REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)

CASE NO: 2024/097437

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

DATE: 26 MARCH 2026
SIGNATURE OF JUDGE: [redacted]

In the matter between:

BRYTE INSURANCE COMPANY LIMITED — **Applicant**

(Registration Number: 1965/0067664/06)

and

MZIKI TRANSPORT HOLDINGS (PTY) LTD — **First Respondent**

(Registration Number: 2003/029807/07)

LIAM ROYCE N.O — **Second Respondent**

JUDGMENT

MEADEN AJ

INTRODUCTION

[1] This is an opposed application for rescission of a default judgment ("the judgment" or "the Order") launched by the Applicant – a short-term insurer on 14 February 2025 and in terms of Rule 42(1)(a), alternatively; Rule 31(5)(d) of the Uniform Rules of Court regarding default judgment granted against it and in favour of the First and Second Respondents (Plaintiffs in the main action) back on 25 November 2024.

[2] The relief sought in this rescission application includes:

[2.1] The Applicant seeking to have the above judgment rescinded and set aside;

[2.2] the Applicant seeking leave to file a plea or further step within 15 days of this Order; and

[2.3] the Applicant seeking an award as to costs against the Respondent in the urgent application (part A) heard by Wilson J on 16 February 2026 and in this rescission application (part B).

[3] It is common cause that this application originates from the main action that was instituted by the First and Second Respondents against the Applicant following on the Applicant's repudiation of the short-term insurance claims lodged by the First Respondent with the Applicant.

[4] This rescission application was preceded by an urgent application resorted to by the Applicant and out of this court back on 16 February 2025 and in which the Applicant was successful in securing a stay on the enforcement of the writ of execution by the Respondents against the Applicant and pending the Applicant's pursuance of this rescission of judgment application.

FACTUAL BACKGROUND

[5] The applicant (Defendant in the main action launched under the above case number) was the short-term insurer of the First Respondent – insured (First Plaintiff in the main action) and the Second Respondent (Second Plaintiff in the main action) being the Business Rescue Practitioner appointed vis-à-vis the First Respondent.

[6] On or about 28 July 2023, a truck and trailer of the First Respondent suffered fire related damage. Per prayer 1 of the First Respondent's Particulars of Claim to its Summons, the sum of R 1 691,300.00 (R 1 391,300 for the truck and R 300,000.00 for the trailer) was claimed in damages from the Applicant. These claims were repudiated by the Applicant in circumstances where it alleged that the First Respondent had failed to keep up to date with its monthly premium payment obligations and further, short paid on monthly short-term insurance premiums due in favour of the Applicant.

[7] Following on the above repudiation and an unsuccessful complaint to the Short-Term Insurance Ombudsman, the Respondents resorted in instituting action proceedings under the above case number and out of this court.

[8] Upon service of the summons in this matter, the Applicant entered an appearance to defend this action. The Applicant did not plead and the Respondents proceeded electronically to serve a Notice of Bar which the Applicant's attorneys averred not receiving. Hereupon, the Respondents applied via the Registrar of the High Court for default judgment and which was granted on 25 November 2024. This occurred despite the fact that the Respondents' claims are for damages and such an application for damages cannot be granted by the Registrar of the High Court, having rather to be set down for hearing in open court.

[9] The Respondents then via their attorneys initiated debt collection steps, having a warrant of execution issued and handed to the Sheriff for execution against the Applicant. In the course of these Sheriff attendances, the Applicant acquired knowledge of the existing default judgment and informed the Respondents of its intention to rescind this.

[10] The Respondents refused to grant their consent to rescission of judgment and the Applicant then resorted on 14 February 2025, in launching an urgent application out of this court to stay execution proceedings, pending determination of this rescission of judgment application.

ISSUE FOR DETERMINATION

[11] Is the Applicant entitled to have the judgment by default rescinded?

THE LAW, APPLICATION AND COMMENTARY

Rescission of judgment in terms of Rule 42 of the Uniform Rules of Court

[12] The Applicant contends that it is entitled to rescission of the Order of 25 November 2024 in terms of either Rule 42(1) (a), alternatively; Rule 31(5)(d) of the Uniform Rules of Court.

[13] For the sake of convenience, the relevant portion of Rule 42(1)(a) of the Uniform Rules of Court is recorded below:

"**Variation and rescission of orders**:

(1) The court may, in addition to any other powers it may have, *mero motu* or upon the application of any party affected, rescind or vary:

(a) an order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby;

(b) ... ..."

[14] There are three ways in which a judgment that was taken in the absence of one of the parties may be set aside, namely:

[14.1] In terms of the above subrule;

[14.2] in terms of 31(2)(b); or

[14.3] at common law.[1]

[15] This court in *Gamede v Wesbank*[2] held that in terms of Rule 42(1)(a), unlike Rule 31(2)(b) or the common law, the applicant need not show good cause in explaining his default or that he has a *bona fide* defence. Here the applicant requires to establish that the judgment was granted erroneously.

[16] The Applicant contends that the default judgment was erroneously sought and granted in its absence.

[17] It is trite that the court has a discretion whether or not to grant an application for rescission under this subrule.[3] This was confirmed by the Constitutional Court in *Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State*[4] where Khampepe J held that:

> "It should be pointed out that once an applicant has met the requirements for rescission, a court is merely endowed with a discretion to rescind its order. The precise wording of rule 42, after all, postulates that a court "may", not "must", rescind or vary its order – the rule is merely an "empowering section and does not compel the court" to set aside or rescind anything."

[18] Further, the Constitutional Court in *Zuma* emphasised that an applicant who invokes this rule must show that the order sought to be rescinded was granted in his or her absence and that it was erroneously sought and/or granted. Put differently, both grounds as above must be shown to exist.[5] The

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[1] *De Wet and Others v Western Bank Ltd* 1977 (4) SA 770 (T) at 776E.
[2] (24707/2020) [2023] ZAGPJHC 804 (20 July 2023) at para 13; *Freedom Stationery (Pty) Ltd v Hassam* 2019 (4) SA 459 (SCA).
[3] Ibid at 780H-781A; *Swart v Absa Bank Ltd* (11975/08) [2008] ZAWCHC 114; 2009 (5) SA 219 (C) (9 December 2008).
[4] (CCT 52/21) [2021] ZACC 28; 2021 (11) BCLR 1263 (CC) (17 September 2021) at para 53.
[5] Ibid. At para 54.

Applicant in this matter therefore bears the onus of proving that the requirements for rescission in terms of the above subrule are met.

[19] The above damages claims, as framed on behalf of the First and Second Defendants in the High Court action, fall within the ambit of Rule 31(2)(a) of the Uniform Rules of Court, in that these are not for a debt or liquidated demand.

[20] Rule 31(2)(a) provides that:

> "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 sub-rule (4) for default judgment and the court may, after hearing evidence, grant judgment against the defendant or make such order as it deems fit."

[21] The application of Rule 31(2)(a) of the Uniform Rules of Court envisages an application for default judgment being ventilated in open court and in circumstances where the integrity of the Respondents' cause of action and claims at hand are open to scrutiny by the court. Such claims require to be quantified and proved and in so doing, evidence to this end (including that of independent experts) requires to be presented to court and in support of such claims and related relief sought from the High Court.

[22] In perusing the Respondents' Particulars of Claim to the Combined Summons, I further inter alia; observed that that the First and Second Respondents failed to set out particulars of how the claimed damages in aggregate of R 1,691,300.00 were made up and quantified and with that; there was no reference contained in these Particulars of Claim as to the actual pre and post fire incident market values of the truck and trailer.

[23] The First and Second Respondents also omitted in their above Particulars of Claim to plead any terms of the insurance agreements relied upon and which are relevant in re the damages claimed from the Applicant.

[24] These Particulars of Claim as presented are materially incomplete and actually excipiable.

[25] These material omissions to the Plaintiff's Particulars of Claim would no doubt have attracted the court's attention in considering whether a complete and sustainable cause of action had been framed and proved by the Respondents and before consideration was given in granting default judgment and in these circumstances, I submit that a judgment would not have been granted.

Default judgments in terms of Rule 31(5)(a) of the Uniform Rules of Court

[26] Rule 31(5)(a) empowers the Registrar of this court to grant default judgments in certain circumstances.

[27] The Registrar of the High Court in considering applications for judgment and as envisaged in Rule 31(5) of the Uniform Rules of Court, can only grant default judgments where the claims are attributed to debts/liquid and liquidated demands (i.e. that fixed, specific and certain as to amount or which may be easily calculated). Default judgment here cannot be granted by the Registrar where the claims at hand are damages orientated and require to be established and proved via the production of evidence for consideration by a court.

[28] The Respondents' claims framed in its Particulars of Claim to its Summons related to damages to a truck and trailer and which damages required to be quantified and established before a judgment may be granted. Such claims fall within the purview of Rule 31(2)(a) and are entirely separate from that envisaged in Rule 31(5)(a) of the Uniform Rules of Court.

[29] In entertaining the Respondents' claims and then in granting judgment on 25 November 2024, the Registrar of the High Court was clearly incorrect and erred in so doing.

[30] The Respondents were also misguided here in applying for default judgment against the Applicant via the Registrar of the High Court and when per the application of Rule 31(2)(a), such an application should have been set down

for hearing in open court. So to do amounts to an abuse of legal process on the part of the Respondents.

[31] Further, the Respondents despite being aware of the application and distinction between Rules 31(2)(a) and 31(5)(a), on acquiring default judgment, then persisted in initiating and undertaking debt collection steps including; causing the Sheriff to execute and enforce a writ of execution against the Applicant. The pursuance of debt collection steps here is flawed, being based on an incorrectly/irregularly and erroneously granted default judgment.

[32] The Applicant became aware of the existence of this default judgment and upon the Sheriff attending on its business premises on 11 February 2025 to enforce the writ of execution. On 11 February 2025, the Applicant's attorneys engaged with the Respondents attorneys, in the process requesting, inter alia; a stay of the writ of execution pending the outcome of a rescission of judgment application then to be resorted to by the Applicant.

[33] The Respondents refused to stay debt collection steps pending the pursuance by the Applicant of its announced rescission of judgment process. Instead, on 14 February 2025 and at the instance of the Respondents; the Sheriff of the High Court again attended on the business premises of the Applicant to write up and attach for sale and execution purposes the Applicant's assets; the Sheriff in the process compiling an inventory of attached assets in anticipation of a sale in execution in due course of such attached assets.

[34] There was clearly no impediment in the Respondents' staying debt collection steps as requested and pending the Applicant's conduct of rescission of judgment application process and further consenting hereto. Instead, what is clearly apparent here is that the Respondents persisted in placing reliance on the above incorrectly, irregularly and erroneously granted default judgment and with that; unduly placed the Applicant under maximum pressure in directing the Sheriff to enforce the writ of execution and attach the Applicant's assets for sale in execution.

[35] This then culminated in the Applicant resorting in pursuing an urgent application out of this court on 16 February 2025 to stay the enforcement of the writ of execution pending a rescission of judgment application being resorted to by the Applicant.

[36] On 16 February 2025, an Order to stay the writ of execution was granted by my brother Wilson J and whose related urgent Order, I concur with.

[37] Despite having been presented with the above Court Order of Wilson J, the Respondents for their part then doggedly persisted in opposing the Applicant in the ensuing rescission of judgment application that I contend with here.

[38] What is noteworthy is that the Respondents have failed in both the urgent application and this rescission of judgment application to substantively deal with the circumstances of the Registrar of this court having incorrectly granted the default judgment in favour of the Respondents and on their illiquid claim.

[39] In these circumstances, the Applicant having regard to the scope and application of Rule 42(1)(a) of the Uniform Rules of Court is entitled to expeditiously correct an obviously wrong order and judgment granted against it by the Registrar of this court and which then stands to be summarily rescinded and set aside and substituted with the Order recorded below.

[40] With this, I have no reason to take issue with the Applicant's rescission of judgment application. I also have no reason to disbelieve the Applicant and where it alleges that its attorneys did not electronically receive the Respondents' notice of bar and default judgment application.

[41] Where however I do take issue with the Applicant's conduct in this action, is in its attorneys' failure to abide the Uniform Rules of Court in timeously serving and filing as of record the Defendants's plea. An appearance to defend the action was served on behalf of the Defendant on 04 September 2024 and the 20-day period within which to draw, serve and file the Defendant's plea per Rule 22(1) of the Uniform Rules of Court lapsed on 03

October 2024. Had the Defendant simply abided the Uniform Rules of Court and timeously served its plea, none of the aforesaid would have occurred.

COSTS

[42] On costs in civil suits, the general principle is that costs follow the outcome.[6]

[43] A fundamental feature of awarding costs serves to indemnify a successful litigant for the expense that it has been put through in initiatiating or defending litigation.[7] The successful party should be awarded costs.[8]

[44] The Applicant in the midst of defending an ongoing substantive action being pursued by the Respondents against it, had also then to resort in launching an urgent application to stay debt collection process being pursued against it by the Sheriff of the High Court at the behest of the Respondents and in circumstances where the Respondents had disregarded the scope and application of Rule 31(2)(a) and in incorrectly obtaining default judgment against the Applicant via the Registrar of the High Court.

[45] Having been successful in the above urgent application, the Applicant had then also to contend with a strenuously opposed rescission of judgment application. Clearly, in contending with debt collection process being enforced by the Sheriff, taking the extraordinary step of having to resort in pursuing the above urgent High Court application to stay execution and thereupon in having to contend with an opposed rescission of judgment application; it is to be anticipated that the Applicant will indeed incur unnecessary and not insubstantial legal costs in so doing.

[46] There was absolutely no bar to the Respondents and upon the Applicant applying for rescission of judgment back on 11 February 2025, to there and then consent thereto and with that, avoid the above entirely unnecessary

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6 *Alluvial Creek Ltd* 1929 CPD 532 at 535.
7 *Road Accident Fund v Nibe* (76672/2017) [2025] ZAGPPHC 24 (16 January 2025) at para 75.
8 *Union Government v Gass* 1959 4 SA 401 (A) 413.

urgent High Court application and ensuing opposed rescission of judgment process.

[47] The court here has a wide discretion vis-à-vis costs and which it may exercise upon due consideration of the salient facts of this matter.[9] The decision the court makes here also takes account of fairness to the litigants and the peculiar circumstances of this case, in the process carefully weighing up the issues arising and the conduct of the parties as well as any other circumstances which may have a bearing on the issue of costs.

[48] Accordingly, having read the documents filed of record, heard counsel and considered the matter, I handed down the undermentioned Order:

"IT IS ORDERED:

1. *That the default judgment granted against the Applicant, dated 25 November 2024, is rescinded and set aside;*

2. *That the Applicant is afforded 20 (twenty) days from the date of this order to file papers in the main action; and*

3. *That costs of the urgent application and the rescission application, under the abovementioned case number, are granted against the Respondents, in favour of the Applicant, on an attorney and client scale, including the costs of 1 counsel on scale B."*

[redacted]

MEADEN JR

ACTING JUDGE OF THE HIGH COURT,

GAUTENG DIVISION, JOHANNESBURG

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[9] *Road Accident Fund v Nibe* (n 7) at para 76.

For Applicant:	Adv. H Le Roux
Instructed by:	Muller & Co Attorneys Inc.
For Respondents:	Adv. MF Mashishi
Instructed by:	Mokuena Attorneys
Date of Hearing:	03 February 2026
Date of Judgment:	26 March 2026

This judgment was handed down electronically by circulation to the parties and or parties' representatives by email and by being uploaded to CaseLines. The date and time for the hand down is deemed to be 13h00 on this 26th day of March 2026.