


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: A284/25

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
27 May 2026	
Date	Signature

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

Appellant

and

KAMOGELO LEGARI

Respondent

In re:

KAMOGELO LEGARI

Applicant

And

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

First Respondent

DIVISION HEAD: LABOUR RELATIONS MANAGEMENT

Second Respondent

SENIOR STRATEGIC EXECUTIVE SUPPORT SPECIALIST:

HUMAN RESOURCES	Third Respondent
DIRECTOR: HUMAN CAPITAL PROVISION AND MAINTENANCE	Fourth Respondent
MEMBER OF THE MAYORAL COMMITTEE	Fifth Respondent
ACTING GROUP HEAD: COMMUNITY AND	
SOCIAL DEVELOPMENT	Sixth Respondent
HUMAN RESOURCES DEPARTMENT HEAD	Seventh Respondent

This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties or their legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date for handing down is deemed to be 27 May 2026.

JUDGMENT

CORAM: POTTERILL, BAQWA JJ DE VOS AJ**Introduction**

- [1] The appellant, the City of Tshwane Metropolitan Municipality (“the City”) appeals against the dismissal of a rescission application.
- [2] The dispute concerns the respondent, Mr Kamogelo Legari (“Mr Legari”), an employee of the City of Tshwane, who is dissatisfied with the City’s refusal to pay his salary. Mr Legari brought an urgent application to order the City to pay his salary. This urgent application was successful and resulted in an order by Kooverjie J on 12 July 2022, directing the City to pay Mr Legari his salary for the period 1 April 2022 to 30 June 2022.

- [3] The City launched an application to rescind the Kooverjie J order. The court a quo, per Domingo AJ, dismissed the City's recusal application. It is against this refusal that the City appeals. The appeal is with the leave of Domingo AJ.

Nature of the dispute

- [4] Mr. Legari, whilst employed by the City, garnered sufficient votes to be elected to the Rustenburg Local Municipal Council. Mr. Legari commenced in his post with the Rustenburg Local Municipal Council in December 2021.
- [5] On 24 January 2022, Mr Legari wrote to the Third Respondent, the Senior Strategic Executive Support Specialist Human Resources ("HR Specialist"). From the HR Specialist's response, it is apparent that Mr. Legari wanted to ensure his employment with the City and election to the Rustenburg Council complied with the City's regulatory provisions.
- [6] The HR Specialist informed Mr. Legari that his services with Rustenburg Local Municipality did not contravene any policy, procedure, and/or regulation of the City, and was accordingly permissible. The reason given in the letter is that whilst some regulations prohibit holding dual posts, that prohibition does not apply if the posts are in different municipalities. From the letter, it is clear that the interpretation of the regulations is contentious, but that Mr. Legari is cleared to hold the two posts, provided they are in different municipalities.
- [7] On 6 March 2022, Mr. Legari did not receive his salary. He raised a query with the Fourth Respondent, the Director: Human Capital Provision and Maintenance ("Director"). The Director informed Mr. Legari that his salary was blocked because he was receiving additional income from the Rustenburg Local Municipality.
- [8] The Director informed Mr. Legari that his salary would only become unblocked on instruction of the Sixth Respondent, who was Mr. Legari's direct supervisor. The Director further told Mr. Legari that a "small boy" like him would not receive the salary.

- [9] After further correspondence, on 30 March 2022, the Sixth Respondent, the Acting Group Head: Community and Social Development, Tshwane, informed the Director that Mr Legari had resigned from his post with the Rustenburg Local Municipality. The Sixth Respondent specifically requested the Director to reactivate Mr. Legari's salary.
- [10] Despite the advice from the HR Specialist, Mr Legari's resignation from the Rustenburg Municipality, and a request from the Sixth Respondent, the Director did not release the funds.
- [11] At this stage, Mr. Legari explains, he had been without a salary for some time. To pay for his commute to work, he had to use his savings. But these savings were depleted and he was about to default on his bond payments, car instalments and life insurance. Mr. Legari was also the sole breadwinner of three minor children, aged seven, three, and the last one three months old.
- [12] Mr. Legari approached the urgent court seeking three months' salary. The urgent application came before Kooverjie J, who granted the three months' salary. The order of the Court is dated 22 July 2022 and was granted in the absence of the City. It is this order which the City sought to rescind.

Judgment of the court a quo

- [13] Domingo AJ held that none of the requirements for rescission, either under Rule 42(1)(a) or the common law, was met.
- [14] The Court held that the City had failed to show the order was granted in its absence for purposes of rule 42(1)(a). In reaching this conclusion, the Court relied on the judgment in *Zuma*¹ that "absence" in Rule 42(1)(a) "exist[s] to protect litigants whose presence was precluded, not those whose absence was elected" and "a decision by a party not to participate in proceedings where they have received notices of those

¹ *Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture and Fraud in the Public Sector Including Organs of State and Others* (CCT 52/21) [2021] ZACC 28; 2021 (11) BCLR 1263 (CC) (17 September 2021) at para 53

proceedings and being given the opportunity to do so does not qualify as that party having been absent for the purposes of Rule 42(1)(a).”

- [15] The Court held² that the City was correctly invited to participate in the proceedings according to the rules of court; entered a notice of intention to defend; addressed correspondence to Mr Legari in which the City communicated their representatives’ appointment as attorneys of record, and also attached a notice of intention to oppose in the same correspondence.
- [16] In light of these common cause facts, the Court concluded that: “the order was not granted in the absence of the applicant. The applicant thus fails to meet the second jurisdictional requirement of Rule 42(1)(a).” The Court held that the City’s failure to explain its absence was fatal for both its Rule 42(1)(a) and common law rescission grounds.
- [17] For the City to be successful on appeal, it needs to disturb Domingo AJ’s findings regarding its absence.

The City’s absence

- [18] The facts surrounding the City’s absence is common cause between the parties. The City, on appeal, does not take issue with any of the factual findings forming the basis of Domingo AJ’s finding on the City’s absence.
- [19] The facts, as found by Domingo AJ, are that the City received notice of the hearing on 22 July 2022. The set-down date was contained in the notice of motion that the City received. The City filed a notice of intention to oppose. The City had legal representation. The City engaged Mr Legari in correspondence regarding the hearing. The City’s representatives were aware of the hearing date.

Reasons for the absence

² Judgment a quo para 30

[20] The Court considered the events of the day of the hearing. Specifically, that the City had legal representation on the day of the hearing; the legal representatives were informed that the matter was on the roll, they knew the matter was on the roll, and they nonetheless failed to appear.³ The City alleged it believed the matter was online before Bam J and realised too late to travel to Pretoria that it was before Kooverjie J in person. The Court held that, in relation to this explanation that -

“It is also alarming to me that, after discovering the matter had been moved to Judge Kooverjie, the applicant’s legal representatives did not attempt to remedy the situation but simply resigned themselves to the belief that they could not make it to court on such short notice, despite knowing the legal consequences of not appearing.

In the premises, I am not convinced the applicant has provided a reasonable and satisfactory explanation for their default or absence.”⁴

[21] On appeal, the City did not seek to disturb the factual findings on which the Court made this finding. Rather, it reiterated its position. Specifically, that it had prepared for an online hearing before Bam J, but learned too late that the matter was to be heard in person before Kooverje J. By the time it realised the hearing was in person, it was too late to attend, as its representatives were in Melville.

[22] This Court also considers explanation, which is essentially that the City’s representatives erred in failing to find the correct roll. There is no allegation that the roll before Kooverje J was not publicly available. There is no allegation of an error on the roll. The City does not state that their matter was on the roll before Bam J. The explanation is that the City assumed the matter was before Bam J when it was in fact of Kooverje J’s roll. The City’s representatives did not explain why they made this error.

[23] The City explanation is lacking in further material respects. The City does not explain when it found out that its assumption that the matter was to be heard by Bam J was incorrect. This is important. If the City found out about its error before judgment was

³ Judgment a quo para 33

⁴ Judgment a quo para 34

handed down, it does not explain what steps it took to prevent the judgment from being handed down. If the City found out after the judgment had been handed down, it doesn't explain why it did not approach Kooverje J in chambers and explain the situation to have the matter recalled. The City also does not explain why it did not immediately use the special remedy in Rule 6(12)(c) to reconsider the order.

- [24] The City has not given a reasonable and satisfactory explanation. The explanation is lacking vital details, does not take the Court into its confidence, and does not give the Court a sense of how the order was granted in the City's absence.
- [25] Lastly, even if this Court were to accept the City's explanation at face value and ignore the missing elements, it is an explanation of negligence. Stated differently, to the extent there is an explanation before the Court, whilst lacking fullness, it is one of gross negligence.
- [26] In *Chetty*⁵ the Court held as follows: "broadly speaking, the exercise of a court's discretion [is] influenced by considerations of fairness and justice, having regard to all the facts and circumstances of the particular case". One of the most important factors to be taken into account in the exercise of discretion, so the Court in *Chetty*⁶ found, was whether the applicant has demonstrated "a determined effort to lay his case before the court and not an intention to abandon it" for "if it appears that [an applicant's] default was wilful or due to gross negligence, the court should not come to his assistance".
- [27] In short, in cases of gross negligence, the Court should not come to the assistance of someone seeking to rescind an order.
- [28] The City's explanation shows that it was aware of the hearing and the likelihood of the order being granted or that it had been granted, did not take the necessary steps to

⁵ *Chetty v Law Society, Transvaal* 1985 (2) SA 756 (A) at 764J-765D at 761D

⁶ at 760H and 761E

prevent it, and did not make use of the special purpose remedy in rule 6(12)(c) to correct it after it had been granted.

- [29] The City's absence was not due to a procedural error that prevented them from receiving notice. The City did get the notice but failed due to its own negligence in finding its matter on the roll and attending Court. The absence of the City is not the type of absence that permits the Court to grant a rescission.
- [30] The City's failure to appear at the hearing, despite notice, has two consequences for its grounds of rescission. The first is that it fails to establish the order was erroneously granted in its absence for purposes of Rule 42(1)(a), the second is that it fails to establish good cause under the common law in that it has failed to explain its default adequately.
- [31] The City appeals against the conclusion reached by the Court without seeking to disturb the factual finding on which it is based. Rather, the City submits that the authority of *Zuma* is factually distinguishable. The City submits that *Zuma* concerns a litigant who elects not to attend. Whilst the facts of this case are that the City did not elect to attend, but merely failed to attend. Specifically, the submission on appeal is that the City "made an effort to appear on the day". On this basis, the City contends the Court a quo erred in finding the order was granted in the absence of the City.
- [32] The City misconstrues the finding in *Zuma*. In *Zuma*, the Court concluded that a party who is properly informed and fails to attend has, despite receiving notice, elected not to attend the hearing and is not absent for purposes of Rule 42(1)(a). It does not matter whether the litigant believes it elected or not – the question is whether, after proper notice, a party failed to attend a hearing. The distinction which the City seeks to draw on the *Zuma* judgment is rejected.
- [33] The finding of the Court that the City has failed to explain its absence and so failed to meet the jurisdictional requirements for a rescission under rule 42(1)(a) and the common law is upheld.

[34] The City is under a duty to give a “reasonable and satisfactory explanation”⁷ for its default.⁸ Recently, the Constitutional Court in *Zuma* concluded that as Mr Zuma had failed to provide a plausible or acceptable explanation for his default, 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”.⁹

[35] In the absence of a reasonable explanation for default, it is unnecessary to make findings or to consider the arguments relating to the appellant’s prospects of success.¹⁰

[36] Having found the City was in wilful default and the absence of good cause, the requirements for a rescission have not been met, and the appeal is dismissed.

Costs

[37] The Court sees no reason why costs should not follow the results. The City has belatedly launched an unsuccessful rescission application.

[38] The matter is not complex, nor is it voluminous. There is no basis to grant relief on any basis other than Scale A.

Order

[39] The Court grants an order:

1. The appeal is dismissed.
2. The appellant is ordered to pay the costs of the appeal. Counsel’s costs on Scale A.

⁷ *Grant v Plumbers* 1949 (2) SA 470 (O) p476–7

⁸ *Government of the Republic of Zimbabwe v Fick* [2013] ZACC 22; 2013 (5) SA 325 (CC); 2013 (10) BCLR 1103 (CC) (Fick) at para 85

⁹ *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* (CCT 52/21) [2021] ZACC 28; 2021 (11) BCLR 1263 (CC) (17 September 2021) 768B-C

¹⁰ 768C

[Redacted signature]

I de Vos
Acting Judge of the High Court

I agree

[Redacted signature]

S Potterill
Judge of the High Court

I agree

[Redacted signature]

S.A.M. Baqwa
Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be e-mailed to the parties/their legal representatives.

Counsel for applicants: PP Baloyi
Instructed by: Leepile Attorneys Inc

Counsel for respondent: M Sithole
Instructed by: Gordrich Gardee Attorneys

Date of hearing: 22 January 2026

Date of judgment: 27 May 2026