



IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG

Case no: 17229/2023P

In the matter between:

MANOJ SEWAK MAHARAJ N.O.
MANJ SEWAK MAHARAJ
KIRAN SEWAK MAHARAJ
SIMLA REDDY

FIRST PLAINTIFF/RESPONDENTS
SECOND PLAINTIFF/RESPONDENTS
THIRD PLAINTIFF/RESPONDENTS
FOURTH PLAINTIFF/RESPONDENTSS

AND

THE MASTER OF THE HIGH COURT, DURBAN

FIRST DEFENDANT/APPLICANT

THE MINISTER OF JUSTICE & CORRECTIONAL SERVICES

SECOND DEFENDANT/APPLICANT

STANLIB FUNDS LIMITED

THIRD DEFENDANT

THE STANDARD BANK OF SOUTH AFRICA LIMITED

FOURTH DEFENDANT

LEAVEIL GORDON LESLIE

FIFTH DEFENDANT

JUDGEMENT

P. BEZUIDENHOUT J.:

[1] The First and Second Defendants (Defendants) seek an order in terms of Rule 31(2)(b) setting aside the default judgment granted against them on 22 April 2025 jointly and severally with Fifth Defendant. They also seek condonation for the late filing of the rescission application.

[2] As this matter has a long history it is necessary to set out the timeframe in this matter.

[3] Summons was served on First Defendant on 27 November 2023 and on Second Defendant on 23 November 2023. No notice to defend was received and the default judgment was then set down for 22 April 2025.

[4] The notice of set down of the default judgment was served on First Defendant on 7 February 2025 and for Second Defendant on 3 March 2025 on the State attorney. There was no opposition and Default judgment was then granted on 22 April 2025.

[5] It is contended by Defendants that following service of the summons the matter was referred internally for legal attention on 11 December 2023 and that the summons and documents were transmitted to the State attorney on 11 December 2023.

[6] During December 2024 officials from Defendants made enquiries regarding the handling of the matter. Additional enquiries were directed to the State attorney during March 2025. On 3 December 2024 Mr. Hlatshwayo the previous handler left, the State attorney and Defendants then asked which State attorney worked with the matter. On 25 March 2025 a further letter was sent to the State attorney and on 26 March 2025 the State attorney requested a case number.

[7] Notice of set down was served on a Ms A L Naidoo an employee of First Defendant on 7 February 2025 and on the State attorney in respect of Second Defendant.

[8] Defendants became aware of the default judgment on 14 May 2025 after receiving a letter from Plaintiffs attorney and initiated steps to seek rescission thereof.

[9] It is contended by Defendants that the failure to enter an appearance to defend arose from administrative failure after instructions had been issued to the State attorney. They were under the *bona fide* but mistaken belief that the matter was being defended. It is submitted that it is a reasonable explanation for the default.

[10] It is contended on behalf of Plaintiffs that summons was served on 27 November 2023 and that it was then sent to the State attorney on 12 December 2023. Accordingly on that date First Defendant was aware of the summons. It was further submitted that there was no prejudice to Plaintiffs serving the summons on the State attorney as per section 2(2)(b) of the State Liability Act 2020 of 1957 as it was held in the case of the Minister of Police v Miya 2025 (3) SA 130 (SCA) that it was sufficient as it is apparent from the documentation and the affidavits that the State attorney did later act thereon.

[11] The notice of set down for default judgment was served upon First Defendant on 7 February 2025 and on the State attorney on 3 March 2025. There were emails between the State attorney and Defendants on 25 and 26 March 2025.

[12] It was submitted that Defendants failed to exercise due care by regularly following up with the State attorney to ensure that the matter is dealt with. No explanation has been provided as to the conduct of the State attorney.

[13] In respect of the condonation for the late filing of the application to have the judgment rescinded it is submitted that Defendants became aware of the judgment on 14 May 2025. On 16 May 2025 the State attorney was advised of the default judgment and instructed to rescind the judgment. The rescission application was only served on 1 August 2025, seven weeks later. It was submitted that no proper and full explanation for the seven week delay is provided. It was contended that despite the urgency two weeks was taken to arrange a consultation with counsel because the State attorney was involved in an urgent matter. It then took a further five weeks for the rescission papers to be finalised. It was further submitted that Defendants have not furnished explanations in respect of both the default and condonation sufficiently to enable the court to assess their conduct and motives. Defendants attribute all the delays to the office of the State attorney. This however has not been inadequately explained.

[14] Although the notice of set down of the default judgment was served on the Master's office on 7 February 2025 and on a Ms Naidoo no affidavit is provided from her as to what happened with the notice of set down and why it was not brought to the attention of First Defendant as Defendants allege they only became aware of the judgment on 15 May 2025. Judgment having been granted on 22 April 2025.

[15] The claim of Plaintiffs arises from the estate of one Gyanmatha Maharaj who died on 6 January 2021. It is contended that First Defendant and its staff had failed to issue the necessary letters of executorship and further that a fraud was committed in the office of First Defendant alternatively that they failed to exercise reasonable care and diligence and acted negligently in appointing Fifth Defendant as the executor of the estate who was not related to the deceased at all and who produced a false Will. As a result of his appointment he withdrew from the estate account the amount of R845 000.00 which was in the estate resulting from policies which had been paid out into the estate account. It is alleged that Plaintiffs accordingly suffered a loss in the sum of R826 362.89 due to the conduct of First Defendant.

[16] On 22 April 2025 judgment was entered against First, Second and Fifth Defendants in the sum of R826 362.89 together with interest on the said amount at the legal rate from 9 July 2021 and costs of suit on the attorney and client scale.

[17] It is against this order that First and Second Defendant have brought this application to have it rescinded in terms of Rule 31(2) of the Rules of this Court.

[18] It is contended by Plaintiffs that on 20 January 2021 one Janice Sellick delivered documents to the Master's office requesting letters of executorship. This included the original Will of the deceased an inventory etc. Receipt of the letter and documents was acknowledged by First Defendants as appears from their stamp dated 20 January 2021. First Respondent was later not prepared to accept or appoint the executor and asked that the documents be uplifted and they obtain nominations from Third and Fourth Plaintiffs. On 23 March 2021 the attorney handed signed nominations as requested from the two additional persons. This was accepted by First Respondent as appears from its stamp.

[19] On 25 February 2021 First Defendant accepted a Will and inventory etc. from another person. It was an undated Will. This was from Fifth Defendant who is totally unknown to Plaintiffs and is in no way related to any of them. Fifth Defendant was appointed as executor in terms of the undated Will on 15 April 2021. He then withdrew the sum of R826 362.89.

[20] It is contended by Defendants that the documentation initially submitted by Plaintiff's was returned after queries were raised by the Master's office. The estate had not yet been registered when Plaintiffs initially submitted the documentation. There was a backlog at the Master's office at the time and when the Will of Fifth Defendant had been accepted there was no knowledge of Plaintiffs involvement in the estate. There was no

official who knowingly facilitated the fraud perpetrated by Fifth Defendant. It was submitted that Plaintiffs allegations of complicity was speculative. It was further contended that the documentation could not only have been obtained at the Masters office but that Plaintiffs had transmitted the death certificate and identity document of the deceased to Third and Fourth Defendants. It was contended that Fifth Defendant was an employee of Fourth Defendant and accordingly could have had knowledge of the estate and therefore the information could not only have been emanated from the Master's office. This was only raised in Defendants replying affidavit.

[21] It is contended that Defendants must merely establish a *bona fide* defence with some *prima facie* prospects of success. It was further submitted that the Will which was accepted was registered by the Master. Letter of executorship was issued pursuant thereto and that was normal administrative action. Although Fifth Defendant was removed as executor the disputed Will itself was not declared invalid or set aside. It was submitted that as the Master had accepted the Will it was *functus officio* and could not rescind it. It was also submitted that Plaintiffs did not comply with section 2 of the State Liability Act. This issue has been dealt with above.

[22] It was submitted that the interests of justice favours the rescission of the judgment and that these issues which were raised on the papers require to be ventilated. It was submitted that Plaintiffs would suffer no irreparable harm or prejudice if the matter proceeds to trial.

[23] In terms of Rule 31(2)(b) for rescission a reasonable explanation must be provided for the default and it must be a *bona fide* application and there must be a *bona fide* defence.

[24] The various delays in doing anything in this case are factors to be considered in considering the explanation for the default.

[25] In the matter of *Grant v Plumbers Pty. (Ltd)* 1949 (2) SA 470 (0) it was held that in an application to have a judgment rescinded the applicant must give a reasonable explanation for the default. If it appears that the default was wilful or due to gross negligence the court should not come to their assistance. It must be a *bona fide* application and not merely for delaying and must show that there is a *bona fide* defence to the claim. This requirement has been repeated in various other decision at a later stage.

[26] In the present matter there was a long time delay from service of the summons until the granting of the default judgment. It was only on 3 December 2024 a year after summons was served that enquiries were made. On 7 February 2025 the notice of set down was served on First Defendant's offices and on the State attorney in respect of Second Defendant. On 25 March it was enquired from the State attorney by the Master who the State attorney was attending to the matter. There was then correspondence between them. On 22 April 2025 default judgment was granted. On 14 May 2025 First and Second Defendants became aware of the judgment and then only on 1 August 2025 brought an application for rescission.

[27] There is no explanation by Ms. Naidoo as to what she did with the notice of set down. Defendants only became aware of the judgment when Plaintiffs made enquiries.

[28] A period of seven weeks elapsed from the time Defendants became aware of the judgment until the application was brought. The explanations for the delay are inadequate. The fact that the person at the office of the State attorney was busy is not sufficient reason not to comply with time limits. The time from becoming aware of the default judgment is explained merely by stating that the State attorney was busy with an urgent matter. That is not a reason to ignore the matter or not to communicate with the other party. The application was brought in terms of Rule 31(2)(b) and accordingly the

provisions thereof had to be complied with. One of the first requirements as mentioned above is an explanation which must not indicate negligence on the part of the applicant. In my assessment, especially considering the delay and the reason therefore, it would appear that there was negligence on the part of Defendants.

[29] On 20 January 2021 Plaintiffs attorney provided First Defendant with a Will, death certificate, inventory etc. as appear from their letter which was accepted by First Defendant and stamped by it. Further nominations were requested by First Defendant which was provided on 19 March 2021 and acceptance acknowledged by stamping it.

[30] On 25 February 2021 First Defendant accepted a death notice and an unsigned Will from one Derek Govender attorneys and on 15 April accepts the said Will and appoints the executor in the undated Will.

[31] It must have been apparent to First Defendant if they kept accurate records as they should that on 20 February 2021 a Will and other documents had been filed. Then five days later they accepted an unsigned Will from another party in respect of the same deceased. After Plaintiffs filed the additional documents requested by First Defendant during March 2021 which First Defendant acknowledged. First Defendant accepted the undated Will on 15 April 2021 and appointed an executor. This was all after they had received the documents from Plaintiffs. If they kept accurate records it should have been apparent to them that a Will etc. had already been filed. There is nothing in the paper that the Will was rejected by First Defendant.

[32] Having considered the delay and the merits of the case I am not satisfied that Defendants have made out a case for the relief claimed.

Order

The application is dismissed with costs such costs to be on scale B.



P C BEZUIDENHOUT J.

JUDGMENT RESERVED:

11 JUNE 2026

JUDGMENT HANDED DOWN:

19 AUGUST 2026

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