REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 2024 - 044391

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

22 June 2026

DATE

[redacted]

MOKOSE SNI

In the matter between:

THE MINISTER OF HOME AFFAIRS — First Applicant

THE DIRECTOR-GENERAL: HOME AFFAIRS — Second Applicant

and

SAKHAROV, MIKHAIL — Respondent

JUDGMENT

MOKOSE J

Introduction

[1] Two opposed applications are before this court – the main application for rescission of the Court Order granted on 9 September 2024 and a counter application for contempt of the Court Order.

Brief Facts

[2] It is common cause that on or about 9 December 2013 the respondent was granted a permanent residence permit to reside in South Africa. It is also common cause that he was married to a South African citizen for a period in excess of 5 years. On 13 November 2023 the respondent attended at the offices of the Department of Home Affairs to confirm the requirements for an application for citizenship. The attendant official stated that only an application for verification of his permanent residence permit could be submitted. On 6 June 2024, the respondent's junior counsel, Ms Granova, was called by an official from the same department requesting a clearer copy of the permanent residence certificate, which was duly furnished. It is common cause that the respondent's application for citizenship was refused and that only an application for verification of the permanent residence permit could be submitted.

[3] On or about 23 April 2024, an application to this court was sought for the review of the decision of the department in its refusal of the respondent's application for citizenship by naturalisation. The matter was set down and hear on the unopposed motion roll of 9 September 2024. On order was granted by the Court on the following terms:

> *"1. The failure and/or refusal by the first and/or second respondent(s) to allow submission of and/or accept an application to have the applicant's birth registered in terms of the provisions of the Births and deaths Registration Act 51 of 1992 is reviewed and set aside;*
>
> *2. The applicant is declared a citizen of the Republic of South Africa by naturalisation in terms of the Citizenship Act 88 of 1995, as amended;*
>
> *3. The first and/or second respondent(s) are ordered to take all necessary steps within 30 (thirty) days of the date of this Order, to:*
>
> *3.1 Register the applicant's birth in terms of Section 13 of the Births and Deaths Registration Act, as amended;*

3.2 Issue the applicant with written recognition of his citizenship of the Republic of South Africa by naturalization as contemplated in Section 5 of the Citizenship Act 88 of 1995, as amended; and

3.3 Issue the applicant with an identity document as contemplated in the Identification Act 68 of 1997, as amended;

4. Should the first and/or second respondent(s) fail to timeously comply with paragraph 3 above, the applicant is granted leave to approach this Honourable Court for an order for contempt and committal of the said respondents to goal on the same papers, supplemented and/or amended where necessary.

5. The respondents be ordered to pay the costs of this application jointly and several, the one paying, the other to be absolved, on Scale B party and party costs."

Issues in dispute

[4] The rescission application is opposed by the respondents. So too is the application for contempt being opposed by the applicants. I will commence with the main application being that of the rescission.

[5] The first issue in dispute to be determined by this court is whether the applicants have made out a case for condonation for the later application for the rescission of the judgment. Then the court will have to determine whether the applicants have an acceptable explanation for their default to oppose the review application. Thirdly, the court must determine whether the applicants have a *bona fide* defence to the respondent's application for review and whether they were in wilful default in respect of the compliance with the order of 9 September 2024. The final issue is that of contempt of the order – that will be dealt with after the main application of rescission.

Condonation

[6] In the Notice of Motion the applicants seek an order that the late application for the rescission of the default judgment be condoned, it having been sought over eleven months after it came to their attention. The reason for the delay is stated as *"being the gathering of information required thorough*

tracking of the history of the matter as well as past communication between the parties for the purpose of making up a case on condonation..."

[7] The legal test for condonation applications is well established. Holmes JA in the matter of *Melane v Santam Insurance Company Limited*[1] held as follows:

".....the basic principle is that the Court has a discretion, to be exercised judicially upon a consideration of all the facts, and in essence it is a matter of fairness to both sides. Among the facts usually relevant are the degree of lateness, the explanation therefore, the prospects of success and the importance of the case. Ordinarily, these facts are interrelated; they are not individually decisive, save of course that if there are no prospects of success there would be no point in granting condonation. Any attempt to formulate a rule of thumb would only serve to harden the arteries of what should be a flexible discretion. What is needed is an objective conspectus of all the facts. Thus a slight delay and a good explanation may help to compensate prospects which are not strong. Or the importance of the issue and strong prospects of success may tend to compensate for a long delay. And the respondent's interests in finality must not be overlooked."

[8] A condonation application is an application in which the court's indulgence is sought. Accordingly, the deponent of the founding affidavit ought to take the court into its confidence and provide a full explanation for the circumstances of the delay. The ultimate consideration when all other factors have been considered is whether refusing or granting the condonation would serve the interests of justice.[2]

[9] I am of the view that the applicants have failed to take this Court into their confidence. They have failed to explain fully the reason why it took over 11 months to launch this application. The deponent has merely informed the court of the meetings which took place to obtain instructions to proceed with the rescission application and that consultations with counsel took place. The applicants' application for condonation stands to be dismissed for this reason.

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[1] 1962 (4) SA 531 (A)

[2] Mankanyi v AngloGold Ashanti Limited 2011 (5) BCLR 452 (CC) at para 8

Rescission Application

[10] In order for an applicant to be successful in its application for rescission of judgment based on rule 31(2)(b) of the Uniform Rules of Court, the applicant is required to show *"good cause"* for the rescission by:

(i) giving a reasonable explanation for its default in failing to attend to the filing of a notice of intention to defend;

(ii) showing that he is *bona fide* in bringing the application and not made with the intention of delaying the plaintiff's claim; and

(iii) showing that he has a *bona fide* defence to the respondent's claim which *prima facie* has some prospect of success.

[11] Regarding the last-mentioned requirement, it is trite law that an applicant for rescission of judgment is not required to illustrate a probability of success but rather the existence of an issue fit for trial.[3]

[12] In the founding affidavit, the applicants contend that the respondent set the matter down on the unopposed motion roll without properly serving the application for review on the applicants in accordance with the provisions of Section 2(2)(a) of the State Liability Act 20 of 1957. Furthermore, the applicants contend that this same application was not served on the office of the State Attorney in accordance with Section 2(2)(b) of the State Liability Act of 1957. It was however conceded that the order of 9 September 2024 was served on the offices of both the State Attorney and the applicants on 16th and 20th September 2024 respectively.

[13] From the documents on hand, it is evident that the review application was served on the State Attorney on 2 May 2024. Furthermore, on 3 May and 9 May 2024 the review application and notice of set down were serve on the first and second applicants respectively. I am satisfied that proper service of the application had been effected on the applicants and the matter properly enrolled. The applicants have failed to provide an acceptable explanation why they did not oppose the application

[3] Sanderson Technitool (Pty) Ltd v Intermenua (Pty) Ltd 1980 (4) SA 573 (W) at 575H to 576A

whilst they were aware of the date of the hearing of the matter. Accordingly, the court is unable to come to the applicants' assistance in this regard.

[14] The second requirement is that of a *bona fide* defence. The applicants contend that the respondent had failed to comply with the requirements of obtaining citizenship. In particular, the applicants contend that the respondent had been informed that he was obliged to comply with the department's Standard Operating Procedures and have his permanent residence permit verified.

[15] The respondent contends that he qualifies for citizenship under Sections 5(1) and 5(2 of the Citizenship Act as he had been in possession of this permanent residence permit for a period of more than 5 years and that he had been married to a South African citizen during that time.

[16] The Supreme Court of Appeal in the matter of *Minister of Home Affairs v Jose and Another*[4] held that if the requirements of the Citizenship Act are complied with, the applicants have no discretion whether to grant it or not. They must just issue it.

[17] The applicants' defence of non-compliance with the department's Standard Operating Procedures has no merit. Accordingly, I am of the view that this is not a *bona fide* defence as neither the Citizenship Act nor its regulations require the respondent to firstly apply for and obtain verification of his permanent residence permit and to submit it as part of the application for his citizenship application. The application stands to be dismissed on this ground too.

Application for contempt

[18] The respondent brings a counterapplication against the applicants in the rescission application. The respondent contends that since the applicant learnt of the order on or about 20 September 2024 and have not complied with such order, the only conclusion to be drawn is that they are in contempt of the order of 9 September 2024 and that such non-compliance is both deliberate

[4] 2021 (6) SA 369 (SCA) at para 21-24

and *mala fide*. The respondent also seeks an order that the respondents be committed to goal for a period of 90 days.

[19] All citizens and residents of the Republic of South Africa have a duty to respect and abide by the laws of the country. In the matter of *Secretary of the Judicial Service Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others*[5] it was held that *'courts unlike other arms of State.....rely solely on the trust and confidence of the people to carry out their constitutionally mandated function which is to uphold, protect and apply the law without fear or favour. Disregard of court orders is an attack on the very fabric of the rule of law.'*

[20] The requirements for contempt of court are trite. They are the existence of a court order; the contemnor must have knowledge of the court order; there must be non-compliance with the court order; and the non-compliance must have been wilful and *mala fides*. Once the first three elements have been shown, wilfulness and *mala fides* will be presumed, and the evidentiary burden shifts to the contemnor. Should the contemnor (the applicant in this matter) fail to discharge this burden, contempt would have been established.

[21] The parties are *ad idem* that the order was indeed granted by this Court. The applicant admits knowledge of the court order and that there was non-compliance of such order for the reason that they believed that the judgment was not enforceable against the department as the respondent had not made a proper application for naturalisation.

[22] In view of the admissions in the founding affidavit of knowledge of the order and that it was wilfully not complied with and that there was *mala fides* on the part of the first and second applicants, I have no reason not to grant the order as sought by the respondent in the counterapplication.

[23] Accordingly, the following order is granted:

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[5] 2021 (5) SA 327 (CC) at para 1

1. The application for the rescission of the Order dated 9 September 2024 is dismissed;

2. The first and second applicant are found to be in contempt of the order issued by Mahomed AJ on 9 September 2024 under case number 2024 – 044391 and are committed to goal for a period of 90 in the event that the order is not complied with within a period of 15 days of receipt of this order;

3. The first and second applicants are ordered to pay the costs of the rescission application as well as the counterapplication for contempt on a scale as between attorney and client including the costs of two counsel, jointly and severally, the one paying the other to be absolved.

SNI MOKOSE J

Judge of the High Court of
South Africa Gauteng
Division, PRETORIA

For the Applicants: Adv K Mondlane

On instructions of: The State Attorney

For the Respondent: Adv CFJ Brand SC

Adv A Granova

On instructions of: Van Greunen and Associates Inc

Date of hearing: 16 March 2026

Date of judgment: 22 June 2026