(1) Reportable: No
(2) Of interest to other Judges: No

Signature Date

IN THE LABOUR COURT OF SOUTH AFRICA, DURBAN

Case No: D103/2023

In the matter between:

GILL WOODS First Applicant

GAIL SINGLETON Second Applicant

MOGANYAGIE RAMSAMY Third Applicant

SHOBA DAWOOD Fourth Applicant

and

GROSVENOR BOYS HIGH SCHOOL Respondent

Heard: 13 November 2025

Delivered: This judgment was handed down electronically by circulation to the parties and / or their legal representatives by email. The date and time for handing-down is deemed 10h00 on 22 May 2026.

JUDGMENT: RESCISSION APPLICATION

ALLEN-YAMAN J

Introduction

[1] On 10 February 2025 this court granted the applicants default judgment. In accordance with the order then issued, the respondent was ordered to pay each of the first to fourth applicants the amounts of R393 214.32, R430 622.64, R572 854.32 and R547 471.20 respectively, together with interest as well the wasted costs of a previous adjournment.

[2] In the present application the respondent sought the rescission of that order, together with ancillary relief, which the applicants opposed.

Background

[3] Having been dismissed by the respondent on 31 December 2022 the applicants initiated a claim concerning the fairness of that decision to this court pursuant to a certificate of non-resolution having been issued by the CCMA on 20 January 2023.

[4] Service of the Statement of Claim on the respondent elicited no response and, on 30 June 2023 the applicants applied for default judgment to be granted in their favour, which application was also served on the respondent. Despite the failure on the part of the respondent to have delivered a notice of opposition, the Registrar was directed to enrol the applicants' application for default judgment on notice to all parties, which was effected on 24 October 2024.

[5] In response, the respondent delivered a notice opposing the granting of that order. By the time the application came before this court on 28 November 2024, the respondent had delivered an affidavit opposing the application, which led to the parties agreeing to the adjournment of the application to 7 February 2025.

[6] Mr Mpanza appeared on behalf of the respondent at those proceedings and drew this court's attention to the fact that the respondent had delivered a Statement of Response some four days prior. In view of the fact that the time for the delivery of a Statement of Response had lapsed in early 2023 and the Statement of Claim was unaccompanied by any application for condonation, this court proceeded to deal with the matter on an unopposed basis. In view of the nature of the applicants' claim, this court required them to introduce evidence in relation to certain of the issues and, to this end, the application was adjourned to 10 February 2025 for that purpose. Upon the conclusion of the proceedings that day default judgment was granted in their favour.

[7] Thereafter, on 18 March 2025, the respondent delivered its rescission application. Incorporated in that application was the further relief sought that it be granted leave to *'file its amended Statement of Response together with Special Plea.'*

[8] The rescission application was enrolled for hearing on 13 November 2025. By way of a further application dated 7 November 2025 the respondent applied for condonation for the late delivery of its Statement of Claim. Without having afforded the applicants the appropriate amount of time to oppose that application if they had wished to do so, having motivated for the issue to be dealt with on an urgent basis, or having obtained this particular date from the Registrar, the respondent required this application to be dealt with together with its rescission application on 13 November 2025. The Statement of Response in respect of which condonation was sought was that which had been delivered on 3 February 2025, the respondent seemingly then having abandoned the additional relief sought in its rescission application relating to an 'amended' Statement of Response, of which there was no sign.

[9] In view of the fact that the application for condonation was not before this court, and would have been ineffectual without rescission of the default judgment, Mr Mpanza accepted that this court could not deal with that application.

Analysis

[10] Distinct from having opposed the rescission application on its merits, the applicants raised a number of preliminary issues: that the respondent had failed to identify the legal basis for its application; that the rescission application had been initiated outside of the time frames permitted; and that, in all cases, rescission could only be sought in the event of a litigant's absence from proceedings, which had not been the case when default judgment had been granted.

[11] On the issue of the legal basis upon which the respondent relied, the applicants were correct that this had not been expressly stated by the respondent in its founding affidavit. This court is unaware of any legal requirement that a litigant in the Labour Court is required to identify the section of the LRA or the specific rule upon which he or she relies in advancing his or her case, and nor was any authority for such proposition drawn to its attention. Whilst such identification would serve to clarify the issues involved, an omission to do so would not be fatal to a claim. In application proceedings, a litigant is required to depose to an affidavit in which it discloses the facts essential to a competent cause of action.

[12] In reply, however, the respondent explained its understanding that,

> *'… I am advised that while Rule 46(1) of the Labour Court Rules outlines specific grounds for rescission, however, they are not conclusive, the court retains power to rescind or vary judgments on other grounds, including "good cause shown."*
>
> *Accordingly, the Respondent's reasons for this application are clearly outlined in paragraph 6 of the Respondent's founding affidavit.'*

[13] Despite its explanation, the legal basis for the respondent's application nonetheless remained unclear. Having disavowed reliance on the provisions of Rule 46, the only remaining basis upon which the judgment could be rescinded is the common law. 'Good cause shown' is not an independent basis for the

rescission of a judgment but is, instead, the standard utilised to determine whether grounds exist for rescission under the common law. This was explained by the Constitutional Court 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 2021 (11) BCLR 1263 (CC),

'As an alternative to rule 42, Mr Zuma pleads rescission on the basis of the common law, in terms of which an applicant is required to prove that there is "sufficient" or "good cause" to warrant rescission. "Good cause" depends on whether the common law requirements for rescission are met, which requirements were espoused by the erstwhile Appellate Division in Chetty, and affirmed in numerous subsequent cases, including by this Court, in Fick.'[1]

[14] Assuming that the respondent intended to rely on the common law, and assuming (without deciding) that it may do so in the Labour Court, the time periods applicable in Rule 46 would find no application. Absent a stipulated time period, the application was required to have been brought within a reasonable period of time. This court does not consider the time taken by the respondent to have initiated its rescission application to have been unreasonable, and accordingly does not find the existence of a need on its part to have asked for condonation.

[15] Demonstrating good cause for rescission of the default judgment necessitated that the respondent met the requirements explained in Government of the Republic of Zimbabwe v Fick and Others 2013 (5) SA 325 (CC),

'At common law the requirements for rescission of a default judgment are twofold. First, the applicant must furnish a reasonable and satisfactory explanation for its default. Second, it must show that on the merits it has a bona fide defence which prima facie carries some prospect of success. Proof of these requirements is taken as

[1] At paragraph 71

showing that there is sufficient cause for an order to be rescinded. A failure to meet one of them may result in refusal of the request to rescind.'[2]

[16] In Zuma, the Constitutional Court reiterated that both requirements are to be met,[3] for the reasons explained in Chetty v Law Society, Transvaal 1985 (2) SA 756 (A),

'It is not sufficient if only one of these two requirements is met; for obvious reasons a party showing no prospect of success on the merits will fail in an application for rescission of a default judgment against him, no matter how reasonable and convincing the explanation of his default. And ordered judicial process would be negated if, on the other hand, a party who could offer no explanation of his default other than his disdain of the Rules was nevertheless permitted to have a judgment against him rescinded on the ground that he had reasonable prospects of success on the merits. The reason for my saying that the appellant's application for rescission fails on its own demerits is that I am unable to find in his lengthy founding affidavit, or elsewhere in the papers, any reasonable or satisfactory explanation of his default and total failure to offer any opposition whatever to the confirmation on 16 September 1980 of the rule nisi issued on 22 April 1980.'[4]

[17] The applicants argued that the respondent failed at the first hurdle for the reasons that: the respondent had not been in default of appearance, having participated in the default judgment application; and the respondent's explanation for its failure to have delivered a Statement of Response did not survive scrutiny.

[18] The applicants are correct that the respondent participated in the default judgment application, having delivered an answering affidavit, and having argued the issues. *'Absence,'* in the context of Rule 46, clearly envisages physical absence. In the present matter, whilst the respondent was physically present (having been legally represented), it failed to advance a response to

[2] At paragraph 85
[3] At paragraph 71
[4] At 765 D-F

the applicants' substantive claim and it may, in that sense, be considered to have been absent.

[19] The respondent's explanation for its failure to have delivered a Statement of Response may be summarised as follows:

- The deponent to the founding affidavit, Mr Knowledge Kubheka, received the applicants' Statement of Claim on 23 February 2023.
- He forwarded the Statement of Claim to the organisation, SEESA, which was paid a monthly premium for legal services.
- On 18 April 2023 an official of SEESA advised the respondent that it had poor prospects of success, and that consideration should be given to settlement.
- This advice was reiterated on 10 May 2023.
- Mr Kubheka advised the SEESA representative that the respondent was not prepared to settle the matter, and that litigation should be proceeded with.
- There was no further communication with SEESA thereafter.
- Mr Forster emailed a copy of the applicants' application for default judgment to him on 1 November 2024, to which was also attached a copy of the Notice of Set Down as well as a copy of the Statement of Claim.
- As a result of issues with the respondent's server, he only had sight of the email on 20 November 2024.
- He forwarded the documents Mr Mpanza, who was then appointed to represent the respondent, and who was instructed to oppose the default judgment application which had been enrolled for hearing on 28 November 2024.
- On 26 November 2024 the respondent delivered its answering affidavit opposing the granting of default judgment.
- On 28 November 2024 the application for default judgment was adjourned to 7 February 2025 to enable the applicants to deliver an answering affidavit.
- The respondent's officials were busy with school related activities for the months of November and December 2024, closed for the festive season, and re-opened in the middle of January 2025. The documents necessary

for the purposes of preparing the Statement of Response could not be located before then.

- The documents necessary for the purposes of providing instructions were located in January 2025 and a consultation was held with Mr Mpanza on 31 January 2025.
- The Statement of Response was delivered on 3 February 2025, prior to the granting of default judgment on 10 February 2025.

[20] From this it is evident that the respondent had requested SEESA to represent it at the outset. Pursuant to SEESA having indicated that the respondent enjoyed no prospects of success and that it stood the risk of having default judgment entered against it, there is no evidence that the respondent took any further steps to ensure that a Statement of Response was delivered by it. Whilst Mr Kubheka asserted that he had issued such an instruction to SEESA, no objective evidence that such an instruction had been given was placed before this court. Doubt that such an instruction had, in fact, been given is compounded by the fact that when Mr Kubheka received the applicants' application for default judgment, he did not then enquire of SEESA as to why the applicants were bringing such an application and, instead, transmitted the documents directly to Mr Mpanza who was then appointed to represent the respondent.

[21] If the respondent had indeed been labouring under the impression that SEESA was dealing with the matter, it was disabused of such belief by 20 November 2024, at the latest, when it became aware of the applicants' application for default judgment. Rather than simply having drafted the pleadings necessary at that stage, it embarked upon opposition to the application for default judgment itself. To the extent that the respondent asserted that further information was required to be sourced to enable the drafting of a Statement of Response, this was belied by the fact that the respondent articulated its defence to the applicants' claim in the affidavit delivered by it in opposition to the granting of default judgment. Had further particularity been required, it is evident that the respondent did not deem the matter of sufficient importance to

warrant the sourcing thereof during December 2024 or the better part of January 2025.

[22] When the respondent did finally prepare a Statement of Response, it was delivered almost two years late, a fact which could not have escaped the respondent, which did not then seek to be granted condonation for the delay. That this court found that the absence of any application for condonation for the late delivery of the Statement of Claim had the result that the applicants' claim remained undefended was drawn to the respondent's attention when the default judgment application was heard on 7 February 2025, as was the fact that default judgment would not be granted that day as a consequence of this court having required the applicants to testify in respect of certain aspects of their claim. This being the case, the respondent was afforded yet another opportunity to take the appropriate steps to prevent the granting of default judgment, but failed to do so.

[23] Nothing precluded the respondent from delivering a Statement of Response and Condonation Application at any time from the initiation of the claim in February 2023, at the earliest, or after 20 November 2024 (when it became aware that default judgment was being sought) until 10 February 2024 (when default judgment was granted). Despite having been afforded numerous opportunities to do so, it did not. The reasons given by the respondent for its failure amount to no explanation at all.

[24] In light of such finding, the merits of the respondent's proposed defence do not fall to be considered,

'The truth is that Mr Zuma has failed to provide a plausible or acceptable explanation for his default. This being so, he cannot hope to succeed on the merits, for ultimately, "an unsatisfactory and unacceptable explanation remains so, whatever the prospects of success on the merits." In fact, …, in the absence of a reasonable explanation for his default, we are not even obliged to assess Mr Zuma's prospects, for – "in light of the finding that the appellant's explanation is unsatisfactory and unacceptable it is

therefore, strictly speaking, unnecessary to make findings or to consider the arguments relating to the appellant's prospects of success."[5]

[25] The respondent's application for rescission of the default judgment granted in favour of the applicants on 10 February 2026 will accordingly be dismissed.

Costs

[26] Mr Forster asked that the applicants be awarded their costs in the event that rescission was refused. In consideration of the manner in which the respondent has conducted litigation in this court, this court is in agreement with his submission that it demonstrated wilful disregard of the rules. The applicants have been obliged to incur legal expenses in opposing this application, and this court can conceive of no reason as a matter of law or fairness why they, as unemployed individuals, ought to have to bear the burden thereof.

Order

1. The application to rescind the order of 10 February 2025 is dismissed.

2. The respondent is ordered to pay the applicants' costs.

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K. ALLEN-YAMAN J

Judge of the Labour Court of South Africa

[5] Zuma, at paragraph 76

Appearances

Applicants:

Mr J Forster, Forster Attorneys

Respondent:

Mr D Mpanza, Mpanza and Associates Inc.