

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

Case number: 2020/62105

Date of hearing: 1 September 2025

Date delivered: 21 November 2025

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO THE JUDGES: ~~YES~~/NO

(3) ~~REVISED~~.

DATE: 21/11/25

SIGNATURE:

In the application between:

C[...] **I[...]** **A[...]**

Applicant

and

N[...] **A[...]** **Q[...]**

Respondent

JUDGMENT

SWANEPOEL J:

[1] This is an application for the partial rescission of a divorce order granted on 8 September 2021. Although the notice of motion seeks the rescission of the entire order, the founding affidavit makes it clear that only a partial rescission is sought. Paragraph 1 of the order granted the parties a decree of divorce, whilst paragraph 2 ordered the applicant to pay the respondent R 250 000 plus interest at the rate of

8.25% from 1 December 2020. Paragraph 4 ordered the applicant to pay the costs of the divorce. The applicant seeks to rescind paragraphs 2 and 4 of the order.

[2] The applicant explains his default in opposing the action by alleging that he was never served with the summons. The summons was served by the Sheriff on the applicant personally on 14 January 2021. The applicant says that someone must have impersonated him when the Sheriff attended at his home in Dainfern to serve the summons. He says that when the summons was served he was in Cape Town. The applicant has provided no evidence to substantiate his allegation that he was in Cape Town on 14 January 2021. His version is rather fanciful. If someone impersonated him that would require such a person to know that he was absent, to know when the Sheriff was going to serve the papers, and to be able to access his home. I find that explanation rather outlandish.

[3] Moreover, the applicant had been emailed the summons by the respondent's attorney on 6 January 2021. He received the email, but purported to believe that the summons was not 'real'. The applicant was, despite his protestations to the opposite effect, well aware of the fact that divorce proceedings were underway. Why he would regard the summons as 'not real' is inexplicable. I find his explanation for his default outlandish and unbelievable.

[4] Applicant's case is complicated further by the fact that during 2022 the respondent initiated section 65 debt-collection proceedings in the Magistrate's Court. The first appearance was on 2 November 2022 when the applicant was clearly made aware of the divorce order, and he knew, at least then, that the section 65 proceedings were aimed at collecting the R 250 000. The applicant attended at that court on numerous occasions, and at no stage did he dispute that he owed the money in terms of the order. He was, in fact, told during those proceedings that should he dispute the debt he should apply to rescind the order.

[5] This application was launched on 8 March 2025, almost 3 years after the applicant was first made aware of the order. There is no explanation for the delay, save that the applicant says that he suffered from a mental illness. He also professes to have been intimidated by the respondent's attorney. Save that there is some

evidence that in 2022 the applicant sought treatment for an unknown mental illness, there is nothing to suggest that he was unable to handle his affairs, nor any reason why he was unable to bring this application in the years after November 2022. In this regard the applicant's version is also quite outlandish.

[6] As far as the merits of the claim are concerned, the respondent says that the parties entered into an agreement in terms of which he undertook to pay the monies. The applicant denies that he entered into such an agreement. However, he does not set up any explanation for the agreement upon which the order was based.

[7] Consequently, I find that the applicant's explanation for his willful default is to be rejected. The applicant has shown no reason for the late filing of this application, nor has he sought condonation for the almost three years that he waited to bring this application. The applicant has not shown good cause to rescind the order. The applicant's further suggestion that the summons was never served on him, and that the judgment was, consequently, granted erroneously, is rejected.

[8] I make the following order:

The application is dismissed with costs on Scale B.

SWANEPOEL J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA

Counsel for the applicant: Adv. J Gates
Instructed by: Hamann Attorneys

Counsel for the respondent: Adv. L van Stade
Instructed by: Hartzenberg Inc.

Heard on; 1 September 2025
Judgment on: 21 November 2025