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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case Number: A2024-141041
Court *a quo* Case Number: 14/3/2-518/2021

(1)	REPORTABLE: NO		
(2)	OF INTEREST TO OTHER JUDGES: NO		
(3)	REVISED: YES		
<table style="width: 100%;"><tr><td style="width: 30%;">4 May 2026 DATE</td><td style="border-top: 1px solid black; text-align: center; width: 70%;">SIGNATURE</td></tr></table>		4 May 2026 DATE	SIGNATURE
4 May 2026 DATE	SIGNATURE		

In the matter between:

P[...] **G[...]**

Appellant

and

T[...] **G[...]**

Respondent

In re:

P[...] **G[...]**

Applicant

and

T[...] **G[...]**

Respondent

JUDGMENT

CRUTCHFIELD J with whom MOTHJA J concurs:

- [1] The appellant, P[...] G[...], appeals against the judgment of the magistrates' courts for the district of Johannesburg North, Randburg, delivered on 26 September 2024, particularly paragraphs 25 and 26 of the judgment.
- [2] The respondent, T[...] G[...], does not oppose the appeal and did not appear at the hearing.
- [3] The factual background, briefly stated, is that the respondent procured an emoluments attachment order against the appellant in terms of section 28(1) of the Maintenance Act, 99 of 1998 ("the Act") on 17 April 2024 ("the attachment order"), without service of the application for the attachment order upon the appellant.
- [4] Thereafter, the appellant brought an application in terms of s28(2) of the Act for the rescission of the attachment order ("the rescission application").
- [5] Section 28(2) of the Act provides as follows:
- "28 (2) (a) An order under this section may at any time, on good cause shown, be suspended, amended or rescinded by the Maintenance Court.
- (b) Any person who wishes to make an application for the suspension, attachment or rescission of an order under this section shall give notice in the prescribed manner of his/her intention to make the application to the person in whose favour that order was made, which notice shall be served at least 14 days before the day on which the application is to be heard.
- (c) The Maintenance Court may call upon –
- (i) The person who has made the application to adduce such evidence, either in writing or orally, in support of his/her application as the Maintenance Court may consider necessary; or
- (ii) The person in whose favour an order under this section was made to adduce such evidence, either in writing or orally, in rebuttal of the application as the Maintenance Court may consider necessary."
- [6] The appellant's rescission application came before the court *a quo* on 6 September 2024. The respondent opposed the rescission application and both parties were represented at that hearing. The appellant sought the

immediate suspension of the order pending the outcome of the application for rescission of the order.

- [7] The court *a quo* dismissed the rescission application and directed the appellant to approach the correct forum. The appellant appeals against the dismissal of the rescission application.
- [8] The court *a quo* reasoned in paragraph 25 of the judgment, that the appellant wanted the court *a quo* dealing with the rescission application in terms of s28(2) of the Act, “to usurp the review and appeal powers of the Superior Courts. I cannot sit as a review judge in a decision of my predecessor who was a person of equal rank”.
- [9] Accordingly, the court *a quo* considered that the rescission application in terms of s28(2) of the Act was akin to a review application or an appeal of the attachment order granted by the maintenance court. This because a single magistrate would be sitting in review of an order granted by a court of equal status, thereby usurping the review powers of the superior courts.
- [10] The court *a quo*’s reasoning was notwithstanding the clear wording of s28(2) of the Act, which provides that an order in terms of the section may be suspended, amended or rescinded by a maintenance court.
- [11] Section 2 of the Act provides that every magistrates’ court shall within its area of jurisdiction be a maintenance court for the purposes of the Act. Thus, the court *a quo* sat as a maintenance court in terms of s28(2) when it dealt with the rescission application.
- [12] The interpretation of a statute, similar to a written contract, requires the simultaneous application of the triad of text, purpose and context.¹ The starting point is the text and the syntax of the language used in the statute, given that it is through the text that the legislature expresses itself in terms of the relevant provision of the statute.
- [13] Section 28(2) provides specifically that a maintenance court may deal with an application for the rescission of an emoluments attachment order.

¹ *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) (“*Endumeni*”).

- [14] A rescission application by its nature is not an application for the review of the order in respect of which the rescission is sought. Nor does a rescission application function as an appeal of the order in respect of which the application is brought. The purpose of a rescission application, brought upon good cause shown, is to rescind the order against which the rescission application is brought. It is not intended to be an appeal of the previous order and nor is it intended to be a review of the procedure in respect of the order. The nature of a rescission application, the purpose thereof and the test applied in order to procure a rescission, are markedly at variance to an appeal or a review.
- [15] The fact that a maintenance court, sitting in terms of s28(2) of the Act, is called upon to consider the question of good cause in respect of an order granted in terms of s 28(1) of the Act, by a magistrate of equal superiority or standing as the court dealing with the application in terms of s28(2), is of no significance in the light of the wording of the Act.
- [16] A maintenance court is a specialist court and it is apparent that the intention of the legislature, expressed in terms of the Act, was to have maintenance type matters dealt with by such a specialist court that provides expeditious and easy access to litigants.
- [17] In the circumstances, in the face of the clear wording of s28(2) of the Act, the court *a quo* erred in considering that it was being asked to sit as a court of review or on appeal in respect of the attachment order, in circumstances when it was being called upon to exercise its jurisdiction and function in terms of s28(2) of the Act.
- [18] Accordingly, the appeal must succeed to the extent that the order articulated in paragraph 26 of the judgment of the court *a quo* is set aside.
- [19] The court *a quo* did not consider the merits of the rescission application, more particularly the existence or otherwise of good cause required in terms of s28(2). In those circumstances, it is not for me to deal with the substantive merits of the appellant's rescission application and that application, in terms of

s19(c) of the Superior Courts Act 10 of 2013, stands to be referred back to the maintenance court for determination in terms of s28(2) of the Act.

[20] As to the costs of the appeal, the respondent did not oppose the appeal and should not be burdened with the costs of the appeal pursuant to the error of the court *a quo*. In the circumstances, the costs of the appeal on scale A will be costs in the cause of the rescission application to be determined by the maintenance court in terms of s 28(2) of the Act.

[21] By reason of the aforementioned, I grant the following order:

1. The appeal is upheld.
2. The order in terms of paragraph 26 of the judgment of the court *a quo* delivered on 26 September 2024, is set aside.
3. In terms of s19(c) of the Superior Courts Act 10 of 2013, the appellant's rescission application is referred back to the Randburg Maintenance Court for determination in terms of s 28(2) of the Maintenance Act.
4. The costs of the appeal on scale A are costs in the cause of the appellant's rescission application.

I hand down the judgment.

CRUTCHFIELD J
JUDGE OF THE HIGH COURT
JOHANNESBURG

For the Appellant:

Adv K Blair instructed by Reon Marais
Attorneys.

For the Respondent:

No appearance.

Date of the hearing:

22 April 2026.

Date of the judgment:

4 May 2026.