IN THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION, MBOMBELA MAIN SEAT

Case Number: 1807/2019

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

28.07.2026 [redacted]

In the matter between:

JOHANN MOLLER NO. in his capacity as trustee of the Moller Family Trust	1st Applicant
JOHANN MOLLER NO. in his capacity as trustee of the Lowhills Family Trust	2nd Applicant
JOHANN MOLLER NO. in his capacity as the beneficiary of the Moller Family Trust	3rd Applicant
JOHANN MOLLER NO. in his capacity as the beneficiary of the Lowhills Family Trust	4th Applicant
JOHANN MOLLER NO. in his capacity as a representative of the Moller Family Trust	5th Applicant

JOHANN MOLLER NO. in his capacity as a representative of the Lowhills Family Trust 6th Applicant

And

First Bank Ltd t/a First National Bank 1st Respondent

Master of the High Court of South Africa

Mpumalanga Division 2nd Respondent

The Registrar of Deeds Mbombela 3rd Respondent

The Sheriff of the High Court of South Africa

Mpumalanga Division 4th Respondent

Shofeeds (Pty) Ltd 5th Respondent

Sechaba Trust (Pty) Ltd 6th Respondent

Master of the High Court of South Africa

Gauteng Division 7th Respondent

JUDGMENT

KEKANA AJ

INTRODUCTION

[1] This is an application for rescission of judgment in which the Moller Family Trust and Lowhills Family Trust seek on order rescinding the judgment granted by Roelofse AJ on the 20th February 2020. The application is brought in terms of rule 42(1)(a), 42(1)(b) and 42(1)(c) alternatively in terms of common law. The application is opposed by the first and fifth respondent.

BACKGROUND

[2] FirstRand Bank Limited advanced funds to JSW Moller (Pty) Ltd ("JSW") in terms of a facility agreement and various loan agreements concluded between FirstRand and JSW.

[3] On 22 September 2017, Pieriesfontein (Pty) Ltd ("Pieriesfontein"), represented by Mr Moller, executed a deed of suretyship in favour of FirstRand Bank Limited ("FirstRand"), in terms of which Pieriesfontein bound itself as surety and co-principal debtor, jointly and severally with JSW Moller (Pty) Ltd ("JSW"), for the due fulfilment of JSW's obligations to FirstRand. The suretyship was limited to an amount of R7.2 million, together with interest and all ancillary charges.

[4] As further security for JSW's indebtedness, Pieriesfontein registered Mortgage Bond No. B5377/2017 in favour of FirstRand on 30 November 2017 over Portion 6 (a portion of Portion 2) of the Farm Lowhills ("Portion 6 of Farm Lowhills"), a property owned by Pieriesfontein.

[5] Following JSW's default under the loan agreements, FirstRand instituted liquidation proceedings against both JSW under case number 1807/2020 and Pieriesfontein under case number 1808/2019. The application was heard on 20 February 2020, at which hearing Mr Moller appeared on behalf of both JSW and Pieriesfontein. The Court granted a final winding-up orders against both JSW and Pieriesfontein.

[6] On 29 June 2020, Pieriesfontein applied for leave to appeal the final winding-up order together with an application for condonation for the late filing thereof. The application for condonation was dismissed. Thereafter, Pieriesfontein and Mr Moller, cited as the second applicant, petitioned the Supreme Court of Appeal for leave to appeal, again accompanied by an application for condonation. On 2 March 2021, the Supreme Court of Appeal granted condonation but dismissed the petition for leave to appeal citing lack of reasonable prospects of success. As a result, the final winding-up order remained in force.

[7] On 29 June 2021, the Moller Family Trust, represented by Mr Moller, launched an application challenging the winding up order under case number 2308/21. The Lowhills Family Trust, represented by Mr Moller was cited as the seventh respondent therein. In that application, the Moller Family Trust sought orders declaring the deed of suretyship executed by Pieriesfontein void on the basis that it contravened section 45 of the Companies Act 71 of 2008, and ‘setting aside the final winding-up order granted against Pieriesfontein in terms of section

354 of the Companies Act 61 of 1973', alternatively rescinding the winding-up order. Specifically, the Moller Family Trust argued that the winding-up order ought to be set aside for lack of authorisation by the shareholders of Pieriesfontein to the surety agreement.

[8] Before that application could be determined, the Moller Family Trust, represented inter alia by Mr Moller, launched an urgent application on 7 July 2021 seeking to interdict the sale of Portions 6 and 8 of the Farm Lowhills pending the final determination of the application under case number 2308/21. The urgent application was argued and dismissed on 26 July 2021. Subsequent thereto the application for the setting aside of the winding-up order was dismissed in October 2022.

[9] Following the dismissal of the urgent application, the liquidators proceeded with the realisation of the assets of the insolvent estate and scheduled the sale of Portions 6 and 8 of the Farm Lowhills by public auction. The fifth respondent purchased both properties at the auction, and transfer was thereafter duly effected into its name.

[10] The winding-up of Pieriesfontein has since been completed. The liquidators finalised the administration of the insolvent estate and paid the final dividends to creditors. On 3 May 2024, the Master of the High Court issued a certificate confirming the completion of the liquidation and distribution of the estate.

CONDONATION

[11] The applicants seek condonation for the late filing of this application.

Legal Framework

[12] The court determining a condonation application exercises a discretion after considering all the relevant factors, including the degree of lateness, the explanation for the delay, the prospects of success and the importance of the case. These factors are interrelated and must be weighed together. A weak explanation may be compensated by strong prospects of success, and vice versa, although there are limits. See Melane v Santam Insurance Co. Ltd 1962 (4) SA 531 (A) at 532 B-E

[13] In Wyk v Unitas Hospital and Another (CCT 12/07) [2007] ZACC 24 the Constitutional Court held as follows: '[20] This Court has held that the standard for considering an application for condonation is the interests of justice. Whether it is in the interests of justice to grant condonation depends on the facts and circumstances of each case. Factors that are relevant to this enquiry include but are not limited to the nature of the relief sought, the extent and cause of the delay, the effect of the delay on the administration of justice and other litigants, the reasonableness of the explanation for the delay, the importance of the issue to be raised in the intended appeal and the prospects of success.'

[14] In Notyawa v Makana Municipality and Others (CCT 115/18) [2019] ZACC 43 the Constitutional Court held that the court has a discretion to overlook a delay and the discretion must be exercised with reference to the facts of its case.

Submissions by the parties

[15] Mr Van Rensburg's arguments on behalf of the applicants were principally founded on the contention that the liquidation order was erroneously granted because the wrong parties were before the Court when the order was made. It was further argued that the two trusts ought to have been joined to the liquidation proceedings on the basis that they were the shareholders of Pieriesfontein. The applicants also contended that the two trusts were the rightful owners of the relevant properties and that their absence from the proceedings rendered the liquidation order susceptible to rescission.

[16] A further submission was that the sale of Portion 8 was fraudulent because that property had allegedly never been offered as security. The remainder of the applicants' submissions related to the conduct of various parties following the granting of the liquidation order, including the actions of the liquidators and the attorneys involved thereafter. Those allegations concern events that occurred subsequent to the granting of the liquidation order and therefore have no bearing on the issues for determination in the present rescission application.

[17] Counsel for the first respondent argued that the application ought to be dismissed for amongst others, a rescission of judgment was brought and adjudicated on the same reasons. Counsel for the 5^{th} Respondent argued that the applicants' contention that the trust were the lawful owners of portion 6 and 8 is not true. Further argued that in so far as this position taken

by the applicants on the advice of their counsel Advocate Van Rensburg SC, he ought to be held personally liable for the costs. Counsel for the first respondent also supported this contention.

Discussion

The degree of lateness

[18] The applicant was required to have brought the application within a reasonable time. The application is brought approximately 5 years after the order was granted.

The applicants' explanation for the delay

[19] The applicants seek rescission of a winding-up order granted approximately five years ago. In explanation for this extraordinary delay, they recount the history of the litigation following the granting of the winding-up order and the subsequent application for leave to appeal.

[20] Mr Moller contends that it was only after conducting investigations that the lawful owners of the farm were established. According to him, this discovery explains why the present application has been instituted by the trustees, beneficiaries and alleged shareholders of the trusts. This explanation is wholly unpersuasive.

[21] In the earlier application under case number 2308/21, in which the applicants sought to set aside the winding-up order of Pieriesfontein, Mr Moller acted in his capacity as trustee of the Moller Family Trust, the applicant in those proceedings. In the present application he again seeks to litigate substantially the same issues, this time purporting to act on behalf of the trustees and beneficiaries of the trusts. To the extent that he also purports to represent the "shareholders" of the trusts, such allegation is legally untenable, as a trust has no shareholders.

[22] Moreover, Mr Moller merely makes the bald assertion that, after a diligent search and investigation, the lawful owners of the properties were discovered. He provides no meaningful detail regarding the nature of the investigations undertaken, what information was being

sought, why it could not have been obtained earlier, or when the alleged discovery was made. The explanation is vague, lacks particularity and fails to account for the lengthy delay.

[23] The improbability of Mr Moller's explanation is compounded by his continuous involvement in every material event giving rise to this litigation. He acted as director of JSW when the loan agreement was concluded, represented Pieriesfontein when the deed of suretyship was executed, appeared on behalf of Pieriesfontein during the winding-up proceedings, and subsequently represented the Moller Family Trust in the application brought under case number 2308/21 to set aside the winding-up order.

[24] Throughout this period, Mr Moller was the director of Pieriesfontein and simultaneously a trustee and beneficiary of both the Moller Family Trust and the Lowhills Family Trust. In those circumstances, it is simply not credible to suggest that the trustees and beneficiaries of the trusts were unaware of either the liquidation proceedings or the ensuing winding-up order.

[25] The assertion that the relevant parties only recently became aware of the facts is therefore contradicted by Mr Moller's own extensive involvement in the affairs of Pieriesfontein and the trusts. His explanation is neither satisfactory nor reasonable and falls far short of establishing the exceptional circumstances required to justify reopening litigation that has long since reached finality.

[26] Significantly, the premise upon which the explanation is founded is itself incorrect. The applicants proceed on the basis that the properties belonged to the Moller Family Trust and the Lowhills Family Trust. The evidence demonstrates otherwise. The registered owner of the properties was Pieriesfontein. The trusts accordingly had no proprietary interest in the immovable properties capable of founding the present application.

Prospects of success

[27] The applicants advance numerous grounds upon which they contend that the winding-up order should be rescinded. None has reasonable prospects of success.

[28] The applicants first contend that the liquidation order was granted without affording Mr Moller, who appeared in person, an opportunity to address the Court. The record plainly contradicts this assertion. Mr Moller elected to appear without legal representation despite

being encouraged to obtain legal assistance, and he was afforded a full opportunity to address the Court before judgment was delivered.

[29] The applicants further contend that certain entities involved in subsequent litigation concerning the fifth respondent lacked *locus standi*. That contention is irrelevant to the present proceedings. The fifth respondent was not a party to the liquidation proceedings prior to the granting of the winding-up order, and any subsequent disputes concerning the fifth respondent cannot affect the validity of the order now sought to be rescinded.

[30] The applicants also argue that the liquidation of Pieriesfontein was void ab initio because Portions 6 and 8 of the Lowhills Farm allegedly belonged to the Moller Family Trust and the Lowhills Family Trust. They contend that the trusts were denied an opportunity to oppose the liquidation because they were not joined in the application.

[31] This contention is inconsistent with the objective evidence. The registered owner of Portions 6 and 8 was Pieriesfontein and not either of the trusts. The factual premise underlying the complaint of non-joinder is therefore incorrect.

[32] The applicants further contend that Portion 8 was never encumbered as security for JSW's indebtedness and that its subsequent sale was fraudulent. This submission overlooks the true basis upon which the liquidation proceedings were instituted. FirstRand Bank elected to pursue the liquidation of Pieriesfontein rather than merely enforcing its security over Portion 6. It was fully entitled to pursue liquidation proceedings against its debtor, and the fact that Portion 8 was not specifically mortgaged does not render either the liquidation proceedings or the subsequent liquidation invalid.

[33] The most significant obstacle confronting the applicants is that the winding-up order has already been challenged. During 2021, Mr Moller, acting in his capacity as trustee of the Moller Family Trust, instituted proceedings under case number 2308/21 seeking, firstly, an order declaring the suretyship executed by Pieriesfontein in favour of FirstRand Bank void and, secondly, an order setting aside the winding-up of Pieriesfontein. The Lowhills Family Trust, represented by Mr Moller in his capacity as trustee, was cited as the seventh respondent in those proceedings. The application was dismissed on 27 October 2022.

[34] In the present proceedings the applicants, again represented by Mr Moller, seek substantially the same relief. They contend that documents have now been discovered indicating that the properties belonged to the trusts and that no trustees' resolution authorised the execution of the suretyship. While they do not dispute that the earlier application concerned the same winding-up order, they seek to avoid the consequences of that judgment by asserting that different parties are now before the Court. That submission cannot be sustained.

[35] The doctrine of *res judicata* precludes parties from re-litigating disputes that have already been finally determined by a court of competent jurisdiction. The doctrine serves the important public interests of finality in litigation, legal certainty and the proper administration of justice. Although our courts have recognised limited exceptions where the interests of justice require a departure from its strict application, such exceptions are reserved for truly exceptional circumstances.

[36] In Mulaudzi v S (CCT42/15) [2015] ZACC 20, Theron AJ stated:

"The rule of law and legal certainty will be compromised if the finality of a court order is in doubt and can be revisited in a substantive way. The administration of justice will also be adversely affected if parties are free to continuously approach courts on multiple occasions in the same matter. However, legitimacy and confidence in a legal system demands that an effective remedy be provided in situations where the interests of justice cry out for one."

[37] The applicants contend that an injustice occurred because the alleged owners of the properties were not served with the liquidation proceedings. That submission is unsustainable. The properties were owned by Pieriesfontein, not the trusts. Mr Moller, who represented the relevant entities throughout the litigation, was fully aware of the proceedings. The Moller Family Trust has already unsuccessfully challenged the winding-up order, and the Lowhills Family Trust was a party to those proceedings. The present application is, in substance, no more than a renewed attempt to obtain relief that has already been refused by this Court.

[38] The rule of law demands finality. To permit successive applications founded upon substantially the same facts, advanced by substantially the same person, under different representative capacities, would undermine legal certainty and erode public confidence in the administration of justice. The interests of justice do not favour reopening litigation that has already been conclusively determined and no exceptional circumstances exist.

[39] In so far as the applicants sought to rely on Uniform Rule 46A, same is not applicable in winding up proceedings. I therefore find that the applicants have no prospects of success.

Prejudice

[40] The applicants have failed to demonstrate that they will suffer any prejudice if the winding-up order is not rescinded. On the contrary, the prejudice overwhelmingly favours the respondents and other interested parties should the order now be revisited after approximately five years.

[41] The winding-up order has long since been implemented. The liquidation process has progressed substantially, the liquidators have performed their statutory duties, assets of the insolvent estate have been realised, and transactions have been concluded in reliance upon the validity and finality of the winding-up order. Third parties, including the fifth respondent, have acquired rights on the strength of orders granted by the Court and the subsequent administration of the estate.

[42] In particular, Portions 6 and 8 of the Lowhills Farm have already been sold and transferred pursuant to the liquidation process. To revisit the winding-up order at this stage would prejudice third parties who acquired rights in good faith and who were entitled to rely upon the finality of judicial proceedings.

[43] Regarding prejudice to the applicants, Mr Moller actively participated in the winding-up proceedings, represented Pieriesfontein during those proceedings, and subsequently challenged the winding-up order in the application under case number 2308/21. The applicants cannot now rely upon prejudice arising from circumstances of which they had full knowledge throughout.

CONCLUSION

[44] In the exercise of its discretion, the Court is required to weigh the competing prejudice to the parties and the broader interests of justice. Those considerations overwhelmingly favour maintaining the finality of the winding-up order. Any prejudice alleged by the applicants is substantially outweighed by the serious prejudice that would be occasioned to the respondents, the liquidators, creditors, innocent third parties, and the proper administration of justice if the order were now rescinded.

[45] Having considered the facts cumulatively, the interests of justice militate against the granting of the condonation application. The applicants have failed to establish a proper basis upon which this court should exercise its discretion in their favour.

COSTS

[46] Counsel for the respondent submitted that Mr Van Rensburg ought to be held personally liable for the costs of this application. It was contended, in particular, that the authorities relied upon by the applicants were inaccurate and that Mr Van Rensburg was made aware that Mr Moller had previously instituted an application for rescission of the same judgment, albeit in a different representative capacity. It was argued that this conduct justified a personal costs order against him.

[47] In response, Mr Van Rensburg contended that he should not be penalised for advancing his clients' case. He submitted that, throughout the proceedings, he acted in the bona fide belief that his clients had a sustainable cause of action and that he continued to represent them notwithstanding repeated threats by the respondent to seek a personal costs order against him. He maintained that his conduct did not justify the granting of a *de bonis propriis* costs order.

[48] In Multi-links Telecommunications Ltd v Africa Prepaid Services Nigeria Ltd [2013] 4 All SA 346 (GNP), Fabricius J reaffirmed that the ordinary rule is that costs are awarded on the party-and-party scale. Punitive costs, and particularly costs ordered *de bonis propriis* against a legal practitioner personally, are exceptional remedies that are granted only where the court, in the proper exercise of its discretion, finds compelling reasons to do so.

[49] The Court emphasised that attorneys and counsel must be able to represent their clients fearlessly and vigorously without fear of personal costs orders. However, this protection is subject to the overriding duty of legal practitioners to act with absolute honesty, integrity and in accordance with their ethical obligations to the court.

[50] The Court held that ordinary mistakes, errors of law, procedural irregularities, or failures to comply fully with the Rules of Court do not ordinarily justify a personal costs order. Such orders are reserved for conduct that materially departs from the standard expected of legal practitioners, including dishonesty, misleading the court, obstruction of justice, reckless

litigation, gross negligence, or serious incompetence. In such circumstances, the court may order the legal practitioner personally to bear the costs in order to mark its strong disapproval of the conduct.

[51] In my view the principles articulated in Multi-links telecommunications Ltd v Africa prepaid services Nigeria Ltd apply to the present matter. The applicants' legal representative was not involved in the previous litigation and there is nothing before this Court to suggest that he deliberately sought to mislead the Court or acted dishonestly in any respect. On the contrary, he appears to have genuinely believed, albeit mistakenly, in the merits and strength of his clients' case. While the Court may ultimately disagree with the legal or factual basis upon which the application was pursued, this falls far short of the type of conduct that justifies a punitive costs order against a legal practitioner personally. There is no evidence of dishonesty, recklessness, gross negligence, obstruction of the administration of justice. In the exercise of its discretion, this Court finds that the adverse costs order should be borne by the applicants, who elected to pursue the litigation, and not by their legal representative personally.

In the result I make the following order:

1. The applicant's application is dismissed with costs.

[redacted]

P D KEKANA
ACTING JUDGE OF THE HIGH COURT

DATE OF HEARING: 16.04.2026
DATE OF JUDGMENT: 28.07.2026

ON BEHALF OF THE APPLICANTS: ADV HCJ VAN RENSBURG SC

ON BEHALF OF THE FIRST RESPONDENT: ADV HORN

ON BEHALF OF THE FIFTH RESPONDENT: ADV JE KRUGER