



DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT	
SPECIAL TRIBUNAL CNR AMANDA AVENUE & RIFLE RANGE ROAD, OAKDEN	
	2026 -01- 12
C/A No: One	
REGISTRAR	

IN THE SPECIAL TRIBUNAL ESTABLISHED IN TERMS OF SECTION 2(1) OF
THE SPECIAL INVESTIGATING UNIT AND
SPECIAL TRIBUNALS ACT 74 OF 1996
(REPUBLIC OF SOUTH AFRICA)

CASE NO: WC01/2021

In the application between:

BABALWA MAGODA

Applicant

and

SPECIAL INVESTIGATING UNIT

Respondent

In re:

THE SPECIAL INVESTIGATING UNIT

Plaintiff

and

BIG FIVE FARMING CO-OPERTATIVE LIMITED

3rd Defendant

WEZIWE LYNETTE DLWENGU

2nd Defendant

MPHO ETHEL MALAOGA

3rd Defendant

MONELO GEORGE BONGO	4 th Defendant
VUYANI EDMUND VANYAZA	5 th Defendant
MANDULELI MZAYIYA	6 th Defendant
BABALWA MAGODA	7 th Defendant
MASHUDU JEANETH TSATSAWANE	8 th Defendant
MINISTER OF AGRICULTURE, DEVELOPMENT AND REFORM	RURAL 9 th Defendant
THE GENERAL PUBLIC SERVICE SECTORAL BARGAINING COUNCIL	10 th Defendant
MARTIN SAMBO	11 TH Defendant

JUDGMENT ON THE RESCISSION OF JUDGMENT APPLICATION

Introduction

[1] The applicant is Ms Babalwa Magoda, the seventh defendant in action proceedings instituted by the Special Investigation Unit (SIU). On 30 November 2022 judgment by default was granted against her in respect of claims B, C, D, E together with interest. In respect of claim F an order was granted to set aside a settlement agreement concluded at the General Public Service Sectoral Bargaining Council in a labour related matter where the applicant's employment was reinstated by agreement. She seeks an order that the judgment be rescinded in respect of those orders made against

her and that she be afforded twenty days to file her plea. The SIU opposes the rescission application.

[2] The default judgment was granted in respect of four of the six claims against the applicant jointly and severally with others being Claim B R45 million, Claim C R137 139.79, Claim D R2 609 380.96 and Claim E R4 431 078.87 together with interest on these claims.

[3] She also seeks to set aside the order in terms of which the respondent obtained a declarator which set aside the settlement agreement concluded between the Department of Rural Development and Land Reform and the applicant. The default judgment was predicated on finding the settlement agreement was unlawful and invalid.

[4] The applicant contends that her application is bona fide and that she has met the requirements whilst the respondent contends for the contrary.

Issues for determination

[5] It is necessary for the applicant to establish a number of facts on the available evidential material.

- 5.1 Good or sufficient cause to grant the rescission of the relevant orders.
- 5.2 A reasonable explanation for the default an unsatisfactory explanation could be compensated by good prospects of success.
- 5.3 Whether the applicant has a bona fide defence with prospects of success.
- 5.4 Whether the existence of wilful default is an absolute bar in an application for rescission and whether it is necessary to consider various criteria conjointly. Whether the enquiry is a simple one to punish or not to penalise the litigant.
- 5.5 There is a further consideration and that is whether the judgment is appealable.¹

¹ *Pitelli v Everton Gardens Projects* CC 2010 (5) SA 171 (SCA)

The applicant's submissions.

[6] The applicant contends that her erstwhile attorney of record took advice from counsel not to file a plea after having been served with the notice of bar. Instead counsel advised that the jurisdiction of the Special Tribunal should be challenged by way of review application in the High Court. She was advised that the challenge for lack of jurisdiction of the Special Tribunal would be a better route to follow and if successful would not necessitate an application to uplift the bar and file a plea.

[7] Quite clearly, she was ill advised. She asserts, however, that she was completely reliant on the advice of her attorneys and legal team. The advice to bring a review application in the High Court does corroborate her version on the advice she received, in that a review application was filed in the High Court on 3 August 2022. She was advised that all proceedings in the Special Tribunal would be stayed and if she was to be successful in the High Court all the proceedings before the Special Tribunal would be set aside.

[8] The President of the Special Tribunal found that the matters before the Special Tribunal continued despite the High Court proceedings. The applicant was given an opportunity to set aside the Bar and file her plea. The applicant was given an opportunity to file an application for the upliftment of the bar after the case management meeting which was held on 12 September 2022. Such application was not filed by the applicant, again on legal representatives advice. The applicant's legal representatives emailed an exception to the respondent's attorney. Whatsapp correspondence between the applicant and her attorney show unequivocally that she was told she did not understand legal procedure and that she was to leave matters in their hands.

[9] The respondent contends that she knew about the default judgment and is criticised for relying on the advice of her erstwhile attorney. Her legal representatives also advised that there would be an opportunity to approach the Constitutional Court.

[10] During all this process the applicant also faced dismissal from the Department, her employer. After realizing that her legal matters were not being progressed the applicant changed her legal team on 30 July 2024. There was no progress in the review application in the High Court. Her current attorneys advised that the court review application did not supersede the default judgment granted against her in the Special Tribunal and she would have to proceed with this recession application. This advice she obtained on 5 March 2025 when she consulted with her current attorney on the review matter. As stated she had up to that point laboured under the impression that the High Court review application would be able to set aside the default judgment.

[11] The applicant brings the application in terms of the common law and asserts that she has provided a reasonable explanation for the default, she has a bona fide defence and that she asks the Special Tribunal to exercise a wide discretion and to grant the recession. She also contends that she has good prospects of success. She asserts that as chief director in the Department of Agriculture, Rural Development and Reform (the Department), her duties did not include the acquisition of properties and appointment of beneficiaries to those properties. This is done by the Department National Land and Recapitalization control committee on the recommendation of the District and Provincial land committees. Accordingly, she states she did cannot be held liable for the decisions made.

[12] All she did was to conclude the first caretaker agreement with the third defendant, Big Five Farming Cooperative Ltd, on behalf of the Department in order to safeguard the property while the selection of beneficiaries was still underway. The particulars of claim describe that a caretaker agreement makes provision for the appointment of a person, organisation or NPO who would be responsible for looking after the farm acquired by the Department before the beneficiaries are identified. She describes that this policy was in accordance with the Department's proactive land and acquisition strategy. Caretaker agreements were entered into before the land was actually transferred. She did not enter into subsequent caretaker agreements. The Department

entered into those agreements. When the subsequent caretaker agreements were entered into she was no longer in the Provincial Department but in the National Department.

[13] She also points out that it was the Department that approved the operational funding of R7 090 021 .04. She was dismissed in 2017 accordingly the causes of action pleaded in claims A, B and C are defective, based on the fact that she was not involved in the acquisition of the property and the selection of Big Five as a beneficiary.

[14] The applicant submits that the respondent instituted action against her, despite the fact that after challenging her dismissal, her employment was reinstated. Notwithstanding the respondent pursued claim D (the Nexus Forensic Investigation which recommended her dismissal) when she had successfully challenged her dismissal. It also bears mention that counsel for the applicant addressed the court on an exception at the case management hearing. On 6 January 2023 the applicant received a letter from the Direct General to inform her that the default judgment had been granted and that her employment had ended. On 24 January 2023 the applicant instituted urgent proceedings in the High Court to suspend the operation and execution of the default judgment, pending. On 14 March 2024 a warrant of execution was executed against the applicant's pension. On 31 May 2024 the High Court issued an order staying the warrant of execution pending the determination of the review application.

[15] The applicant argues that the Special Tribunal did not have the jurisdiction to set aside a settlement agreement entered into between herself and the respondent. This had to be done in the Labour Court. She denies the assertion by the respondent that the settlement agreement was not properly concluded. She points out that the Director General sanctioned her reinstatement as well as the payment of her back pay.

The respondent's submissions

[16] It is the respondent's case that the default judgment was not granted in the applicant's absence. She was not precluded from defending the action. Instead she elected to be absent. The respondent contends that she was afforded

correct judicial process and she failed to comply with the directives of the Special Tribunal.

[17] The respondent submits she has not given a reasonable explanation for her rescission application. She has failed to set out a bonafide defence to the claims on which default judgment was granted. The respondent contends that the Special Tribunal rules do not expressly provide for rescission of judgements granted by the Tribunal and no submission is made as to why the tribunal should grant at rescission. The respondent also disputes her reliance on the common law since everything was done with her being fully aware of the procedure.² Justus error was only available in rare circumstances.

[18] The respondent contends that it must be in the interest of justice for a court to exercise its discretion to entertain the matter as in the matter of *Zuma*³. The explanation is not reasonable the application is not made bona fide defense to the plaintiffs claim of success see: *Colyn*⁴. Both requirements must be met.

[19] On the facts the respondent also points out that she was late in entering an appearance to defend. She did not comply, and she was ipso facto barred on 29 July 2022. It was only seven months later she instituted the application proceedings in the High Court. SIU brought an application for default judgment against her a case management meeting was held from 12 September 2022 and the applicant was represented by attorneys and counsel at the case management meeting. The President of the Special Tribunal directed that the default judgment was not suspended and that the applicant had to bring an application for the upliftment of the Bar by 26 September 2022 and deliver her answering affidavit in the default judgment application by 21 October 2022. The respondent emphasises that on 12 September 2022, the applicant had knowledge of the action proceedings she knew she had been barred, she knew that the Special Tribunal President had directed that the review application did not have the effect

² *Swadif (Pty) Ltd v Dyke NO 1978 (1) SA 928 (A)* at 939D-F

³ *Zuma V Secretary of the Judicial Commission of enquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including organs of State and Others* 2021 (11) BCLR 1263 (CC)

⁴ *Colyn v Tiger Foods Industries t/a Meadow Feed Mills (Cape)* 2003 SA1 SCA at 9C

of staying the proceedings and notwithstanding the applicant did not comply. On 28 November 2022 the applicant's attorney raised an objection.

[20] The President of the Tribunal expressed her deep concern about the manner in which the applicant was being dealt with. Counsel excused themselves and the default judgment proceeded. The matter was set down and default judgment was granted on 30 November and this order was circulated on 15 December 2022.

[21] It is the respondent's case that the applicant knew by 11 January 2023 that default judgment had been granted. The applicant's attorneys launched an urgent application in the High Court to stay the process and on 15 February 2023 the first urgent suspension application was heard and struck from the roll for lack of urgency. On 5 October 2023 warrants were issued by the SIU against the applicant. There was a return of non-service and by 14 March 2024 a warrant of execution on the government employees' pension fund in satisfaction of the default judgement order was granted.

[22] The matter came before the Bargaining Council and 13 May 2024. On 12 June 2024 the matter was set down for oral evidence. On 22 May 2024 the applicant instituted urgent proceedings as she only became aware of the warrant of execution against her pension benefits on 13 May 2024. The High Court issued a stay. On 16 March 2025 the Bargaining Council ordered that the dismissal was fair. Proceedings were instituted in the Labour Court in June 2025 challenging the Bargaining Council's order. A settlement agreement was reached and she was reinstated.

Legal Principles

[23] Under the common law, an applicant is expected to show sufficient cause (also equated to good cause) for rescission of judgment by giving a reasonable explanation of the default of appearance, showing that the application was made bona fide and showing that she had a bona fide defence to the plaintiff's claim which prima facie has some prospect of success.

[24] An acceptable explanation of default must be present with evidence of reasonable prospects of success on the merits.¹² A weak explanation can however be cancelled out by the defendant being able to put up a bona fide defence which had not merely some prospect, but a good prospect of success. As set out in *Harris*⁵ Moseneke J set out the basic principles relating to a rescission of a judgment as follows:

“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 omit to take the steps which would avoid the default and must appreciate the legal consequences of his or her actions.” In the matter of *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills* it was held that the principles of presenting a reasonable and acceptable explanation for default, on the merits of the case, an applicant for rescission has to show a bona fide defence which, prima facie, carry some reasonable prospects of success. Sufficient cause must also be shown which means that, there must a reasonable explanation for the default; the applicant must show that the application was made bona fide; and the applicant must show he has a bona fide defence which prima facie has some prospects of success. The Court however has a discretion, according to the matter of *Tshivhase Royal Council v Tshivhase and Cairns’ Executors* to grant the relief 21954 (2) SA 345 (A) at 352G 3 *Chetty v Law Society, Transvaal* 1985 (2) 756 (A) at 765A-C 4 *Supra* 52003 (6) SA 1 (SCA) at 9C 61992 (4) SA 852 (A) at 862 71912 AD 181 at 186 sought that must be exercised judicially after considerations of all relevant circumstances. Where an applicant was in wilful default or acted grossly negligent, the Court should not come to his aide. This is not however an essential element for a rescission application to be refused, but it is an essential ingredient of good cause to be shown. Negligence and/or wilful default on the part of the Applicant is a ground that the Court must consider in exercising its discretion in deciding whether good cause had been shown.”

[25] Moseneke J found that wilful default was not an complete bar to rescission of judgment. It had to be considered contextually. This dicta by Moseneke J was not departed from in the matter of *Fick*⁶ in the Constitutional Court. Both majority and minority judgments in *Fick* did not depart from this principle. In other words, the absence of wilful default is not an express requirement but has an impact upon whether or not the applicant has shown ‘sufficient cause’. Even if wilful default has been

⁵ *Harris v Absa Bank Ltd t/a Volkskas* 2006 (4) SA 527 (T)

⁶ *Government of the Republic of Zimbabwe v Fick and Others* 2013 (5) SA 325 (CC)

demonstrated it is not a bar to the applicant applying for rescission, it is but one factor which the court considers in deciding whether or not good cause has been established.

Foot notes omitted

[26] An important consideration is whether the default is a deliberate one, i.e. when a defendant with full knowledge of the set down and of the risks attendant on his default, freely takes a decision to refrain from appearing. 'Wilful' connotes deliberateness in the sense of knowledge of the action and of the consequences, i.e. its legal consequences and a conscious and freely taken decision to refrain from giving notice of intention to defend, whatever the motivation for this conduct might be. In the context of the evidence presented by the applicant her reliance on her attorneys cannot be interpreted as her being in wilful default.

[27] *Maeujean t/a Audio Video Agencies v Standard Bank of SA Ltd*⁷ dealt with the grounds advanced where the applicant in that case far from lacking knowledge he had consciously, deliberately and intentionally acquiesced in the grant of the default judgment, and it mattered not: it was on clear authority that a defendant, who knew that default judgment was to be taken against him and did not demur but allowed the plaintiff to take his course, was presumed to be in wilful default and was not entitled to rescission of the judgment. However, the factual background and reasons as presented by the applicant in this case, do not amount to a cavalier disregard of the unfolding default procedure as referred to in the *Maeujean* case.

[28] Moseneke J in *Harris* went on to approve of the following principle:

"An application for rescission is never simply an enquiry whether or not to penalise a party for failure to follow the rules and procedures laid down for civil proceedings in our courts. The question is, rather, whether or not the explanation for the default and any accompanying conduct by the defaulter, be it willful or negligent or otherwise, gives rise to the probable inference that there is no bona fide defence and hence that the application for rescission is not bona fide. The

⁷ 1994 (3) SA 801 (C)

*magistrate's discretion to rescind the judgments of his court is therefore primarily designed to enable him to do justice between the parties. He should exercise that discretion by balancing the interests of the parties. . . He should also do his best to advance the good administration of justice.*⁸

Factual matrix.

[29] The applicant filed a notice of intention to defend the action on 1 December 2021. The applicant's legal representatives elected not to file a plea but rather to challenge the jurisdiction of the Special Tribunal in the case management meeting. When this challenge was rejected, the representatives of the applicant advised her that the jurisdiction of the Special Tribunal had to be challenged by way of review application in the High Court which advice the applicant followed by instituting the review application on 3 August 2022. The applicant also launched two urgent applications to obtain relief pending finalisation of the review and it is therefore not unreasonable for the applicant to conclude that her legal matters were under control and that she held the bona fide belief that the review application would set aside the proceedings of the Special Tribunal.

[30] The applicant states that in retrospect she was ill advised of the consequences of not filing a plea in the action and instead filing a review in the High Court. The applicant was specifically advised that the review application would suspend the proceedings in the Special Tribunal and she accepted the advice that the correct procedure was to continue with the review in the High Court.

[31] The applicant acted upon the advice of her legal representatives at the time, albeit that the advice was wrong. It cannot be disputed that the applicant was specifically advised to trust her legal team and not to take the matter into her own hands. Her conduct throughout showed a singular intention to defend all claims against her even her dismissal from her employment. All of this she actively pursued.

⁸ See Harris *ibid* para 11

[32] It can never be inferred or found that the applicant simply acquiesced. She was determined to place her case before the courts, even incurring the costs of a High Court suit on several occasions. She was ill advised and this must be considered in conjunction with her conduct and her prospects of success.

[33] The applicant has several important defences to the claims. In particular the appointment of beneficiaries to the acquired properties was done by the Department's National Land and Recapitalisation Control Committee on the recommendation of the District and Provincial land committees. The applicant did not appoint, nor did she recommend Big Five as a beneficiary.

[34] The applicant only entered into the first caretaker agreement which is in accordance with the Department's Proactive Land Acquisition Strategy. The fact that the property was acquired prior to the identification of the beneficiary is provided for in the relevant policies. The caretaker agreement was entered into for the period of 1 December 2012 to 31 May 2013. Further caretaker agreements were not concluded by the applicant. This is undisputed. The respondent complains that Big Five refused to hand the Farm over to the Department on the expiration of the caretaker agreement on 31 May 2015. Sadly, utter maladministration of the Farm followed. The claim for damages flows from the damage from that maladministration. The respondent does not explain what steps other senior officials in the Department took to limit its damages or to remove Big Five from the Farm in the period of two years that it claims it received no income.

[35] The applicant was no longer with the Provincial department when Big Five was appointed on 25 July 2013. She was at the provincial department. When the Department approved the operational funding of R7 090 021.04, the applicant had already been dismissed. Further she may succeed in opposing her liability in relation to the replacement of the vineyards and equipment. It is unclear whether the applicant was required to supervise the agricultural operations as well.

[36] The applicant has successfully challenged her dismissal and can therefore not be held accountable for expenses which were incurred in dismissing her. This includes the costs of counsel claimed for the pre-disciplinary investigation and the disciplinary hearing. The applicant argues that the settlement agreement could in any event only have been considered or set aside in terms of the Labour Relations Act as the agreement pertained to a labour issue. The Constitutional Court in *Ledla*⁹ has found that the Special Tribunal is not a court of law and accordingly the Special Tribunal does not have inherent jurisdiction to set aside agreements concluded in another jurisdiction. It is possible that the applicant has a good defence on this aspect. The claim for the expense of the Nexus Forensic Report is claimed from the applicant. This too may be successfully defended at a trial in due course.

[37] In the result I have serious concerns about the correctness of the various orders granted by default. At this stage I do not have make definitive findings, nor do my prima facie views bind another court or a judge sitting on the Special Tribunal panel, but I do have to consider the prospects of success on some of the orders granted by default. These include setting aside the settlement agreement. The Special Tribunal is not a court of law.¹⁰ It therefore does not have inherent jurisdiction.

[38] There are also concerns about the applicant being liable for the operating costs when that decision was not within the scope of her employment. There are also concerns about the applicant being liable for concluding the caretaker agreements when she only signed the first one and was entitled to do so despite the land not yet been transferred into the names of the beneficiaries. This step was a permissible practice. Further after the departure of the applicant, the Department renewed the care taker agreement. There is also the question of damages in relation to the destroyed vineyard. It is unclear whether the applicant could be held liable if her role was not to supervise the agricultural operations.

⁹ *Ledla Structural Development (Pty) Ltd and Others v Special Investigating Unit* 2023 (2) SACR 1 (CC)

¹⁰ *Ibid* 9

[39] These concerns bring me to the question where the judgments by default were granted incorrectly and therefore are they appealable. In the light of the Supreme Court of Appeal authority in *Pitelli* the applicant cannot appeal those orders as the rescission order has not been granted. So, there is an impasse. The question of the importance of the prospects of success remain an important consideration.

Conclusion.

[40] In the light of all the available evidential material, and primarily her reliance on her legal team at the time, it cannot be found that the applicant was in wilful default and no intention to defend the action. It has not been shown that she had the necessary legal knowledge to gainsay the advice of her legal team which included counsel. It is correct that she was aware of the ruling by the President of the Special Tribunal that she was to bring an application to uplift the bar. An important context in testing wilfulness on her part must be balanced by the fact that there she launched several High Court applications. She did not remain supine nor did she fail to contact her legal team to make enquiries. The whatsapp messages she produced show her concerns.

[41] The respondent criticised the absence of an affidavit by her previous attorneys of record. It would be a rare event that previous attorneys of record would admit their poor legal advice. The claims against the applicant runs into millions of rand and it is unlikely that the attorneys would open themselves up to a damages claim for poor legal advice.

[42] Her concerns are also indicative that she never accepted the consequences of the judgment by default. The applicant has reasonable prospects of success in a trial in due course.

Costs.

[43] The question of costs of this opposed application is not a simple matter. Adv Williams SC and her junior on behalf of the respondent put a lot of work into defending

the judgment the SIU obtained by default. The arguments were carefully crafted and well researched.

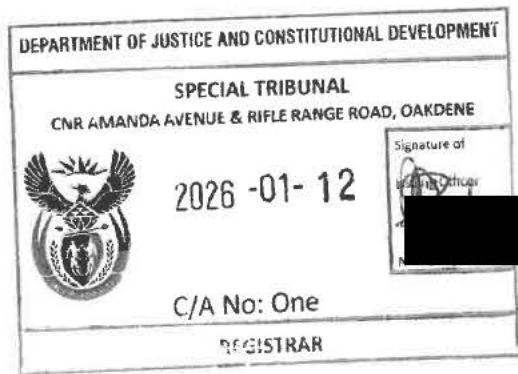
[44] The same amount of care, preparation and research was also evident in the way Adv Pretorius presented on behalf of the applicant. Albeit that I am going to grant a rescission order, at the end of the day, it is the applicant who is seeking an indulgence, and she has succeeded.

[45] The opposition to the rescission was not unreasonable. The issues are complex. Our country is fraught with corruption and holding onto a judgment obtained by default is not unreasonable. Sadly, an agricultural project that could have yielded such good results and provided ample employment opportunities even for young people has been lost.

[46] This is matter where I exercise my discretion that each party should pay their own costs.

As a result, the following order is made:

- 1 The judgment dated 30 November 2022 granted by default is hereby rescinded.
- 2 The applicant must file her plea within 20 court days of this order.
- 3 Each party is to pay their own costs.



A handwritten signature in black ink, which has been redacted with a solid black rectangular box.

JUDGE M VICTOR
PRESIDENT OF THE SPECIAL TRIBUNAL

Appearances:

For the Applicant: Adv L Pretorius

Instructed by: Ndebele Du Plessis Attorneys

For the First Respondent: Adv Williams SC assisted by Adv M Adhikari

Instructed by: State Attorneys, Cape Town

Date of hearing: 08 September 2025

Date of judgment: 12 January 2026

Mode of delivery

This judgment is handed down by email transmission to the parties' legal representatives, uploading on Caselines and release to SAFLII and AFRICANLII. The time of delivery is deemed to be 13H00.