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**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

**Case Number: 054180/23**

(1) REPORTABLE: YES/**NO**

(2) OF INTEREST TO THE JUDGES: YES/**NO**

(3) REVISED: YES/**NO**

DATE: 10/03/26

SIGNATURE:

In the matter between:

**FENCE PULLIN t/a ELECTROMESH**

**Applicant**

and

**DUIN-EN-SEE (PTY) LTD**

**Respondent**

***Delivered:** 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 e-mail and by uploading it to the electronic file of this matter on Case lines. The date for hand-down is deemed to be.*

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**JUDGMENT**

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**MAUBANE, AJ**

*Introduction*

[1] This is an application for a recession of judgment granted on 10 September 2024 against the applicant.

[2] Default judgment was granted as a result of the applicant's failure to file a notice of intention to defend within the prescribed period.

### *Background*

[3] The Respondent issued summons against the applicant and service was effected on 20 of June 2023, and at 1[...] K[...] Road, Blue Hills, Gauteng, being the previous registered business address of the applicant.

[4] The service was effected by affixing copies of the summons to the outer and principal door of the premises.

[5] The Applicant through Julie Pullen, who is a member of the Applicant told the court that when service was effected it relocated to 1[...] B[...] P[...] Road, Kyalami, Gauteng.

[6] It submitted to the court that it did not cause the CIPRO documents to amend to reflect that it had changed and moved to a new business address.

[7] The Applicant further submitted that it was unaware of the summons as it did not come to its attention. It only became aware of the Respondent's action on the 10 September 2024 after receiving an electronic mail dispatched to it by the Respondent.

[8] The applicant told the court that it applied for recession of judgment immediately after receiving the granted default judgment. Both parties agreed that the summons were served at the applicant previous business address, but the Respondent contended that the applicant was negligent in not changing its business address, after relocating,

with the CIPRO. The latter told the court that as a result of Applicant's negligence the default judgment should stand.

[9] The Applicant brought its application for rescission of judgment within twenty days after becoming aware of the default judgment. It further stated that it was not in willful default.

#### *Bona fide defence*

[10] According to the Respondent's particulars of claim, the Respondent represented by Mac Garvhill and the Applicant represented by Charl Pretorius entered into a partly verbal, partly written agreement in terms of which the Applicant would erect and install a Defence Max High Security Fencing System fence.

[11] The price for the erection of the fence was R630 328.00. The Respondent told the court that it paid the full price to the Applicant.

[12] The Respondent further alleged that:

12.1. After the erection of the fence by the Applicant, the fence illustrated signs of poor quality.

12.2. It was not free from defects and as such, it did not comply with the applicable standards that were reasonably acceptable in the industry and moreover, it was not of good quality as it should be.

12.3. The defects related to rust which rendered it inapt for the purpose which it was erected for.

12.4. The Applicant breached the agreement by failing to supply the Respondent with the standards set out in agreement between the parties.

12.5. The breach was thus material as the fence did not serve the purpose for which it was erected for, and the Respondent was entitled to cancel the agreement and demand the full amount paid to the Applicant.

[13] As a result of the alleged action and breach of the agreement by the Applicant, the Respondent cancelled the agreement and demanded the full amount paid and subsequently thereto a default judgment was granted by the court.

[13.1] In its application for rescission for default judgment, the Applicant advanced the following reason to the court in support of its application.

[13.2] It was not in willful default as it did not receive summons and after becoming aware of the summons and after default judgment was granted against it, within the prescribed period applied for rescission of judgment.

[13.3] It has a bona fide defence because the Applicant did not enter into any agreement with the Respondent to erect a fence. The aforementioned Charl Pretorius was not acting on behalf of the Applicant in conclusion of the agreement with the Respondent. He was not mandated by the Applicant to enter into an agreement with the Respondent.

[13.4] The Applicant conducted business for some years with Charl Pretorius, as independent contractor, and was neither an employee nor an agent of the Applicant.

[14] The Respondent requested quotations for erection of the fence and were furnished with two quotations issued in its name and neither of the quotes were accepted by the Respondent. The Applicant further stated that the quotations issued and appeared on the Respondent's summons were not those issued by it. They do not contain the details of the Applicant as they were visually specified in the Applicant's quotations such as name, postal address, CC and VAT numbers.

[15] The Applicant further contended that the fence supplied and erected was not supplied and installed by it but instead by its competitors.

[16] The Applicant further submitted to the court that the money paid for the supply and installation of the fence was not paid into its account but in Charl Pretorius's personal banking account.

[17] Apart from the assertion that Charl Pretorius was an independent contractor to the Applicant, there was no other link between him and the Applicant. The Applicant stated that it did not supply or install any fence for the Respondent.

[18] The only reason the Respondent held the Applicant liable is due to the fact that Charl Pretorius acted on its behalf. It is common to both parties that the fencing material supplied and erected at the instance of the Respondent is not material usually supplied and erected by the Applicant. It is further common cause that the money was paid in Charl Pretorius's personal account.

#### *Legal principle*

[19] Rescission of judgment in respect of default judgment, is governed primarily by Uniform Rule 31(2)(b). The following factors should be considered by the court in application for rescission of judgment:

- a. Reasonable explanation.
- b. Bona fide defence. The applicant must justify why he/she did not defend the matter within the prescribed period and must also demonstrate a set of facts or legal arguments with reasonable prospects of success of trial.

[20] Rule 31(2)(b) states that

*"A defendant may within 20 days after acquiring knowledge of such judgment, apply to court upon notice to the plaintiff to set aside such judgment and the court may, upon good cause shown, set aside the default on such terms as it deems fit."*

[21] A successful rescission requires both procedural justification and substantive defence and in such instances the court has discretion to refuse even if the above-referred factors exist if there is no good cause shown by the Applicant. The effect of granting rescission of judgment allows parties to present their arguments as if the judgment had never been granted. A party applying for a rescission of judgment should not prove its case on a balance of probabilities but must show the court that prima facie he has triable issues.

[22] It was emphasized in *Brummer v Gorfil Brothers Investments*<sup>1</sup> that condonation be considered on the same basis and that such an application should be granted if that is in the interests of justice and refused if it is not. The interest of justice must be determined by reference to all relevant factors including the nature of the relief sought, the extent and cause of the delay, the nature and cause of any other defect in respect of which condonation is sought, the effect on the administration of justice, prejudice and the reasonableness of the Applicant's explanation for the delay or defect.

[23] The Applicant should show the court on (good cause) that judgment was given in error and he has a bona fide defence, he should also show the court that he did not deliberately ignore the proceedings, and the application should be done within 20 days of acquiring knowledge of the default judgment.

[24] The requirements that must be addressed by an Applicant seeking condonation are trite. It was held in *Melane v Santam Insurance Co Ltd*<sup>2</sup> that requirements for consideration are the length of the delay, the explanation for the delay, the importance of the case (prejudice) and the prospects of success. These requirements are interrelated and must be holistically considered.

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<sup>1</sup> 1954 (2) SA 345 (A) at 353.

<sup>2</sup> 1962 (4) SA 531 (A) at 5328-E.

[25] In *De Wet v Western Bank Ltd*,<sup>3</sup> the court stated that:

*"Broadly speaking, the exercise of the court 's discretionary power appears to have been influenced by considerations of justice and fairness, having regard to all the facts and circumstances of the particular case. The onus of showing the existence of sufficient cause for the relief was on the applicant in each case, and he had to satisfy the court, inter alia, that there was some reasonably satisfactory explanation why the judgment was allowed to go by default."*

[26] In *Grant v Plumbers*,<sup>4</sup> the court held that:

*"The Applicant must;*

*a. Give a reasonable explanation of his default. If it appears that his default was wilful or that it was due to gross negligence the court should not come to his assistance,*

*b. His application must be bona fide not made with the intention of merely delaying plaintiff's claim, and,*

*c. He must show that he has a bona fide defence to Plaintiff's claim. It is sufficient if he makes out a prima facie defence in the sense of setting out averments which, if established at the trial, would entitle him, to the relief he asked for. He need not deal fully with merits of the case and produce evidence that the probabilities are actually in his favour. It was also confirmed in *Colyn v Tiger Food Industries t/a Meadow Feed Mills (Cape)*.<sup>5</sup>*

[27] In *Silber v Ozen Wholesalers (Pty) Ltd*<sup>6</sup> the court held that:

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<sup>3</sup> 1979 (2) SA 1031 (A) at 1042F.

<sup>4</sup> 1949 (2) SA 470 (O) at 476 -477.

<sup>5</sup> 2003 (6) SA 1 SCA at 9C-F.

<sup>6</sup> 1953 (2) SA 345 (A) at 353.

*"The applicant for any such relief must, at least furnish an explanation of his default sufficiently full to enable the court to understand how it really came about and to assess his conduct and motives."*

[28] Comparing the present case and above referred cases, the applicant within 20 days after becoming aware of the default judgment, brought application of rescission of judgment. Further the Applicant showed good cause that it has a bona fide defence, and it was not willfully in default.

[29] It is clear from the papers filed by both parties and evidence led in this court that Charl Pretorius is the one who fraudulently acted on behalf of the Applicant. He furnished the Respondent with a quotation and payment was made in his Capitec banking account. The material he supplied for fencing is not the same as the ones used or supplied by the Applicant. At most the Respondent should have joined him as a party to the action.

[30] As a result of the explanation advanced by the Applicant and viewed as having a triable defence, the court has no option but to grant it rescission of judgment.

### *Costs*

[31] Both parties requested that costs be granted in their favour, since this is not the end of this matter, I am of the view that costs should be in the cause of action.

### *Order*

[32] I therefore grant the following order:

1. The late filing of the application for rescission of the judgment is hereby condoned, insofar as it may be necessary.

2. The judgment granted in favour of the Respondent on 10 September 2024 in Case no 2023-054180 is hereby rescinded and set aside.
3. Costs in cause of action.

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**M C MAUBANE**  
**ACTING JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, PRETORIA**

Date of hearing: 10 February 2026

Date of judgment: 10 March 2026

**APPEARANCES:**

For the Applicant:           Adv P Ferreira  
Instructed by:               Martin Inc Attorneys

For the Respondent       Adv X Van Niekerk  
Instructed by:              Boqwana Burns