

THE REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 10537/ 2024

In the matter between:

KIEMAHL HENDRICKS

Applicant

(Defendant *a quo*)

and

NIKITA PETERSEN

Respondent

(Plaintiff *a quo*)

COMMISSIONER BARNES

Second Respondent

(Small Claims Court Commissioner, Kuil's River)

Summary: "Review" of Default Judgment – Non Appearance – Monies
Owed – Application Dismissed

Coram: Wille, J et Louw, AJ

Heard: 24 April 2026

Delivered: 30 April 2026

JUDGMENT

WILLE, J:

INTRODUCTION

[1] This is an application to ‘review’ a default judgment and subsequent ruling by the second respondent at the instance of the applicant, who is now the judgment debtor. The review appears to have been launched in accordance with Rule 53 of the Uniform High Court rules, read with section 46 of the Small Claims Courts Act.¹

[2] Rule 53 provides, *inter alia*, as follows:

‘(1) save where any law otherwise provides, all proceedings to bring under review the decision or proceedings of any inferior court and of any tribunal, board or officer performing judicial, quasi-judicial or administrative functions shall be by way of notice of motion directed and delivered by the party seeking to review such decision or proceedings to the magistrate, presiding officer or chairperson of the court, tribunal or board or to the officer, as the case may be, and to all other parties affected -

(a) calling upon such persons to show cause why such decision or proceedings should not be reviewed and corrected or set aside, and

(b) calling upon the magistrate, presiding officer, chairperson or officer, as the case may be, to dispatch, within fifteen days after receipt of the notice of motion, to the registrar the record of such proceedings sought to be corrected or set aside, together with such reasons as he or she is by law required or desires to give or make, and to notify the applicant that he has done so...²

¹ Act 61 of 1984 (“SCCA”).

² Uniform Court Rule 53 – Reviews.

[3] Section 46 of the SCCA provides for the following grounds of review;

- (a) absence of jurisdiction on the part of the court;*
- (b) interest in the cause, bias, malice, or the commission of an offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, on the part of the commissioner; and*
- (c) gross irregularity with regard to the proceedings...*³

[4] The grounds in the circumstances of this review are thus limited to bias, malice and/or a gross irregularity. Both the applicant and the respondent appear in person, and the second respondent has regrettably failed to file an affidavit in response as an interested party, which may or may not have been of assistance to this court.⁴

BACKGROUND

[5] The review papers before me for consideration consist of the founding papers and the respondent's answering affidavit. There are no replying papers by the applicant. At the heart of this dispute (on motion) is the applicant's review of the refusal of the rescission of the judgment chartered by the applicant, as no appeal is permitted from the decision of the second respondent.⁵

[6] In order to consider the applicant's primary ground of review (which has not been formulated with any precision), it is necessary to delve into some of the background that resulted in this legislative intervention.⁶

[7] A Commission of Enquiry was established to enquire into and advise the government on the desirability or otherwise of establishing a Small Claims Court (SCC). The Commission made far-reaching recommendations concerning the establishment of the SCC and, most importantly, recommended several informal procedural issues to be employed.⁷

³ The applicant contends for a gross irregularity in the proceedings.

⁴ The second respondent has filed a document to abide by the decision of this court.

⁵ This in terms of section 45 of the SCCA.

⁶ Assented to on 19 April 1984 and thereafter becoming operative on 24 August 1985.

⁷ This resulted in the SCCA.

[8] Some of these recommendations and procedures would permit a judicial innovation with many novel features, some of which would run counter to conventional legal concepts of our civil trial procedure.⁸

[9] What was envisaged (and rightly so) was that a less formal procedure was to be adopted, akin to an ‘arbitration’ conducted in an informal atmosphere by the adjudicator, who would assume an active inquisitorial role rather than the traditional adversarial role in that the adjudicator would be allowed to adopt ‘*any method of procedure*’ considered to be convenient to afford a fair and equal opportunity for each party to present his or her case.⁹

[10] The rules of evidence are accordingly relaxed, provided the adjudicator maintains an actively inquisitorial role in the proceedings, resulting in an easier and speedier fact-finding process. In this connection, the SCCA provides for the following:

‘...Subject to the provisions of this chapter, the rules of the law of evidence shall not apply in respect of the proceedings before a court, and a court may ascertain any relevant fact in such manner as it may deem fit...’¹⁰

THE GROUNDS OF REVIEW

[11] The grounds of review are challenging to understand. I say this because they are, in essence, disguised and camouflaged grounds for appeal. The review grounds are these:

- (a) An alleged gross irregularity regarding the proceedings.
- (b) That the second respondent erred and misdirected himself in the finding that the applicant did not contact the Clerk of the SMCC to ascertain the next appearance date.
- (c) That the second respondent failed to apply his mind to the applicant’s failure to attend the proceedings on 25 June 2023.¹¹

⁸ A speedy and uncomplicated procedure was envisaged.

⁹ This was precisely the procedure adopted by the second respondent in this case.

¹⁰ Sections 26 (1) and (2) of the SCCA.

¹¹ The default judgment was granted on 25 May 2023 and not 25 June 2023.

THE CAUSE OF ACTION

[12] The cause of action by the first respondent is uncomplicated and supported by documentary evidence. The first respondent secured his fees and disbursements for the labour-related services he performed for the applicant in writing, by way of emails together with a written agreement. Ultimately, the applicant requested a payment plan from the first respondent in respect of the amount he owed. What is even more challenging to understand is that the applicant made at least two payments on account to the first respondent after the judgment had been entered against him.¹²

CONSIDERATION

[13] This review highlights the SCC's importance as an institution of equity and underscores its critical role in providing access to justice for the public. The SCC exercises equitable *sui generis* jurisdiction, premised on fairness, reasonableness and justice. It is unique in that a wider range of factors is taken into account in executing its mandate. In this context, it is paramount to protect the interests of the poor, marginalised and vulnerable sectors of our society.¹³

[14] To this end, the procedures in the SCC are distinguishable from those of the High Court or a Magistrate's Court. Its procedures are both flexible and informal. The ordinary rules of procedure do not apply to proceedings at the SCC.¹⁴

[15] The purpose of the SCC is to enable the public with small claims to have their disputes *tried speedily and cheaply, without a lawyer and without all the hassle and procedural technicalities usually involved in the trying of cases in the ordinary courts of the land...*¹⁵

¹² There are receipts in the record dated 15 June 2023 and 24 July 2023

¹³ It provides an opportunity to access to justice.

¹⁴ Evidence to prove or disprove any fact in issue, may be submitted in writing or orally.

¹⁵ SAS Strauss: "You in the Small Claims Court – A practical guide"; Second Ed 1990, at 1& 56 - 57.

[16] The latitude and flexibility provided for in the SCCA should, however, not be used as a mechanism or reason to usurp the fundamental principles of natural justice and fairness, but rather in the interest of achieving them.¹⁶

[17] In my view, the conduct of the second respondent in granting a judgment against the applicant for the non-payment of his debt to the first respondent did not compromise the fairness of the proceedings, to the extent that the proceedings were unreasonable, procedurally unfair, and thus amounted to a gross irregularity.¹⁷

[18] Furthermore, the findings by the second respondent that the applicant's defences (as currently formulated) had no prospects of success and that no valid reasons had been advanced for the applicant's non-appearance at the SCC on 25 May 2023 were not irregular.¹⁸

[19] I say this because the applicant's defences to the first respondent's claims are mutually destructive. The applicant contends that he paid the first respondent in full. In the same breath, the applicant alleges that he does not know what amount the first respondent is claiming from him. Then he avers that he has paid the first respondent in full for what the first respondent did for him. The applicant made two payments to the first respondent after judgment had been granted against him. Finally, the applicant requested a repayment plan from the first respondent.¹⁹

[20] The reason for bringing proceedings under review or on appeal is usually the same, namely, to have a judgment set aside. Where the reason for wanting this is that a court came to an incorrect conclusion on the facts or the law, the appropriate procedure is an appeal. Where the grievance is against the method, the procedure is under review.²⁰

¹⁶ Smit v Seleka en Andere 1989 (4) SA 157, Hancke AJ (at 164 D)

¹⁷ There was nothing irregular about the procedure adopted.

¹⁸ This was rather an issue for appeal.

¹⁹ This is not engaged with by the applicant.

²⁰ Nunn v Pretoria Rent Board 1943 TPD 24 at 26.

[21] In this case, the applicant attacks the result and not the method. As a matter of pure logic, the method of adjudication will be attacked on review only when the result is regarded as unsatisfactory. Thus, under this test, the rendering of a judgment not justified by the evidence would be a matter of appeal, not of review.²¹

[22] Put another way, the essential question in review proceedings is not the correctness of the decision under review, but its validity. A gross irregularity must also be prejudicial before review proceedings will succeed.²²

[23] The applicant avers that the judgment was granted against him on 25 June 2023. It was not. His entire case is predicated on this mistaken fact. The judgment was granted against him on 25 May 2023. The applicant had been in constant email communication with the SCC clerk during this time. The applicant chose this method of email communication when he requested that the matter be postponed on 2 May 2023 due to his alleged incapacitation. This is an issue to which I now turn.²³

COSTS

[24] The record reflects that the initial issue the applicant had with his erstwhile employer concerned his absence from the workplace. He was required to work 377 shifts while he was employed by his former employer, and he was absent from work for 224 days during this period. When he was due to appear at the SCC on 2 May 2023, he sent in a medical certificate via email, recording that he was suffering from a 'Medical Condition'. This is completely unsatisfactory. The first respondent has been waiting to be paid for nearly 3 years due to the applicant's delaying 'Stalingrad' approach. I would not ordinarily be inclined to award costs to either party in matters involving review proceedings from the SCC. However, the facts of this matter are exceptional and warrant some type of censure regarding costs.²⁴

²¹ Judicial review is concerned not with the decision, but rather with the decision-making process.

²² *Jordaan v Penmill Investments CC* 1991 (2) SA 430 (E) at 441 B-C.

²³ This issue concerns the applicant's non-appearance and the issue of costs.

²⁴ This despite the fact that the parties appear in person.

[25] As the parties are self-represented, the only costs order that may follow is in connection with the disbursements incurred by the first respondent. I intend to exercise my discretion and grant a costs order to compensate the first respondent for his disbursements incurred in connection with this review application.²⁵

ORDER

[26] The following order is granted:

1. The application for review is dismissed.
2. The applicant (Kiemahl Hendricks) is ordered to pay all the reasonable disbursements and photocopy costs incurred by the first respondent in these proceedings to be taxed by the Taxing Master of the High Court, Cape Town on the scale as between attorney and client.

I agree:

WILLE, J

LOUW, AJ