

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

Case Number: 2025-115857

- (1) REPORTABLE: YES / NO
- (2) OF INTEREST TO OTHER JUDGES: YES/NO
- (3) REVISED: YES/NO

In the matter between:

MHLELI SGWILI LINDA

APPLICANT

And

PEBBLE FALLS BODY CORPORATE

RESPONDENT

JUDGMENT – RESCISSION APPLICATION

STRYDOM, J

- [1] This is an application to rescind a default judgment granted by the court on 29 January 2024, in favour of the respondent, the Pebble Falls Body Corporate, against the applicant, who owns a property at 9[...] P[...] F[...], 4[...] G[...] Avenue, C[...], Boksburg. The judgment debt, comprising arrear levies, amounted to R 477 805.33, together with interest and costs.
- [2] The application is brought pursuant to Rule 31(2)(b) of the Rules of this Court which provides that a defendant may within 20 days after acquiring knowledge of a judgment apply to court upon notice to the plaintiff to set aside such judgment and the court may, upon good cause shown, set aside the default judgment on such terms as it deems fit.
- [3] Two points need consideration. First, the applicant failed to file the application within the 20 days prescribed by the rule. In view of his lateness, the applicant

is seeking condonation. Second, if condonation is granted, the court would have to decide whether good cause has been shown to order rescission of the judgment.

- [4] In both instances, the court would have to consider whether a reasonable explanation was provided for either the delay or why the application was granted by default; that the applicant has a bona fide intention to defend the matter; an absence of a wilful default; and a bona fide defence with prospects of success. (see: *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills (Cape)* 2003 (6) SA 1 (SCA)) at para 11.¹
- [5] Dealing with the condonation application first. The applicant avers that he learned of the legal proceedings against him for the first time when the sheriff served papers on him in connection with a substituted service application to execute against his immovable property. It was indicated that the application for substituted service was set down for hearing in this court on 10 April 2025. He attended court on that day, being unrepresented. About 3 weeks later, on 5 May 2025, he consulted an attorney. It was decided that, before dealing with a rescission application, to focus on opposing the application to declare his immovable property executable, which was set down for hearing on 20 June 2025. On 2 June 2025, the applicant filed his answering affidavit in the execution application. In this affidavit, the applicant challenged the premise upon which the default judgment was granted. Respondent (applicant in the execution application) filed a replying affidavit wherein it stated that it previously obtained a default judgment and that the judgment remained extant until the judgment is rescinded. Without first obtaining a rescission of the monetary judgment, no allegation or defence aimed at the correctness of the default judgment could be relied upon by the applicant to prevent the execution order. Only thereafter, on 17 July 2025, the applicant filed his rescission application.
- [6] What becomes clear is that the applicant served his rescission application well beyond the prescribed 20 days. The applicant has failed to set out in any detail the steps he took after the substituted service application was served on him on 3 March 2025 to ascertain what it was all about. He waited till 10 April 2025 to

¹ *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills (Cape)* 2003 (6) SA 1 (SCA)) at para 11.

obtain information in this regard. It took him a further 3 weeks to obtain the services of an attorney. Then, a deliberate decision was taken not to seek rescission of the default judgment, but to file an affidavit opposing the application to declare his property executable. The applicant failed to explain why he could only obtain a legal representative about 3 weeks after becoming aware of the default judgment. If then the court accepts that the applicant only became aware of the default judgment on 10 April 2025, more than three months have lapsed before he filed his rescission application on 17 July 2025. The explanation for focusing on opposing the application under rule 46A, rather than launching a rescission application, is unconvincing. In such circumstances, the applicant's default becomes wilful, as he was aware of the 20-day requirement but deliberately chose not to comply.

- [7] It is trite that a litigant requesting condonation should explain the reasons for his non-compliance with the rules of court by providing an explanation that covers the full period of the delay. This was not done.

- [8] In his application for condonation and in his rescission application, the applicant had to show that he had a *bona fide* defence with prospects of success that he did not owe Pebble Falls the arrear contributions.

- [9] The Applicant does not deny that he is liable for levies, but he alleges that the respondent failed to show that the trustees responsible for raising levies had been duly appointed. He asserts that the respondent failed to comply with the Sectional Titles Management Schemes Act 8 of 2011 (the STMSA) and its Regulations by taking his property without just cause and by failing to remove the valid trustees in accordance with rule 6(4) of the Prescribed Management Rules. Instead, the respondent replaced the duly elected trustees with trustees whose appointment could not be traced through any valid annual general meeting. Due to such alleged mismanagement, no contributions could have been lawfully raised in the absence of a valid resolution passed by duly appointed trustees. Accordingly, levies were unlawfully raised by a managing agent who was also not lawfully appointed. The applicant asserted that the last duly appointed trustees were those appointed at the respondent's annual

general meeting on 31 July 2013. Apart from baldly stating that no further trustees were appointed at a general meeting of the respondent's members, he does not explain why he makes this statement. He does not state when the lawfully appointed trustees were replaced by unlawfully appointed trustees. Moreover, the applicant could not, on his own version, comment on what transpired regarding the respondent's corporate governance during his absence from his residence for more than 3 years.

- [10] He stated that the services of De Lucia Properties CC (De Lucia), the managing agent, were lawfully terminated by the trustees of the respondent, but De Lucia failed to accept the termination. From the applicant's papers, it becomes clear that De Lucia remained the managing agent until 22 July 2015, when they allegedly changed the Body Corporate's bank account. In a letter dated 22 July 2015, the trustees, whose names appear on a letterhead, informed members that they should make payments into this ABSA account.

- [11] Thus, on the face of this letter, different trustees from the 2013 trustees sanctioned this change of bank account. The applicant did not provide evidence that this was not the respondent's account. The applicant is unwilling to accept the people mentioned in this letter as trustees without providing any substantiation for his statement. He baldly asserts that there is no evidence that they were lawfully appointed. The applicant failed to provide sufficient evidence to show that unlawfully appointed trustees and managing agents raised levies. On a careful analysis of the papers in this matter, it comes down to the applicant's say-so in this regard without supporting evidence.

- [12] He admits he was obliged to pay levies but baldly states that levies were not lawfully raised. He stated that he would resume paying levies once duly appointed trustees are in place. He denies that he is under any obligation to pay historical levies.

- [13] The levy statement of the respondent indicates that as at 9 September 2025, the applicant was in arrears in the amount R801 376,24. On this levy statement, the current banking details of Pebble Falls Lifestyle Estate appear.

The Property Management Professionals are referred to as ZDMGT. The applicant made no case that this managing agent was not lawfully appointed.

- [14] His defences advanced in the rescission application started with an explanation of what happened to him from the second week of July 2016, when he started to suffer misfortune, including sudden illness. He explained that it was later discovered on 8 December 2019, by a traditional healer/diviner, that his illness was related to a “calling” from his ancestors. He was obliged to acquiesce to his culture and began his initiation to become a traditional healer. He believed that if he did not follow his calling, it could result in serious illness or even death. His initiation or training to become a traditional health practitioner commenced on 15 May 2022, and he took up residence at his tutor's home in Soweto. He had to move all around the country during his initiation and training.

- [15] Honoring his cultural beliefs led to his dismissal from work, which compromised the well-being of his children. His financial obligations to his creditors were also compromised. It prevented him from paying his levies lawfully raised. He had to rely on his family members for assistance. During the period of his initiation, he remained under the control of his tutor from 15 May 2022 until all the requirements to become a traditional healer were complied with on 28 February 2025, when he was discharged. Thus, for almost 3 years, he was unable to meet his financial obligations.

- [16] During his initiation, his residence at 9[...] P[...] F[...], 4[...] G[...] Avenue, B[...], was under lock and key. He does not dispute that the sheriff duly served the summons at this address, but he asserts that he was not there for good reason beyond his control. He did not willfully prevent service on him.

- [17] According to the applicant, this explains why he only became aware of the default judgment on 10 April 2025.

- [18] The court cannot find that the applicant wilfully avoided service. He made an election not to reside at his home for the period of his initiation. This was his choice and his right. Although he was, according to the respondent, substantially in arrears with his levies, it was not expected of the applicant to remain at his premises to receive a summons. The summons was lawfully

served when he was not there, and the monetary judgment was obtained by default. It was argued that the applicant abandoned his responsibilities by being absent for so long and that he could not rely on his so-called “calling” to undergo initiation and training to become a traditional healer, as grounds for rescinding the judgment. It is indeed true that the applicant abandoned his responsibilities towards the respondent, as he knew he was not paying levies. Although the applicant was obligated to pay the levies, he was not obligated to remain at his residence awaiting a possible summons. He chose to put his obligations on the back burner and follow his “calling”. The court will accept that service of the legal process was proper, but it cannot be found that the applicant showed a conscious disregard of this court's process by failing to respond thereto during his absence from his residence. Such a finding can only be made once it is established that the applicant wilfully avoided service, or became aware of service of legal process, but elected to ignore it. There is no evidence to this effect.

[19] The court is of the view that on 3 March 2025, the scenario changed. He became aware of litigation instituted by the respondent against him. On his own version, on 10 April 2025, he became aware that this entailed a default judgment granted against him and an application to declare his property executable.

[20] The court already found that the applicant wilfully failed to pursue his rescission application within the prescribed time. This aspect should not be considered in isolation. A strong defence may prompt this court, in the exercise of its discretion, to grant condonation regardless. (see: *Satis Rock (Pty) Ltd and Another v Teichman 2022-049732* [2024] ZAGPJHC 224 5 March 2024 at para 4 and 6.²

[21] The complaint regarding the respondent's appointment of the trustees dates back to 2013-2015. This is more than ten years ago. But for an alleged payment on 9 April 2019, the applicant made no payments at all.

[1] ² *Satis Rock (Pty) Ltd and Another v Teichman 2022-049732* [2024] ZAGPJHC 224 5 March 2024 at para 4 and 6.

[22] The applicant failed to substantiate his defence regarding the unlawful appointment of the trustees by attaching any correspondence from his side on the matter. In my view, his bald and unsubstantiated statement that the respondent contravened various sections of the STMSA and regulations does not establish a *bona fide* defence which carries a prospect of success. The allegations that the appointment of the trustees, from time to time, conflicted with the Act are also bald and not supported by evidence. Merely stating that the trustees were not duly elected would not suffice. Neither could it be expected from the respondent to prove the legality of each appointment of trustees over a period of ten years, without some factual basis laid for alleging that their appointment was unlawful.

[23] In my view, the applicant has not shown a *bona fide* defence with some prospect of success. Considering the lateness of the rescission application together with a lack of a *bona fide* defence, condonation for the late filing of the rescission application should not be granted. The rescission application stands to be dismissed.

[24] It should be mentioned that even if the condonation application was granted, I would have dismissed the rescission application on the basis that no *bona fide* defence was shown by the applicant to obtain rescission of the default judgment.

[25] As for costs, the respondent asked for attorney and client costs, alleging that the application was an abuse of the court's process. I cannot make such a finding.

[26] The following order is made:

- a. The application for condonation is dismissed.
- b. The rescission application is dismissed with costs.

R. STRYDOM

**JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG**

Heard on: 19 January 2026

Delivered on: 26 January 2026

Appearances:

For the Applicant: Adv. B. Yalezo

Instructed by: Thokozani Radebe Incorporated

For the Respondent: Adv. P.J. Badenhorst

Instructed by: Heerschop Pienaar Incorporated Attorneys