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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
_____ DATE _____ SIGNATURE	

CASE NO: 2024-103939

In the matter between:

IYH IMPORT EXPORT TRADING CC
MUHAMED HUD PATEL

First Applicant
Second Applicant

and

MASSUE (PTY) LTD
CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY

First Respondent

Second Respondent

In re:

MASSUE (PTY) LTD

Applicant

and

IYH IMPORT EXPORT TRADING CC
MUHAMED HUD PATEL
CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY

First Respondent
Second Respondent
Third Respondent

Neutral Citation: Delivered: By transmission to the parties via email and uploading onto Case Lines the Judgment is deemed to be delivered.

JUDGMENT

SENYATSI J

Introduction

[1] This is an application by the first and second applicants (collectively “the applicants”) for the rescission of a default judgment granted by this court on 7 January 2025. In that judgment, the applicants were evicted from the commercial property situated at 4[...] L[...] Street, M[...], Johannesburg (“the property”), owned by the first respondent (“Massue”). The application is opposed by Massue

Background

[2] The essential facts, which are largely common cause, are as follows:

- (a) The applicants have been in occupation of the property since at least February 2022 for commercial purposes.
- (b) On or about 9 February 2022, the parties entered into a sale agreement in respect of the property. A material term was that the

purchase was conditional upon the first applicant securing a loan of R2,600,000.00 within 75 days. Should it fail to do so, the agreement would lapse, and the applicants were to vacate the property within 60 days thereafter.

- (c) The applicants failed to secure the loan. By letter dated 23 May 2022, Massue terminated the sale agreement and demanded that the applicants vacate the property on or before 30 June 2022.
- (d) The applicants did not vacate by 30 June 2022. It is common cause that they have remained in occupation without the express or tacit consent of Massue, without any lease agreement, and without any other legal right to do so. Their occupation has been unlawful since 1 July 2022.
- (e) Massue instituted eviction proceedings. The application and relevant notices were served on the applicants, personally and via email, in September and December 2024. The applicants did not oppose the application. Consequently, on 7 January 2025, this court granted a default eviction order against them.
- (f) On 25 February 2025, the applicants launched this rescission application, citing a non-existent “Rule 42(9)”. The application is evidently brought under Rule 31(2)(b) of the Uniform Rules of Court and/or the common law.

[3] The issue before this court is whether the applicants have made out a case for rescission of the judgment.

Applicable Legal Principles

[4] The legal principles governing rescission applications are well-established. An applicant seeking rescission at common law or under Rule 31(2)(b) must show “good cause”. This entails:

- (a) A reasonable and acceptable explanation for the default;
- (b) That the application is made *bona fide* and not merely to delay the plaintiff’s claim; and
- (c) The existence of a *bona fide* defence to the claim which, prima facie, carries some prospect of success.¹

[5] In terms of Rule 42(1)(a), a court may rescind a judgment “erroneously sought or erroneously granted in the absence of any party affected thereby”. The error must be patent from the record at the time the order was granted, such as a procedural irregularity or the court being unaware of a fact which, if known, would have precluded the granting of the order. (*Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills (Cape)* 2003 (6) SA 1 (SCA)).

Evaluation

[6] The applicants’ case is fundamentally defective. They fail to meet any of the requirements for rescission.

No Reasonable Explanation for Default

¹ *Grant v Plumbers (Pty) Ltd* 1949 (2) SA 470 (O) at 476-477 ; *Chetty v Law Society, Transvaal* 1985 (2) SA 756 (A) at 767I-768A.

- [7] The applicants claim they were never served with the eviction application and only became aware of the judgment on 7 February 2025. This contention is irreconcilable with the evidence.
- [8] The Sheriff's Returns of Service, filed as part of the record, are prima facie proof of the facts stated therein (Section 43(2) of the Superior Courts Act 10 of 2013). These returns clearly show that on 17 September 2024, the second applicant accepted personal service of the application and also accepted service on behalf of the first applicant at the property's address.
- [9] To impeach a Sheriff's return, clear and satisfactory evidence is required (*Sussman & Co (Pty) Ltd v Schwarzer* 1960 (3) SA 94 (OPD)). The applicants provide no such evidence. Their mere denial, unsupported by any corroborative facts, is insufficient.
- [10] Furthermore, Massue's attorneys sent the application and subsequent set-down notices to the applicants via email in September and December 2024. No explanation is given for why these emails were not received.
- [11] The only reasonable inference is that the applicants, knowing they had no defence to the eviction, elected not to oppose. Their default was, at best, wilful. They have provided no reasonable explanation for it.

Lack of a Bona Fide Defence

- [12] Even if the applicants had explained their default (which they have not), they have not demonstrated a *bona fide* defence. Their own founding affidavit and concessions in these proceedings are fatal.

- [13] They concede that Massue is the owner of the property. They concede that the suspensive condition (securing a loan) was not met, causing the sale agreement to lapse. They concede they were required to vacate by 30 June 2022 following the lapse of the agreement and Massue's demand. They concede there is no lease agreement between the parties.
- [14] In the face of these concessions, the applicants are, on their own version, in unlawful occupation. Their purported defence – that they are entitled to remain until they find alternative business premises – is not a defence recognised in law. Massue, as owner, has no obligation to house the applicants' business indefinitely while they seek alternative accommodation. The applicants have been in unlawful occupation for nearly three years. Their claim to a right of continued occupation is devoid of any legal merit and cannot constitute a *bona fide* defence.

Lack of Bona Fides and Intent to Delay

- [15] The circumstances of this application point overwhelmingly to a lack of good faith and an intention to delay the execution of a valid court order.
- [16] The applicants cited a non-existent rule, demonstrating a lack of care and preparation. They have failed to file a replying affidavit in the rescission proceedings, despite having been granted extensions. Their excuse that counsel was busy with another trial is inadequate, especially given the significant period of delay. The practical effect of launching and prolonging this rescission application is that the eviction order is stayed, allowing the applicants to remain in the property without any legal right and without paying compensation. This tactical advantage underscores the dilatory purpose of the application.

[17] Granting rescission where there is no defence would be an exercise in futility and would sanction an abuse of court process.²

Rule 42(1)(a)

[18] The applicants' papers do not properly engage Rule 42(1)(a), and in any event, no case under this rule is made out. The judgment was not erroneously granted. Service was properly effected, as demonstrated by the Sheriff's returns. There was no procedural irregularity patent from the record at the time the order was made. The applicants' alleged lack of knowledge stemmed from their own failure to engage with the served process, not from an error by the court.

Conclusion

[19] In summary, the applicants have failed to provide a reasonable explanation for their default; demonstrate a *bona fide* defence to the eviction claim and show that this application is brought in good faith and not merely to delay Massue from exercising its rights as owner.

[20] Consequently, there is no basis in common law, under Rule 31(2)(b), or under Rule 42(1)(a) to rescind the judgment granted on 7 January 2025.

Order

² *Silber v Ozen Wholesalers (Pty) Ltd* 1954 (2) SA 345 (A) at 352A-353H.

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

- (a) The application for the rescission of the judgment granted on 7 January 2025 is dismissed.
- (b) The first and second applicants are ordered, jointly and severally, the one paying the other to be absolved, to pay the costs of this application on the scale as between attorney and client.

ML SENYATSI
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

DATE APPLICATION HEARD: 02 FEBRUARY 2026

DATE JUDGMENT HANDED DOWN: 04 FEBRUARY 2026

APPEARANCES

Counsel for the Applicant:	ADV L RAMBAU
Instructed by:	TENTE I. RASENYALO INC
Attorney for the Respondents:	ADV Z HOOSEN
Instructed by:	SLH INC