s 34 of the Constitution. The doors of the court were wide open for them to come in and to present their case, but they did not accept the invitation. The doors have been closed and should not be reopened.

Conclusion

[31] The applicants failed to meet the requirement of good or sufficient cause. Litigants' non-compliance with the rules of court affects justice and pollutes the sanctity of the rule of law as aptly stated by Opperman J in *Matjhabeng Local Municipality v Down Touch Investments (Pty) Ltd and Another*.⁵ This is exactly what the applicants have done in this case. They showed a total disregard for the rights of the respondents. Consequently, the application for rescission of judgment cannot succeed.

[32] I considered granting costs on an attorney and client scale as requested by the respondents, but although this is an appropriate case to grant such punitive costs, I decided against it, especially bearing in mind that the respondents could have issued summons in the Magistrate's Court. However, I do not intend to grant costs on the Magistrate's Court scale, but on the High Court scale.

Order

[33] The following order is made:

The application for rescission of the default judgment granted on 30 January 2025 is dismissed with costs, including the costs of counsel on scale A.



J P DAFFUE
JUDGE OF THE HIGH COURT

⁵ *Matjhabeng Local Municipality v Down Touch Investments (Pty) Ltd and Another* [2024] ZAFSHC 220; [2024] 4 All SA 827 (FB) para 36.

Appearances

For the applicants: PG Chaka
Instructed by: State Attorney, Bloemfontein

For the respondents: NA Wagemaker
Instructed by: Welman and Bloem Inc
c/o McIntyre Van der Post Inc, Bloemfontein.