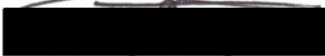


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: A321/2024

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
2026-04-14	
DATE	SIGNATURE

In the matter between:

THE ROAD ACCIDENT FUND

Appellant

and

LISBETH RUELE

First Respondent

MALEPE ATTORNEYS

Second Respondent

SHERIFF PRETORIA EAST

Third Respondent

THE LEGAL PRACTICE COUNCIL

Fourth Respondent

This judgment 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 handing down is deemed to be 14 April 2026.

JUDGMENT

POTTERILL J

Introduction

[1] On 19 January 2024, Marumoagae AJ dismissed an application for rescission of a judgment granted by default on 15 February 2021 against the Appellant, the Road Accident Fund [the RAF]. The default judgment was granted for loss of earnings in the amount of R5 368 308.00. This appeal is before us pursuant to the Supreme Court of Appeal granting leave to appeal to the Full Court of this Division.

The common cause facts as background to the matter.

[2] Prior to this default judgment being granted, the parties partially settled the matter in that the RAF accepted 100% liability for the First Respondent, Lisbeth Ruele's [Ruele] proven or agreed damages. Furthermore, the RAF provided an Undertaking in terms of Section 17(4)(a) of the Act for future medical expenses and settled the quantum for general damages in the amount of R500 000.00. The only outstanding issue was the claim for loss of income

[3] Malepe Attorneys, the second respondent, did not file any affidavit in opposition to the rescission. The Third Respondent, the Sheriff, Pretoria East and the Fourth Respondent, the cited Legal Practice Council, did not participate in the proceedings.

[4] The erstwhile attorney of Ruele on 21 May 2019 served on the RAF a notice of set down for trial on 30 November 2020. This notice was withdrawn and simultaneously gave notice of set-down for the trial of 15 February 2021. Whether this was a regular set-down is in dispute.

[5] On 27 August 2021, Ruele served a writ of execution on the RAF. The RAF responded by issuing an urgent application seeking the suspension of the operation and execution of the default judgment and writ of execution.

[6] The RAF, pursuant to assessing the claim for loss of earnings, made a partial payment to Ruele in the sum of R2 156 050.00. The payment was made on 21 September 2021.

[7] On 6 October 2021, Davis J granted the RAF's urgent application by ordering the stay of execution pending the institution of and finalization of an application for rescission within 20 days of the order.

[8] On 7 October 2021, the attorneys for Ruele sent an email to the attorneys of the RAF with the following proposal:

"Please notice that we propose that this matter be retried.

On condition that you appoint your own experts, IP Actuary and others if necessary.

Then you await for us to supply you with additional medical records of the claimant.

Further, the Plaintiff's attorney will appoint new orthopaedic and physiotherapist.

Then do the joint minutes and restart negotiations.

If not possible of being settled parties, then go to court to determine final settlement.

We are urgently looking forward to hear from you."

[9] On 1 November 2021, the RAF sent an email seeking Ruele to abandon the judgment in terms of Rule 42 for the parties to start from a clean slate. She also enquired whether, on behalf of Ruele, further experts were appointed and informed that the RAF will appoint experts.

[10] On 3 November 2021, on behalf of the RAF, a further email was sent to Ruele's attorney wherein the following is stated:

"We accepted that proposal and requested that the judgment be formally abandoned to start afresh."

And

"We expect you to honour the agreement reached about this matter being retried, please serve the notice of Abandonment of the February 2021 judgment without delay."

[11] On 21 November 2022, the attorney for the RAF emailed Ruele's attorney, placing on record inter alia that they did not proceed with the application for rescission because of the agreement reached to re-trial the matter. The response to this email is that: "The judgement granted by Judge Davis was the misleading one. Since you have been threatening to appoint experts and even to the date nothing has happened." There is an immediate response questioning on what basis Judge Davis' judgment is misleading, and that the RAF had reassessed the claim and paid the amount for loss of income. Should they not be happy with the amount paid, they should in terms of their agreement, place the matter on the trial roll as agreed for re-trial.

[12] On 25 November 2022, Mr. Malepe wrote to the RAF attorney that they had no agreement and made disparaging remarks about the attorneys for the RAF and again remarked that Judge Davis' judgment was misleading.

[13] No further procedural steps were taken until July 2023, when Ruele proceeded to execute a further warrant of execution. The sale in execution was scheduled for 25 July 2023. The RAF brought an urgent application to suspend the operation and execution of all warrants of execution pending the application for rescission of the default judgment granted to be brought by the RAF. Such order was granted by Labuschagne J.

[14] An application for leave to appeal against the suspension order granted by Labuschagne J was sought. This application was dismissed on the basis that a suspension order is not a final order and there were no compelling grounds to grant

leave to appeal. A petition to the Supreme Court of Appeal against the refusal to grant leave to appeal was lodged but was dismissed with costs by the Supreme Court of Appeal. A direct access appeal to the Constitutional Court was brought but was dismissed and pursuant to Directions issued by the Constitutional Court pertaining to costs the Court ordered that “the costs of the application should be paid by Mr Selaelo Malatji *de bonis propriis*.”

[15] On 26 July 2024, de Vos AJ refused an urgent application from Ruele for a “counterclaim” and declared that Labuschagne AJ’s order is interlocutory and not susceptible to s18(2) of the Superior Courts Act 10 of 2013. A *de bonis propriis* cost order was granted against Mr. Malatji pursuant to submissions made after the costs were reserved.

[16] Neither party filed further reports.

The hearing of the appeal

[17] I find it necessary to highlight the following during the hearing of this Appeal. Mr Malatji was informed by means of email prior to the hearing that no Heads of Argument had been filed on behalf of Ruele. A response was received that Heads would be filed shortly before the hearing. Another email was sent informing him that that would not be acceptable as it is not in terms of the Rules of Court or the practice at the High Court.

[18] The evening before the hearing Heads of Argument were uploaded onto caselines. I find it necessary to quote these “Heads of Argument”:

- “1. Firstly, it is inconceivable, irregular, and constitutes an abuse of the Uniform Rules of Court and rule of the law as to how the RAF’s purported legal team, Mr Rip, once struck off the roll Mr Pillay and deranged attorney Sunelle who just falsely instituted this appeal randomly.
2. The whole appeal is meritless and incompetent.
3. The RAF has acquiesced itself of the judgement by making payment of both capital amount and the costs purported to be appealed by the so-called an imposed legal team of the Road Accident Fund.

4. The 1st Respondent reserve rights to advance more argument, points of the law at the hearing of the appeal.
5. Wherefore, the Respondent Ms Ruele prays from the appeal to be dismissed with punitive costs *de bonis propriis* against deranged purported legal team of the RAF Mr C Rip, Mr T Pillay and attorney Sunelle Eloff together with Road Accident Fund one to pay another to be absolved."

[19] It speaks for itself that this document does not constitute Heads of Argument. Heads of Argument is a written summary of the legal arguments, facts, and authorities a party intends to present in court. It is submitted prior to the hearing to assist the Judges hearing the Appeal. It acts as a roadmap for the case, highlighting key issues, addressing legal principles, and rebutting the opponent's arguments.

[20] But, more disturbingly, it contains derogatory, disparaging and unbecoming remarks about the legal team of the RAF.

[21] When confronted with why the Heads of Argument were filed so late, it was met with the argument that there is no Rule providing when Heads must be filed, and Directives in terms of a SCA decision are not Rules. Mr Malatji is seemingly unaware of Rule 49(15) that requires a respondent to an appeal to file Heads of Argument 10 days before the hearing of an appeal. He displayed a total disrespect to this Court.

[22] Mr Malatji then insisted that the Court strike the Appeal because there was no power of attorney for the RAF. The Counsel for the RAF handed up a power of attorney by the new board of the RAF submitting to the Court that at every hearing Mr Malatji sought to have the matter struck due to a lack of a power of attorney. There was, as required, another power of attorney uploaded onto caselines, but as a precaution, this power of attorney was obtained from the new board of the RAF. There was compliance with filing a power of attorney and this point is dismissed.

[23] The further argument raised was that the RAF had not complied with Rule 49, but this appeal emanated from a ruling by the Supreme Court for the Full Court to entertain the Appeal and did not follow upon leave being granted by the Court a quo. It was not "falsely" and "randomly" instituted.

The Court a quo's decision.

[24] The application for rescission was brought in terms of Rule 31(6)(a) that reads as follows:

"Any person affected by a default judgment which has been granted, may, if the plaintiff has consented in writing to the judgment being rescinded, apply to court in accordance with Form 2B of the First Schedule to rescind the judgment, and the court may upon such application rescind the judgment."

[25] Rule 31(6)(b) caters for the situation where there was a judgment granted against a judgment debtor and the judgment debtor paid the judgment debt, interest and costs in full. No consent from the judgment creditor is required, only proof that the judgment debt was paid in full.

[26] The Court a quo did an analysis of Rule 49 of the Magistrate's Court Act, the equivalent to Rule 31(6), and the case law thereon relevant to Rule 31(6)(b) and not Rule 31(6)(a). The Court a quo did draw a distinction between the purpose of Rule 31(6)(a) and Rule 31(6)(b) on the basis that there was no good cause requirement in Rule 31(6)(a). The Court came to the following conclusion:

"[69] The wording of both section 23A of the Superior Courts Act and Rule 31(6)(a) of the Uniform Rules of Court suggest that rescission applications can only be brought in terms of these provisions where there is no possibility of judgment creditors opposing these applications. Where written consent has been granted there will generally be no need for these matters to go back to trial or to be reconsidered by the courts. There will also be no need for judgment debtors to demonstrate that they have *bona fide* defenses (sic). Surely, judgment creditors who are likely to consent in writing to these applications are those who are no longer pursuing claims against judgment debtors.

[70] It is clear to me that not every judgment debtor can rely on Rule 31(6)(a) of the Uniform Rules of Court. To allow every judgment debtor to rely on this rule will render Rule 31(2)(b), Rule 42(1), and

the common law redundant by allowing judgment debtors to unreasonably delay bringing their rescission applications and excuse themselves from explaining to the court why they brought their applications late. This will make a mockery of rescission applications and lead to abuse of untold proportions.

[71] This will create a situation where judgment debtors who did not fully comply with their obligations to their judgment creditors and desire to have their matters retried or reconsidered not to satisfy the court that they have *bona fide* defences that can successfully be raised should they be allowed to oppose or defend their matters. Most importantly, this will incorrectly empower these judgment debtors not to apply for condonation when they eventually decide to bring their rescission applications to court. This cannot be allowed.

[72] In my view, judgment debtors who desire to have their matters retried or reconsidered are not entitled to approach the court in terms of this rule. They should approach the court in terms of Rule 31(2)(b), Rule 42(1), or the common law. In this case, given the fact that the applicant has not fully satisfied its obligations to the first respondent and claims to have a *bona fide* defense (sic) against the first respondent, the applicant cannot rely on Rule 31(6)(a) of the Uniform Rules of Court. If it was competent for the applicant to utilise this Rule, why did Davis J order the applicant to bring its rescission application within 20 days of his order? In my view, Davis J's order implies that the applicant ought to have relied on Rule 31(2)(b). It is important to note that the applicant failed to comply with this order."

[27] The Court was correct that the purpose of inserting Rule 31(6)(b) was to address the problem of judgment debtors having paid off their debt but remained backlisted. They could not in terms of rules 42, 31 and the common law seek rescission of the judgment because they did not have a *bona fide* defence.

[28] Rule 31(6)(a) caters for when a "plaintiff", not described in the Rule as "a judgment creditor" as in rule 31(6)(b), consented to rescission. The distinction is clear;

rule 31(6)(a) caters for a different scenario with the only barrier to invoking the Rule is that the plaintiff must have consented. It speaks for itself that if the plaintiff consented, no further requirements are necessary to invoke this Rule.

[29] The Court erred in finding that the RAF could not in terms of Rule 31(6)(b), seek the rescission of the default judgment. We would agree that, in principle, Rule 31(6)(a) and (b) foresee unopposed applications due to the requirements of either written consent by the judgment creditor or proof of payment of the debt. However, this does not imply that such application cannot be opposed by the judgment creditor or plaintiff precisely because either there was no consent, or insufficient payment in terms of the default judgment. In casu the dispute related to consent. The RAF did not seek to raise a bona fide defence; it contended that there was consent to a retrial, which could only happen if the judgment was abandoned or rescinded. The RAF did not need to raise a bona fide defence for the rescission to be granted. No judgment debtor can utilize this Rule unless it can prove consent of the judgment creditor and therefore it can never render Rules 42, 31 and the common law rescissions redundant. It is very seldom that a judgment creditor would have consented, excepting if there was full compliance with the default judgment or some other compelling reason. Rules 42, 31 and the common law rescissions would stay highly relevant and most used. A judgment debtor could never be successful in utilising this Rule to circumvent condonation applications if no written consent is attached, or could be proved, and would not be the tool used to circumvent condonation for the late filing of a rescission application.

[30] The Court further erred in relying on Davis J's order of the rescission application to be brought as corroboration for his reasoning. It is practice when granting a suspension order to insert a time frame for the rescission application to circumvent a position where a warrant is suspended and the judgment debtor takes no steps to rescind the judgment, rendering the warrant to stay suspended for an indefinite period. The 20 days ordered can never be interpreted as that Davis J was implying that the RAF should have utilized Rule 31(2)(b). The basis on which the implication was deducted is wrong in fact and law.

[31] Another factual misdirection from the Court a quo is the finding that there was no instruction from Ruele to her attorney to make the proposal for a re-trial. Ruelle

herself was clearly aware of the proposal made by her attorney because in her answering affidavit she sets out that: "It is indeed true that my attorney made this proposal, however it was not explicitly or tacitly accepted." Furthermore, it was not Ruele's case on the papers that she did not give the instruction to her attorneys to make such a proposal.

Was there consent?

[32] The Court found there was no consent because there was no mandate from Ruele [addressed above] to make the proposal, incorrect reliance on the ratio of Davis J [addressed above] and no acceptance of the offer by the RAF.

[33] The Rule requires written consent. In law, consent is the clear, voluntary and conscious agreement or permission given by a person with legal capacity to engage in a specific act. The function of the Court was to interpret the emails setting out the offer and the responses thereto, as well as the contextual common cause facts and the apparent purpose of the proposal in determining whether there was consent to a rescission. The Court must interpret it objectively and give a sensible meaning to the proposal and its acceptance in determining whether there was consent.¹

[34] The proposal or offer speaks for itself and is not contested. The offer, emanating from Ruele, was that the loss of income must be re-tried. In context it is important to note that the proposal is made the day after the suspension of the warrant of execution order, inclusive of the order that the RAF must bring a rescission application. Further context is that the offer is made 2 weeks after the RAF made a payment for the loss of income. A re-trial on the loss of income is only possible on two scenarios; if Ruele, who is making the offer, abandons the default judgment, or the RAF proceeds with the application for rescission of the judgment. By making this proposal while having an order in hand that the RAF must apply for rescission, the proposal has only two consequences; either it consents to rescission, or Ruele knows it must abandon the judgment. While not using the order for rescission as a tool to force the RAF to apply for rescission, the only sensible interpretation of the offer is that they consented to the rescission, or, as an alternative, would abandon the judgment.

¹ *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA); *University of Johannesburg v Auckland Park Theological Seminary and Another* 2021 (6) SA 1 (CC) par [93]

The consequent email from the RAF is correct in law seeking the abandonment of the judgment.

[35] It is correct that there is no direct acceptance of the proposal, but there is most definitely not a “no” to the proposal. There is also not silence from the RAF pertaining to the offer. Within 3 weeks it confirmed that it accepted the offer to have the matter retried and urged Ruele to abandon the judgment. It does so again 4 days later. This is not an unreasonable period of delay for acceptance, and the RAF, in writing, confirmed it accepted the proposal. It need not bring an application for rescission because Ruele had consented to the rescission or abandonment. A consent need not be signed by both parties; it is not a settlement agreement; it is the acceptance of an offer, and the acceptor must convey its acceptance. The requirement of consent will be satisfied if consent is embodied in the correspondence of the attorneys, no signatures are required.

[36] The finding of the Court criticising Labuschagne AJ in finding that the email dated 3 November 2021 proved that there was consent is factually incorrect. The Court a quo found that in this email there is no reference to Ruele’s proposal to retry the matter. I repeat the relevant portion in the email: “We expect you to honour the agreement reached about this matter being retried, please serve the Notice of Abandonment of the February 2021 judgment without delay.” Not only is the word “retried” used, but it has clearly conveyed its acceptance of the proposal. The finding that there was no written acceptance is a misdirection.

[37] The Court did not consider or make a finding on whether the offer was conditional, and accordingly, no ground of appeal was raised thereon. This Court will accordingly only remark that the acceptance of a proposal must be unconditional. In the proposal the words “on condition” is countered or nullified by the words “if necessary” and thus this offer was unconditional.

No further requirements

Rule 31(6)(a) has no further requirements and we need not decide any further issues despite much being made of the absence of the RAF at the hearing when default judgment was granted.

Conduct of Mr Malatji

[38] Mr Malatji in open Court orally referred to Ruele's legal team as "deranged." The Court requested him to refrain from using such language. He persisted and was warned to desist from using this language. Despite this, Mr Malatji continued. The Court warned him that this matter would be referred to the Legal Practice Council attaching the record of proceedings.

Costs

[39] There is no reason why costs should not follow the result, including the costs of two counsel, one on scale B and one on Scale C.

[40] The following order is made:

[40.1] The appeal is upheld.

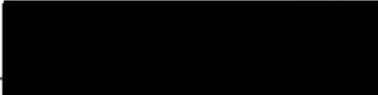
[40.2] The judgment granted on 15 February 2021 is rescinded.

[40.3] All warrants of execution premised on the default judgment are set aside.

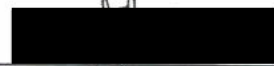
[40.4] The Respondent can approach the office of the Deputy Judge-President for a preferential trial date.

[40.5] The conduct of Mr Malatji is referred to the Legal Practice Council for investigation.

[40.6] The respondent is to carry the costs of the appeal, including the costs of two counsel, one on scale B and one on Scale C.


S. POTTERILL
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I agree



N.G.M. MAZIBUKO
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I agree



J. VAN DER MERWE
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

CASE NO: A321/2024

HEARD ON: 25 February 2026

FOR THE APPELLANT: ADV. T. PILLAY

ADV. C.M. RIP

INSTRUCTED BY: Malatji & Co Attorneys

FOR THE FIRST RESPONDENT: MR. S. MALATJI

INSTRUCTED BY: Malatji S Legal Practitioners

DATE OF JUDGMENT: 14 April 2026