



**THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Reportable/Not Reportable

Case no: 20/2023

In the matter between:

GEORGE LOUIS CORNER

1st Applicant

JOFFIE MEYER

2nd Applicant

and

THOMAS MEYER

Respondent

In re:

THOMAS MEYER

Applicant

and

GEORGE LOUIS CORNER

1st Respondent

JOFFIE MEYER

2nd Respondent

MEYERS FAMILY COMMUNAL PROPERTY ASSOCIATION

3rd Respondent

In the matter between:

MEYERS FAMILY COMMUNAL PROPERTY ASSOCIATION

Applicant

and

THOMAS MEYER

1st Respondent

JOHANNES MEYERS	2 nd Respondent
JERMAN MOSINKI	3 rd Respondent
SNEEL MEYERS	4 th Respondent
JACK MOSINIKI	5 th Respondent
DAVID BASIE	6 th Respondent
LARGA MEYERS	7 th Respondent
JOHANNES PETERSON	8 th Respondent
VICTOR MEYERS	9 th Respondent
MICHAEL TITIES	10 th Respondent
STEPHEN BOTHA	11 th Respondent
MINISTER: DEPARTMENT OF LAND REFORM AND RURAL DEVELOPMENT	12 th Respondent
DIRECTOR-GENERAL: DEPARTMENT OF LAND REFORM AND RURAL DEVELOPMENT	13 th Respondent
REGIONAL LAND CLAIMS COMMISSIONER: NORTHERN CAPE	14 th Respondent

Neutral citation: *Corner and Another v Meyer* (20/2023) (24 April 2026).

Coram: Tyuthuza AJ.

Heard: 17 October 2025.

Delivered: 24 April 2026.

Summary: *Practice – Rescission – Rule 42(1)(a) of the Uniform Rules of Court – Joinder of applicants and ancillary relief – Whether order erroneously granted in absence of applicants – Applicants had notice of proceedings – Filed notice of intention to oppose application – Failed to file answering affidavits – Elected not to further participate in proceedings – Order not granted in applicants’ absence – application dismissed with costs.*

ORDER

1. The application in terms of Rule 42(1)(a) to rescind the court order granted on 30 June 2023 is dismissed.
2. The applicants are ordered to pay the costs of this application on a party and party scale B.

JUDGMENT

Tyuthuza AJ

INTRODUCTION

- [1] This is an opposed rescission application in which the first and second applicants seek an order rescinding the order granted by Coetzee AJ on 30 June 2023. This application is made in terms of Rule 42(1)(a) of the Uniform Rules of Court.

BACKGROUND

- [2] On 10 January 2023, the Meyers Family Communal Property Association launched an application under the above case number wherein it sought certain declaratory relief against the first respondent, Thomas Meyer and other respondents (the main application). The main application was opposed by the first to tenth respondents on 31 January 2023.
- [3] On 17 February 2023, the first respondent in the main application- Thomas Meyer, filed his answering affidavit, together with a counter application wherein he sought the joinder of the first and second applicants herein to the main

proceedings in terms of Rule 10(3) of the Uniform Rules and ancillary relief. The applicant's erstwhile attorneys filed a notice of opposition to the counter application on 17 May 2023.

- [4] On 19 May 2023, Phatshoane DJP postponed the matter to 9 June 2023. The postponement was coupled with an order directing that the applicant in the main application (Meyers Family Communal Property Association) file its answering affidavit to the counter application on or before 2 June 2023, and that the first respondent file his replying affidavit therein on or before 7 June 2023. It is common cause that no answering affidavit to the counter application was filed.
- [5] On 6 June 2023, the Meyers Family CPA (the applicant in the main application) withdrew the main application. On 9 June 2023, the matter was postponed to 30 June 2023 for the adjudication of the counter application. On 12 June 2023, Thomas Meyer (the first respondent in the main application who is also the applicant in the counter application) filed a notice in terms of Rule 10(3) of the Uniform Rules of Court, wherein he sought the joinder of the first and second applicants herein to the counter application. The notice directed the applicants to file their notice to oppose and answering affidavit, but no opposition was filed thereto. The application was served on the applicants' erstwhile attorneys.
- [6] On 28 June 2023, the applicants' current attorneys filed a notice of appointment as attorneys of record, a notice to oppose the counter application, a Rule 10(3) notice, and a notice in terms of Rule 30 and Rule 30A.
- [7] On 30 June 2023, the counter application was heard by Coetzee AJ, who granted an order in the following terms:
 - 7.1. George Louis Corner be joined as the second applicant in the counter application.
 - 7.2. Joffie Meyers be joined as the third applicant in the counter application.
 - 7.3. The twelfth to the fourteenth respondents be compelled to resolve the impasse and dispute regarding the two CPA's namely Meyers Family CPA and Grootfontein Family CPA.

- 7.4. The deponents to the main application hand over the bank accounts and management of finances to the relevant treasurer elected for the Meyers Family CPA within five days of this order.
- 7.5. An auditor be appointed by the Meyers Family CPA to audit the finances and the records.
- 7.6. The applicants (second and third) and any other respondent opposing, pay the costs of this counter-application.

[8] On 11 July 2023, the first and second applicants launched an application in two parts. Part A was heard on an urgent basis on 28 July 2023, wherein Williams J ordered that the execution or the operation of the order of Coetzee AJ be suspended in terms of Rule 45A pending the finalisation of Part B of the application. This application deals with Part B of the application, wherein the applicants seek the rescission of the order granted by Coetzee AJ.

Applicants' version

- [9] The first and second applicants premised their Rule 42(1)(a) rescission application on the following grounds:
- 9.1. They were not parties to the main application and were not served with the counter application and the Rule 10(3) notice by the sheriff.
 - 9.2. They were under the mistaken belief that the counter-application would not succeed as the main application was withdrawn, and were only informed on 26 June 2023 that the application would proceed on 30 June 2023.
 - 9.3. They were not advised that they would have to file opposing papers and only learnt on 28 June 2023, that their erstwhile attorneys did not file opposing papers.
 - 9.4. They were not advised that they would be held personally liable for the costs, and were only advised by their current attorneys of record that costs would be sought from them personally.

- 9.5. They were not represented personally by their erstwhile attorneys and their erstwhile attorneys did not have authority to accept the pleadings on their behalf.
- 9.6. The notice to oppose the counter application filed in May 2023 was filed by the Meyers Family CPA and not the applicants.
- 9.7. Despite the presence of their current attorneys of record at Court on 30 June 2023, the applicants were not granted an audience. Thus, their rights in terms of section 34 of the Constitution of the Republic of South Africa, 1996 were violated.

Respondent's version

[10] The respondent opposes the application on the following grounds:

- 10.1. The applicants have failed to show good cause as to why the Coetzee AJ order should be rescinded. They failed to provide a reasonable explanation for the default, after having been served with the counter-application on 17 February 2023.
- 10.2. The applicants' failure to oppose the application was wilful.
- 10.3. The first and second applicants were deponents to the founding affidavit and confirmatory affidavits, respectively, in the main application. The answering affidavit and the counter-application were properly served on the applicants' erstwhile attorneys of record.
- 10.4. The applicants were at all times represented.
- 10.5. The applicants have failed to show grounds as envisaged in Rule 42.
- 10.6. The applicants' attorneys of record filed a notice of appointment, notice to oppose the joinder and the counter claim, and a Rule 30 notice on 28 June 2023, whilst there was still another attorney on record.
- 10.7. The erstwhile attorney's notice of withdrawal was only served on 3 July 2023.

RESCISSION

Legal principles

[11] Rule 42(1)(a) of the Uniform Rules of Court provides that:

“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.”

[12] A party who seeks to succeed with a rescission application in terms of Rule 42(1)(a) must satisfy two grounds; firstly, that the judgment was erroneously sought or erroneously granted and secondly, that such judgment was granted in the absence of the affected party.

[13] The purpose of Rule 42(1) is to expeditiously correct a wrong judgement/order. When relying on this rule, both requirements must be met and, once that is done, the court is merely endowed with a discretion whether to grant the rescission. This is because the precise formulation of the rule postulates that a court “may”, not “must”, rescind or vary its order. As such, the rule is merely an empowering provision which does not compel the court to set aside or rescind its order.¹ Of importance is that the court must exercise this discretion judicially and be influenced by considerations of fairness and justice, having regard to all the facts and circumstances of the particular case.² It is so that rescission may be refused if undesirable consequences would follow.³

[14] 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 and Others* (“Zuma”),⁴ the Constitutional Court stated the following when explaining what it means for an order to have been granted in the absence of the affected party in the context of Rule 42(1)(a):

¹ *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 (Council for the Advancement of the South African Constitution and Another as amici curiae)* [2021] ZACC 18; 2021 (11) BCLR 1263 (CC); 2021 JDR 2069 (CC) para 53.

² *Chetty v Law Society, Transvaal* 1985 (2) SA 756 (A) at 761D.

³ *Naidoo and Another v Matlala N.O and Others* 2012 (1) SA 143 (GNP) para 4.

⁴ *Supra* fn 1 para 56.

“... [T]he words ‘granted in the absence of any party affected thereby’, as they exist in rule 42(1)(a), exist to protect litigants whose presence was precluded, not those whose absence was elected. Those words do not create a ground of rescission for litigants who, afforded procedurally regular judicial process, opt to be absent.”

[15] In *Zuma*,⁵ the Constitutional Court continued:

“... As I see it, the issue of presence or absence has little to do with actual, or physical, presence and everything to do with ensuring that proper procedure is followed so that a party can be present, and so that a party, in the event that they are precluded from participating, physically or otherwise, may be entitled to rescission in the event that an error is committed. I accept this. I do not, however, accept that litigants can be allowed to butcher, of their own will, judicial process which in all other respects has been carried out with the utmost degree of regularity, only to then, *ipso facto* (by that same act), plead the ‘absent victim’. If everything turned on actual presence, it would be entirely too easy for litigants to render void every judgment and order ever to be granted, by merely electing *absentia* (absence).”

[16] In *Freedom Stationery (Pty) Ltd and Others v Hassam and Others*,⁶ the Supreme Court of Appeal held that where an affected party took the considered decision not to participate, they reconciled themselves with the reasonable prospect that a court could make an adverse order against them.

[17] It is trite that Rule 42(1)(a) operates where the court was unaware of the facts relating to the procedural error, and therefore granted an order or judgment to which the plaintiffs were not procedurally entitled, and which the court would not have granted had it known of those facts.⁷ In *Naidoo and Another v Matlala N.O. and Others*,⁸ Southwood J puts it in the following terms:

“In general terms a judgment is erroneously granted if there existed at the time of its issue a fact of which the judge was unaware, which would have precluded the granting

⁵ *Zuma* para 60.

⁶ 2019 (4) SA 459 (SCA) para 32.

⁷ *Nyingwa v Moolman N.O.* 1993 (2) SA 508 (Tk) at 510G.

⁸ 2012 (1) SA 143 (GNP) para 6.

of the judgment and which would have induced the judge, if aware of it, not to grant the judgment...”

- [18] The importance of proper service in the context of Rule 42(1) was expressed in the following terms in *Lodhi 2 Properties Investments CC and Another v Bondev Developments (Pty)Ltd*⁹:

“... Where notice of proceedings to a party is required and judgment is granted against such party in his absence without notice of the proceedings having been given to him such judgment is granted erroneously. That is so not only if the absence of proper notice appears from the record of the proceedings as it exists when judgment is granted but also if, contrary to what appears from such record, proper notice of the proceedings has in fact not been given.”

- [19] Rule 4(1)(aA) of the Uniform Rules of Court provides that “[w]here the person to be served with any document initiating application proceedings is already represented by an attorney of record, such document may be served upon such attorney by the party initiating such proceedings.”

- [20] In relation to the standard of compliance with the Uniform Rules of Court, Rampai J in *Louw v Grobler and Another*¹⁰ stated as follows:

“The purpose of the uniform court rules is to regulate the litigation process, procedures and the exchange of pleadings. The entire process of litigation has to be driven according to the rules. The rules set the parameters within the course of litigation has to proceed. The rules of engagement, must, therefore, be obeyed by the litigants. However, dogmatically rigid adherence to the uniform court rules is as distasteful as their flagrant disregard or violation. Dogmatic adherence, just like flagrant violation, defeats the purpose for which the court rules were made. The prime purpose of the court rules is to oil the wheels of justice in order to expedite the resolution of disputes. Quibbling about trivial deviations from the court rules retards instead of enhancing the civil justice system.”

⁹ 2007 (6) SA 87 (SCA) para 24.

¹⁰ [2016] ZAFSHC 206 (15 December 2016) para 18.

Analysis

[21] In the founding affidavit, the first applicant makes the following averments:

- 21.1. "I am also the First Applicant in the current application."¹¹
- 21.2. The Second Applicant and I were not parties to the main application and merely acted on behalf of the Third Respondent in the main application.¹²
- 21.3. The erstwhile attorneys of the Third Respondent, Mr. Reetsang brought the Second Applicant and myself under the mistaken belief that the counter application brought by the First Respondent would not succeed as the main application was withdrawn. . . This is the first time that the Second Applicant and I heard that the matter will proceed in Court on the 30th of June 2023.¹³
- 21.4. Myself and the Second Applicant are not familiar with court proceedings and this is the first time that we have been engaged in such a litigious and complex matter. The said attorney representing the third respondent ensured us that the litigation was under control. We were never advised that opposing papers had to be filed and we have recently learned on 28 June 2023 from our current attorneys of record that no opposing papers to the counter application under rule 10(3) application were filed.¹⁴
- 21.5. Alarm bells started ringing on 26 June 2023 when Mr. Reetsang informed me that the third respondent should just concede to the relief in the counter application, and the said attorney also informed me that he was unable to source an advocate for the case.¹⁵
- 21.6. The firm Towell and Groenewaldt Attorneys was instructed to defend the matter on behalf of the Third Respondent.¹⁶

¹¹ Para 1.1 of the founding affidavit.

¹² Para 8.1 of the founding affidavit.

¹³ Para 12 of the founding affidavit.

¹⁴ Para 13 of the founding affidavit.

¹⁵ Para 14 of the founding affidavit.

¹⁶ Para 17 of the founding affidavit.

21.7. The failure to participate in the proceedings is not of the First and Second Applicant's own making¹⁷ⁿ

- [22] The first applicant, Mr Corner, is the deponent to the founding affidavit in the main application. He serves as a member of the executive committee of the Meyers Family CPA and was authorised to depose to the papers and launch the main application on behalf of the applicant. The second applicant, Mr Joffie Meyer, also serves as a member of the executive committee of the Meyers Family CPA and was also authorised to depose to the papers in the main application.
- [23] The applicant in the main application, Meyers Family CPA, was at all times represented by EB Reetsang Incorporated and filed a notice of opposition to the counter-application. On 19 May 2023, the matter was postponed and the parties were ordered to file further papers. The applicants, instead of filing an answering affidavit to the counterclaim, withdrew the main application in June 2023. The erstwhile attorneys were served with the notice in terms of Rule 10(3) on 12 June 2023, and no opposition or answering affidavit was filed thereto. Since the launch of the counter application in February 2023, the applicants only filed a notice to oppose and, despite representation, did nothing further except for ultimately withdrawing the main application. Again, on 28 June 2023, instead of filing an answering affidavit to respond to the allegations in the counter application, the applicants opted to again file a notice of opposition and therewith a notice in terms of Rule 30 and 30A. In my view, there was ample time granted to the applicants to file their answering affidavit to the counter application and defend those proceedings in terms of the rules, but the applicants elected not to do so despite being legally represented.
- [24] The applicants were given notice of the proceedings launched against them. They were therefore aware of the relief sought against them and as such, instructed the erstwhile attorneys to defend the proceedings on behalf of the Meyers Family CPA. The applicants had the requisite notice and knowledge

¹⁷ Para 26 of the founding affidavit.

and elected not to participate in the proceedings. The failure to participate in the proceedings is their own doing, Rule 42(1)(a) does not permit a party to circumvent the principle of finality in litigation by seeking another opportunity to enter appearance and obtain another bite to the cherry.

[25] I am convinced that the court on 30 June 2023 was apprised of the relevant facts, considered the submissions and, in its discretion, granted the counter application. As such, I am not inclined to rescind the order granted on 30 June 2023. It bears emphasis that the applicants have previously failed to fully ventilate the counter application and have done nothing since receiving the notices. This Court is of a considered view that it would not be in the interests of justice to rescind the impugned order.

[26] For these reasons, I am of the view that the applicants have failed to satisfy and meet the jurisdictional requirements of a rescission application under Rule 42(1)(a). Accordingly, the applicants' rescission application under Rule 42(1)(a) must be dismissed.

Costs

[27] Costs are within the Court's discretion. In exercising my judicial discretion, there is no reason why the general principle, that costs follow the result, should not be applied *in casu*. I therefore grant an order that the applicants pay the costs of the application on a party and party scale B.

[28] As a result, I make the following order:

1. The application in terms of Rule 42(1)(a) to rescind the court order granted on 30 June 2023 is dismissed.
2. The applicants are ordered to pay the costs of this application on a party and party scale B.



T. TYUTHUZA

ACTING JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

Appearances

For the Applicants:

Mr S Groenewaldt

Instructed by:

Towell & Groenewaldt Attorneys

For the Respondent:

Adv MS Tshabalala

Instructed by:

Mthembu Sibanda Malau & Associates
c/o Mosikare Attorneys.