

REPUBLIC OF SOUTH AFRICA



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

Case No: 059387/2022

Reportable: No

Of interest to other Judges: No Revised: No

SIGNATURE

Date: 29 April 2026

In the matter between:

THE ROAD ACCIDENT FUND

Applicant

and

MBAY SPECIALISTS (PTY) LTD

1st Respondent

THE SHEFF, PRETORIA EAST

2nd Respondent

In re:

MBAY SPECIALISTS (PTY) LTD

Plaintiff

and

THE ROAD ACCIDENT FUND

1st Defendant

NOZUKO NXUSANI ATTORNEYS

2nd & Further
Defendants

JUDGEMENT

MOOKI J

- 1 The applicant (the RAF) seeks to have the Court rescind a judgement granted in favour of the first respondent (Mbay Specialists). MBay Specialists obtained a default judgment against the RAF on 19 April 2024, in which an order was made that the RAF pay Mbay Specialists the amount of R43, 901,113.04.
- 2 Mbay Specialists contends that the default judgement “relates to amounts owing to Mbay by virtue of medico-legal services rendered to the RAF. The claim is based on 2593 invoices relating to assessments conducted by Mbay for the RAF.” The services, according to Mbay, were rendered either directly upon instruction by the RAF or upon instruction from attorneys instructed by and representing the RAF in various road accident fund matters.
- 3 The RAF invokes Rule 41(1)(a), alternatively, the common law, as the bases for the rescission. The RAF contends that the judgement was erroneously sought or granted because Mbay Specialists served summons at a branch office of the RAF, instead of service at the RAF’s main office in Centurion. The RAF essentially contends that summons were not served in accordance with the Rule, by having service effected at a principal place of business or at a registered address, with the result that there was no proper service on the RAF

and that the RAF is thus entitled to the rescission.

- 4 Mbay Specialists contends that summons were properly served and that the RAF did not enter a defence. It was submitted that service was effected in terms of 4(1)(a)(viii), as shown in the sheriff's return of service.

- 5 The return of service records, in part, as follows:

This is to certify that on the 19th of January 2023 at 09:00 at 3[...] I[...] STREET, MENLO PARK, PRETORIA, being the Principal Place of Business of THE ROAD ACCIDENT FUND, a copy of the COMBINED SUMMONS WITH ALL ANNEXURES was served upon MR T MOKHUTLE ADMINISTRATION CLERK IN THE CLAIMS DEPARTMENT OF THE MENLYN OFFICE BRANCH),
..."

- 6 The service of summons was defective. This is the case even on the basis that service was effected on the RAF as "a statutory body" as contemplated in Rule 4(1)(a)(viii). Service on a statutory body must be effected on "the secretary or similar officer or member of the board or committee" of a statutory body. The sheriff effected service on an "administration clerk in the claims department" at the RAF's Menlyn office branch. Such service does not comply with Rule 4(1)(a)(viii), even on accepting that the RAF is a "statutory body" contemplated in the Rule.

- 7 The sheriff had in mind that he was effecting summons at the RAF's "principal place of business", as expressly recorded in the return of service.

Service was effected at a branch of the RAF's office. Mbay Specialists did not take issue with the RAF's assertion that the RAF's main office is at Centurion. That is the RAF's principal place of business.

8 The purpose of Rule 42(1)(a) is to correct an error in the procedure that was followed to obtain default judgment.¹ An applicant is, without further ado, entitled to rescission once an applicant can point to an error in the proceedings.² An order is erroneously granted where there was no procedural entitlement to such an order.³

9 The summons were not served on the RAF as required in the Rules. A showing that summons were served other than as required by the Rules is determinative, and the RAF is entitled to relief. It is unnecessary to consider the RAF's case for rescission based on the common law.

10 I make the following order:

(a) The order granted by Madam Justice Baloyi-Mbembele AJ under case number 059387/2022 on 19 April 2024 is rescinded.

(b) The first respondent is ordered to pay costs, on Scale B.

O MOOKI

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

¹ Freedom Stationery (Pty) Ltd and others v Hassam and others 2019 (4) SA 459 (SCA) at 465F-H and the authorities referred to therein.

² Bakoven Ltd v GJ Howes (Pty) Ltd 1992 (2) SA 466 (ECD) at 471G-H.

³ Lodhi 2 Properties Investment CC v Bondev Developments [2007] ZASCA 85. Approved by the Constitutional Court in Occupiers of erven 87 & 88 Berea v Christiaan Frederick De Wet N.O. [2017] ZACC 18, para 22

Counsel for the applicant:

V J Chabane

Instructed by:

X & Z Ngogodo Inc.

Counsel for the first respondent:

V V Mabuza

Instructed by:

Joubert Scholtz Inc.

Date heard:

6 March 2026

Date of judgment:

29 April 2026