

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

Case No: 4508412021

In the matter between:

THE ROAD ACCIDENT FUND

Applicant

and

**ADV. YVETTE ISAACS N.O. obo
CHELSE-LEIGH GLYNNIA TIEMIE**

Respondent

REASONS FOR JUDGMENT

LUKHAIMANE, AJ

The Order

[1] This matter was argued on 21 April 2026 and the following order was granted on the same date:

1. *The application for rescission of judgement is dismissed.*
2. *The Apphcant is ordered to pay the costs of the Respondent in respect of the application on the High Court scale as between party and party.*

3. *The costs referred to in paragraph 2 above to include, but not be limited to the following:*

3.1 *the costs of the Respondent's attorney of record and correspondent attorney;*

3.2 *the costs of two counsel on Scale B, one of whom is a senior counsel.*

4. *The aforesaid costs to be paid to the Respondent's attorney of record by direct transfer into their trust account with the following details:*

ACCOUNT HOLDER : JS TERBLANCHE INC.
BANK : FIRST NATIONAL BANK
BRANCH CODE : 210 655
ACCOUNT NUMBER : 6[...]
REFERENCE NUMBER : WIL10/CA0093

5. *Costs are to be paid within 14 days of settlement or taxation, failing which interest shall accrue at the prescribed interest rate as from the due date to date of payment.*

6. *The deponent to the founding affidavit, Ilse Tamara Goertzen, is ordered to take the necessary steps to ensure that the Applicant loads the matter on the requested but not yet paid ('RNYP') list and all other steps as may be required to ensure that payment of the matter is effected in terms of the order granted on 28 August 2025.*

Reasons

[2] The reasons follow. The Applicant seeks to have the Court Order dated 28 August 2025 by the Honourable Justice Mogotsi AJ under case 45084/2021 (ADV Y

ISAACS NO obo C-L G TIEMIE vs RAF)¹ ("trial order:) rescinded and set aside. In doing so the Applicant relies on Rule 42(a). To succeed, the Applicant must therefore demonstrate that such impugned order was erroneously sought or erroneously granted". The application is opposed by the Respondent.²

[3] The applicant's contention centers around its non-compliance with the order granted by the Honourable Justice Teffo on 4 August 2025 ("compelling order")³, directing the applicant to file a reply to the respondent's amplified Rule 41A notice within 10 days service of the said order and the Directive and Protocol Introducing Mandatory Mediation in the Gauteng Division as amended, effective from 22 April 2025 ("the Directive").

[4] As it will be clear from the ruling, it is not necessary for the court to go into detail as to the content of both the trial order and the compelling order, except to state that the applicant is aggrieved that the respondent's attorneys filed certain affidavits prior to the expiry of the allotted court days, essentially paving the way for the order that they now seek to rescind. At all times, notices of set down were served on the applicant and therefore they were fully aware of the matters proceeding before the court, including the short service of the notice of intention to amend the particulars of claim which they contend amounted to non-compliance with the Uniform Rules of Court⁴

[5] In dealing with the meaning of erroneously granted, the following was stated in *Bakoven Ltd v GJ Howes (Pty) Ltd*⁵:

"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,

¹ Caselines 30-22/34

² Notice of Intention to Oppose Caselines 30-148; Answering Affidavit Caselines 30-154/344

³ Annexure RA2 Caselines 30-35 to 37

⁴ FA, page 14 at paragraph 44 CseLines 30-19

⁵ 1990 (2) SA 446 at page 471 E - H

confined to a 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 (supra) at 578F-G; De Wet (2) at 777F-G; Tshabalala 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".

[6] Further, in *Nyingwa v Moolman NO*⁶ the court stated as follows:

"therefore, it seems that a judgment has been erroneously granted if there existed at the time of its issue a fact of which the Judge was unaware, which would have precluded the granting of the judgment and which would have induced the Judge, if he had been aware of it, not to grant the judgment"

[7] The respondent contends that the applicant has failed to challenge the substance of the trial order. It states that the Applicant cannot rely on Practice Directives;⁷ or the compelling order,⁸ once the matter was allocated at the calling of the roll. There is further no merit in the complaint based upon Rules 28(2), as the amendment was effected in terms of Rule 28(10).⁹ The respondent contends that the circumstances of the present case are exactly the same as those that prevailed in the matter of *Road Accident Fund v Manzini obo Mokone 2025*¹⁰:

"In the present case it cannot be said that the judgement was erroneously granted or sought when one considers the fact that the Court having read the papers and submissions quite justifiably decided to grant the relief sought. The Court had before it pleadings, expert evidence and written submissions which made much explicit the basis of the claim and having read papers quite justifiably decided to grant relief sought by the Respondent."

⁶ 1993(2) SA 508 at 570

⁷ Founding Affidavit paragraph 11-18 Caselines 30-10 to 13

⁸ Founding Affidavit paragraph 10.3 Caselines 30-9

⁹ Answering Affidavit paragraph 22 Caselines 30-170 to 171

¹⁰ *JDR 4040 (GP) par [52]*

[8] The respondent submitted that the applicant has already partially complied with the trial order by furnishing an undertaking dated 9 September 2025¹¹ in compliance with the impugned order. It is therefore the respondent's case that when the applicant partially complied with the order, the applicant accepted the judgment, in other words the applicant acquiesced to the judgment and has therefore perempted this application for rescission.

[9] It is further stated that "*the purpose of the rule is to correct expeditiously an obviously wrong judgment or order*"¹². "In order words Rule 42(1)(a) caters for a mistake in the proceedings."¹³ It is clear from the papers that the applicant knew that default judgment is to be taken against it and did nothing to stop it but acquiesced to the judgment. The Court had before it pleadings, expert evidence, filing notices and written submissions which made much explicit the basis of the claim and having read papers quite justifiably decided to grant relief sought by the Respondent.

[10] I therefore concluded that the applicant failed to satisfy the requirement of a rescission in terms of Rule 42(1)(a) of the Uniform Rules of Court.

[11] In addition, the conduct of the applicant, failing to defend both the compelling order and the trial order, but instead applying for rescission of judgment is to be frowned upon and deserves costs on a punitive scale.

[12] The application is dismissed, applicant to pay costs on attorney and client scale.

MA LUKHAIMANE
Acting Judge of the High Court

¹¹ Caselines 000-152

¹² *City of Tshwane Metropolitan Municipality v Beknor* CC2025 JDR 4828 (GP) par [61]

¹³ *Kesiilwe v Absa Bank Ltd* 2025 JDR 42 74 (NWM) par [321]

Gauteng Division, Pretoria

HEARD AND GRANTED JUDGMENT: 21 April 2026

REASONS HANDED DOWN: 11 May 2026

Appearances:

For the Applicant: Adv V Mnisi, instructed by the State Attorney, Pretoria

For the Respondent: Adv BP Geach SC and Adv CPJ Strydom instructed by JS Terblanche Inc Attorneys.