Reportable:	YES / **NO**
Circulate to Judges:	YES / **NO**
Circulate to Regional Magistrates:	YES / **NO**
Circulate to Magistrates:	YES / **NO**

IN THE HIGH COURT OF SOUTH AFRICA

(NORTHERN CAPE DIVISION, KIMBERLEY)

Case no: 1913/2024

In the matter between:

BAREND JACOBUS LIEBENBERG Applicant

and

STANDARD BANK OF SOUTH AFRICA LTD First Respondent
(Registration number: 1962/000738/06)

DONOVAN THEODORE MAJIEDT N.O. Second Respondent

LEDWABA MPONYANA LAZARUS N.O. Third Respondent
(in their capacities as provisional Trustees of the Insolvent Estate of Barend Jacobus Liebenberg, Estate No: K30/2024)

MASTER OF THE HIGH COURT, KIMBERLEY Fourth Respondent

Coram: MAMOSEBO J

Heard: 22/08/2025.

Delivered: 14/11/2025.

Summary: Insolvency – Applicant finally sequestrated – Application for rescission of the final sequestration order – The onus lies with the applicant to prove that the requirements in rule 42(1)(a) for rescission are met: that the order sought to be rescinded was erroneously sought or granted in his absence – Applicant electing not to oppose final sequestration despite being served with the application, the provisional sequestration order, and further being aware of the return date – Applicant failing to demonstrate that the order was erroneously sought or granted – No case made for rescission of final sequestration order.

ORDER

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1. The application for the rescission of the judgment and order dated 11 October 2024, as well as for the condonation of the late filing thereof, is dismissed with costs which costs shall include counsel fees on Scale B of Rule 69(7).

JUDGMENT

Mamosebo J

[1] The applicant, Mr Barend Jacobus Liebenberg, was finally sequestrated on 11 October 2024 in terms of a sequestration order granted by default under Case No 1913/2024. On 10 December 2024, he launched an application for the rescission of the sequestration order and the condonation of the late filing of the said rescission application. The applicant subsequently sought a postponement of the rescission application. The application is opposed by the first respondent, Standard Bank of South Africa Ltd ("Standard Bank").

[2] In light of the chronology of events in this case, I shall deal first with the purported postponement of the rescission application, followed by the rescission application including the condonation thereof.

Postponement application

[3] The applicant filed his Notice of Motion in the rescission application on 10 December 2024. The notice reads that in the absence of opposition, the matter be enrolled to be heard on 20 December 2024 which was scratched out and the date of 03 January 2025 appears above. The notice was signed by the applicant and seemingly served on the respondent's attorney. The respondents filed their opposing papers, however, it appears that the applicant did nothing to move the matter forward. Mr Els, appearing for the first respondent, submitted that Standard Bank set the matter down on 11 June 2025 after the applicant failed to file a replying affidavit. The applicant subsequently filed a replying affidavit and a supplementary affidavit.

[4] On the date of the hearing, 22 August 2025, the applicant sought to have the hearing postponed without having filed a substantive application for postponement. Notwithstanding that, he was afforded ample chance to explain his postponement application from the bar. He argued that he had new evidence, he needed more time to appoint a legal representative as he would be prejudiced unrepresented, and would be ready to proceed in a few weeks. Standard Bank opposed the application for postponement.

[5] These are the reasons furnished by Mr Els to substantiate the Bank's opposition to the postponement. The second and third respondents are appointed by the Master of the High Court, Kimberley as the Trustees in the applicant's estate. Even though dates were already set, 31 July and

01 August 2025 for the enquiry in terms of s 152(2) of the Insolvency Act[1] to be conducted, Mr Liebenberg did not attend. He was aware that the rescission application was set down for 22 August 2025 and on the day before the hearing, Standard Bank got wind that a postponement application was looming. It perceived Mr Liebenberg as being opportunistic because he had addressed a letter to the Master of the High Court dated 30 July 2025 where he pleaded at paragraph 5 as follows:

> 'It is imperative to bring to your attention that I, Barend Jacobus Liebenberg, in good faith and on sound legal grounds, launched an application for the rescission of the final sequestration order. This rescission application, under High Court Case Number: 1913/2024 has been duly set down for hearing on 22 August 2025.'

On the first paragraph of the last page, he wrote:

> 'It is respectfully requested that the Section 152(2) inquiry be postponed to a date subsequent to 22 August 2025, allowing for the High Court's determination of the rescission application.'

[6] Postponements are an indulgence granted by the courts after a substantive application has been launched. A court retains the discretion, to be exercised judiciously, as to whether to grant or refuse a postponement.[2] In *Myburgh Transport v Botha t/a SA Truck Bodies*[3] the following principles were outlined:

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[1] 24 of 1936. Section 152(2) stipulates that: 'If at any time after the sequestration of the estate of a debtor and before his rehabilitation, the Master is of the opinion that the insolvent or the trustee of that estate or any other person is able to give any information which the Master considers desirable to obtain, concerning the insolvent, or concerning his estate or the administration of the estate or concerning any claim or demand made against the estate, he may by notice in writing delivered to the insolvent or the trustee or such other person summon him to appear before the Master or before a magistrate or an officer in the public service mentioned in such notice, at the place and on the date and hour stated in such notice, and to furnish the Master or other officer before whom he is summoned to appear with all the information within his knowledge concerning the insolvent or concerning the insolvent's estate or the administration of the estate.'

[2] *Lekolwane and Another v Minister of Justice and Constitutional Development* [2006] ZACC 19 (CC); 2006 JDR 0897 (CC); 2007 (3) BCLR 280 (CC) para 17; see also *Majakathata Long Distance Taxi Association and Another v MEC for Police, Road and Transport, Free State Province and Others* [2019] JOL 44884 (FB) para 5.

[3] 1991 (3) SA 310 (NmS) at 314F – 315J.

'1. The trial Judge has a discretion as to whether an application for a postponement should be granted or refused (*R v Zackey* 1945 AD 505).

2. That discretion must be exercised judicially. It should not be exercised capriciously or upon any wrong principle, but for substantial reasons. (*R v Zackey* (*supra*); *Madnitsky v Rosenberg* 1949 (2) SA 392 (A) at 398 - 9; *Joshua v Joshua* 1961 (1) SA 455 (GW) at 457D.)

3. An appeal Court is not entitled to set aside the decision of a trial Court granting or refusing a postponement in the exercise of its discretion merely on the ground that if the members of the Court of appeal had been sitting as a trial Court they would have exercised their discretion differently.

4. ...

5. A Court should be slow to refuse a postponement where the true reason for a party's non-preparedness has been fully explained, where his unreadiness to proceed is not due to delaying tactics and where justice demands that he should have further time for the purpose of presenting his case. *Madnitsky v Rosenberg* (*supra* at 398 - 9).

6. An application for a postponement must be made timeously, as soon as the circumstances which might justify such an application become known to the applicant. *Greyvenstein v Neethling* 1952 (1) SA 463 (C). Where, however, fundamental fairness and justice justifies a postponement, the Court may in an appropriate case allow such an application for postponement, even if the application was not so timeously made. *Greyvenstein v Neethling* (*supra* at 467F).

7. An application for postponement must always be *bona fide* and not used simply as a tactical manoeuvre for the purposes of obtaining an advantage to which the applicant is not legitimately entitled.

8. Considerations of prejudice will ordinarily constitute the dominant component of the total structure in terms of which the discretion of a Court will be exercised. What the Court has primarily to consider is whether any prejudice caused by a postponement to the adversary of the applicant for a postponement can fairly be compensated by an appropriate order of costs or any other ancillary mechanisms. (Herbstein and Van Winsen *The Civil Practice of the Superior Courts in South Africa* 3rd ed at 453.)

9. The Court should weigh the prejudice which will be caused to the respondent in such an application if the postponement is granted against the prejudice which will be caused to the applicant if it is not.

10. Where the applicant for a postponement has not made his application timeously, or is otherwise to blame with respect to the procedure which he has followed, but justice nevertheless justifies a postponement in the particular circumstances of a case, the Court in its discretion might allow the postponement but direct the applicant in a suitable case to pay the wasted costs of the respondent occasioned to such a respondent on the scale of attorney and client. Such an applicant might even be directed to pay the costs of his adversary before he is allowed to proceed with his action or defence in the action, as the case may be. *Van Dyk v Conradie and Another* 1963 (2) SA 413 (C) at 418; *Tarry & Co Ltd v Matatiele Municipality* 1965 (3) SA 131 (E) at 137.'

[7] It is inexplicable how the applicant can renege to seek to postpone the rescission application for which he had earlier requested the office of the Master to allow to be prioritised. Strangely, during the application for the postponement of the rescission application, he not only attempted to disavow his own signature appearing at the bottom of the letter, but the letter as well. He, however, reluctantly confirmed the details appearing below the signature as his and his wife's.

[8] The sought postponement has numerous problems. First, as already said in paragraph 4 above, the applicant did not make a substantive application for postponement.[4] Second, the application made from the bar was not timeous. Third, the reasons meant to justify the postponement sought fall short of doing that, especially in light of the nature of the impugned order in the proceedings the applicant sought to postpone. In sequestration matters, even the slightest of delays has significant repercussions.

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[4] See *Absa Bank Limited v Nosworthy and Another* [2017] JOL 37247 (ECP) para 1; see also *Mahlangu and Another v Standard Bank of South Africa Ltd* [2024] JOL 66261 (GP) para 7.

[9] The postponement seems more like a tactical manoeuvre to obtain an advantage that the applicant is not entitled to. This is clear from his conduct in the rescission proceedings, ranging from failing to timeously file his replying affidavit; to him filing a notice to oppose the set down of the rescission application; and the self-conflicted argument that he be afforded some time to appoint a legal representative as he would be prejudiced unrepresented.

[10] The argument on legal representation is the most burdened. In May 2025, the applicant had addressed a letter to this Court asking that he be afforded some time to seek assistance from Legal Aid or counsel *pro bono*. On 22 August 2025, he argued that he had secured legal assistance but experienced 'unforeseen circumstances' which resulted in him being unable to pay same. The applicant persisted that he be given more time to appoint another legal representative, of which it is not clear how he would deal with the finance issues that purportedly arose with the previous legal representative. Not to mention that he makes all these submissions while also arguing that he has a terrible memory and cannot remember certain events as he tried to deny his signature on the letter he had addressed to the Master. I hold the view that this is one of those cases where prejudice caused by a postponement cannot simply be fairly compensated by an appropriate cost order. The application for a postponement was accordingly refused and the hearing proceeded.

<u>Rescission application</u>

[11] As already stated, the final sequestration order was granted on 11 October 2024 and the application for the rescission thereof was instituted on 10 December 2024, about two months later. The applicant's explanation

for the delay is that he needed to gather information to demonstrate to this Court that: he was not in wilful default when the final sequestration order was granted; and there are exceptional circumstances warranting the rescission of the sequestration order. The main argument is that the applicant was a victim of fraud orchestrated through some group called 'You are Law' and its named agents.

[12] The applicant submits that upon becoming aware of the final sequestration order, he attempted to contact 'You are law' to enquire about the state of affairs since they had given him the impression that they were actively opposing the sequestration application. 'You are law' and its agents were nowhere to be found. He subsequently obtained a legal opinion on 11 November 2024 which confirmed that the sequestration application was not opposed and he was a victim of fraud. He was also advised to seek rescission and he did so by launching the application for rescission a month after such advice.

[13] In relation to the merits of the rescission application, the applicant submits that he was not in wilful default when the sequestration order was granted. The explanation for the applicant's defence is that he was wrongly influenced by the group 'You are law'. The said group had allegedly instructed him not to honour his obligations of repaying his debts as it was assisting him to be emancipated from this country's laws. The group is also said to have claimed to be assisting him to oppose the sequestration application, hence he was at all times under the impression that the sequestration application was being actively opposed.

[14] Further, the applicant submits that the sequestration order should not have been granted because his estate is not insolvent as his assets exceed his liabilities. It seems as though it is in this regard that the applicant

maintained that this Court lacked the necessary jurisdiction to entertain the sequestration application. His failure to pay his debts is attributed to the 'You are law' group and related advisors which led him to believe that his debts were being settled through a Trust created for this purpose. He was given copies of purported 'Bonded Bills of Exchange' and told that his debts were all settled whilst he made payment to those advisors. The main argument is that the Sheriff who executed the orders that preceded the sequestration application did not properly do so. That had the warrant of execution been properly effected, it would have been clear that the applicant has equity to satisfy his debts. Standard Bank knew that he had and still has enough equity to satisfy his debts and, therefore, the application for his sequestration was driven by an ulterior motive, so the argument went. Finally, the applicant further submits that he has since been promised a possibility of a loan to settle his entire debt.

[15] On the other hand, Standard Bank submits that the applicant's default was wilful as he chose to believe that he was emancipated from this country's laws. The Bank is adamant that the warrant of execution was properly executed and the Bank was entitled to seek sequestration as the applicant had committed an act of insolvency. It is further argued that, had the applicant been solvent and prepared to settle his debts, he would have done so a long time ago. The Bank raises the fact that the applicant chose to pay 'You are law' advisors instead of paying his debts. A reasonable person could not have honestly followed the path the applicant followed.

[16] Mr Els contended on behalf of Standard Bank that Mr Liebenberg's submission, that he is close to obtaining funds to settle his debts, is only mentioned now during this application but he lacks a *bona fide* defence. Despite his awareness of the return date for the final sequestration, and

despite all affidavits having been filed in the sequestration application, he chose not to oppose that application.

[17] The principles pertaining to condonation are trite. Condonation is not to be had merely for the asking.[5] The Constitutional Court in *Van Wyk v Unitas Hospital and Another (Open Democratic Advice Centre as Amicus Curiae)*[6] enunciated:

'This court has held that the standard for considering an application for condonation is the interests of justice. Whether it is in the interests of justice to grant condonation depends on the facts and circumstances of each case. Factors that are relevant to this enquiry include but are not limited to the nature of the relief sought, the extent and cause of the delay, the effect of the delay on the administration of justice and other litigants, the reasonableness of the explanation for the delay, the importance of the issue to be raised in the intended appeal and the prospects of success'.[7]

. . .

'An applicant for condonation must give a full explanation for the delay. In addition, the explanation must cover the entire period of delay. And, what is more, the explanation given must be reasonable.'[8]

[18] It is trite law that a rescission application must be brought within reasonable time after the order sought to be rescinded was granted. That this is more so for sequestration orders is highlighted by Engelbrecht AJ in *Sekgala v Body Corporate of Petra Nera (Leave to Appeal)*[9]:

'When a party learns that a default judgment has been granted against him or her and that party believes there are grounds upon which to rescind it, it is imperative that such

[5] *Uitenhage Transitional Local Council v South African Revenue Service* 2004 (1) SA 292 (SCA) para 6.
[6] 2008 (2) SA 472 (CC).
[7] *Ibid* para 20.
[8] *Ibid* para 22.
[9] 2023 JDR 2393 (GJ) para 10.

a party acts promptly. Not only does a judgment have consequences for the parties immediately involved, but it may also affect third parties (as is the case with provisional and final sequestration). That is why there is a requirement that rescission applications be instituted within a reasonable time. In the present case, there was a very real and practical consequence of the delay: Mr Sekgala's estate has been finally sequestrated. The order sought to be undone was variously extended, revived and ultimately served as the jurisdictional prerequisite for the grant of the final order. The effects of the delay in the particular circumstances of the case has had significant consequences.'

[19] The requirements for a rescission of a judgment either in terms of rule 42(1)(a) of the Uniform Rules of Court or the common law were well enunciated by the Constitutional Court 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 (Council for the Advancement of the South African Constitution and Another as amici curiae)*[10] ("*Zuma*"):

'It should be pointed out that once an applicant has met the requirements for rescission, a court is merely endowed with a discretion to rescind its order. The precise wording of rule 42, after all, postulates that a court "may", not "must", rescind or vary its order – the rule is merely an "empowering section and does not compel the court" to set aside or rescind anything. This discretion must be exercised judicially.'[11]

. . .

'… 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 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.'[12]

[10] [2021] ZACC 28 (CC); 2021 (11) BCLR 1263 (CC).
[11] *Ibid* para 53.
[12] *Ibid* para 56.

[20] The following instructive remarks by the Constitutional Court in *Zuma*[13] bear repeating:

> '... Our jurisprudence is clear: where a litigant, given notice of the case against him and given sufficient opportunities to participate, elects to be absent, this absence does not fall within the scope of the requirement of rule 42(1)(a). And, it certainly cannot have the effect of turning the order granted *in absentia,* into one erroneously granted.'

[21] Mr Liebenberg, affected by the final sequestration order, was of course entitled to seek a rescission of that order. However, the hurdle that he stood to climb was discharging the onus of proving whether he has met the requirements for rescission. First, that the order sought to be rescinded was granted in his absence and that it was erroneously granted or sought.[14]

[22] The applicant failed on all levels to sway this Court to hold in his favour. Mr Liebenberg's default is not covered by rule 42(1)(a), for he simply elected not to oppose the sequestration for which he now attributes the blame to his previous legal advisors. His election not to oppose the sequestration despite having been served with the provisional sequestration order with a return date, was done deliberately, intentionally, and out of his own volition. The fact that the sequestration order was granted in his absence does not render the order rescindable. It follows that on this first leg, he stands to fail.

[23] Standard Bank launched the sequestration application in terms of s 149(1)(a) of the Insolvency Act, and the challenge to this Court's jurisdiction was devoid of merit. In relation to the assets the applicant vehemently argued to have despite not utilising same to pay his debts, it

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[13] *Ibid* para 61.
[14] Rule 42(1)(a) of the Uniform Rules of Court.

is understandable that he may wish to retain them for various reasons. However, it is unclear how the applicant would receive a loan as an unrehabilitated insolvent. The order was therefore not erroneously sought or granted. It is impermissible for Mr Liebenberg to endeavour to seek a rescission just to get a rehearing of the sequestration application. The Trustees have already been appointed and are apparently struggling to gain access to the Farm resultantly frustrating the process.

[24] Mr Liebenberg's reliance on the purported fraud does not take his case any further under the circumstances. His conduct in these proceedings leave more questions than providing the necessary justification for the relief sought. More problematic is the fact that the applicant seems to have specifically attempted to be absolved from his debts without paying them. The purported fraud, although unfortunate, would appear to have been well timed to meet a mind ready to join forces for a common purpose of not paying one's debts. Further, from the reading of the letter addressed to the Master, particularly the terminology and vocabulary used, more so that Mr Liebenberg is Afrikaans speaking, it is evident that there may be a person with a legal background or an attorney assisting him in the background who is not on record.

[25] Regard being had to the submissions made and the authorities referred to above, I am not persuaded that the applicant has met the requirements for a rescission of the order granted by this Court. The applicant has also not shown the existence of exceptional circumstances justifying the rescission of the order. Without any prospects of success in the rescission application; and given the nature of the impugned order the rescission is sought against; as well as the prejudice the respondents will suffer, the application for the condonation of the late filing of the rescission application must also fail. The applicant has not shown this Court any

good cause why it should condone the lateness and I am not satisfied that he explained any of the factors to sway the Court to find in his favour. On the question of costs, there is no reason why costs should not follow the result.

Order

[26] In the result, the following order is made:

1. The application for the rescission of the judgment and order dated 11 October 2024, as well as for the condonation of the late filing thereof, is dismissed with costs which costs shall include counsel fees on Scale B of Rule 69(7).

[redacted]

MC MAMOSEBO
JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

Appearances

For the applicant:	In person
For the first respondent:	Adv. J. Els
Instructed by:	Phatshoane Henney Attorneys c/o Van de Wall Attorneys Inc