



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 53341/2020

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES / NO.

(2) OF INTEREST TO OTHER JUDGES: YES / NO.

(3) REVISED.

11/08/2025
DATE

SIGNATURE

In the matter between:

BRAD STRYDOM

APPLICANT

And

ANTHONY KILROY BEAMISH

RESPONDENT

In re:

ANTHONY KILROY BEAMISH

PLAINTIFF

And

BRAD STRYDOM**DEFENDANT**

JUDGMENT

TD SENEKE, AJ**INTRODUCTION**

1. The applicant brought an application to seek the following orders:
 - 1.1. The order, dismissing the application for security of costs as granted by the Honourable Mister Justice Strijdom on 26 February 2024, be set aside.
 - 1.2. The costs to be costs in the main application.
 - 1.3. In the event that the application becomes opposed, costs to be paid by the respondent.¹

CASE FOR THE APPLICANT

2. This application for rescission of judgement, is brought in terms of the provisions of Rule 42 of the Uniform Rules of the above Honourable Court as well as in terms of the common law. The applicant submits that the relief sought in terms of Rule 42 fall within the parameters envisaged by the rule.²

¹ Notice of motion, caseline 027-1 to 027-4

² FA (rescission) para 5 caseline 027-8

3. The application is more specifically brought on the premise that it was erroneously sought and erroneously granted in his absence.³
4. The applicant further submits that, had the Honourable Court known about the true facts, as well as the reasons for his absence, which at the time could not be brought to its attention, it would never have granted the default judgment against him.⁴
5. The application is brought in terms of the common law because what occurred on the 26th of February 2024 is against the principle of simple justice between man and man, as the facts will demonstrate.⁵

Application for security of costs

6. The applicant alleges that he was advised by his first attorney of record, Arnoud van den Bout, where he did his articles at the time, to bring an application for the security for costs against Mr Beamish, who has issued summons against him for defamation in the main action. The application was brought because the applicant alleges that he knows that Mr Beamish is involved in no less than three other defamation matters where he is also the Plaintiff, as well as in an application against a Ms M van der Merwe to declare her a vexatious litigant. The applicant submits, that the action against him is vexatious and without merit seeing as he has a *bona fide* defence based on qualified privilege and fair comment. The applicant contends that the facts that he has set out also supports his contentions that he has a reasonable chance of being successful with the application for security for costs, which he has always intended to pursue.⁶

³ FA (rescission) para 6 caseline 027-8

⁴ FA (rescission) para 7 caseline 027-8

⁵ FA (rescission) para 8 caseline 027-8

⁶ FA (rescission) para 9 caseline 027-9

7. The applicant states further that the respondent has instituted legal action against a Mr O'Sullivan in three claims amounting to R1 500 000.00 under case number 2024/3628, also for defamation. Mr O'Sullivan has the same defences against the claims namely qualified privileged, public interest and fair comment. Then there are two actions pending against Ms M van der Merwe claiming approximately R 3 200 000 (under case number 2021/28473) and one with no less than eight defendants under case number 2022/35912, which includes attorneys, advocates, the National Prosecuting Authority and Forensics for Justice. This last claim is in excess of R 8 000 000. The papers are voluminous, the particulars of claim alone are 48 pages, there are applications to compel, notices of bar, notices of removal of bar, exceptions, amendments etc. These processes are all very time consuming and costly, especially in the high court and taking into account that Mr Beamish has appointed an attorney and an advocate. The applicant submits that the monetary value of the claims, if one has regard to how the courts normally decide reasonable awards for "general damages", are exorbitant and unrealistic.⁷

Facts leading to the granting of the order

8. On or about 19th of February 2024, and despite the notice of set down having been served on the applicant's new attorneys of record on 24th January 2024, (a fact the applicant's latest attorneys of record discovered on CaseLines), the candidate attorney referred to herein before, a certain Chanel, contacted the applicant via WhatsApp and requested a consultation on Wednesday, 21 February 2024. The applicant alleges that she also advised that he had to make a further deposit before they would assist him further in the matter.⁸

⁷ FA (rescission) para 10 caseline 027-9 to 027-10

⁸ FA (rescission) para 12 caseline 027-11

9. She explained that the matter was on the opposed motion roll for 26th February 2024. Once again enrolled by the respondent, Mr Beamish's, Attorneys.⁹

Withdrawal as attorneys of record by the applicant's previous legal representative

10. On 20 February 2024, the day after the WhatsApp messages aforementioned, the applicant alleges that he received another WhatsApp message indicating that the current attorneys had filed a notice of withdrawal of attorneys of record without any further explanation whatsoever. After having received the notice of withdrawal, the applicant decided to attend Court on Monday, 26th February 2024 in person and asked for a postponement of the matter in order to seek alternative legal advice. It needs to be pointed out to this Honourable Court and it is an error pointed out to him by his current attorneys of record, that the mentioned notice of withdrawal does not comply with the provisions of Rule 16 of the Uniform Rules of this Honourable Court. Another irregularity which should have been pointed out to the court granting default judgment because it is a factor that could affect (and he submits indeed did), the party seeking judgment's endeavours to contact him before making an application for default judgment.¹⁰
11. On Monday, 26 February 2024, the applicant alleges that he arrived at the High Court (New Building) in Madiba Street, at approximately 10:00. He made quite a few enquiries about where he should be going, but without success. Eventually around 10:30 or just after, he alleges that he asked an advocate who consulted his phone and told him that he should appear in Court 8D. When he arrived at Court 8D, it was between 10:30 and 11:00, the courtroom was completely empty and he had no idea what to do or where to go next.¹¹

⁹ FA (rescission) para 13 caseline 027-12

¹⁰ FA (rescission) para 15 caseline 027-12 to 027-13

¹¹ FA (rescission) para 17 caseline 027-13

12. The applicant alleges that he knows that it might seem strange to this Honourable Court, having done his articles at a law firm in Pretoria, that he did not know where to go, but this was literally a rare time he found myself in the High Court as he did not have a lot of litigation exposure whilst he did his articles.¹²

Good cause

13. The applicant alleges that it is with the help of Mr Bahlmann that he found out that default judgment was granted against him on the 26th of February 2024 by Judge Strijdom and that he was now also responsible for paying the respondent, Mr Beamish's costs. As his other attorneys of record have intimated, Mr Bahlmann agrees that he has a very strong defence against the claim in the main action.¹³
14. The applicant's new attorneys of record also pointed out to him that his telephone number was on the notice of withdrawal served on the respondent's attorneys of record, albeit that the notice does not comply with the provisions of Rule 16 as mentioned herein before. He was therefore available and contactable, and he submit it was the very least, his opponent could and should have done on the day before taking judgment against him, to phone him and establish his whereabouts or intent. He has been advised that the Judge sitting in *casu* Judge Strijdom, under normal circumstances would probably have asked whether an attempt to get hold of him was made before giving judgment against him.¹⁴

Good prospects to succeed

15. The applicant submits that, he also makes out good argument for the fact that the respondent might in fact not be able to make good a cost order against him

¹² FA (rescission) para 18 caseline 027-13

¹³ FA (rescission) para 20 caseline 027-14

¹⁴ FA (rescission) para 22 caseline 027-15

in the event that he is successful in his defence against his defamation claim, by virtue of all the other actions he has pending and having regard to the fact that he maintains that the defendants all ruined his career, one can only wonder whether the respondent has the resources, in for example, being gainfully employed. The applicant requests an order as set out in the notice of motion hereto.¹⁵

CASE FOR THE RESPONDENT

The order was not granted in the applicant's absence

16. The terminology "in the absence of a party affected thereby" does not refer to the physical presence of a party (or his representatives) at a hearing. It refers to an order having been sought without citing and serving that party.¹⁶
17. Judge Strijdom had both a founding affidavit and replying affidavit from the applicant before him when he considered the application, and he duly read them. The applicant was thus not "absent" as a party to the proceedings. His version on the affidavits (from which he would not, in any event, have been permitted to depart at a hearing) was before the Court.¹⁷

The order was not erroneously sought or erroneously given

18. Even if it could be said that the order was sought or granted in the "absence" of the applicant (which is denied), the applicant has failed to show that his absence resulted from any error on the part of the respondent or the Court. Instead, on

¹⁵ FA (rescission) para 27 caseline 027-17

¹⁶ AA (rescission) para 7.1 caseline 027-60

¹⁷ AA (rescission) para 7.2 caseline 027-60

his own version, his “absence” was the result of: (a) his attorneys’ failures; and (b) his own election to come to Court late.¹⁸

19. Moreover, even if there was an “error” on the respondent’s part or that of the Court (which is denied), the applicant is required to show that the order would not have been granted but for the error. He has failed to do so. He has failed even to plead, let alone prove, in his affidavits, that his application for security for costs had any prospects of success. Instead, he inadvertently reveals that his application was based on a lie (i.e. that he was going to incur substantial legal costs, when in fact his lawyers were acting *pro bono*), and that he, in truth, never needed security at all.¹⁹
20. As to the third requirement, the applicant has not brought this application within a reasonable time. The applicant has failed to account adequately for every day, week and month between the granting of the order on 26 February 2024, and the bringing of this application on 8 May 2024.²⁰
21. The applicant has therefore met none - not even one - of the three requirements for rescission of the order. This application should thus be dismissed with costs.²¹
22. The application constitute abuse of court process which is intended to evade the defamation action.

LEGAL FRAMEWORK

23. Rule 42(1) provides that:

“Variation and rescission of orders

¹⁸ AA (rescission) para 8.1 caseline 027-60

¹⁹ AA (rescission) para 8.2 caseline 027-60

²⁰ AA (rescission) para 9 caseline 027-61

²¹ AA (rescission) para 10 caseline 027-61

- (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.*
- (2) *Any party desiring any relief under this rule shall make application therefor upon notice to all parties whose interests may be affected by any variation sought.*
- (3) *The court shall not make any order rescinding or varying any order or judgment unless satisfied that all parties whose interests may be affected have notice of the order proposed."*

Absence of a party affected

24. 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*²² when dealing with the absence of an applicant in rescission applications under Rule 42(1)(a), the Constitutional Court clarified that:

"[56] ...However, the words "granted in the absence of any party affected thereby", as they exist in rule 42(1)(a), exist to protect litigants whose

²² 2021 (11) BCLR 1263 (CC) (17 September 2021)

presence was precluded, not those whose absence was elected. Those words do not create a ground of rescission for litigants who, afforded procedurally regular judicial process, opt to be absent.

[57] At the outset, when dealing with the “absence ground”, the nuanced but important distinction between the two requirements of rule 42(1)(a) must be understood. A party must be absent, and an error must have been committed by the court. At times the party’s absence may be what leads to the error being committed. Naturally, this might occur because the absent party will not be able to provide certain relevant information which would have an essential bearing on the court’s decision and, without which, a court may reach a conclusion that it would not have made but for the absence of the information. This, however, is not to conflate the two grounds which must be understood as two separate requirements, even though one may give rise to the other in certain circumstances. The case law considered below will demonstrate this possibility.

...

[60] ... Whilst that matter correctly emphasises the importance of a party’s presence, the extent to which it emphasises actual presence must not be mischaracterised. As I see it, the issue of presence or absence has little to do with actual, or physical, presence and everything to do with ensuring that proper procedure is followed so that a party can be present, and so that a party, in the event that they are precluded from participating, physically or otherwise, may be entitled to rescission in the event that an error is committed. I accept this. I do not, however, accept that litigants can be allowed to butcher, of their own will, judicial

process which in all other respects has been carried out with the utmost degree of regularity, only to then, ipso facto (by that same act), plead the “absent victim”. If everything turned on actual presence, it would be entirely too easy for litigants to render void every judgment and order ever to be granted, by merely electing absentia (absence).” (own emphasis)

25. In this case, the applicant stated in paragraph 12 of the founding affidavit that he became aware that the matter was set down for 26 February 2024. He was informed by Chanel, the candidate attorney of his erstwhile attorneys, on 19 February 2024.
26. He was the applicant in the Rule 47 application for security of costs. As the *dominus litis* on the Rule 47 application, he was not precluded from participating in the case.
27. On his version, the applicant had more than 5 (five) days to ensure that he was ready for the hearing on 26 February 2025.
28. The applicant has laid most of the blame on his legal representative. He blamed his legal representatives for not filing the heads of argument and for withdrawing as his attorneys of record.²³
29. The applicant has not satisfied the requirements for absence

Order erroneously sought by the respondent or erroneously granted

30. In *Daniel v President of the Republic of South Africa*,²⁴ the Constitutional Court held that:

²³ FA (rescission) para 21 caseline 027-14 to 027-15

²⁴ 2013 (11) BCLR 1241 (CC).

*"[6] The applicant is required to show that, but for the error he relies on, this Court could not have granted the impugned order. In other words, the error must be something this Court was not aware of at the time the order was made and which would have precluded the granting of the order in question, had the Court been aware of it."*²⁵

31. The applicant basis his case in this regard on the fact that the matter was called at 09h52 in accordance with the script.
32. That counsel for the respondent misled the court by stating that the matter was unopposed. That the counsel did not mention whether the respondent or counsel took steps in locating the applicant.
33. That the counsel or respondent did not tell the court that the notice of withdrawal did not comply with the Rule 16 of the Uniform Rules in that only the applicant's phone number appeared on the notice and alleges that this would make service of the judgment impossible.
34. The applicant also contends that having regard to the transcript and judgment, it may be construed that the Court at no stage considered the merits of the application and that had Strijdom J been appraised of the facts, the more appropriate order in such circumstances would have been to postpone.
35. In *De Wet and Others v Western Bank*,²⁶ the court stated the following:

"In the Supreme Court an application for the rescission of a default judgment can be based on the provisions of Rule 31(2)(b) or Rule 42(1), or on common law principles, depending on the circumstances of the particular case. It is common cause that in the present instance the appellants cannot rely on the

²⁵ Daniel at para 6.

²⁶ (363/77) [1979] ZASCA 22 (13 March 1979)

provisions of Rule 31(2)(b). Counsel for the appellants presented his argument under two main heads. Firstly, he contended that the Court of first instance should have rescinded the judgments and orders in question under the provisions of Rule 42(1)(a) as being judgments and orders "erroneously sought and erroneously granted" against the appellants, in their absence. A number of arguments were advanced in support of this proposition. Counsel for the appellants referred, in the first instance, to the fact that, in withdrawing as attorney for the appellants, Lebos had failed to comply with the provisions of Rule 16(4) in at least two respects. This is common cause. The formal notification to the Registrar did not specify the date when, the parties to whom, and the manner in which notification was sent to all parties concerned, and it was not accompanied by a copy of last-mentioned notification. It was, accordingly, contended that the proceedings before VAN REENEN J were irregular and that the judgments against the appellants had been erroneously sought and granted. In my view, there is no substance whatever in this contention. The appellants cannot avail themselves of the fact that their attorney had not complied with all the requirements of Rule 16(4). There is no question of any irregularity on the part of the respondent. At the stage when Lebos withdrew as the appellants' attorney, the case had already been set down for hearing on 16 August 1976 in accordance with the Rules of Court, and there was no need for the respondent to serve any further notices or documents on the appellants in connection with the resumed hearing. As far as the trial Court was concerned the Rules of Court had been fully complied with and the notice of trial had been duly given. When the case was called before VAN REENEN J neither the appellants nor their legal representative were present in Court, and, in the circumstances, the respondent's counsel was fully entitled to apply for an order of absolution

from the instance with costs in terms of Rule 39(3) in respect of the appellants' claims and to move for judgment against the appellants under Rule 39(1) on the counterclaim. The fact that the appellants had not been advised timeously of the withdrawal of their attorney is, of course, a factor to be taken into account in considering whether good cause has been shown for the rescission of the judgments under the common law, but it is not a circumstance on which the appellants can effectively rely for the purpose of an application under the provisions of Rule 42(1)(a)."

36. The applicant has in broad terms based his case on technical issues such as the transcripts and the Rule 16 notice withdrawal. He has not met the test for erroneous order as enunciated in Daniel and De Wet authorities.

Rescission under common law

37. The test for a rescission under Common law is trite, namely that good cause must be shown. In order to establish good cause, an applicant must set forth a reasonable explanation for the default and a bona fide defence(s).²⁷
38. Chetty expressed the requirements as follows:

"The term "sufficient cause" (or "good cause") defies precise or comprehensive definition, for many and various factors are required to be considered (See Cairn's Executors v Gaam 1912 AD 181 at 186 per Innes JA), but it is clear that in principle and in the long-standing practice of our courts two essential elements "sufficient cause" "for rescission of a judgment by default" are:

²⁷ Mokgatle v Allegiance JHB South (Pty) Ltd (47615/2020) [2024] ZAGPPHC 661 (2 July 2024) at para 9.

- (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 (De Wet's case supra at 1042; PE Bosman Transport Works Committee and Others v Piet Bosman Transport (Pty) Ltd 1980 (4) SA 799 (A); Smith N O v Brummer N O and Another; Smith N O v Brummer 1954 (3) SA 352 (O) at 357-8)."*

39. The court in Chetty also held that:

*"... It is not sufficient if only one of these two requirements is met; for obvious reasons a party showing no prospects of success on the merits will fail in an application for rescission of a default judgement against him, no matter how reasonable and convincing the explanation of his default. An orderly 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 judgement against him rescinded on the ground that he had reasonable prospects of success on the merits."*²⁸

Reasonable and satisfactory explanation for his default

40. In *Harris v ABSA Bank Ltd Volkskas*,²⁹ the court stated that:

"[8] 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

²⁸ Chetty at 765 A-E; Ratshitanga and Another v Madima N.O and Others (35748/2018) [2023] ZAGPJHC 76 (1 February 2023) at para 47.

²⁹ 2006 (4) SA 527 (T).

omit to take the step which would avoid the default and must appreciate the legal consequences of his or her actions.

[9] *A decision freely taken to refrain from filing a notice to defend or a plea or from appearing, ordinarily will weigh heavily against an applicant required to establish sufficient cause. However, I do not agree that once wilful default is shown the applicant is barred; that he or she is then never entitled to relief by way of rescission as he or she has acquiesced. The Court's discretion in deciding whether sufficient cause has been established must not be unduly restricted. In my view, the mental element of the default, whatever description it bears, should be one of the several elements which the court must weigh in determining whether sufficient or good cause has been shown to exist. In the words of Jones J in De Witts Auto Body Repairs (Pty) Ltd v Fedgen Insurance Co Ltd 1994 (4) SA 705 (E) at 708G,*

'... the wilful or negligent or blameless nature of the defendant's default now becomes one of the various considerations which the courts will take into account in the exercise of their discretion to determine whether or not good cause is shown'."

41. In *casu*, the applicant was in default of filing his heads of argument, practice note, chronology and appearing for the hearing of the matter. The factual basis of the applicant's claim was contained in the form of affidavits and was considered by this Court. The applicant blames the omission on his legal representatives. As I have already stated above, the failure to act by the applicant's attorneys does not absolve the applicant. This is especially so in circumstances where he failed to instruct them. Even more so where the applicant fails to provide any account

for the steps he took in ensuring the Rule 47 application was set down to be heard in light of his attorneys' alleged failure to act.

42. This was not an ordinary case where the applicant was precluded from participating in the application. The applicant was aware at all material times of the cut off dates for the submission of the relevant documents and the date the matter was set down.
43. The applicant had no intention to bring to finality his application in terms of Rule 47. On his version at paragraph 15 of his founding affidavit, his appearance on 26 February 2025 was for the purpose of seeking a postponement and not to present his case before court. The applicant's intention was to delay the main case of defamation which was brought by the respondent.

Bona fide defence

44. In the *Harris v ABSA Bank*, Moseneke J stated as follows:

"[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".

45. The applicant's Rule 47 application was premised on the ground that the defamation action is vexatious, reckless and amounts to an abuse of court process.³⁰
46. The applicant now alleges in this rescission application, that he brought the Rule 47 application because he knew (at the time it was brought) that the respondent was involved in no less than three other defamation matters where he is the plaintiff, as well as in an application against Ms M van der Merwe to declare her a vexatious litigant. He also contends that it is an undisputed fact that litigation is expensive and that this strengthens his claim.³¹
47. Nevertheless, this *ex post facto* reasons has no bearing on the issue of whether the respondent's defamation action is vexatious, frivolous or amounts to an abuse of court process. It is irrelevant and does not raise a triable issue.
48. The applicant's contention is also problematic because at the inception of the Rule 47 application, the applicant was being assisted on a pro-bono basis because he was doing his articles of clerkship. Therefore, the applicant had no valid reason to bring the Rule 47 application.

CONCLUSION

49. I come to the conclusion that the applicant has not made a case for the rescission of the order granted by Strijdom J on 26 February 2025.
50. I accordingly make the following order:

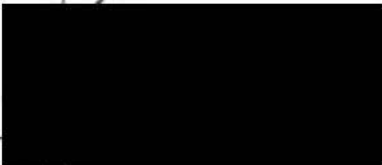
The order:

1. The application for rescission of judgment is dismissed.

³⁰ FA (Rule 47 Application) para 9.1 to 9.3 caseline 011-12

³¹ FA (rescission) para 9 caseline 027-9

2. The applicant is ordered to pay party and party cost at scale B.


TD SENEKE AJ

Acting Judge of the High Court

Gauteng Division, Pretoria

Appearances

For Applicant : Advocate M de Meyer

Instructed by : Fourie Fismer Attorneys

For Respondent : Advocate B Winks

Instructed by : Stephan G May Attorneys