

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NUMBER: 69417/2017

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

16 March 2026

DATE

SIGNATURE

In the matter between:

PASSENGER RAIL AGENCY OF SOUTH AFRICA

PLAINTIFF

and

LEBOGANG DIALE

DEFENDANT

Heard: 30 October 2025

Delivered: 16 March 2026

This judgment is handed down electronically by circulating to the parties or their legal representatives by email and by uploading the judgment onto CaseLines. The date and time for hand down of the judgment are deemed to be 14:00 on 16 March 2026.

JUDGMENT

MATLAPENG AJ**INTRODUCTION**

- [1] This is an application for rescission of Judgment brought by the Applicant in terms of Uniform Rule 42 (1) (a), alternatively under the common law, and further alternatively in terms of Rule 31 (2) (b).
- [2] The Applicant bid this Court to rescind a Default Judgment granted on 2 May 2023¹, together with written reasons handed down on 18 July 2023 by her Honorable Justice Janse Van Nieuwenhuizen² which was in favour of the Respondent.
- [3] The Respondent opposes the application and submits that the Applicant has failed to meet the requirements for rescission, *inter alia*, due to the inordinate delay, secondly, the lack of a *bona fide* defence and lastly, the absence of sufficient cause.

BACKGROUND

- [4] It is so that the Default Judgment application arose from damages claim that was instituted by the Respondent, following injuries allegedly sustained by the Respondent on 20 February 2017³ wherein two locomotives operated by the Applicant, collided.

¹ CaseLines: 00-1-4.

² CaseLines: 001-8.

³ CaseLines: Of Claim 001-10 para 5.1.

[5] The Applicant attributes the granting of the Default Judgment to procedural irregularities⁴, including the refusal of the presiding Judge to hear the Applicant's Counsel⁵, alleging non-compliance with Rule 28 and the hearing of unliquidated damages without oral evidence.⁶

[6] The Respondent, however, contends that the Applicant was the author of its own misfortune⁷, having persistently failed to comply with Court Orders⁸, practice directives, and procedural obligations over an extended period.

[7] It is so that after the Applicant took a protracted period of time in defending the matter by entering a Notice of Intention to Defend and file a Plea, the Respondent approached the Court seeking the following relief:

7.1. An order compelling the Applicant to, within 10 days from date of transmission of the Order to the Applicant to deliver a signed discovery affidavit in terms of Rule 35;

7.2 For the Applicant to attend a pre-trial conference in terms of Rule 37;

7.3 For the Applicant to deliver notices in terms of Rule 36 and Rule 36(9)(a) should the Respondent require the Applicant to submit to a medical

⁴ CaseLines: Founding Affidavit 023-2 para 9.

⁵ CaseLines: Founding Affidavit 023-7 para 26.

⁶ CaseLines: Founding Affidavit -23-7 para 27.

⁷ CaseLines: Answering Affidavit 025 para 4.7-4.9.

⁸ CaseLines: Answering Affidavit 025-4.12 to 4.14

examination, failing which, the Applicant will be precluded from invoking the provisions of Rule 36(2).

7.4 Should the Applicant fail to comply with the above, the Applicant's defence to the action will be struck out and the Respondent may apply to the Registrar to allocate a date in the Default Judgment Trial Court for Default Judgment in terms of paragraph 21 of the 18 February 2021 practice directive, 1/2021; and

7.5 That the Applicant be ordered to pay the costs of the application.

[8] The service of the Order of Ncongwane AJ Order on the Applicant, was effected twice via email on 18 August 2021 as well as 20 August 2021.⁹

[9] It is so that the Ncongwane AJ Order, was not challenged by the Applicant and therefore it was deemed to be accepted by the Applicant. It was only on 27 May 2022¹⁰, when the Applicant served its discovery affidavit while the balance of the Ncongwane AJ Order, were not complied with.

[10] Despite the defence of the Applicant been automatically struck as a result of the Applicant's non-compliance with the Ncongwane AJ Order, the Respondent erroneously applied for the defence to be struck which application, and after a series of correspondence between the legal representatives of the parties,

⁹ CaseLines: Answering Affidavit 025-11 para 4.12.5.

¹⁰ CaseLines: Answering Affidavit 025-12 para 4.13.

(amongst others there was an indication from the Applicant's legal representatives that an application for the rescission of the Ncongwane AJ would be made, such was never launched)¹¹, the Respondent proceeded with the application for Default Judgment which the set-down, was delivered on 2 November 2022¹² and the matter was heard on 2 May 2023.¹³

[11] For its part, the Applicant's failed to file the Answering Affidavit to the application for Default Judgment despite been served with the application on 14 June 2022¹⁴ and the Answering Affidavit, was uploaded on CaseLines on the day of the hearing which was 2 May 2023.¹⁵

THE ISSUES

[12] The central issues which calls for determination by the Court are, firstly, whether the application was brought within a reasonable time. Second, whether the Default Judgment was erroneously sought or granted as contemplated in Uniform Rule 42 (1) (a) alternatively 31 (2) (b) and in the further alternative the common law.

[13] Lastly, this Court is called upon to make a determination as to whether sufficient cause exist, to justify rescission.

¹¹ CaseLines: Answering Affidavit 025- 15 paras 4.14.5.3-4.15.

¹² CaseLines: Answering Affidavit 025-15 para 4.17.

¹³ CaseLines: Answering Affidavit 025-15- paras 4.17-18.

¹⁴ CaseLines: Answering Affidavit 025-12 para 4.14.

¹⁵ CaseLines: Answering Affidavit 025-16 para 4.19.

The delay in launching the application

[14] It is so that rescission is not there for the asking. A party seeking such indulgence must act with diligence and expedition.

[15] The Judgment and Order sought to be rescinded by the Applicant, was granted on 8 May 2023 with reasons furnished on 18 July 2023. The present application before the Court, was instituted on 08 August 2023.

[16] It is well established that an Applicant seeking condonation or indulgence from a Court, bears the onus of proving a full, detailed and accurate explanation for the entire period of the delay.

[17] This principle has been authoritatively articulated by the Constitutional Court in **Van Wyk vs Unitas Hospital and Another (Open Democratic Advice Center as Amicus Curiae)**¹⁶ where the Court held that an unsatisfactory explanation may, in and of itself, be dispositive of the inquiry. The Court held thus:

[30] If the only hurdle that the applicant had to surmount was mootness, the position would have been entirely different. Here the applicant has to surmount two hurdles, the first being the inordinate delay coupled with a lack of reasonable explanation for the delay. Mootness adds a further hurdle and renders the first hurdle insurmountable...

¹⁶ (2008) SA 472 (CC) at Paras 31-31.

[31] There is an important principle here. As inordinate delay induces a reasonable belief that the order had become unassailable. This is a belief that the hospital entertained and it was reasonable for it to do so. It waited for some time before it took steps to recover its costs. A litigant is entitled to have closure on litigation. The principle of finality in litigation is intended to allow to get on with their lives. After an inordinate delay a litigant is entitled to assume that the losing party has accepted the finality of the order and does not intend to pursue the matter any further. To grant condonation after such an inordinate delay and in the absence of a reasonable explanation, would undermine the principle of finality and cannot be in the interests of justice.”

[18] On these facts, there has not been a delay in launching the application as the impugned Court Order as well as the Judgment thereto, are dated 6 May 2023 and 18 July 2023 respectively and this application, was served on 08 August 2023.

Rule 42(1) (a): erroneously granted

[19] Rule 42 (1)(a) permits rescission only where a Judgment was erroneously sought or erroneously granted in the absence of an affected party. An “error” must exist at the time the Order was made.

[20] It is so that subsequent dissatisfaction with the outcome, does not suffice under these circumstances. It is so that the record reveals that the Applicant was in

default due to its own failure to comply fully and timeously with Court Orders and the applicable practice directives of this division.

[21] The Court was accordingly, entitled to proceed on the basis that the Applicant defense had been struck-off by Ncongwane AJ whether by operating of the Order or as a consequence of persistent non-compliance on the part of the Applicant which, has been expressly and unambiguously demonstrated by the Respondent.

[22] The Applicant, had been aware of the Ncongwane AJ Order at least from 18 August 2021 alternatively 14 June 2022 when the Default Judgment application which was predicated by the Ncongwane AJ Order, was served on it.

[23] Despite this awareness, the Applicant failed to file an Answering Affidavit to the application for Default Judgment alternatively bring a counter-application to rescind the Ncongwane AJ Order and instead, remained in default until 02 July 2023.

[24] When quizzed by Janse Van Van Nieuwenhuizen J that the Order of Ncongwane AJ expressly and unambiguously stated that the failure to comply with the Order would, *ipso facto* Bar the Applicant, the Applicant's Counsel responded and stated:

"It was ordered that the defense will be struck ipso facto. So as we sit here today you are not before court."

*"I agree that court orders must be adhered to..."*¹⁷

[25] In sum, the Applicant's reliance on alleged procedural missteps, does not establish an error attributed to the Court. At best, it reflects an attempt to re-litigate matters that ought to have been raised timeously by the Applicant.

[26] Rule 42, is not a mechanism for appeal in disguise and reliance on the same, must thus fail on these facts.

Bona fide defence

[27] Even if Rule 42 were applicable (which this Court does not find), the Applicant has failed to disclose a *bona fide* defense.

[28] It is so that a *bona fide* defense, requires more than bold averments. It must be set out with sufficient particularity to enable the Court to assess its prospects.

[29] The Applicant with respect, does not meaningfully traverse the merits of the Respondent's claim. Instead, the Applicant relies almost exclusively on technical objections and procedural complaints to bolster its case.

¹⁷ CaseLines: Answering Affidavit 025-19 paras 4.34-4.35.

[30] There are no expert reports which seriously challenge the quantum claimed and Ordered by the Court *a quo*. Instead, the Applicant states that the Order is contrary to the Practice Directives of 1/2021 of the Gauteng Division.¹⁸

[31] There has not been non-compliance with the Practice Directive of 1/2021 and instead, the opposite is true. The Applicant, failed to comply with the Order of Ncongwane AJ, failed to effectively engage with the Respondent regarding pre-trials which prompted the Respondent, while relying on prayer 2 of the Ncongwane AJ Order, to approach the Court, confirm a date of hearing and correctly proceed on a default basis as, there was no Defendant as the defence was struck after the non-compliance of the 18 August 2021 Order, and whilst being aware as of 18 August 2021 of what was required of the Applicant to no avail.

[32] Critically, no substantive defence to the quantum is articulated by the Applicant. Furthermore, there is no engagement with the factual allegations underpinning the damages claim as stated above.

[33] In this regard, the Applicant falls well short of the threshold articulated in *De Wet vs Western Bank Limited* 1979 (2) SA 1031 (A).¹⁹

[34] In sum, the absence of a *bona fide* defence, is fatal to the application whether considered under the common law or Rule 31(2) (b).

¹⁸ CaseLines: Founding Affidavit 023-4 para 12.

¹⁹ 1042 F-H.

The unliquidated damages and evidence

[35] The Applicant also contends that the Court erred by granting Default Judgment without hearing oral evidence. This argument overlooks the context in which the matter was heard.

[36] It is so that the Applicant's defense had been struck-off by the operation of the Ncongwane AJ Order and the matter therefore proceeded on an unopposed basis and with the strict compliance of the Practice Directive 1/2021.

[37] The Court was entitled to rely on the expert reports which were filed by the Respondent which included documentary evidence, was properly before the Court.

[38] The reliance that the Respondent was not entitled to effect an amendment is misplaced. An amendment may be affected at any time before Judgment as was the case under the facts before the Court.

[39] It is so that no application was made at the time to challenge the admissibility or sufficiency of such evidence, which evidence, was properly before Court.

[40] In any event, the Applicant was *ipso facto* barred from participating in the proceedings. The Applicant's remedy squarely lies with rescinding the Ncongwane AJ Order.

[41] In sum, the Applicant through its own default, deprived itself and on multiple occasions, the opportunity to be heard by the Court.

[42] There was no application for condonation for the late filing of the Answering Affidavit which made the situation worse for the Applicant when the matter was heard before Janse Van Nieuwenhuizen J.

Common law and rule 31 (2) (b)

[43] Under both the common law and Rule 31 (2) (b), the Applicant bears the onus of showing good cause. For the reasons already articulated above and namely, delay, lack of adequate explanation, and absence of a *bona fide* defense the Applicant has failed to discharge this onus.

[44] It is so that litigation must come to an end. The interest of justice and finality weigh heavily against granting rescission in circumstances such as these.

[45] In sum, inadequate explanation and the absence of prospects of success, aligns squarely with the approach endorsed in Van Wyk *supra*, namely that Courts must guard against the abuse of process and uphold the principle that litigation must reach finality (interest *rei publicae ut sit finis litum*).

CONCLUSION

[46] Having considered the case before the Court, this Court finds that The application was not unreasonably delayed and that the Judgment and Order was not erroneously sought or granted.

[47] Finally, there was no *bona fide* defense disclosed and no sufficient cause exists to warrant rescission and the application is accordingly dismissed with costs.

ORDER

[48] The application is dismissed with costs of two counsel and on Scale C.



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MT Matlapeng
Acting Judge of the High Court, Gauteng
Division, Pretoria.

Appearances

Applicant's Counsel:
argument prepared by N Mahlangu)

Adv S. Raselalome (Heads of

Applicant's Attorneys:

Ledwaba Mazwai

Respondent's Counsel:

JF Grobler SC with C Jooste

Respondent's Attorneys:

Wehmeyers Attorneys