



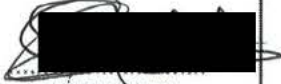
**IN THE LAND COURT OF SOUTH AFRICA
HELD AT RANDBURG**

LCC82/2022

BEFORE THE HONOURABLE FLATELA J

Heard on: 26 February 2026

Delivered on 15 May 2026

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES / NO	
(2) OF INTEREST TO OTHER JUDGES: YES / NO	
(3) REVISED: YES / NO	
15/05/2026 DATE	 SIGNATURE

In the matter between:

MHLONGAMVULA COMMUNAL PROPERTY ASSOCIATION

Applicant

and

MINISTER OF LAND REFORM AND RURAL DEVELOPMENT

First Respondent

DIRECTOR -GENERAL OF LAND REFORM

Second Respondent

CHIEF LAND CLAIMS COMMISSIONER

Third Respondent

THE REGISTRAR OF DEEDS, MPUMALANGA

Fourth Respondent

ORDER

1. The late filing of the rescission application is condoned
2. The default judgment granted by this Court on 29 August 2022 is hereby rescinded
3. The Respondents in the review application shall deliver their answering affidavit by 29 May 2026.
4. The Applicants in the main application shall, by Friday, 12 June 2026, file their replying affidavit.
5. The Applicants in the main application shall deliver their heads of arguments by 1 July 2026.
6. The Respondents in the review application shall deliver their heads of arguments on 10 July 2026.
7. The costs of this application shall be the costs in the main application.

JUDGMENT

FLATELA J

Introduction

[1] This is an opposed application for rescission in terms of Rule 58 of the Rules of this Court. The Applicant, Mhlongamvula Community Property Association (the CPA), launched an application to rescind the default judgment granted by this court on 29 August 2022, on the basis that the judgment was erroneously sought and erroneously granted in their absence. The Applicant also applied for condonation for

the late filing of the rescission application. Only the Sixth and Seventh Respondents oppose the application.

The Parties

[2] The Applicant is **MHLONGAMVULA COMMUNITY PROPERTY ASSOCIATION**, an association established and governed in terms of the Communal Property Associations Act 28 of 1996 (the CPA Act)¹ with its registered address at ..

[3] The First Respondent is the Minister of Land Reform and Rural Development, cited herein in his official capacity as the head of the Department of Land Reform and Rural Development. The Second Respondent is the Director-General of the Department of Land Reform and Rural Development, the accounting officer responsible for the administration of the Communal Property Association Act ("the CPAA") by the Department.

[4] The Third Respondent is the Chief Land Claims Commissioner of the Commission of Restitution of Land Rights (the Commissioner). The Fourth Respondent is the Regional Land Claims Commissioner for Mpumalanga Province (the RLCC). They have been cited as interested parties in the matter. The Fifth Respondent is the Registrar of Deeds, Mpumalanga Province. The First to the Fifth Respondents will be referred to as the State Respondents.

[5] The Sixth Respondent is Cecilia Masesi Nkosi, the Applicant in the main application. The Sixth Applicant describe herself in the main Application as the claimant who lodged the claim with the Restitution of Land Rights Commission in terms of section 10(1) of the Restitution of Land Rights Act No 22 of 1994 before 31 December 1998. The Seventh Respondent is Tshabalala Community.

Factual Background

[6] On 09 November 1998, the late Chief Magwaza James Tshabalala, acting on behalf of the Tshabalala Traditional Community, lodged a land claim in respect of St

¹ 28 of 1996.

Helena 67 HT, Welgevonden 65 HT, Holspruit 29 HT, Eerst Geluk 30 HT, Langgewacht 1, the Remaining Extent of the farm Hamburg 28 HT, and Portion 1 of the Farm Hamburg. The land claims were accepted by the Fourth Respondent and published in Government Gazette No. 931 of 2003 in terms of section 11 of Act 22 of 1994.

Mhlongamvula Property Association

[7] The Applicant was registered on 21 November 2007 to receive and administer various properties purchased by the State in settlement of the land claim and to hold them for the benefit of the beneficiaries of the land claimed against the farms. Its objectives are to collectively acquire, hold, and manage property for members' benefit, fostering economic self-reliance through agriculture and lawful business activities. It encourages socio-economic development, infrastructure provision, financial assistance programs, poverty alleviation, and cooperative action for its members.

Section 42 Settlement

[8] The Applicant and the Minister concluded the Section 42D agreement to settle the claim. On 11 January 2008, Portion 6 of the Farm Langgewacht 170, Registration Division HT, the Remaining Extent of the farm Hamburg 28, Registration Division HT and Portion 1 of the Farm Hamburg Registration Division, were transferred and registered to the Applicant under Title Deed No. 0575/2008.

[9] The Applicant is currently leasing the Remaining Extent of the Farm Holspruit 29, measuring 441 hectares, to one farmer, Cornelius Jahannes Van Der Merve.

[10] On 08 September 2008, another entity, MHLONGAMVULA Primary Cooperating Limited (2008/003686/24), was registered with the Companies and Intellectual Property Registration Office. Its objectives, as set out in its Constitution, are to provide employment for its members in the following industries: agriculture, mining and property development, and to provide skills development and training.

The main review application

[11] During 2022, the Sixth and the Seventh Respondent launched review proceedings seeking the following relief:

1. That the First and Fourth Respondents' section 42D of the Restitution of Land Rights Act 22 of 1994 be reviewed and set aside.
2. That the MHLONGAMVULA CPA be declared illegal and unlawful.
3. that members of MHLONGAMVULA CPA are interdicted from interfering with the legal process of the land claim.
4. That the lease documents entered into by white farmers with them, CPA, be declared unlawful and illegal.
5. that the third respondent produce audited financial statements of the funds transferred to CPA since its registration to court within 14 days.
6. That the First and Second Respondents produce and disclose audited financial statements of monthly payments from lease documents from white farmers into CPA bank accounts to the court within 14 days.
7. That the first applicant and second applicant be declared legitimate beneficiaries to establish and register a Communal Property Association in terms of section 5(4) and section 8 of the Communal Property Association Act of 1998.
8. That the first applicant and second applicant declared legitimate beneficiaries to establish and register a communal property Association
9. That the first respondent must appoint their own boots-mediator-traitor to assist in the settlement of the land claim within 90 days
10. directing the first, second, third, and fourth respondents jointly and severally to pay the costs of this application.
11. alternative relief

[12] The review application was heard on 29 August 2022, unopposed. The Respondents sought and obtained the orders mentioned above by default. The court order was served on Mr Cornelius Van Der Merwe, a lessee of one of the Applicant's properties, on 15 September 2022. Upon receipt of the order, the Applicant launched this application.

Issues for determination

[13] The issue for determination is whether the Applicant is entitled to rescission of the order granted.

Legal principles governing rescission applications

[14] In this court, the rescission application are governed by Section 27 of the Land Court Act², Rule 58 and Rule 64 of the Land Court Act .

[15] **Section 27 of the Land Court Act provides as follows:**

27. Variation and rescission of orders of the Court

The Court may, on application of any person affected thereby, or acting of its own accord in cases falling under paragraph (b), and subject to the rules, vary or rescind any judgment or order—

- (a) erroneously sought or erroneously granted in the absence of the person against whom that judgment or order was granted;
 - (b) in which there is an ambiguity or an obvious error or omission, but only to the extent of that ambiguity, error or omission;
 - (c) which was void from its inception or was obtained by fraud or mistake common to the parties; or
 - (d) in respect of which no appeal lies.
- (3) Any party applying under this rule must deliver notice of his or her application to all parties whose interests may be affected by the rescission or variation sought.”

[16] **‘Rule 58 Hearing where a party is in default** provides as follows:

- (6) A party may apply to the Court to rescind or vary any judgment or order granted in her absence, provided the application is filed within twenty days after she or he became aware of the judgment or order.

² 6 of 2024

(7) An application in terms of subrule (6) may be granted only if the Applicant shows good cause for such rescission or variation.'

[17] Rule "64 **Variation and Rescission of Orders**

(1) Subject to section 35 (11) of the Restitution of Land Rights Act, the Court may suspend, rescind or vary, of its own accord or upon the application of any party, any order, ruling or minutes of a conference which contains an ambiguity or a patent error or omission, in order to clarify the ambiguity or to rectify the patent error or omission.

(2) Any party seeking the rescission or variation of an order in terms of section 35 (11) or (12) of the Restitution of Land Rights Act or in terms of subrule (1) may do so only upon –

- (a) application delivered within ten days from the date upon which he or she became aware of the order; and
- (b) good cause shown for the rescission or variation."

Rescission Proceedings

[18] On 01 November 2022, the Applicant brought this application for the rescission of the judgment on the basis that it was erroneously sought and erroneously granted. The Applicant contended that it was unaware of the main application because it was not served on it. The Applicant also filed a condonation application as the application was filed out of time.

[19] The Respondents raised a point in limine challenging the Chairperson of the CPA's *locus standi* to depose to a founding affidavit. I must address the point *in limine*, the question of whether the deponent to the affidavit was authorised to bring these proceedings, before dealing with the merits of the application.

Point in Limine

[20] In their answering affidavit, the Sixth and Seventh Respondents raised a *point in limine* regarding the *deponent's locus standi* to bring these proceedings on behalf of the Applicant.

[21] In the founding affidavit, the deponent contended that he was the Chairperson of the Applicant and had been duly authorised to depose the affidavit on behalf of the Applicant. He annexed the resolution to that effect. In paragraph 8 of the founding affidavit, he again addresses the *locus standi* as follows:

“I have the *locus standi* to bring this application on behalf of the Applicant by virtue of being the Chairperson duly authorised by the resolution of the Applicant”

[22] In their answering affidavit, the Respondents contended as follows:

“7.1 I submit that the deponent to the applicant's founding affidavit lacks *locus standi* to depose to this affidavit in that he is not a beneficiary to the claim.

7.2 The applicant failed to provide proof of the resolution in this application.

7.3 The deponent failed to appreciate that the chairman of the CPA cannot be authorised by an appointment as alleged in his affidavit and needs to be democratically appointed by the CPA through elections as provided by the CPA Act”

[23] In support of their contention, Mr Sambo, representing the Respondents, submitted that the resolution annexed to the founding affidavit does not identify the individuals who signed it. He further indicated that the seventh respondent does not recognise these signatories. Additionally, Mr Sambo noted that he had failed to provide the minutes of a committee meeting confirming his position as the CPA chairperson, nor could he present a list of the committee members associated with the CPA.

[24] Mr Sambo further submitted that the deponent failed to provide any record showing that the Department had listed him as a chairperson, and that he also failed to state the section of the CPA Constitution under which he was appointed, as well as the other individuals listed in the resolution. Notably, these issues were not raised in the papers.

[25] The point *in limine* need not detain us any further, as it is trite that a challenge to a lack of authority to act by any person should not be raised in limine but should be specifically challenged under Rule 7(2) of the Rules of the Land Court and the Uniform Rules.

[26] Two decades ago, the SCA dealt with the legal challenge of authority to act in *Ganes and Another v Telkom Namibia Ltd*³. Streicher JA, writing for the unanimous court, held as follows:

“The deponent to an affidavit in motion proceedings need not be authorised by the party concerned to depose to the affidavit. It is the institution of the proceedings and the prosecution thereof which must be authorised. In the present case, the proceedings were instituted and prosecuted by a firm of attorneys purporting to act on behalf of the respondent. In an affidavit filed together with the notice of motion a Mr Kurz stated that he was a director in the firm of attorneys acting on behalf of the respondent and that such firm of attorneys was duly appointed to represent the respondent. That statement has not been challenged by the appellants. It must, therefore, be accepted that the institution of the proceedings were duly authorised. In any event, rule 7 provides a procedure to be followed by a respondent who wishes to challenge the authority of an attorney who instituted motion proceedings on behalf of an applicant. The appellants did not avail themselves of the procedure so provided. (See *Eskom v Soweto City Council* 1992 (2) SA 703(W) at 705C-J.)”

[27] In this case, the Applicant is an association. I am satisfied that the deponent of the founding affidavit had sufficiently laid out the authority for the bringing of the application. The Respondents have not availed themselves of the procedure provided in Rule 7 of the Rules of this court. The Respondent's point *in limine* is dismissed.

Application for condonation of the late filing of the rescission Application.

³ 2004(3)SA 615 (SCA)

[28] The courts, on numerous occasions, had had to deal with the condonation of the non-compliance with the rules. The principles applicable to condonation applications are trite and were enunciated in *Melane v Santam Insurance Co Ltd*,⁴ The Court held as follows:

"In deciding whether sufficient cause has been shown, the basic principle is that the Court has a discretion, to be exercised judicially upon a consideration of all the facts, and in essence it is a matter of fairness to both sides. Among the facts usually relevant are the degree of lateness, the explanation therefore, the prospects of success and the importance of the case. Ordinarily these facts are interrelated; they are not individually decisive, save of course that if there are no prospects of success there would be no point in granting condonation. Any attempt to formulate a rule of thumb would only serve to harden the arteries of what should be a flexible discretion. What is needed is an objective conspectus of all the facts. Thus a slight delay and a good explanation may help to compensate prospects which are not strong. Or the importance of the issue and strong prospects of success may tend to compensate for a long delay. And the respondent's interests in finality must not be overlooked."

[29] "Whether it is in the interests of justice to condone a delay depends entirely on the facts and circumstances of each case.⁵ The relevant factors⁶ In that inquiry generally include the nature of the relief sought, the extent and cause of the delay, its effect on the administration of justice and other litigants, the reasonableness of the explanation for the delay, which must cover the whole period of delay, the importance of the issue to be raised, and the prospects of success.

Applicant's explanation for the delay

⁴ 1962 (4) SA 531 (A).

⁵ *Van Wyk v Unitas Hospital and Another* 2008 (2) SA 472 (CC) para 20.

⁶ For the above-listed factors found in *Ethekwini Municipality v Ingonyama Trust* 2014 (3) SA 240 (CC), para 28; *Van Wyk v Unitas Hospital (Open Democratic Advice Centre as Amicus Curiae)* 2008 (2) SA 472 (CC), para 22; *Camps Bay Rate Payers' and Residents Association v Harrison* [2010] (2) All SA 519 (SCA) para 54. *Grootboom v National Prosecuting Authority and Another*⁶

[30] Mr Tshabalala, who deposed to the affidavit on behalf of the Applicant, explains that the Applicant's members were unaware that an order by default had been granted against the Applicant on 29 August 2022. The Applicant states that it became aware of the court order on 15 September 2022, when it received it from Mr Cornelius Van Der Merwe, who advised that he had received it from the Sixth Respondent. The Applicant further submits that a meeting of the executive members was held on 16 September 2022, at which a resolution was taken to challenge the default judgment, and that it had to travel from Mpumalanga Province to Gauteng Province to secure the services of a legal representative within the jurisdiction of this court. The consultation took place on 15 October 2022. The attorneys had to obtain copies of the file from the Registrar of this court; thereafter, counsel was briefed to provide the Applicant with an opinion on the prospect of success. On 1 November 2022, these proceedings were launched.

[31] I am satisfied that the applicants have provided a reasonable explanation for not bringing a rescission application within the prescribed period under the rules. The delay before the launch of these proceedings was not long and showed good cause. The late filing of the application is condoned.

Discussion

[32] The Application was brought in terms of Rules 58(6) and (7) of the Land Claims Court Rules ("the Rules") read with section 35 (11) of the Restitution of Land Rights Act 22 of 1994. Section 35 of the Restitution Act was repealed and replaced by Section 27 of the Land Court Act ⁷. Section 27, which mirrors Rule 42(1)(a) of the Uniform Rules, gives the court the power, in addition to any other powers it may have, *mero motu* or upon the application of any party affected, rescind or vary: An order or judgement erroneously sought or erroneously granted in the absence of any party affected thereby.

[33] For the Applicant to succeed in this application, it must meet all three requirements of Section 27 (a) read with Rule 42(1)(a) of the Uniform Rules, namely

⁷ Act 6 of 2023

that the judgement or order must have been erroneously sought or erroneously granted; that it must have been granted in the absence of the applicant; and that the applicant's rights might have been affected.

Were the orders erroneously sought and erroneously granted?

[34] Dealing with the meaning of the words "erroneously granted", in *Bakoven Ltd v G J Howes (Pty) Ltd* 1990 (2) SA 446 at page 471 E-H, the court stated that:

"An order or judgment is 'erroneously granted' when the Court commits an 'error' in the sense of 'a mistake in a matter of law appearing on the proceedings of a Court of record' (The Shorter Oxford Dictionary). It follows that a Court in deciding whether a judgment was 'erroneously granted' is, like a Court of Appeal, confined to the record of proceedings. In contradistinction to relief in terms of Rule 31(2)(b) or under the common law, the applicant need not show 'good cause' in the sense of an explanation for his default and a bona fide defence (**Hardroad (Pty) Ltd v Oribi Motors (Pty) Ltd (supra) at 57BF-G; De Wet (2) at 777F-G; Tshabala/a and Another v Pierre 1979 (4) SA 27 (T) at 30C-D**). Once the applicant can point to an error in the proceedings, he is, without further ado, entitled to rescission."

[35] The Applicant asserts that the main review application was not served on it, a fact corroborated by the Sheriff's return of non-service, which is annexed to the main application. The Sheriff's return of non-service recorded non-service on 13 June 2022 at 15:30 as follows:

"ATTEMPT TO SERVE: THE DEFENDANT NO MORE IN PIET RETIEF AREA, LEFT THE GIVEN ADDRESS. CONTACT DEFENDANT AND STATED THAT HE IS IN JOHANNESBURG."

[36] The Respondents do not dispute this contention, making it common cause.

[37] In *Lodhi 2 Properties Investments CC v Bondev Developments (Pty) Ltd* [2007] ZASCA 85; 2007 (6) SA 87 (SCA) (Lodhi 2), Para 24. The Supreme Court of Appeal held that:

“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. That would be the case if the sheriff’s return of service wrongly indicates that the relevant document has been served as required by the Rules, whereas there has, for some other reason, not been service of the document. In such a case, the party in whose favour the judgment is given is not entitled to judgment because of an error in the proceedings. If, in these circumstances, judgment is granted in the absence of the party concerned, the judgment is granted erroneously.”

[38] It is trite that an order or judgment is erroneously granted if there was an irregularity in the proceedings or if the court was not legally competent to make such an order.

[39] It is not in dispute that the Applicant was absent when the order was granted due to the non-service of the review Application, as reflected in the Sheriff’s return of service. This was irregular. Had the judge been aware that the review Application was not served on the Applicant, he would not have granted the default judgment. I am satisfied that the Applicant has met all the requirements in terms of Section 27(a), read with Rule 42(1)(a).(a).

[40] 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*⁸, the court held that even when requirements are met, the Court is ‘merely endowed with a discretion to rescind its order’, a discretion that must be ‘exercised judicially’.

⁸ *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* (CCT 52/21) [2021] ZACC 28; 2021 (11) BCLR 1263 (CC) (17 September 2021) at para [53].

[41] Having considered the pleadings in toto and having exercised discretion carefully on the rescission application, I conclude that it should be granted. There are also serious allegations concerning the management practices within the Community Property Association (CPA). Notably, the Department of Land Reform and Rural Development, which holds regulatory authority over the CPA pursuant to the CPA Act in matters of compliance and governance, did not engage in the review process. It is paramount to the interests of justice that the issues presented in the main application be thoroughly examined, warranting an expedited hearing of the primary review application.

[42] In the circumstances, I make the following order:

1. The late filing of the rescission application is condoned
2. The default judgment granted by this Court on 29 August 2022 is hereby rescinded
3. The Respondents in the review application shall deliver their answering affidavit by 29 May 2026.
4. The Applicants in the main application shall, by Friday, 12 June 2026, file their replying affidavit.
5. The Applicants in the main application shall deliver their heads of arguments by 1 July 2026.
6. The Respondents in the review application shall deliver their heads of arguments on 10 July 2026.
7. The costs of this application shall be the costs in the main application.

A handwritten signature in black ink, appearing to be 'L FLATELA', is written over a solid black rectangular redaction box. The signature is fluid and cursive.

L FLATELA
JUDGE
LAND COURT

Date of hearing: 26 February 2026

Date of judgment: 15 May 2026

Appearances

Counsel for the Applicant: Mr. Malesoena

Instructed by: Malesoena Attorneys

Counsel for the Sixth and Seventh Respondents: Adv Sambo

Instructed by: Mokoena Attorneys