



**IN THE HIGH COURT OF SOUTH AFRICA  
FREE STATE DIVISION, BLOEMFONTEIN**

**Not Reportable**

Case no: 2414/2023

In the matter between:

**UNLIMITED TRAVEL (PTY) LTD  
(Registration number:2022/566940/07)**

**APPLICANT**

and

**DR LILLIAN PHOLOHOLO**

**RESPONDENT**

**Neutral citation:** *Unlimited Travel (Pty) Ltd v Pholoholo* (2414/2023) [2026] ZAFSHC 310 (21 May 2026)

**Coram:** MPAMA AJ

**Heard:** 23 April 2026

**Delivered:** This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The time and date for the hand-down is deemed to be 15h30 on 21 May 2026.

**Summary:** Rescission of default of judgment – rule 31(2)(b) of the Uniform Rules of Court – condonation for late filing – good cause – reasonable explanation – *bona fide* defence – wilful default – dispute of fact – access to court.

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## ORDER

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- 1 The application for condonation for late filing of the application for rescission of judgment is granted.
  - 2 The default judgment dated 08 June 2023 is hereby rescinded.
  - 3 The costs of this application are reserved for later adjudication.
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## JUDGMENT

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### **Mpama AJ**

#### **Introduction**

[1] This is an opposed application for rescission of a default judgment granted in the absence of the applicant on 08 June 2024. The judgment sought to be rescinded is for the payment of R489 000.00 by the applicant. The applicant is Unlimited Travel (Pty) Ltd (Unlimited Travel), a company duly incorporated in terms of the laws of the Republic of South Africa carrying on business at 92 Charles Street, Westdene, Bloemfontein. The respondent is Dr Lilian Pholoholo, a medical doctor practicing as such at Stand 07, Ganyesa Village, North West. The applicant seeks the following relief in this application:

- (a) Condonation of late filing
- (b) Rescission of judgment obtained by the respondent.

#### **Background facts**

[2] Ms Candida Crystal Smith (Ms Smith) is a director of the applicant and another entity, Candys Unlimited Collection (Pty) Ltd (Candys) which has since been liquidated. The respondent alleges that she concluded a verbal agreement which was later reduced into writing with the applicant. At the time of the conclusion of the said agreement, the applicant was represented by Ms Smith. In terms of the said agreement, the respondent advanced and loaned certain sums of monies to the applicant. The applicant has failed to make repayment of the aforesaid loan

amounts. On 16 May 2023, the respondent issued summons against the applicant. The summons was served by affixing the summons to the principal door at the applicant's registered address at 14 Kaptein Proctor Street, Brandwag, Bloemfontein on 22 May 2023. The applicant did not defend the matter and on 08 June 2023 the respondent obtained a default judgment against the applicant.

### **The application**

[3] On 05 February 2026, the applicant launched this application in terms of rule 31(2)(b) of the Uniform Rules of the Court (the rules), alternatively rule 42(1) and in the further alternative, the common law. Ms Smith has deposed to the founding affidavit. She averred that she is the director of the applicant as well as another entity, Candys, which has since been placed in liquidation. She had no knowledge of the summons issued by the respondent against the applicant. She learnt of the default judgment in October 2025 when the sheriff attended at Sapphire Hotel (Sapphire), Westedene, Bloemfontein for the purposes of effecting attachment of the applicant's property.

[4] Upon learning of the judgment, she contacted the applicant's attorney. On 17 October 2025, the applicant's attorney addressed correspondence to the respondent's attorney advising of applicant's intention to approach the court for rescission of judgment and enquiring whether the respondent would consent to the said application. A further letter was dispatched on 29 October 2025 as follow-up. In reply, the respondent's attorney indicated that they were awaiting instructions from their client regarding whether consent to the application would be granted.

[5] On 19 January 2026, the respondent's attorney forwarded a letter to the applicant's attorney advising that he had received instructions from his client to oppose the rescission application. The applicant submits that the delay in launching the application was occasioned by the fact that it awaited the respondent's indication as to whether the application would be opposed or not. Due to this delay, the application was filed out of time. The delay is not excessive, and the respondent will suffer no prejudice if the condonation for late filing is granted.

[6] The applicant has a bonafide defence to the respondent's claim in that it does not owe the respondent as it never concluded a contract with the respondent

but the respondent concluded a contract with Candys which has now been liquidated and that as a director of Candys she represented the said company when the contract was concluded. The applicant was not in wilful default in that the summons never came to its attention since it was served on vacant premises as the sheriff's return of service shows summons was served by affixing to the principal door of the registered address and the premises are 'believably locked and empty'.

[7] The respondent filed her Notice to Oppose and the subsequent answering affidavit. From the outset, the respondent denied any impropriety in the manner of service of the summons. The respondent averred that the applicable rules expressly authorise such manner of service, the summons was duly served by affixing the same to the principal door at the applicant's registered address and the respondent was entitled to the default judgment. The applicant became aware of the judgment in October 2025 and approached its attorney who must have been fully aware of the time limits, therefore there was no reason for the application to be brought out of time. The applicant has failed to explain the delay in bringing the application after 19 January 2026 when it received a response from the respondent's attorney that the application will be opposed.

[8] The respondent further averred that the plaintiff's defence is a fabrication. She alleged that *inter alia*; the contract was concluded with the applicant; not Candys and the applicant is trying to shift liability to Candys which has been liquidated. Candys has never traded as Unlimited Travel but operated exclusively in the fashion industry and never in the travel industry. The nature of Candys operation would not require cash injections; however, the applicant needed the money as it was organising local and international bookings for its clients and did not have enough funds to do so. Even after Candys was liquidated, Ms Smith acknowledged the debt and did not refer to the liquidated company.

[9] The applicant filed a replying affidavit, however, out of time and no condonation was requested for late filing. During oral arguments, the applicant moved for condonation, contending that the replying affidavit ought to be admitted notwithstanding its lateness, is material for the adjudication of the matter and of significance to both parties. It contended that the reason for late filing was attributed to a delay in obtaining some bank statements needed in its reply.

[10] The respondent objected to the admission of the replying affidavit, contended that in the absence of a properly instituted application for condonation, the affidavit falls to be disregarded. The reply was filed two days late. I have considered the nature of the delay and in the interest of justice condonation for the late filing of the replying affidavit is granted.

[11] In its replying affidavit, the applicant disputed the assertion that Candys business activities were confined to the fashion industry and excluded the travel business. In support thereof, the applicant annexed documentary proof extracted from the Government's Central Supplier Database to show that Candys operated as a travel agency, tour operator, reservation service and related activities and that it traded under the style and name; Unlimited Travel. On condonation, the applicant stated that the parties had agreed that the application for rescission would be filed by 30 January 2026 and the application was filed only three days later and it is not correct that the applicant was extremely out of time.

[12] The issue for determination is whether good cause has been shown by the applicant for its condonation for late filing of the application and rescission of the judgment.

[13] The applicant in its written and oral submissions submitted that the application fell squarely within the provisions of rule 31(2)(b). I will, for the purposes of this judgment confine myself to the provisions of the said rule. Rule 31(2)(b) provides that 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 shown, set aside the default judgment on such terms as it deems fit.

[14] With regard to good cause shown the applicant is required to set out facts in its papers to establish that:

(a) There is a reasonable explanation for the default. Wilful default is 'normally fatal but gross negligence may be condoned'. Wilful in this context connotes knowledge of the action and its legal consequences and a conscious decision, freely taken, to refrain from entering an appearance, irrespective of the motivation;

(b) The application is *bona fide* and not made with the mere intention to delay the plaintiff's claim;

(c) The defendant can show that he has a bonafide defence to the plaintiff's claim and that he has a bonafide intention to raise the defence if the application is granted. The court may also take into account the prejudice to the parties. See D R Harms *Civil Procedure in the Superior Courts* Issue 58 (2019) at B-206(2).

[15] The requirements of an application for rescission of judgment were set out in *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills (Cape)* [2003] ZASCA 36; [2003] 2 All SA 113 (SCA); 2003 (6) SA 1 (SCA) para 11, as follows:

'The courts generally expect an applicant to show cause (a) by giving a reasonable explanation of [the] default; (b) by showing that [the] application is made *bona fide*; and (c) showing that [there is] a *bona fide* defence to the plaintiff's claim which *prima facie* has some prospects of success.'

[16] The first issue I must determine is that of condonation for late filing of the application. It is common between the applicant and the respondent that following notification to the applicant that the respondent would not consent to the application, it was agreed that the applicant would file its application by 30 January 2026. The respondent contended that, despite that, upon the applicant's approach to its own attorneys on 17 October 2025, the attorney ought to have been aware that the application was required to be filed within 20 days from the date the applicant became aware of the default judgment. I agree, it is so, however, at that stage, the respective attorneys were engaged in discussions regarding the application. Once it became clear that the respondent was not consenting, the applicant was afforded until 30 January 2026 to file the application. The application was filed three days after the agreed date and the applicant provided reasons for such delay. In my view, the delay has been reasonably explained, and it was not of such duration as to prejudice the respondent. Accordingly, condonation for late filing is granted.

[17] The applicant contended that it did not receive the summons and only became aware of the default judgment upon arrival of the sheriff at its hotel, Sapphire. The sheriff's return of service records that at the time the summons was affixed to the principal door of the applicant's registered office, the premises were locked and unoccupied. I agree with the respondent, this was proper service as

envisaged in rule 4(1)(v). Nevertheless, the applicant's contention that it did not receive the summons and first became aware of the judgment when sheriff attended is neither implausible nor unfounded but remains a reasonable possibility.

[18] In *RGS Properties (Pty) Ltd v Ethekwini Municipality* [2010] ZAKZDHC 27; 2010 (6) SA 572 (KZD) para 12 it was said:

'I may add to this principle that judgment by default is inherently contrary to the provisions of s 34 of the Constitution. The section provides that everyone has a right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a Court or, where appropriate, another independent tribunal or forum. Therefore, in my view, in weighing up facts for rescission, the court must on the one hand balance the need of an individual who is entitled to have access to court, and to have his or her or dispute resolved in a fair public hearing, against those facts which led to the default judgment being granted in the first instance. In its deliberations the court will no doubt be mindful, especially when assessing the requirement of reasonable cause being shown, that while amongst others this requirement incorporates showing the existence of a *bona fide* defence, the court is not seized with the duty to evaluate the merits of such defence. The fact that the court may be in doubt about the prospects of the defence to be advanced is not a good reason why the application should not be granted. That said however, the nature of the advanced defence must not be such that it *prima facie* amounts to nothing more than a delaying tactic on the part of the applicant.'

[19] The applicant contended that no agreement was ever concluded between itself and respondent. However, it is undisputed that the respondent is owed monies as the monies she loaned and advanced were not repaid as agreed and that Ms Smith acted as a representative of the entity which contracted with the respondent. Notwithstanding, the precise identity of the entity that contracted with the respondent remains in dispute. Was it the applicant or the liquidated Candys?

[20] In addition, amongst other issues raised, in rebuttal to the applicant's *bona fide* defence, the respondent asserted that Candys has never conducted business as a travel agent but exclusively operated within the fashion industry. However, the documentary extract from the Government's Central Suppliers database annexed to the applicant's papers demonstrates the contrary position that Candys has, in fact engaged in activities consistent with the operation of a travel agency.

[21] In my view a factual dispute exists which can only be resolved through the leading of oral evidence. All these issues can be ventilated during trial. In these proceedings, it is incumbent upon the applicant to establish *bona fide* defence prima facie only and it is not necessary to deal with the merits of the case or to prove its case. It is sufficient to set out the facts, which if established at the trial, would constitute a defence. It is not the duty of this Court to fully evaluate the merits of the applicant's defence.

[22] For these reasons I am satisfied that the application for condonation for late filing of the application should succeed. The applicant was, amongst other things, not in wilful default, there is a *bona fide* defence and rescission of judgment should succeed.

[23] In the result, the following order is issued:

- 1 The application for condonation for late filing of the application for rescission of judgment is granted.
- 2 The default judgment dated 08 June 2023 is hereby rescinded.
- 3 The costs of this application are reserved for later adjudication.

  
L MPAMA  
ACTING JUDGE OF THE HIGH COURT

**Appearances:**

For the applicant:

Instructed by:

Q J Moletsane

Matlho Attorneys,

Bloemfontein

For the respondent:

Instructed by:

H J Van der Merwe

Symington De Kok Attorneys,

Bloemfontein.