THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 2025-170092

In the matter between:

RYAN MICHAEL NEW Applicant / Defendant

And

DYNAMIC INTERTRADE AGRI (PTY) LTD Respondent / Plaintiff

Coram: YAKE AJ

Argument: 03 June 2026

Delivered: Electronically on 11 June 2026

Summary: Judgment and order – rescission of judgment in terms of the Uniform Rule 31(2)(b) and/or the common law – summons personally served – no explanation given for default – no *bona fide* defence advanced – applicant bound by sale agreement as a guarantor - Application dismissed.

JUDGMENT

YAKE AJ

Introduction

[1] This is an application for rescission of judgment granted by the Registrar of this Court on 22 October 2025, in terms of which the applicant was ordered to pay the sum of R369 200 together with interest and costs *("the judgment")*. The applicant seeks an order rescinding that judgment in order to be afforded an opportunity to defend the main action. The respondent opposes the application.

[2] The respondent's judgment is founded upon a written sale agreement *("the sale agreement"),* concluded on 25 April 2025 between the respondent and The Original Grain Company (Pty) Ltd *("OGC").* At the time of the conclusion of the sale agreement, OGC was duly represented by the applicant, acting in his capacity as Managing Director and Sole Shareholder of OGC.

[3] In terms of the sale agreement, OGC undertook to supply to the respondent 97.111 metric tons of grade one soyabeans. In his capacity as managing director and sole shareholder of OGC, the applicant bound himself as principal surety and guarantor for any sum due and owing to the respondent under the sale agreement. Pursuant thereto, the respondent effected payment in the total amount of R687 533.50. OGC, however, the applicant delivered only 29.111 metric tons and thereafter failed to deliver the outstanding balance of 68 metric tons, attributing its non-performance to the default of its own supplier. As a consequence, OGC was in breach of its contractual obligations and remained indebted to the respondent in the sum of R369 200.

Background facts

[4] Following OGC's failure to deliver the contracted soyabeans, the respondent issued summons, which were personally served upon the applicant on 23 September 2025. In terms thereof, the *dies* for the filing of a notice of intention to defend expired on 8 October 2025. No such notice was filed by the applicant, nor was any received by the respondent.

[5] Instead of filing a notice of intention to defend, on 13 October 2025, the applicant addressed an email to the respondent's attorneys requesting an opportunity to settle the matter. In that communication, he intimated that a settlement proposal would be furnished the following day, 14 October 2025. No such proposal was forthcoming, nor was any explanation tendered for the failure to deliver on the undertaking.

[6] Upon the applicant's failure to furnish the promised settlement proposal, the respondent proceeded to apply for default judgment in terms of the rules, without further notice to the applicant. On 20 October 2025, the applicant belatedly forwarded a proposal to the respondent's attorneys, which was acknowledged with an undertaking to obtain instructions. In the interim, however, default judgment was duly granted on 22 October 2025.

[7] On 3 November 2025, the applicant addressed a follow-up communication to the respondent's attorneys, requesting feedback on the settlement proposal. On 5 November 2025, the respondent's attorneys replied, advising that they were still

consulting with their client and undertook to revert to the applicant. No further response was forthcoming.

[8] It was only on 8 December 2025 that the applicant became aware that default judgment had been granted against him. Thereafter, on 9 January 2026, the applicant launched the present application for rescission. It is on this basis that the matter now serves before this Court.

Legal principles

[9] Before dealing with the issues raised, it is necessary to set out the legal principles applicable to rescission of judgments. An applicant seeking rescission of a default judgment, whether at common law or in terms of Rule 31, is required to show good cause. Rule 31(2)(b) of the Uniform Rules of Court governs the rescission of judgment applications and provides as follows:

'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 set aside the default judgment on such terms as it deems fit.'

[10] Alternatively, an application for rescission may be brought under common law. At common law, the requirements for rescission of judgment are well established, namely that good cause or sufficient cause must be shown. In line with the principles underlying Rule 31(2)(b), the common law requires the applicant must: (a) provide a reasonable and acceptable explanation for the default, which must not be wilful or the result of gross negligence; and (b) set out bona fide defence to the merits of the plaintiff's claim which prima facie carries

prospects of success, and is not advanced merely for the purpose of delaying the plaintiff's claim. (See *Vilvanathan Nathan and Another v Louw N.O.*[1])

[11] Where it appears that the applicant's default was wilful or attributed to gross negligence or that the application was brought with the sole intention of delaying the plaintiff's claim, the Court ought not come to the applicant's assistance. Conversely, it suffices for the applicant to establish a prima facie defence, without the necessity of dealing fully with the merits of the case, provided that evidence is produced to show that the probabilities favour the applicant.

[12] Importantly, the Court retains a discretion whether to grant rescission of judgment. In exercising this discretion, the Court must be satisfied that the applicant has demonstrated *"a determined effort to lay his case before the Court and not to abandon it."*[2] The remedy of rescission is not granted as of right; it is a discretionary relief, to be afforded only where the applicant's conduct and explanation justify the intervention of the Court.

[13] Courts have repeatedly cautioned that the granting of rescission in circumstances where the applicant has no defence to the respondent's claim serves no purpose and amount to an exercise in futility. In such instances, the application cannot be regarded as bona fide, but rather as one brought merely to delay the respondent's entitlement to relief.

[1] 2010 (5) SA 17 (WCC) at 27).

[2] *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* 2021 (11) BCLR 1263 (CC);

[14] In considering whether "good cause" has been shown for the rescission of a default judgment, the dictum in *Chetty v Law Society, Transvaal*[3] is apposite:

'The term "sufficient cause" (or "good cause") defies precise or comprehensive definition, for many and various factors are required to be considered (See *Cairn's Executors v Gaarn* **1912 AD 181** at 186 per Innes JA), but it is clear that in principle and in the long-standing practice of our courts two essential elements "sufficient cause" "for rescission of a judgment by default' are:

(i) that the party seeking relief must present a reasonable and acceptable explanati on for his default; and

(ii) that on the merits such party has a *bona fide* defense which, *prima facie*, carries some prospect of success (*De Wet's* case supra at 1042; *PE Bosman Transport Works Committee and Others v Piet Bosman Transport (Pty) Ltd* **1980 (4) SA 799** (A); *Smith N O v Brummer N O and Another; Smith N O v Brummer* **1954 (3) SA 352** (O) at 357-8).'

[15] These twin requirements form the cornerstone of the enquiry into whether rescission is justified. It is therefore incumbent upon an applicant for rescission to satisfy both requirements. Absent either, the application cannot succeed, for the exercise of judicial discretion in this context demands both a satisfactory account of the default and a substantive defence that, if proven, would defeat the respondent's claim. Miller JA in *Chetty supra* explained that:

'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 his explanation of his default. And ordered judicial process would be negated it, on the other hand, a party who could offer no explanation of his default other than his disdain of the Rules was nevertheless

[3] 1985 (2) SA 756 (A) 765A-C;

permitted to have a judgment against him rescinded on the ground that he had reasonable prospects of success on the merits.'[4]

[16] 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*[5], restated the two requirements of granting an application for rescission that need to be satisfied under the common law as being the following:

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

[17] I turn now to consider whether the applicant has met the requirements for rescission.

Reasonable explanation for default

[18] Although not expressly articulated, the applicant's case is founded upon Uniform Rule 31(2)(b), alternatively upon the common law. In either instance, the applicant bears the onus of establishing good cause. This requires the furnishing of a reasonable explanation for failure to file a notice of intention to defend, thereby placing the applicant in default. It is essential that the applicant demonstrate that the default was not wilful. The enquiry into wilful default, however, is not conclusive. Should the applicant's explanation for the default fail

[4] Ibid
[5] [2021] ZACC 28 para 71

to persuade, that does not necessarily terminate the enquiry, for the application may yet be sustained if the applicant establishes the existence of a bona fide defence to the claim on the merits.[6]

[19] In considering whether the applicant is in wilful default, I bear in mind the dictum in *Harris v ABSA Bank Ltd Volkskas*[7] where it was held that:

'[8] Before an applicant in a rescission of judgment application can be said to be in 'wilful default'' he or she must bear knowledge of the action brought against him or her and of the steps required to avoid the default. Such an applicant must deliberately, being free to do so, fail or omit to take the step which would avoid the default and must appreciate the legal consequences of his or her actions. A decision freely taken to reform from filing a notice to defend or a plea or from appearing would ordinarily weigh heavily against an Applicant required to establish sufficient cause.'

[20] In the present matter, it is common cause that summons were personally served upon the applicant on 23 September 2025. The summons clearly stipulated the procedural steps to be taken and the prescribed time frame within which the applicant was required to act. There is no suggestion that the applicant lacked knowledge of the summons or of the obligations arising therefrom.

[21] The applicant was afforded ten days within which to file a notice of intention to defend. The *dies* for filing such notice expired on 8 October 2025. Upon the lapse of that period, the respondent became entitled, in terms of the rules, to apply for default judgment. Importantly, the rules impose no obligation

[6] *Harris v ABSA Bank Ltd t/a Volkskas* 2006 (4) SA 527 (T) at [8] – [10], *Melane v Santam Insurance Co Ltd* 1962 (4) SA 531 (A) at 532C-F
[7] *Harris (supra)* at 530 A-B

upon the respondent to furnish further notice to the applicant before seeking default judgment. Accordingly, the procedural framework is clear: once the applicant failed to file a notice of intention to defend within the prescribed period, the respondent was entitled to proceed to judgment by default. The applicant's subsequent reliance on Rule 31(2)(b) or the common law must therefore be assessed against this backdrop, with particular reference to whether a reasonable explanation for the default has been furnished and whether a bona fide defence exists.

[22] Since it has been established that summons was personally served upon the applicant, the first hurdle the applicant must overcome is to furnish a satisfactory explanation for his failure to file a notice of intention to defend within the prescribed time frame. The applicant contends that the respondent misled him by purporting to engage in settlement negotiations. He submits that, had he appreciated that the respondent was not genuinely disposed to settle the matter, default judgment would not have been granted against him. In that event, he avers, he would have instructed his attorney of record to file a notice of intention to defend, as at that stage he was not yet barred from doing so. In advancing this contention, the applicant indirectly attributes his failure to comply with the rules to the respondent's conduct.

[23] In response, the respondent argues that the applicant deliberately ignores the fact that the *dies* for filing a notice of intention to defend had already expired on 8 October 2025, prior to any settlement proposal being advanced. The respondent submits that the applicant has furnished no explanation whatsoever for his failure to enter an appearance to defend within the prescribed period. The

respondent further contends that they never extended the time for compliance with the rules, nor did they indicate any intention to stay the proceedings. The timelines upon which the applicant seeks to rely are, in the respondent's submission, belated, as they arose only after the applicant was already in default. Accordingly, the respondent maintains that the applicant has failed to provide any explanation for his default, let alone a reasonable one. On this basis, the respondent submits that the application for rescission cannot succeed and stands to be dismissed.

[24] The applicant's contention that the respondent's posture created a false impression, thereby excusing his failure to comply with the rules, cannot be sustained. The summons was personally served, leaving no doubt that the applicant was fully apprised of the proceedings instituted against him. The *dies* for filing a notice of intention to defend expired on 8 October 2025. Despite this, the applicant consciously elected not to defend within the prescribed period, choosing instead to pursue settlement negotiations. Such negotiations, however, do not suspend or absolve compliance with peremptory procedural requirements. The applicant cannot now belatedly invoke settlement discussions as justification for his omission. His failure to act within the prescribed time frame constitutes non-compliance with the rules, and reliance on a subsequent settlement proposal is plainly misplaced and, in my considered view, unconvincing.

[25] Moreover, no explanation, let alone a reasonable one, has been furnished by the applicant for his failure to file the notice of intention to defend within the prescribed time frame. The founding and replying affidavits in the rescission application are both silent in this regard. Despite the applicant's counsel being

invited to address the court on this issue, no reasonable explanation was forthcoming. As correctly argued by the respondent, the applicant seeks to downplay the fact that he did nothing upon receipt of summons. He now wishes to rely on a proposal belatedly sent, which cannot cure his default.

[26] The absence of an explanation for the default and the reason for electing to pursue settlement negotiations indicate that he has knowledge that he was in default with payments. Moreover, the procedural obligation to file a notice of intention to defend is not suspended or excused by parallel settlement negotiations. The rules are peremptory in requiring compliance within the stipulated time frame, and absent such compliance, the respondent was entitled to proceed to default judgment.

[27] Furthermore, absent any agreement or indulgence formally recorded, reliance on settlement discussions cannot excuse non-compliance. The critical question is whether such conduct amounts to wilful default, whether it discloses a reasonable, albeit misguided, belief that settlement efforts obviated the need for procedural compliance, or whether it reflects deliberate disregard of the rules.

[28] While I do not condone the conduct of the respondent's attorneys in failing to advise the applicant timeously that they had applied for default judgment, and in creating the impression that settlement might be reached, this does not absolve the applicant of his default. As correctly pointed out by the respondent's counsel, the applicant's failure to comply with the rules remains decisive.

[29] It further appears that the applicant had attorneys available to him but failed to employ their services from the outset. He now belatedly seeks to shift blame onto the respondent's attorneys, despite having had the means to instruct his own legal representatives immediately upon receipt of summons. His attempt to rely on settlement discussions as a shield against procedural non-compliance is misplaced.

[30] It is surprising how lightly the applicant has treated the entire issue. He appears to expect the respondent to dance to his tune, disregarding the consequences of his own inaction. His omission to file a notice of intention to defend within the prescribed period, coupled with his failure to honour his own undertaking regarding the settlement proposal, demonstrates disregard for procedural obligations. His conduct cannot be excused by reference to settlement discussions, particularly where no indulgence was formally recorded. The inference is inescapable: the applicant's actions disclose either wilful default or, at best, a negligent disregard of the rules. In either event, the respondent, in my view, was entitled to proceed to default judgment, and the applicant's belated reliance on negotiations cannot cure his procedural default.

[31] The Court's primary objective in an application for rescission of judgment is to ensure fairness and justice between the parties. That objective presupposes that the applicant must set out reasons for his default with sufficient particularity. Failure to do so must carry consequences. In the present matter, the applicant has failed to furnish a satisfactory explanation for his default. The record is devoid of any explanation as to why he did not file a notice of intention to defend within the prescribed period. This silence is telling. I accordingly find that the absence of any explanation demonstrates that the applicant was in wilful default and

weighs decisively against the grant of rescission. The application stands to be dismissed.

Bona fide defence to the merits

[32] In the *Zuma* decision supra, the Constitutional Court expressly warned that a litigant who ignored court processes cannot later seek to rescind, whereas he knew the consequences of the order sought against him. The court emphasized that in the absence of a reasonable explanation for the default, the court is not obligated even to assess the prospects of success. Absent an acceptable explanation for the defendant's default, it is not strictly speaking necessary to consider whether or not he has shown prospects of success on the merits.[8] I shall nevertheless do so, for the sake of completeness.

[33] Having found that the applicant was in wilful default, what remains is to determine whether he has advanced a bona fide defence to the merits which prima facie carries prospects of success, and not merely an intention to delay the respondent's claim. Counsel for the applicant contended that strong prospects of success exist in the rescission application.

[34] Notwithstanding the absence of a reasonable and acceptable explanation for the delay, if prospects of success are demonstrated, the Court may still consider granting rescission. Conversely, no matter how compelling the explanation for the default, without reasonable prospects of success, the application must fail. The two requirements; explanation for default and bona fide

[8] *Zuma (supra)* para 76.

defence, are not disjunctive but cumulative, each reinforcing the other in the exercise of judicial discretion. *See Chetty v Law Society, Transvaal.*[9]

[35] In the *Harris* decision[10] supra, Moseneke J stated thus:

'[10] A steady body of judicial authorities has held that a court seized with an application for rescission of judgment should not, in determining whether good or sufficient cause has been proven, look at the adequacy or otherwise of the explanation of the default or failure in isolation.

"Instead, the explanation, be it good, bad or indifferent, must be considered in the light of the nature of the defence, which is an important consideration, and in the light of all the facts and circumstances of the case as a whole".'

[36] I turn to the defence raised by the applicant. Assuming, for present purposes, that a reasonable explanation for the default had been furnished, which I already found it was not, it is trite that the applicant is not required to prove his defence in the sense of discharging a full onus or an onus of rebuttal. What is required is that he make averments which, if established at trial, would constitute a defence to the respondent's claim. The applicant's averments, however, are not to be read in isolation. They must be considered in conjunction with the averments advanced by the respondent. The Court must therefore assess whether the applicant's version, when viewed against the respondent's case, discloses a bona fide defence that prima facie carries prospects of success, or whether it is merely a stratagem to delay the respondent's claim.

[9] Ibid
[10] Ibid

[37] The applicant contends that the respondent's claim is founded upon partly verbal and partly written agreements in terms of which it is alleged that he agreed to stand as principal surety and guarantor for the sum due and owing to the respondent, and that he undertook to repay the respondent the sum of R469 200. He disputes the validity of such a claim on the basis that he never entered into a suretyship agreement with the respondent. His position is that, had such an agreement been concluded, he would have insisted that it be reduced to writing and, at the very least, confirmed by email. The applicant correctly points out that, in order for a suretyship agreement to be valid, it must be reduced to writing and signed. He therefore argues that no binding suretyship was ever concluded between the parties.

[38] In addition, the applicant contends that he is not personally liable for the debts of OGC. He notes that although OGC was deregistered, it was reinstated on 3 September 2025, prior to the issuance of summons. In support of this contention, he relies on a company search annexed to his founding affidavit, marked RN3 and dated 11 December 2025, which reflects the company's status as "in business." On this basis, the applicant indirectly contends that the respondent has proceeded against the wrong party. He maintains that the claim ought to have been pursued against OGC, which was in operation at the time of issuing summons, rather than against him personally. In the result, he has a bona fide defence to the respondent's claim.

[39] In response, the respondent alleges that at the time of issuing summons, OGC was deregistered. Reliance is placed on a company search dated 4 September 2025, annexed as "AA7" to the answering affidavit. On this basis, the

respondent disputes that they were not entitled to bring the application against the applicant, as in their view, OGC was not in business, making the applicant himself liable. The respondent further avers that the applicant has failed to disclose a bona fide defence to the claim. It is asserted that, through written correspondence, the applicant unequivocally acknowledged liability for the outstanding balance in the sum of R369 200 and undertook to discharge such indebtedness by way of instalments of R100 000, the first instalment being due on 1 November 2025. The respondent argues that this admission undermines any suggestion of a genuine defence.

[40] Moreover, the respondent submits that no formal suretyship agreement was required, as the applicant expressly agreed to assume liability for any debt or performance in the event of OGC's default, in terms of clause 29 of the sale agreement marked "POC1". The respondent denies that the payment of R100 000 on 4 June 2025 was made by OGC, asserting instead that OGC was deregistered at the time. It is contended that the applicant made payment because he was aware of his breach of clause 29 and pursuant to a verbal agreement concluded on 3 June 2025.

[41] The respondent further points out that the applicant did not intend to defend the matter and lacks a bona fide defence. The respondent submitted, on 20 October 2025, the applicant himself, not OGC was prepared to pay the respondent R100 000 in instalments towards the debt and was even prepared to sign an acknowledgement of debt, which would have been discharged by 1 February 2026. The respondent submits that the present application has been brought merely to delay payment and does not disclose a genuine defence with prospects of success.

[42] It is not in dispute that the respondent concluded a written sale agreement, marked "POC1," with OGC, and that the applicant represented OGC in his capacity as managing director and sole shareholder. It is further common cause that the sale agreement incorporated both a suretyship clause and a guarantee clause. It is equally undisputed that OGC breached the agreement and became indebted to the respondent in the amount of R369 200. The issue for determination is whether the applicant is personally liable to pay OGC's debts, particularly by virtue of clause 29 of POC1. The Court must therefore assess whether clause 29, properly construed, imposed personal liability upon the applicant in the event of OGC's default, or whether liability remained confined to the corporate entity.

[43] This enquiry lies at the heart of the applicant's asserted defence and will determine whether his opposition to the respondent's claim discloses a bona fide defence with prospects of success. The resolution of this question requires careful consideration of the doctrinal distinction between suretyship and guarantee, the autonomy principle governing performance guarantees, and the settled jurisprudence recognising the independence of a guarantor's obligation from the underlying contract.

[44] A suretyship is accessory in nature, dependent upon the existence and enforceability of the principal debt, and subject to statutory formalities requiring reduction to writing. By contrast, a guarantee constitutes an independent contractual undertaking, whereby the guarantor assumes a primary obligation to ensure performance of the debtor's obligations. If a creditor suffers losses when it transpires that the debtor's principal contract to the creditor is invalid, the

guarantor's obligation remains in force and he must answer for those losses, whereas a surety's obligation falls away and he will not have to pay anything.[11] Unlike suretyship, a guarantee does not fall within the ambit of the statutory writing requirement. This distinction underscores the applicant's misapprehension. His reliance upon the invalidity of the suretyship clause does not absolve him of liability under the guarantee clause. The guarantee constitutes a separate and enforceable undertaking, unaffected by the fate of the principal contract.

[45] In *Orkin Lingerie Co (Pty) Ltd v Melamed & Hurwitz,*[12] Trollip J observed that a contract of suretyship in relation to a money debt is one in which a person (the surety) agrees with the creditor that, as an accessory to the debtor's primary liability, he too will be liable for that debt. Importantly, in the context of this case, the essence of suretyship is the existence of the principal obligation of the debtor to which that of the surety becomes accessory. Simply put, for there to be a valid suretyship, there must be a valid principal obligation between the debtor and the creditor.[13] Thus, if the principal debtor's obligation is legally non-existent, for example if it is founded upon a fraud, there can be no suretyship of it. It was stated in *African Life Property Holdings (Pty) Ltd V Score Food Holdings Ltd,*[14] that guaranteeing a non-existent debt is as pointless as multiplying by nought.

[46] In seeking to escape liability, the applicant anchors his defence upon the alleged invalidity of the suretyship clause, contending that any such agreement

[11] See *Hutchinson v Hylton Holdings and Another* 1993 (2) SA 405 (T) at 412E; Forsyth CF and Pretorius JT Caney's: *The Law of Suretyship in South Africa* (2010) 6 ed at 26.
[12] 1963 (1) SA 324 (W) at 326.
[13] Forsyth CF and Pretorius JT Caney's: *The Law of Suretyship in South Africa* (2010) 6 ed at 30.
[14] *African Life Property Holdings (Pty) Ltd v Score Food Holdings Ltd* 1995 (2) SA 230 (A) at 238E-F.

was required to be reduced to writing and signed by the parties in order to be enforceable. That contention, while correct in principle, is not dispositive of the matter. Notably, the applicant remains conspicuously silent regarding the guarantee clause expressly incorporated in the agreement.

[47] It must be stressed at the outset that the guarantee concluded between the parties falls to be interpreted in a manner that gives effect to its terms. The court's duty is not to dilute or re-fashion the undertaking, but to construe it in accordance with the language employed, the context in which it was concluded, and the evident purpose it was designed to serve. Clause 29 of POC1 reads as follows:

'Ryan New in his capacity as the Managing Director and Sole Shareholder of the Original Grain Company to stand as the Principal Surety and Guarantor of any sum due and owing to the Buyer in relation to the Sale and Purchase Agreement.'

[48] The inclusion of the guarantee clause in the sale agreement was in my view deliberate and purposive. Its object was to afford the respondent protection in the event of non-compliance by the applicant. The clause was designed to ensure that, irrespective of any failures in performance, the respondent would not be left without recourse.

[49] The respondent relies upon a partly verbal and partly written agreement allegedly concluded between the parties on 3 June 2025. Pursuant thereto, the applicant effected payment of R100 000 on 4 June 2025. Save to deny that any verbal agreement was entered into, the applicant has failed to disclose to this Court the circumstances which led to his payment on 4 June 2025; the very date said to follow the alleged agreement.

[50] The applicant's silence in this regard is material. The unexplained payment, made immediately after the date of the alleged agreement, lends weight to the respondent's version and undermines the applicant's denial. In the absence of a cogent explanation, the inference arises that the payment was made in recognition of the obligation said to have been undertaken, thereby corroborating the respondent's reliance on the verbal agreement.

[51] Moreover, it cannot be coincidental that the respondent alleges an agreement obliging the applicant to pay R100 000 by 9 June 2025, and that on 20 October 2025, the applicant himself proposed payment of precisely the same amount. In my view, this sequence of events is a clear indication that the applicant was fully aware of his indebtedness to the respondent. His conduct, when viewed cumulatively, supports the inference that he acknowledged liability and sought to manage payment rather than contest the debt. The October proposal, mirroring the earlier alleged obligation, corroborates the respondent's version and undermines the applicant's denial. Taken together, these facts demonstrate that the applicant's opposition does not rest upon a bona fide defence but is rather calculated to serve as a stratagem to delay the respondent's claim.

[52] While I accept that OGC was reinstated on 3 September 2025, prior to the issuing of summons, it cannot be denied that on 4 September 2025, when the respondent conducted its company search, OGC was still reflected as deregistered. In my view, it was reasonable for the respondent to believe, at the time of issuing summons, that OGC remained deregistered. On that basis, the respondent was entitled to pursue its claim against the applicant in terms of clause 29 of POC1. The respondent's reliance on the deregistration status was not

contrived but founded upon the official search results available to it at the time. The applicant's subsequent reliance on reinstatement does not negate the respondent's bona fide belief nor its entitlement to proceed against him personally under the contractual undertaking.

[53] In any event, clause 29 does not stipulate that the applicant's liability for OGC's debts arises only in the event of the company's non-existence. The clause is framed broadly, imposing liability upon the applicant as both principal surety and guarantor for any sum due under the agreement. I note the applicant's contention that clause 29 does not constitute a valid suretyship agreement as it was not properly reduced to writing in compliance with statutory formalities. That contention is accepted. However, the applicant's silence on the distinct undertaking to act as guarantor for OGC's debts is telling. Even if the suretyship is invalid for want of compliance with formal requirements, the applicant remains bound by his express undertaking as guarantor. The language of clause 29 is clear, and the applicant was fully aware of the personal obligation he assumed. Accordingly, the applicant's liability does not depend solely on the validity of the suretyship. His role as guarantor, expressly recorded in clause 29, provides an independent basis upon which the respondent was entitled to pursue its claim against him.

[54] This conclusion is supported by various emails sent by the applicant from 13 October 2025, wherein he expressed a willingness to enter into a settlement agreement and even indicated his preparedness to sign an acknowledgement of debt. Although in his replying affidavit he belatedly sought to argue that the use

of "I" in these emails referred to OGC rather than to himself in his personal capacity, the contemporaneous correspondence proves otherwise.

[55] The email dated 20 October 2025 is particularly telling. In that communication, the applicant expressly stated: *"I will be able to commit to payment of R100 000 with effect from 1 November 2025 and I would be prepared to sign a supporting Acknowledgement of Debt."* He went further to note: *"Just note. The company is still active and trading. The deregistration was an admin oversight which was rectified."*

[56] This language is unequivocal. The applicant assumed personal responsibility for payment and acknowledged his preparedness to formalise such liability. His attempt to retrospectively attribute these admissions to OGC is unconvincing. The correspondence demonstrates that he was fully aware of his indebtedness and personally undertook to discharge it. Moreover, the applicant has knowingly and purposefully affixed his signature to the agreement, which expressly included the guarantee clause and records obligations undertaken between the applicant and the respondents. The nature of the applicants' obligation under this guarantee is wholly independent of any underlying contract.[15]

[57] Accordingly, even if the suretyship clause is rendered invalid for want of compliance with formalities, the applicant's liability under the guarantee clause

[15] *Joint Venture Aveng (Pty) Ltd / Strabag International GmbH v South African National Roads Agency SOC Ltd* 2021 (2) SA 137 (SCA) para 7.

remains unaffected. His reliance upon the invalidity of the suretyship clause, while legally accurate in isolation, fails to address the distinct and enforceable undertaking embodied in the guarantee. In the result, the applicant cannot evade liability by invoking the invalidity of the suretyship clause while remaining silent on the distinct and binding guarantee.

Is the application for rescission bona fide?

[58] In light of the foregoing, the question arises whether the applicant has demonstrated a bona fide defence to the merits which prima facie carries prospects of success. I am mindful that the applicant is not required at this stage to discharge a full onus or to prove his defence conclusively; it suffices that he sets out averments which, if established at trial, would constitute a defence.

[59] It is my considered view that the applicant's reliance on the alleged absence of a valid suretyship agreement is undermined by clause 29 of POC1, which expressly records his undertaking to stand as principal surety and guarantor. Even if the suretyship is defective for want of compliance with statutory formalities, the applicant remains bound by his express undertaking as guarantor.

[60] Moreover, the applicant's own correspondence, particularly the email of 20 October 2025, demonstrates unequivocal admissions of liability and a willingness to sign an acknowledgement of debt. These admissions are inconsistent with his present denial of personal liability and strongly suggest that his defence is contrived rather than genuine. The cumulative effect of clause 29, the contemporaneous payments, and the applicant's admissions in writing is that

his defence is not bona fide and does not disclose a prima facie prospect of success. On the contrary, it reinforces the respondent's contention that the application has been brought merely to delay payment.

[61] In all the circumstances and having found that the applicant failed to furnish a satisfactory explanation for his default, that he lacks prospects of success in relation to the respondent's claim, and that his application is devoid of bona fides, I conclude that the applicant has not made out a proper case. The application for rescission of judgment accordingly falls to be dismissed.

Costs

[62] As regards the question of costs, it is evident that the applicant brought this application to Court fully aware that he had no bona fide defence to the respondent's claim. His conduct demonstrates a deliberate attempt to delay payment rather than a genuine effort to contest liability. In these circumstances, an ordinary costs order would not suffice to mark the Court's disapproval of such conduct.

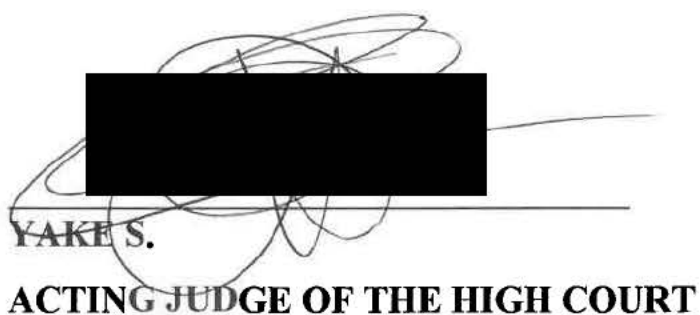
[63] I accordingly consider that the only fitting order is one on a punitive scale. The applicant will therefore be ordered to pay the respondent's costs of this application on the scale of attorney and client. Such an order is justified both to compensate the respondent for the unnecessary expense incurred and to deter litigants from abusing the process of Court by advancing applications devoid of merit.

Order

[64] In the result, the following order is made:

(a) The application for rescission of judgment is dismissed.

(b) The applicant is ordered to pay costs of this application on an attorney and client scale A.



YAKE S.

ACTING JUDGE OF THE HIGH COURT

Appearances

For the Applicant: Adv B. C. Wharton

Instructed by: Rubenstein Attorneys

For the Respondent: Adv G. Quixley

Instructed by: Prinsloo Wright Incorporated