



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

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

CASE NO: 47598/2021

04 March 2026

DATE

Signed by:

[Redacted Signature]

SIGNATURE

In the matter between:

CITY OF JOHANNESBURG METROPOLITAN

Applicant

And

CABINETILE TRADING

Respondent

IN RE: CABINETILE TRADING CC

Plaintiff

And

CITY OF JOHANNESBURG

Defendant

Heard: 30 April 2025

Delivered: This Judgement was handed down electronically by circulation to the parties' legal representatives by email and by uploading to Caselines and release to SAFLII. The date and time for hand down is deemed to be 10:00 am on 04 March 2026.

JUDGMENT

JOUBERT AJ

1. INTRODUCTION

1.1. This judgment concerns an application for rescission of a default judgment granted by the Honourable Wanless J on 3 November 2022. The applicant, City of Johannesburg Metropolitan Municipality ("the City"), seeks to rescind the default judgment granted in favour of the respondent, Cabinetile Trading CC ("Cabinetile Trading"), for the payment of an outstanding invoice amounting to R1 720 400.00, excluding VAT and payment of interest on the amount of R1 720 440.00 at the prescribed rate of interest per annum a tempore morae from 1 July 2016.

1.2. The applicant seeks to rescind the judgment granted in favour of the respondent on the grounds that the respondent lacks locus standi; the respondent has failed to comply with the Institution of Civil Proceedings Against Certain Organs of State Act; the claim has prescribed; and Particulars of Claim are flawed.

1.3. The respondent denies the existence of the alleged grounds; further, the applicant's application was filed late, without any explanation and furthermore that the applicant has failed to apply for condonation as envisaged in Rule 31(2) of the Uniform Rules of court and is therefore excipiable.

2. BACKGROUND

- 2.1. For clarity purposes, the main application, as referred to hereafter, refers to the default judgement application. The plaintiff, in the main application, as referred to hereafter, refers to Cabinetile Trading, and the defendant, in the main application, as referred to hereafter, refers to the City.
- 2.2. On or about 9 March 2016, employees of Pikitup (a state-owned entity which renders waste management services to the defendant), namely members of the South African Municipal Workers Union, embarked on an unprotected strike action pertaining to salary increments. As a result, during the course of March 2016, the then City Manager of the defendant, established a Joint Operations Task Team comprising various departments under the defendant, the objective of which was to perform emergency waste management services.
- 2.3. At the time of the strike the plaintiff was a waste management service provider for the City, and the defendant orally, with an undertaking to enter into a formal service level agreement at a later stage, appointed the plaintiff to render emergency services to the City.
- 2.4. The plaintiff, as a matter of urgency, repaired plumbing utilities which had resulted in water wastage in Soweto's informal settlements; removed waste which had accumulated since the commencement of the strike in Soweto's informal settlements and cleaned up waste created in illegal dumping sites and garden sites.
- 2.5. All services were rendered satisfactory by the plaintiff. The plaintiff used its own resources, *inter alia*, twenty tipper trucks and 4 TLBs, at its own expense

to render the services, albeit with a legitimate expectation to be reimbursed fully by the defendant.

2.6. On or about 1 August 2016, the defendant, expressed its satisfaction with the emergency services rendered by the plaintiff, when it, duly represented by its then, City Manager, and the Executive Mayor at the time, presented to the plaintiff a certificate of appreciation, extending its appreciation to the plaintiff for being part of its integrated solution into cleaning up the municipality during a strike at the time.

2.7. The defendant agreed that it would effect payment to the respondent within 30 (thirty) days of its receipt of an invoice for services rendered.

2.8. The plaintiff rendered said invoice and struggled for years to be reimbursed even though the defendant provided the plaintiff with a ratification report in 2019, and a purchase order in 2020, as acknowledgment for the services rendered by the plaintiff, the debt owed to the plaintiff and the authorization for payment of same.

2.9. Ultimately, the ratification report recommended that the defendant, through the City Manager, must approve the payment of the plaintiff for the services provided between April, May, and June 2016 and that the plaintiff is paid the amount R1 636 453.60, which amount comprised the amounts of R 1 496 000.00 and R142 453.60 (exclusive of value added tax).

2.10. The ratification report was followed by a purchase order, issued from the defendant to the plaintiff, in February 2020. The purchase order was for the

immediate payment of the debt, for services as described in the purchase order.

2.11. Despite the abovementioned ratification report, purchase orders and various letters of demand, the defendant failed, neglected, and/or refused to effect payment. As a result, on 6 October 2021, the plaintiff instituted legal proceedings for breach of contract, and in the alternative, unjustified enrichment.

2.12. The defendant was duly served with combined summons on 11 October 2021 and was afforded until 9 November 2021 to enter a Notice of Intention to Defend, which it has to date not entered. Consequently, the plaintiff applied for judgment in default as envisaged in Rule 31 (2)(a) of the Uniform Rules of Court.

2.13. Rule 31 (2)(a) provides: *"When ever in an action the claim or, if there is more than one claim, any of the claims is not for a debt or liquidated demand and a defendant is in default of delivery of notice of intention to defend or of a plea, the plaintiff may set the action down as provided in subrule (4) for default judgment and the court may, after hearing evidence, grant judgment against the defendant or make such order as it deems fit."*

2.14. As mentioned above, at the time when combined summons was served on the defendant, the defendant did not enter a Notice of Intention to defend, which subsequently resulted in the granting of the default judgment in favour of the plaintiff on 3 November 2022.

2.15. The defendant (now the applicant) instituted an application for a rescission or setting aside of the default judgment granted by this Court on 3 November 2022.

2.16. The applicant seeks to rescind the judgment granted in favour of the respondent on the grounds that the respondent, *inter alia*, lacks locus standi; the respondent has failed to comply with the Institution of Civil Proceedings Against Certain Organs of State Act; the claim has prescribed; and procedural irregularities.

2.17. The respondent denies the existence of the alleged grounds for rescission; contends that the applicant's rescission application was filed late without any justifiable explanation to support the late filing and furthermore that the applicant has failed to apply for condonation for the late filing of the rescission application.

2.18. The applicant asserts that it did not rely on the requirements of Rule 31(2) of the Uniform Rules of Court, since "it [the rescission application] does not rely on any error in the proceedings and therefore, the rescission application was brought in terms of Rule 31(2)(b) of the Uniform Rules of Court.

3. THE RELEVANT CONTEXT

3.1. The respondent, Cabinetile Trading, was engaged by the City of Johannesburg to perform emergency services during a municipal workers' strike in 2016. An invoice for the services rendered was submitted on 1 June 2016. The respondent alleges that the City failed to make timely payment of the debt

owed, and this omission resulted in breaching the agreement., which in turn lead to the issuance of summons on 11 October 2021, and subsequently obtaining a default judgment on 3 November 2022.

3.2. The applicant argues that the claim had prescribed by 31 May 2019, and no valid Section 3 notice was served as required under the Institution of Legal Proceedings Against Certain Organs of State Act.

4. THE LEGAL PRINCIPLES APPLICABLE ARGUED

4.1. The legal principles applicable to this case include the Uniform Rules of Court, particularly Rule 31(2), governing the rescission of judgments.

4.2. The Prescription Act 68 of 1969, which stipulates that a debt prescribes after three years unless interrupted.

4.3. The Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002, which requires a Section 3 notice to be served within six months before instituting legal proceedings against an organ of state.

4.4. In addition, at the time of initiating proceedings, Cabinetile Trading's registration status was in question, although it was later reinstated on 2 February 2023. These facts provide the backdrop for the legal proceedings and the issues being addressed in the case.

4.5. The crux of the applicant's argument is that the respondent's claim was prescribed by 31 May 2019, as the summons was only served in October 2021,

well beyond the three-year prescription period. The applicant also argues that the Section 3 notice was not served within the prescribed six-month period and was addressed to the wrong person, thus invalidating the proceedings.

4.6. The respondent counters that the City acknowledged the debt through partial payment and issuance of a purchase order in 2020, which interrupted the prescription. Furthermore, the respondent argues that the absence of a Section 3 notice can be rectified by seeking condonation and that the alternative claim for unjust enrichment does not constitute a debt under the Institution Act, thus not requiring a Section 3 notice.

5. ANALYSIS

5.1. After consideration of the pleadings and hearing oral argument for both parties, the court must first and foremost determine whether the applicant has demonstrated a reasonable and acceptable explanation for a defence to the claim that it did not wilfully act in default, and if granted the opportunity to state its case, it will have a prima facie prospects of success.

5.2. In its determination, it is trite that the court must not only consider whether there are bona fide reasons for default, but also whether there is potential prejudice to the respondent and whether the rescission is pursued in good faith.

5.3. To this effect, the applicant's counsel is required to be fully informed about the legal process and associated timelines required under Rule 31(2) of the Uniform Rules of Court and clearly demonstrate compliance to the court.

5.4. Rule 31(2) provides that:

5.4.1. Whenever in an action the claim or, if there is more than one claim, any of the claims is not for a debt or liquidated demand and a defendant is in default of delivery of notice of intention to defend or of a plea, the plaintiff may set the action down as provided in subrule (4) for default judgment and the court may, after hearing evidence, grant judgment against the defendant or make such order as it deems fit; and

5.4.2. A defendant may, within 20 days after acquiring knowledge of such 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.

5.5. The applicant seeks rescission under Rule 31(2)(b) of the Uniform Rules of Court, which allows for rescission of a default judgment if the applicant can show "good cause." This typically requires demonstrating a reasonable explanation for the default, and that there is a bona fide defence to the claim.

5.6. It is trite that the common law also requires compelling cause to be shown for setting aside a default judgment. The principles of good cause are well established: An applicant is expected to give a reasonable explanation of its default and show that its application is made bona fide and show that it has a

bona fide defence to the Plaintiff's case, which prima facie has some prospect of success, if advanced to trial.

5.7. In this instance, it seems if though the applicant and its counsel, elected to ignore the court rules, by simply omitting to apply for condonation for the late filing of the rescission application.

5.8. In *Kataka v Standard Bank (060093/23) [2025] ZAGPPHC 512*, Moila AJ, ruled that: *"The judicial facts required for an application under uniform Rule 31(2)(b) are the following: default judgment has been given in an action, within 20 days after obtaining knowledge of the judgment, deliver a notice, upon good cause shown. The requirement for good cause shown is no different in the context of common law than in the context of Uniform Rule 31(2)(b). That being said, if one of the jurisdictional facts does not exist, the court has no jurisdiction to rescind in terms of the Uniform rule 31(2)(b) or the common law."*

5.9. Whereas the court order was served on the applicant on 8 November 2022, the applicant instituted its application for rescission on 8 December 2022. The period in which the application should have been instituted expired on 6 December 2022. Accordingly, the application was instituted 22 (twenty-two) days consequent to the service of the court order.

5.10. Given that Rule 31(2) patently requires of an applicant to bring such an application within 20 days of its knowledge of the Order in the main application, failing which a condonation application must accompany the application, the applicant has not only failed to launch its rescission application within 20 days

of its receipt of the Order, but has also failed to apply for condonation for the late institution of its application for rescission.

5.11. The Applicant's reasoning for the omission to apply for condonation due to its assertion that "it does not rely on any error in the proceedings and therefor, the rescission application was brought in terms of Rule 31(2)(b) of the Uniform Rules of Court and the common law", is a failed attempt to provide a reasonable explanation for its default.

5.12. Considering the facts in this rescission application, in a fair, reasonable, rational and justifiable manner, I am therefore inclined to agree with the proposition by the respondent that the applicant's failure to apply for condonation for the late filing of the rescission application should be dismissed, solely due to its lateness, however, and more so, since the applicant filed its rescission application without any application for condonation.

5.13. Notwithstanding the applicant's failure to comply with the court rules and to apply for condonation, the court is of the view that even in the instance that the applicant did apply for condonation for the late filing of the rescission application, it did not convince the court that it had a bona fide defence against the default judgment and more importantly that it did not act in a non-wilful manner.

5.14. In consideration of the applicant's defence against default judgment, it is important to consider the exact facts that led to the default.

5.15. The applicant (at the time the defendant) was duly served with combined summons on 11 October 2021 and was afforded until 9 November 2021 to enter a Notice of Intention to Defend, which it has to date, not entered. Consequently, the respondent (at the time the plaintiff) applied for judgment in default as envisaged in Rule 31 (2)(a) of the Uniform Rules of Court.

5.16. Rule 31 (2)(a) states *“When ever in an action the claim or, if there is more than one claim, any of the claims is not for a debt or liquidated demand and a defendant is in default of delivery of notice of intention to defend or of a plea, the plaintiff may set the action down as provided in subrule (4) for default judgment and the court may, after hearing evidence, grant judgment against the defendant or make such order as it deems fit.”*

5.17. As mentioned above, at the time when combined summons was served on the applicant in the default judgement proceedings, the applicant did not enter a Notice of Intention to defend, which subsequently resulted in the granting of the default judgment against the applicant.

5.18. The responded convinced this court that proper service of the combined summons and particulars of claim with annexures & notice, was served on a para-legal/intern employee, a certain Ms Moleke, at the applicant's registered address.

5.19. In paragraph 9 of the applicant's replying affidavit in response to ad paragraph 15 of the respondent's responding statement, the applicant acknowledged that “there was a clear and outlined process for registering and receiving legal documents and there was clear supervisor of the interns who

were responsible for receiving” and that “In this present case it is accepted that there may have been an air of negligence by a former employee/intern Ms Moleke when handling the particulars of claim as same never reached the legal advisor.

5.20. The recipient of the duly served combined summons was not an ordinary employee of the applicant. It is important to note that at the time, when service of the combined summons was effected on the applicant on the 11th of October 2021, the recipient of the combined summons, Ms Moleke, was already employed from the 1st of April 2021- seven months, by the applicant as an “intern in the Group Legal and Contracts department of the City of Johannesburg...Litigation unit”.

5.21. On its own version, the applicant explained at length the process and procedures of training legal interns: *“It is perhaps instructive at this juncture, to set out the process of acceptance of service by the Applicant. The Applicant employs legal advisors and legal interns/paralegals. Part of the responsibilities of the interns is to receive summons and any other legal processes which are regularly served on the Applicant. Once a summons has been served on the legal interns, they have to give that summons to the legal advisers for further handling. When receiving service, the legal interns would ordinarily affix the Applicant's stamp confirming that service was effected.... The legal adviser who would have received that summons would then seek the necessary permissions to appoint a firm of attorneys for the purposes of defending or opposing the matter. That, in a nutshell is a process of handling summonses after service on the Applicant.”.*

5.22. The applicant failed to introduce any confirmatory evidence, in the form of a sworn statement or confirmatory affidavit, deposed by Ms Moleka, to affirm that Ms Moleka had read the main affidavit, in order to affirm that the facts contained within it, especially the submissions relating to her purported negligence, are indeed factually correct.

5.23. Neither did the applicant present any evidence that Ms Moleka did not receive the combined summons on the 11th of October 2021, in a procedurally incorrect manner.

5.24. Furthermore, the applicant did not present any legal argument during the trial that could convince this court that there was any reasonable attempt to obtain a confirmatory affidavit from Ms Moleka. Consequentially, the court does not accept the hearsay evidence advanced by the applicant.

5.25. A primary consideration which cuts through the entire pleaded case for rescission, is that the applicant, who on its own admission, argued that the city regularly receives and register legal documents, and in this specific instance, admits that *“there was clear supervisor of the interns who were responsible for receiving”*, is in stark contradiction, also arguing that Ms Moleka, negligently, acted in isolation.

5.26. This is a clear contradiction. The reasonable and rational deduction must be that the applicant, and not an individual intern, bears ultimate responsibility for the service and registration of important legal documents.

5.27. The respondent should never be subjected to any form of prejudice in the instance that the applicant does not have the necessary and or precautionary procedures in place to manage the proper receipt of legal documents, even in the instance where it is argued that the sole reason for the default, is because an intern acted in a negligent manner. The applicant bears ultimate responsibility for its interns, and thus its failure to exercise said responsibility is wholly unsatisfactory.

5.28. The court agrees with the respondent that the applicant's explanation of its default is wholly unsatisfactory. In my view, a party who deliberately or negligently chooses not to oppose a summons, should not complain against a judgment that was ostensibly granted erroneously in their absence.

5.29. In considering the merits of the applicant's argument in respect of non-willful default, the Constitutional Court held in Zuma v Secretary of the Judicial Service Commission of Inquiry into Allegations of State Capture, 2021 (11) BCLR 1263 (CC), that a litigant who ignored court processes cannot later seek to rescind, whereas he knew the consequences of the order sought against him. The court emphasized that in the absence of a reasonable explanation for the default, the court is not obligated ever to assess the prospects of success.

5.30. The following proposition was put forward in Government of the Republic of Zimbabwe v Fick and Others [2013] ZACC 22, where the court held that: "*At common law the requirements for rescission of a default judgment are twofold. First, the applicant must furnish a reasonable and satisfactory explanation for its default. Second, it must show that on the merits, it has a bona fide defence, which prima facie carries some prospects of success..*"

5.31. It follows, that proof of this requirement is taken as showing that there must be sufficient cause for an order to be rescinded. A failure to meet one of them may result in refusal of the request to rescind.

5.32. In Chetty v Law Society, Transvaal [1985] (2) SA 756 (A), Miller JA formulated the test in these terms: *"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 against him, no matter how reasonable and convincing the explanation of his default...and ordered judicial process would be negated if, on the other hand, a party who could offer no explanation of his default other than his disdain of the rules was nevertheless permitted to have a judgment against him rescinded on the ground that reasonable prospects of success on the merits. The reason for my saying that the appellant's application for rescission fails on its own demerits is that I am unable to find in his lengthy founding affidavit or elsewhere in the papers any reasonable or satisfactory explanation of his default and the total failure to offer any opposition whatever to the confirmation on 16 September 1980 of the rule nisi issued. on 22 April 1980."*

5.33. It is common cause that the applicant never disputed that there was an agreement with the respondent to deliver emergency services to the applicant for a certain monetary value and, furthermore, that the respondent had fully dispensed with its obligation under the agreement with the applicant, by delivering such emergency services to the satisfaction of the applicant. The applicant knew for a very long time that it had to pay and simply ignored this

obligation through extensive frustration and evasive actions, causing the respondent much difficulty, however, it seems that negligence, resulted in one evasive action to many.

5.34. I concur with Honourable Wanless J's default judgement, on the premiss that the applicant failed to demonstrate a reasonable explanation for the default and that its defense, which is based on a misconstrued prescription and procedural non-compliance interpretation, did not convince the court that the defence is a bona fide, substantiated defense, and consequentially, is rejected, more so, in light of its own failures of procedural non-compliance.

5.35. The court's primary goal in the application for rescission of judgment is to ensure fairness and justice between the parties. It would simply not be fair, rational and justifiable to condone the blatant non-compliance of court rules, whilst the very remedy relied on by the applicant pertains to an argument for prescription. It is this court's view that the applicant, in any event, did not convince the court that it did not willfully default and that it had a bona fide argument for such default, with prima facie prospects of success, if the order was to be rescinded and the applicant was awarded another opportunity.

5.36. The general rule is that costs follow the result. I have no reason to depart therefrom. Accordingly, the following order is granted:

6. ORDER

6.1. The application is dismissed with costs.

Signed by:

**JOUBERT AJ
JUDGE**

GAUTENG DIVISION OF THE HIGH COURT, JOHANNESBURG

Heard: 30 April 2025

Judgment: 04 March 2026

Appearances:

For Applicant: Adv. Mbeki

Instructed by: Majang Inc. Attorneys

For Respondent: Adv. Chauke

Instructed by: Shinyori Chauke Inc