



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

Case no: **D1249/2025**

In the matter between:

M[...] R[...] S[...]

APPLICANT

and

B[...] S[...]

FIRST RESPONDENT

GOVERNMENT EMPLOYEES PENSION FUND

SECOND RESPONDENT

SOUTH AFRICA RETIREMENT ANNUITY FUND

THIRD RESPONDENT

Coram: MOSSOP J

Heard: 4 February 2026

Delivered: 4 February 2026

ORDER

The following order is granted:

1. The order of divorce and associated relief granted by Sibiya AJ on 1 December 2025 is rescinded and is set aside in terms of the provisions of Uniform Rule 42(1)(a).

2. The action shall continue as an opposed divorce trial, and its further conduct shall be regulated by the Uniform Rules of Court and the Practice Directives of this division.
3. Pending the further relief detailed hereunder, the first respondent is interdicted and restrained from utilising any of the funds already paid to her by the second and/or third respondents arising out of the order granted on 1 December 2025.
4. The first respondent is directed, within 48 hours of the date of this order, to pay into the applicant's attorney's trust account any and all monies paid to her by the second and/or third respondents arising out of the order granted on 1 December 2025. The details of the trust account in to which the monies are to be paid are as set out in annexure 'A' to this judgment.
5. The applicant's attorneys shall place the monies paid into their trust account by the first respondent in an interest bearing account pending the finalisation of the action and shall retain and preserve those monies until instructed by the trial court hearing the divorce action on how they are to be distributed.
6. The application is otherwise adjourned sine die.
7. The first respondent's attorney, Ms Aphasana Yusuph of AY Attorneys Incorporated, Umhlanga shall pay the costs of this application, either taxed or agreed, on an attorney and client scale, *de bonis propriis*.
8. The Registrar of this court is directed to furnish a copy of this judgment and the papers in this application to the Legal Practice Council in order for it to consider the conduct of Ms Aphasana Yusuph.

JUDGMENT

MOSSOP J:

Introduction

[1] This is an ex tempore judgment hastily prepared and is delivered in order to explain why the order that is shortly to be granted was granted.

[2] The applicant and the first respondent were married to each other on 9 April 2012 and were divorced by an order of Sibiya AJ on 1 December 2025. The divorce was moved as an unopposed divorce at the end of the motion court roll on that day.

[3] The issue that arises in this application centres on the granting of the order of divorce on an unopposed basis. The applicant's complaint is that the divorce action instituted by the first respondent was opposed by him and the first respondent's attorneys well knew this to be the case. It was consequently not an unopposed divorce, and it could not legitimately have been presented to Sibiya AJ as being unopposed. It is necessary to point out that in this division the motion court only deals with unopposed divorces. As a consequence of the order of divorce that issued, the second and third respondents were directed to make certain payments to the first respondent. The applicant believes that one of the payments directed has already been made and appears uncertain about whether the other has also been made.

[4] Before me this morning is an urgent application that seeks to set aside the order of divorce and to preserve and protect the monies that may already have been paid to the first respondent by the second and/or third respondents pending the proper resolution of the divorce action. A punitive costs order is also sought against the first respondent.

How did this all happen?

[5] The first respondent lives in Durban and the applicant lives in Cape Town. The first respondent is the plaintiff in the action, and the applicant is the defendant. At all material times, the first respondent has been represented by Ms Aphsana Yusuph (Ms Yusuph) of the firm AY Attorneys based in Umhlanga, Durban.

[6] Ms Yusuph was instructed by her client to issue summons against the applicant in which she was to claim a decree of divorce and, presumably, allied relief. I am forced to presume for, after reading this application, I immediately called for the court file dealing with the divorce action. My registrar was advised that the court file has inexplicably gone missing, and I am accordingly unable to consider its contents.

[7] There were apparently difficulties in effecting service of the summons upon the applicant and, ultimately, an order for substituted service of the divorce summons was ordered by this court. Service was duly effected upon the applicant on 6 August 2025. Upon receipt of the summons, the applicant decided, initially, to represent himself and he delivered a notice of intention to defend on 13 August 2025. The notice of intention to defend was delivered by email and was received by the first respondent's attorneys without objection. The matter was, thus, clearly an opposed action.

[8] On 8 September 2025, the applicant, still conducting his own defence to the action, delivered his plea by email to the first respondent's attorneys. It was received by them. The plea was considered by the first respondent's attorneys, who deemed it to be excipiable in both its form and content and accordingly counsel was consulted and was briefed to draw an exception to it. This was then done, and the notice of exception was served upon the applicant by email on 25 September 2025. I do not consider whether the exception was properly taken.

[9] On 20 October 2025, the applicant was served with a notice of set down. The date inserted in the notice of set down was 1 December 2025. This seems to have galvanised the applicant into some form of action, for it appears that he had second thoughts about continuing to represent himself. He decided that it would be better for him if he received legal advice on what next to do and so he instructed a firm of attorneys based in Cape Town to assist him. That firm was Greenberg and Associates, and he was there attended to by a Mr Brendon Kassel (Mr Kassel). It is common cause that Mr Kassel placed himself on record on 24 October 2025 through an email sent to the first respondent's attorneys.

[10] Both the applicant and Mr Kassel assumed that the notice of set down received by the applicant related to the last document served on the applicant, namely the notice of exception. The notice of set down is attached to the founding affidavit in this application and is non-specific and simply says that the 'above matter' has been set down for hearing on 1 December 2025. What was being referred to

was simply the heading to the document which simply reflects the names of both parties.

[11] On 28 November 2025, the applicant's attorneys served upon the respondent's attorneys a notice to amend in terms of Uniform Rule 28 and an amended plea. The plea now also incorporated a claim in reconvention. The plea and the notice of intention to amend were sent to Ms Yusuph's email address and was accompanied by a covering email, penned by Mr Kassel, which read:

'Please find attached our client's Notice in terms of Rule 28 to amend his Plea, for service herewith.

Kindly confirm you will accept such service via e-mail, and kindly further confirm that in light of the above, the application set down for 1 December will be withdrawn.

The defendant tenders the wasted party and party costs.

We await to hear from you.'

[12] As previously mentioned, on 1 December 2025, counsel representing the first respondent sought and obtained a decree of divorce on the basis that the matter was unopposed.

[13] A month and a half later, on 16 January 2026, the first respondent's attorneys served a copy of the divorce order upon the applicant and his attorneys. This was the first inkling that either had that something was amiss.

[14] Mr Kassel immediately sought an explanation from Ms Yusuph telephonically. Ms Yusuph apparently advised Mr Kassel that the notice of set down did not relate to the exception but rather to the divorce action. Seemingly outraged by what had occurred, Mr Kassel directed an email to Ms Yusuph in which he made the case that the divorce could not have been presented to the court as being unopposed in view of the applicant's notice of intention to oppose, his plea and his amended plea and counter claim. No reply was seemingly forthcoming to this email, and a further email was consequently sent by Mr Kassel to the respondent's attorneys on 19 January 2026. All that elicited was a request for a copy of the applicant's notice in terms of Uniform Rule 28.

Further developments

[15] Upon receiving my motion roll for 4 February 2026, and after having read the urgent application brought by the applicant, I directed a letter to Ms Yusuph on 30 January 2026 (also copied to the applicant's attorneys) in which I said, inter alia, the following in relation to the relief claimed by the applicant in the rescission application:

'[3] In the event that I am persuaded to rescind the judgment and to award costs in favour of the defendant in the action, I direct that Ms Aphsana Yusuf of A Y Attorneys be personally in attendance at court on 4 February 2026 to explain her role in the events of 1 December 2025, and to motivate why she should not personally bear the costs of the application before me on 4 February 2026 *de bonis propriis*.

[4] Ms Yusuf is entitled to be represented by counsel on 4 February 2026, but for the avoidance of any doubt, if so represented, she must still be personally in attendance.'

I was advised by Ms Reddy, who appeared this morning for Ms Yusuph, that she was in attendance as requested.

[16] I did not request a response to my letter but I, nonetheless, received one in the form of an affidavit deposed to by Ms Yusuph on 2 February 2026. She indicated at the beginning thereof that:

'This affidavit is not intended to oppose the rescission, but merely to provide the above honourable court with an explanation because the judgment was granted on the 1 December 2025 and in respect of the proposed cost order against me.'

[17] Thereafter, the affidavit narrated the history of the matter, which I need not repeat having already set it out in some detail. Ms Yusuph admitted that an exception had been prepared to the applicant's plea and that on 7 October 2025 her offices were notified by an email from the applicant that he had received the notice of exception. She went on to state that her offices had applied for a date on the unopposed roll on 16 October 2025 and were, as a consequence, allocated the date of 1 December 2025. Counsel was thereafter instructed and then, referring to the proceedings on 1 December 2025, Ms Yusuph indicated that:

'The matter was stood down twice, and Counsel did bring to the attention of the presiding judge that the appearance to defend and plea was not filed.'

[18] Ms Yusuph also referred to an email sent to her by the counsel that she had briefed to appear on 1 December 2025 and who moved the divorce on an

unopposed basis. The email is not one contemporaneously sent to Ms Yusuph after the court appearance but is of more later vintage, only being sent to Ms Yusuph on 30 January 2026. In it, counsel stated the following:

‘As you are aware, I informed the judge on the day of the notice of intention to defend and opposing affidavit and advised her that same was not in the court file I asked if she required a copy but she did not request same.

I advised her that it was irregular as it was not a plea.

I confirmed that service was effected on the attorneys and on Mr Sheik in terms of the court order (via e-mail).

Copies of same were handed up.

She was satisfied that the matter could proceed. She further interrogated the evidence led and granted the order.’

[19] Ms Yusuph indicated in her affidavit that it was of crucial importance that the applicant and his attorney did not comply with the rules of court in that none of the documents that they had delivered were placed in the court file. This may be so, for I have no way of verifying this allegation by virtue of the court file having gone missing. But there is evidence that the applicant, while he represented himself did email copies of the notice of intention to defend and his plea to the Registrar of this court in the rather naïve expectation that they would be printed out and placed in the court file by the Registrar. There is every likelihood that did not happen. But the crucial importance that Ms Yusuph attached to this potential failure does not resonate with me.

[20] At the end of her affidavit, Ms Yusuph made the following submissions:

‘17. I note the correspondence of the Honourable Judge Mossop and submit that at all material times, the Applicant acted mala fides in this matter, in respect of the service of summons, and when he eventually defended the matter, failed to adhere to the rules of court.

18. The applicant should also bear some responsibility for the granting of the judgment by default and could have prevented judgment. Neither the applicant nor his attorneys appeared on the date or submitted any explanation for their absence at court. I submit that the applicant clearly has had his part to play in the granting of judgment by default.’

[21] An affidavit was then received by me from the applicant. It dealt with what Ms Yusuph had said in her affidavit to me and took issue with what Ms Yusuph had to say in her affidavit. He drew attention to the unresolved exception taken by the first respondent and noted that there was no mention of it in counsel's report to Ms Yusuph. He stated that both he and his attorney were under the impression that what had been enrolled for 1 December 2025 was the exception. He further submitted that there was no steam left in that application, in any event, because Mr Kassel had delivered an amended plea to the first respondent's attorneys thereby resolving any issues with the plea as originally formulated.

[22] Subsequent to the receipt of Ms Yusuph's affidavit, and also on 2 February 2026, Ms Yusuph caused to be delivered to my chambers a notice of intention to oppose the applicant's rescission application on behalf of the first respondent. However, the very next morning, 3 February 2026, a letter was delivered to me by Ms Yusuph in which she withdrew the notice to oppose delivered but the day before. She stressed in that letter that her affidavit had not been delivered in opposition to the relief claimed by the applicant and that the first respondent would abide the decision of this court. But she indicated that she was not prepared to allow certain allegations in the applicant's affidavit to me to go unanswered. She went on to again criticise the fact that the applicant had not filed his documents in the court file, concluding that:

'Hence the defence was not properly before Judge Sibiya when the order was granted.'

It was, so she said, the applicant's attorney's duty to ensure the documents were properly filed in the court file.

Analysis

[23] I am astonished at the attitude adopted by Ms Yusuph. Her understanding of what the law requires is at complete variance with what I understand its demands to be.

[24] Ms Yusuph appears to try and explain her conduct by reference to the state of the court file: the applicant's documents were allegedly not in it, so it was entirely permissible for her to set the matter down on the unopposed roll and to instruct her counsel to move for an unopposed divorce. There is not even a passing nod to the

requirement that a legal practitioner is required to be entirely honest and candid with the court and not to deceive or mislead the court. As was stated in *Society of Advocates of Natal and Another v Merret*:¹

‘The requirement that advocates should be honest and truthful in their dealings with each other and the Court applies equally to attorneys.’

[25] On consideration, it is apparent that Ms Yusuph knew several things:

(a) She knew, at least initially, that the applicant acted without representation. She was thus dealing with a person not trained in the law, as she was. Legal practitioners must anticipate that litigants in person may err in their conduct. Allowances must be made for imprecise or unsanctioned acts or failings by people who do not make their living from the law. Ms Yusuph’s complaint that the applicant did not follow the prescripts of the Uniform Rules may be valid, but his alleged failure to do so is completely understandable and should have been expected by her.

(b) She also knew that the applicant had filed an appearance to defend. She had a copy of that very document in her file. Without taking any steps to have that document set aside, if there were any such steps that she could take, that document immediately changed the action from being unopposed to being opposed. That fact itself prevented her from seeking a date on the unopposed roll in motion court. Ms Yusuph conducted herself as if the appearance to defend had been set aside and was consequently of no significance, which had not occurred, or did not exist. This conclusion is inescapable when considered against the fact that she applied for a date of hearing on the unopposed roll at a time when she knew the matter was opposed. There is no other way to state it other than this was an act of deception on the part of Ms Yusuph. She deceived the Registrar into giving a date on the unopposed roll and then the acting judge was further deceived when the divorce was presented to her as an unopposed divorce.

(c) Ms Yusuph also knew that the applicant had delivered a plea and that she had noted an exception to that plea. In other words, the matter was truly an opposed action, and she must have appreciated that the matter could not be adjudicated on the unopposed motion court roll.

¹ *Society of Advocates of Natal and Another v Merret* 1997 (4) SA 374 (N) at 383F-G.

(d) It was known to Ms Yusuph that the applicant's attorneys had prepared and delivered to her offices a new plea and a claim in reconvention. That was done in response to the notice of exception that she served upon the applicant. The issue of the exception had to be resolved and could not simply be left hanging.

(e) Finally, Ms Yusuph must also have contemplated that the notice of set down with the date of 1 December 2025 inserted on it could cause confusion in the mind of both the applicant and Mr Kassel. Mr Kassel could not reasonably have anticipated that it, in fact, referred to a date on which the divorce action would be heard on an unopposed basis in the light of the appearance to defend and the plea and then the amended plea already delivered. That such confusion existed is demonstrated clearly by Mr Kassel's email of 28 November 2025, where the exception is specifically referenced by him. Ms Yusuph must have appreciated that Mr Kassel was labouring under an incorrect apprehension of what was to occur on 1 December 2025, yet she did nothing to disabuse him of his misunderstanding.

[26] A troubling aspect to this whole episode is Ms Yusuph's apparent lack of responsibility towards the truth.² She has continued in the correspondence that she has sent to me directly to incorrectly attempt to blame the applicant for what occurred. She referred to his conduct as being 'mala fide' in relation to the difficulty that she had in obtaining service of the summons on him. That difficulty, of course, has no relevance to her conduct and cannot be employed by her in an attempt to exonerate her or provide any mitigation for what she has done.

[27] It needs to be stated that the applicant is in no way to blame for what occurred on 1 December 2025. Ms Yusuph knew the application was opposed but enrolled it on the unopposed roll, nonetheless. That is all her doing and has nothing to do with the applicant. If the documents filed by the applicant were not in the court file, then it was her duty to ensure that the court file was complete because she knew that those documents had, indeed, been filed. The alleged lack of documentation in the court file delivered by the applicant was not an opportunity for Ms Yusuph to steal a march on the applicant and to ask the court for an order that she knew she was not entitled to ask for.

² *Ex parte Swain* 1973 (2) SA 427 (N) at 433D.

[28] The allegation was made by Ms Yusuph that the applicant could have avoided the taking of the divorce order by appearing at court on that date. That is perhaps correct, for had he been there he would have pointed out the matter was opposed. But he was not there because Mr Kessel believed that the exception had been enrolled. I am not sure that Ms Yusuph is entitled to make this argument without proffering some explanation as to why the action was on the unopposed motion court roll in the first place. She has not attempted to provide any such explanation, other than to complain that the documents served upon her by the applicant were not in the court file. That is no reason to assert that the matter was undefended and capable of being heard on the unopposed motion court roll.

[29] In the view that I take of the matter, the conduct of Ms Yusuph is contrary to those standards expected from those in the legal profession. The legal profession is regarded as a noble profession because it requires those who are permitted to practice it to act with integrity, to fearlessly pursue justice and to exhibit high ethical and moral standards in order to advance the administration of justice. Ms Yusuph appears to have lost sight of the fact that her primary duty is to the court, and her secondary duty is to her client.

[30] I am accordingly of the view that this is an instance where Ms Yusuph should be required to pay the costs of this application *de bonis propriis* on the attorney and client scale. Her conduct must also be brought to the attention of the governing body of the legal profession.

Order

[31] I accordingly grant the following order:

1. The order of divorce and associated relief granted by Sibiya AJ on 1 December 2025 is rescinded and is set aside in terms of the provisions of Uniform Rule 42(1)(a).
2. The action shall continue as an opposed divorce trial, and its further conduct shall be regulated by the Uniform Rules of Court and the Practice Directives of this division.

3. Pending the further relief detailed hereunder, the first respondent is interdicted and restrained from utilising any of the funds already paid to her by the second and/or third respondents arising out of the order granted on 1 December 2025.
4. The first respondent is directed, within 48 hours of the date of this order, to pay into the applicant's attorney's trust account any and all monies paid to her by the second and/or third respondents arising out of the order granted on 1 December 2025. The details of the trust account in to which the monies are to be paid are as set out in annexure 'A' to this judgment.
5. The applicant's attorneys shall place the monies paid into their trust account by the first respondent in an interest bearing account pending the finalisation of the action and shall retain and preserve those monies until instructed by the trial court hearing the divorce action on how they are to be distributed.
6. The application is otherwise adjourned sine die.
7. The first respondent's attorney, Ms Aphasana Yusuph of AY Attorneys Incorporated, Umhlanga shall pay the costs of this application, either taxed or agreed, on an attorney and client scale, *de bonis propriis*.
8. The Registrar of this court is directed to furnish a copy of this judgment and the papers in this application to the Legal Practice Council in order for it to consider the conduct of Ms Aphasana Yusuph.

MOSSOP J

APPEARANCES

Counsel for the applicant:

Ms N de Gay

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Counsel forms Yusuph and the respondent:

Ms L A Reddy

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ANNEXURE 'A'**TRUST ACCOUNT DETAILS OF GREENBERG ATTORNEYS INC**

Bank:	Standard Bank
Account holder:	Greenberg Attorneys Inc
Registration number:	2022/409665/21
Account type:	Current
Account number:	0[...]
Branch:	Thibault Square
Branch code:	0[...]
SWIFT code:	SBZAJJ
Date account opened:	23 March 1995