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

Case Number: 88913/2019
(1) REPORTABLE: ~~YES~~ / **NO**
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / **NO**
(3) REVISED: ~~YES~~ / **NO**
DATE 16/2/26
SIGNATURE

In the matter between:

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

Applicant

And

MARTHINUS WILLEM DE JAGER

Respondent

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be **16 February 2026**.

JUDGMENT

MANAMELA AJ

Introduction:

- [1.] This is an opposed application for rescission of a default judgment granted against the applicant on **25 August 2023**. The applicant also seeks condonation for the late filing of the Rescission Application, as well as costs based on opposition.

- [2.] The Notice to Oppose the application for rescission of a default judgment was filed on 3 June 2024.

- [3.] The applicant is Tshwane Metropolitan Municipality, a municipality established in terms of Section 14 of the Local Government Municipal Structures Act 117 of 1998, and the respondent is Martinus Willem De Jager, who operates a farming business at Farm 594 Downbern JR, situated at Number 2[...] R[...] Road, Downbern, Wallmansthal, Pretoria (the immovable property”).

- [4.] The respondent issued Summons against the applicant on 25 November 2019 allegedly based on the applicant’s breach of duty of case for failure emanating from failing to attend to significant water leak repairs on the immovable property which erupted from the adjacent property, being Number 20 Riverside Road, Downbern, Wallmansthal, Pretoria, despite being made aware of the leaks on several occasions, causing the agricultural site of the respondent’s the immovable property to be flooded on the agricultural side, resulting in drowning of plants and loss of revenue and income to the total value of R1,689 853.00 (One Million Six Hundred and Eighty Nine Thousand Eight Hundred and Fifty Three Rand).

- [5.] The respondent apparently prepared a notice of intention to defend on or about 27 January 2023 almost 8 months before default judgment was

obtained, and served it on the applicant's erstwhile attorneys, Macintosh Cross And Farqharson Attorneys.

- [6.] On 6 February 2023, Macintosh Cross And Farqharson, Attorneys, served a Notice of Withdrawal as attorneys of record.
- [7.] Ordinarily, the applicant were to be served with a Notice of Bar, granting five days' notice to serve its Plea, if they failed to file a Plea timeously.
- [8.] The only common cause facts between the parties are the citation of the various parties and the jurisdiction of this court.
- [9.] The applicant apparently became aware of the judgment on or about 25 March 2024 when the respondent as the judgment creditor sought to have a notice of taxation served on the applicant's legal department. The administrative process of trying to locate the file, record processing between various officials, the insurers and the file handler, the process of compiling submission for appointment of attorneys took long within the applicant's legal department office leading to a delay of approximately 5 days in the launching of the application. The last day for filing of the application for Default Judgment was the 24th April 2024.

Issues of Determination

- [10.] The main issue of determination is whether the relief sought by the applicant is competent and whether the relief sought by the respondent is competent.

The Applicant's case and grounds for rescission of judgment:

- [11.] The application is brought in terms Rule 31(2)(b) and 42(1) of the Uniform Rules of Court read with the common law. The application was electronically served on the on 22 February 2024.

[12.] The applicant filed an amended notice of motion, on 29 July 2024, in terms of which the applicant incorporated the following relief:

*“That the applicant be condoned for the late filing oof the application for recission of judgment of the order attached as annexure **FA1** of the founding affidavit.”*

[13.] The applicant’s case is that the respondent obtained default judgment on the basis that the applicant did not file a notice of intention to defend. The applicant served a notice of intention to defend on 27 January 2023. The applicant attached a Notice to defend, which was transmitted via email communication to the respondent’s erstwhile attorneys who were responsible for the matter, and argued that the premise that there was no Notice to Defend at the time when default judgment was sought was incorrect.

[14.] The applicant never received any notice of bar from the respondent’s attorneys of record. Instead a Notice of Withdrawal as attorneys of records, was received from the respondent’s erstwhile attorneys, Macintosh Cross And Farqharson, Attorneys.

[15.] The applicant assumes that, by proceeding with an application for Default Judgment, the Defendant’s erstwhile attorneys failed to share the applicant’s Notice of Intention to Defend and hence there was no Notice of Bar from the respondent’s attorneys.

[16.] In so far as the merits of the case are concerned, the applicant contends that the respondent lacks a *bona defence* in that in that the respondent’s case does not disclose the type of crops that the respondent is harvesting in winter and as such the applicant alleges that there is no connection between the water leaks and the subsequent failure to harvest the crops.

[17.] The applicant further contents that it did not cause the respondent’s loss, and that there is no causal link between the water pipe burst and the resultant failure to harvest the crops.

The Respondents case for opposing rescission of judgment:

- [18.] The respondent's opposition to the applicant's rescission of judgment is includes two points *in limine*. The points *in limine* were that, in terms of: (i) Rule 7 of the Uniform Rules of Court the deponent to the founding affidavit lacked the authority in terms of the Rule 7 to institute the proceedings in the absence of a Municipal Council resolution authorising him to do so; and (ii) the applicant's lack of condonation, in that, the applicant is required to bring an Application for Condonation for non-compliance with the Uniform Rules of Court before the Applicant's application can be entertained.
- [19.] The respondent contends that the applicant's application does not comply with the provisions of section 54A of the Municipal Systems Act, 32 of 2000, in that the institution of the application for rescission of judgment was not authorised by the Council resolution of the applicant.
- [20.] The respondent argue that the applicant's Notice of Intention to Defendant was not filed in Court in terms of the Rules. The respondent argue that the Notice to Defend was filed out of the prescribed timeframe and that it was not file in the court file.

Legal Framework

- [21.] The legal requirements for rescission of judgment in terms of Rule 42(1)(a) are that -

"[1] The court may, in addition to any other power it may have, mero muto or upon the application of any party affected rescind or vary;

(a) An order or judgement erroneously sought or erroneously granted in the absence of any party affected thereby."

- [22.] The law governing rescission under Rule 42(1)(a) is trite. The applicant must show that the default judgment or order had been erroneously sought or

erroneously granted.¹ It is based on two elements, namely, that the applicant must set forth a reasonable explanation or show good cause for the default and secondly that the applicant must demonstrate a *bona fide* defence(s).

- [23.] Under this Rule 42(1)(a) a judgment may be rescinded if it was erroneously sought or erroneously granted in the absence of the affected party. The applicant must demonstrate that the judgment was granted due to a procedural or factual error, such as the court not being aware of relevant facts at the time of granting the judgment.
- [24.] Rule 31(2)(b) provides that a judgment may be rescinded if the applicant provides a reasonable explanation for their default, shows that the application is *bona fide* and not intended to delay the proceedings, and discloses a *bona fide* defence with prospects of success.
- [25.] In terms of common law rescission may be granted if the applicant can show "sufficient cause," which includes providing a reasonable explanation for the default and demonstrating a *bona fide* defence.
- [26.] In the matter of *Chetty v Law Society*², Miller JA clarified the test for rescission that:

"The Appellant's claim for rescission of judgment confirming the *rule nisi* cannot be brought under Rule 31 (2) or Rule 42 (1), but must be considered in terms of the common law, which empowers the Court to rescind a judgment obtained on default of appearance, provided sufficient cause therefore has been shown.

The term "sufficient cause" (or "good cause") defies precise or comprehensive definition, for many and various factors are required to be considered (See *Cairn's Executors v Gaarn* 1912 AD 181 at 186 per Innes JA), but it is clear that in principle and in the long-standing practice of

¹ *Rossitter v Nedbank* [2015] ZASCA 196 at 16, also see *Bakoven Ltd v GJ Howes (Pty) Ltd* 1992 (2) SA 446 (ECD), *Elia and others v Absa Bank* (A5083/2021; 19617/2017 [2023] ZAGPHJC 649

² *Chetty v Law Society, Transvaal* 1985 (2) SA 756 (A) 1985 (2) SA 746J to 765 C; (See *De Wet and Others v Western Bank* 1979 (2) SA 1031 (A) at 1042 and *Childerly Estate Stores v Standard Bank SA Ltd* 1924 OPD 163.)

our courts two essential elements “sufficient cause” “for rescission of a judgment by default” are:

- (i) that the party seeking relief must present a reasonable and acceptable explanation for his default; and
- (ii) that on the merits such party has a *bona fide* defence which, *prima facie*, carries some prospect of success.³

[27.] It is not sufficient if only one of these two requirements is met; for obvious reasons a party showing no prospect of success on the merits will fail in an application for rescission of a default judgment.

[28.] *Silber v Ozen Wholesalers*⁴ remains authority for the proposition that an applicant’s explanation must be sufficiently full to enable the court to understand how the default came about and assess the applicant’s conduct.

[29.] It is settled law, that the procedure to be followed by a party disputing the authority of a person to act on behalf of another party in litigation as in the present application is set out in Rule 7. Rule 7(1) provides as follows:

“7 Power of Attorney (1) Subject to the provisions of subrules (2) and (3) a power of attorney to act need not filed, but the authority of anyone acting on behalf of a party may, within 10 days after it has come to the notice of a party that such person is so acting, or with the leave of the court on good cause shown at any time before judgment, be disputed, whereafter such person may no longer act unless he satisfied the court that he is authorised so to act, and to enable him to do so the court may postpone the hearing of the action or application.”

[30.] The purpose of the rule is, on the one hand, to avoid cluttering the pleadings unnecessarily with resolutions and powers of attorneys. On the other hand, it provides a safeguard to prevent a cited person from repudiating the process and denying his or her authority for issuing the process.

³ *PE Bosman Transport Works Committee and Others v Piet Bosman Transport (Pty) Ltd* 1980 (4) SA 799 (A); *Smith N O v Brummer N O and Another*; *Smith N O v Brummer* 1954 (3) SA 352 (O) at 357-8).

⁴ 1954 (2) SA 345 (A) at 353

Analysis

Erroneously sought and granted default Judgment

- [31.] Uniform Rule 42(1)(a) provides that a court may rescind or vary an order or judgment erroneously sought or erroneously granted in the absence of a party affected thereby. The principles governing rescission applications under Rule 42(1)(a) were articulated in *Colyn v Tiger Food Industries Ltd* 2003 (6) SA 1 (SCA), which held that a judgment is erroneously granted if there is a mistake in the proceedings, either on the part of the applicant for default judgment or the court granting the judgment.
- [32.] Generally a judgment is erroneously granted if there existed at the time of its issue a fact of which the court was unaware, which would have precluded the granting of the judgment and which would have induced the court, if aware of it, not to grant the judgment.⁵
- [33.] The main points to be considered by the court for Rule 42(2)(1)(a) are, that -
- (a) The court examines whether the judgment was granted erroneously, either due to a procedural mistake or the court not being aware of material facts at the time of granting the judgment.
 - (b) If the application is brought under Rule 31(2)(b) or common law, the applicant must explain why they failed to act or appear in court. The explanation must show that the default was not wilful or due to gross negligence.

⁵ *Van Heerden v Bronkhorst* (Case no 846/19) [2020] ZASCA 147 (13 November 2020) also see *Nyingwa v Moolman* NO 1993 (2) SA 508 (TK) at 510D-G; *Naidoo and Another v Matlala NO and Others* 2012 (1) SA 143 (GNP) at 153C; *Rossiter v Nedbank Limited* (unreported, SCA case number 96/2014 dated 1 December 2015) para 16; *Thomani and Another v Sobeka NO and Others* 2017 (1) SA 51 (GP) at 58C-E; *Occupiers, Berea v DeWet NO and Another* 2017 (5) SA 346 (CC) at 366E-367A.

- (c) The applicant must disclose a defence that is bona fide and has prospects of success. This does not require proving the defence but showing that it is not frivolous or vexatious.
- (d) The court considers whether the application for rescission was brought within the prescribed time frame or whether condonation for late filing is warranted. The applicant must show that the delay was not excessive and provide reasons for the delay.
- (e) The court assesses whether granting rescission would cause prejudice to the respondent and whether such prejudice can be remedied, for example, through a costs order.

[34.] In *Grant v Plumbers (Pty) Ltd* 1949 (2) SA 470 (O) and *Chetty v Law Society of Transvaal* 1985 (2) SA 756 (A), the courts established that an applicant for rescission under Rule 31(2)(b) must provide a reasonable explanation for its default, show that the application is bona fide, and disclose a bona fide defence with prospects of success.

[35.] From the respondent's answering affidavit, it is evident that the respondent concedes that the notice to defend was served to its erstwhile attorneys, but the respondent contends that it was not filed with the court, as required by the rules. This argument cannot stand when the current filing process is done electronically, particularly when it is evident that the respondent's attorneys were the custodians of the CaseLines system and having been duly served with the Notice to Defend.

[36.] The respondent counters that the applicant should have ensured its inclusion in the court file by requesting access to CaseLines. I find this argument to incorrect as the respondent had a duty to invite the applicant on CaseLines upon receipt of its Notice to Defend. The court finds that the notice of intention to defend was indeed served on the respondent's attorneys, as evidenced by the stamp on the document. The failure to upload the notice to CaseLines does not negate the fact that the respondent was aware of the

applicant's intention to defend. The respondent's attorneys had a duty to ensure that all relevant documents were properly filed.

[37.] In light of *Colyn v Tiger Food Industries Ltd*, the judgment was granted erroneously because the court was not made aware of the notice of intention to defend. The applicant has therefore satisfied the requirements of Rule 42(1)(a). Regarding condonation, the court finds that the delay of five days is not inordinate and has been adequately explained in the applicant's founding affidavit. The respondent has not demonstrated any prejudice arising from the delay that cannot be remedied by an appropriate costs order.

[38.] On the issue of a bona fide defence, the applicant has raised a defence in its papers, disputing the causal connection between the alleged water leaks and the failure to harvest crops. While the respondent argues that this defence lacks merit, the court is not required to assess the prospects of success under Rule 42(1)(a).

Lack of authority under Rule 7 (first point in limine)

[39.] The respondent, argues that the deponent to the founding affidavit lacked the authority in terms of the Rule 7 to institute the proceedings in the absence of a Municipal Council resolution authorising him to do so. The Applicant asserts that the Respondent's Rule 7 challenge to the authority of the Applicant's attorneys is misplaced and irregular, as it was not filed within the required 10-day period and without leave of the court.

[40.] The Court finds that the objection to the applicant's authority was raised only when the answering affidavit was filed, well outside the 10-day period contemplated in Rule 7(1). On the applicant's version, which is not meaningfully disputed, a Rule 7 challenge brought after the statutory period may only be entertained with leave of the Court, supported by a substantive application demonstrating good cause. No such application was sought or placed before the Court. The authorities relied upon by the applicant reflect that an informal or out-of-time challenge to authority is impermissible, and that Rule 7 is the exclusive mechanism for disputing authority. In these

circumstances, the respondent's challenge was procedurally defective, irregularly raised, and cannot be sustained. The Court accordingly finds that the Rule 7 notice falls to be disregarded and bears no impact on the determination of the rescission application.

Condonation (second point in limine)

[41.] The respondent's point *in limine* premised on an alleged absence or inadequacy of condonation cannot be sustained. Recent authority from the Supreme Court of Appeal reiterates that condonation is not a mere formality and turns on a holistic, interests-of-justice assessment that considers, *inter alia*, the degree of lateness, the explanation for each period of delay, the prejudice, and the prospects of success; importantly, a court retains a discretion to grant condonation where the delay is neither inordinate nor unexplained in material respects.⁶ In this matter, the applicant's delay was brief, fully explained on the papers, and occasioned no demonstrable prejudice to the respondent; moreover, the underlying application raises issues with sufficient merit to warrant ventilation on the merits. Applying these principles, the procedural attack must fail and condonation is granted. The Constitutional Court has similarly cautioned that condonation "is not for the mere asking" and requires a full, reasonable explanation linked to the period of delay and the interests of justice:⁷

⁶ *Member of the Executive Council for Health, Gauteng v Motubatse & Another* (182/2021) [2023] ZASCA 162 (30 November 2023) (SCA, re-affirming condonation principles and the court's discretion); see also *Commissioner for the South African Revenue Service v Virgin Mobile South Africa (Pty) Ltd* (1303/2023) [2025] ZASCA 77 (4 June 2025) (SCA, emphasising that non-compliance and delay are assessed against explanation, prejudice and the interests of justice).

⁷ *Ferris v FirstRand Bank Ltd* [2013] ZACC 46; 2014 (3) SA 39 (CC) at paras 10–12

Costs

- [42.] It is trite that an order of costs lies in the discretion of the Court, to be exercised judicially upon a consideration of all relevant factors. The primary principle remains that costs follow the event, and a successful party should ordinarily be awarded its costs unless there exist circumstances that justify a departure from this rule. This approach reflects the notion that a litigant who has been substantially successful should not be out of pocket for vindicating or defending its rights.
- [43.] In the present matter, the respondent's opposition was marked by the raising of points in limine that were either unsustainable in law or devoid of factual foundation. These objections resulted in unnecessary procedural disputes that protracted the litigation and burdened the Court with issues that ought not to have been advanced. Where a party persists in technical or meritless objections which do not meaningfully assist the resolution of the dispute, it is appropriate that such conduct be reflected in the costs order.
- [44.] Having assessed the totality of the circumstances including the nature of the issues, the manner in which the litigation was conducted, and the relative success of the parties, I am satisfied that the applicant is entitled to its costs.
- [45.] The applicant was compelled to approach the Court to vindicate its position in circumstances where the respondent's procedural objections lacked substance and contributed to the unnecessary escalation of costs. In these circumstances, fairness dictates that the respondent should bear the costs occasioned by its opposition. Where the conduct of a litigant demonstrates a pattern of obstructive, dilatory, or untenable procedural manoeuvring, the Court is justified in considering a punitive costs order. Although such orders are exceptional, they serve an important function in expressing the Court's disapproval of litigation conduct that unnecessarily consumes judicial resources. In the present matter, while the respondent's conduct is deserving of censure, I am satisfied that an award on the ordinary party-and-party scale will adequately mark the Court's displeasure.

Conclusion:

- [46.] Having considered the parties' submissions, the applicable legal principles governing rescission under Rules 31(2)(b) and 42(1)(a), together with the issues raised *in limine*, the Court is satisfied that the applicant has demonstrated that the default judgment was erroneously sought and granted. The evidence establishes that a notice of intention to defend had been properly served on the respondent's erstwhile attorneys and that this fact was not disclosed to the Court at the time judgment was taken. The respondent's remaining objections particularly the challenges directed at condonation and the Rule 7 notice are without merit. The delay in bringing the application was brief, fully explained, and occasioned no legally cognisable prejudice. The Rule 7 objection, raised out of time and without the requisite application for leave, is similarly unsustainable.
- [47.] In light of these findings, the interests of justice require that the judgment be rescinded and that the parties be restored to the procedural position they occupied prior to the granting of the default judgment. The respondent's conduct in persisting with meritless technical objections has unnecessarily protracted these proceedings, and an appropriate order of costs must reflect this.

It is ordered that:-

- (a) The point *in limine* relating to condonation is dismissed.
- (b) The point *in limine* based on Rule 7 is dismissed.
- (c) The applicant's amendment to the notice of motion is granted.
- (d) Condonation for the late filing of the rescission application is granted.
- (e) The default judgment granted on 25 August 2023 is hereby rescinded in terms of Rule 42(1)(a).
- (f) The matter is restored to the roll as defended. The respondent shall, if so advised, deliver a notice of bar in accordance with the Uniform Rules of Court,

and thereafter the applicant shall deliver its plea within the prescribed time periods.

(g) The respondent is ordered to pay the costs of this application on a party and party scale.

P N MANAMELA

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Date of hearing: 13 October 2025

Judgment delivered: 16 February 2026

APPEARANCES:

Counsel for the Applicant: R Maphutha

Attorneys for the Applicant: Lekhu Pilson Attorneys

Counsel for the Respondent:

Attorneys for the Respondent: Phosa Loots Attorneys