

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2018/20995

(1)	REPORTABLE: No
(2)	OF INTEREST TO OTHER JUDGES: No
(3)	NOT REVISED
20/08/2026	
DATE	SIGNATURE

In the matter between:

MINISTER OF POLICE

Applicant

and

MOGALE NAMEDI LIONEL

Respondent

Heard: 17 August 2026

Delivered: 20 August 2026

JUDGMENT

Yacoob, J:

1. The power to rescind an order in specific circumstances is an exception to the general rule that a court is *functus officio* once it has pronounced on a matter. That general rule is essential to the finality and certainty which themselves are necessary elements of the Rule of Law. However, like any other rule, it cannot be applied inflexibly as that may lead to injustice. Rescission is therefore permitted in limited circumstances.
2. The applicant seeks rescission of an order obtained by the respondent in the default judgment court, awarding him R500 000 damages for unlawful arrest, detention and assault. The applicant relies on Rule 42(1)(a) of the Uniform Rules of Court, alternatively the common law.
3. Mr Mogale was arrested on Sunday 19 November 2017 and detained until the next morning, when he was released on bail. Charges against him were subsequently dropped. He alleges also that he was assaulted.
4. After Mr Mogale's action was instituted, he obtained an order striking the applicant's defence due to non-compliance with the rules of court. Thereafter, on 19 June 2025, the order referred to above was obtained on a default basis, after notice of set down had been served on the office of the State Attorney. The order was served by email on the State Attorney on 1 July 2025 and served physically on 14 July 2025.
5. The State Attorney's undisputed version in explanation of its client's default and of any delay before instituting the rescission application is that the attorney who was seized with the matter left the employ of the State Attorney on 30 August 2024 and that no attorney was actively managing the matter. The attorney who deposed to the founding affidavit in support of the rescission was allocated the matter on 01 September 2025. The application was then instituted on 30 October 2025.
6. It is, in my view, clear that the application was instituted within a reasonable time for the purposes either of Rule 42(1)(a) or the common law, neither of which impose a specific time limit, but both of which require the application to

be brought within a reasonable time. A reasonable time, of necessity, must be determined in the context of each case.

7. I am also satisfied that the explanation establishes that the default was not deliberate. This distinguishes this case from the primary authority on which the respondent sought to rely, that is, *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*,¹ since in that case the applicant for rescission deliberately opted not to appear before the court.
8. The requirements for rescission under Rule 42(1)(a) are that the order must have been erroneously sought or erroneously granted in the absence of any party affected thereby.
9. For purposes of the Rule, the absence of the party affected must not be as a result of a deliberate decision to participate in proceedings. As set out above, I am satisfied that the applicant's failure to appear was not deliberate.
10. The applicant contends that the order was erroneously granted because the court was unable to consider the applicant's argument, particularly on what the appropriate quantum of the award would be. It contends that as a result, the award is too high. Essentially, the applicant's contention is that the order was wrong. This is not the sort of error that falls within the ambit of the Rule.²
11. It is then necessary to consider whether the applicant has made out its case in terms of the common law. In terms of the common law, an applicant for rescission of a judgment granted in default must show good cause. This includes giving a reasonable explanation for the default, and that there is a bona fide defence with some prospects of success.³
12. An application in terms of the common law must be brought within a reasonable time. This depends on the context of the particular case. The Constitutional

¹ [2021] ZACC 28; 2021 (11) BCLR 1263 (CC); 2021 JDR 2069 (CC).

² *Seale v Van Rooyen NO and Others; Provincial Government, North West Province v Van Rooyen NO and Others* 2008 (4) SA 43 (SCA) at [18].

³ See *Zuma* (above) at [71] and the authorities there referred to.

Court in *Ekurhuleni City v Rohlandt Holdings CC and Others*⁴ commented that, although there is no prescribed time period, a starting point or guide would be the 20 days referred to in Rule 21(2)(b) of the Uniform Rules. Although counsel for the respondent suggested otherwise, this is not a ruling that 20 days is the definitive reasonable period for purposes of review under the common law. It is simply a starting point.

13. I have already accepted that the applicant's explanation for default is reasonable, and that the application is brought within a reasonable time. The same facts are relevant to both elements, in the circumstances of this case, and there was no need for the applicant to repeat them with reference to each ground pleaded. The questions to be determined are whether the application is made *bona fide* and whether there is a *bona fide* defence.

14. It is the respondent's contention that the application is made simply for the purpose of delaying payment. However, it would not be appropriate for the applicant, as an organ of state, to simply pay an amount that, *prima facie* at least, appears to be excessive.

15. I am satisfied both that the application is made *bona fide* and that there is a *bona fide* defence, as the amount awarded does not seem consistent with the evidence apparently before the court. The respondent does not make any allegations in his answering affidavit as to what was submitted to the court and what was before the court. In those circumstances this court is limited to the papers and the contents of the file. My view is that the award is higher than may have been expected and had the applicant been present, and presented proper argument with regard to the evidence and comparative awards, it is probable that the award would have been lower.

16. I am satisfied that the applicant has established grounds for rescission under the common law, and that my discretion should be exercised in the applicant's favour.

⁴ 2025 (1) SA 1 (CC).

17. The relevant portion of the judgment being set aside, any execution is automatically precluded. There is no need to make an order in that regard. There is no evidence of any warrant of execution that may need to be set aside.
18. However, with regard to costs, it is indubitable that the default was due to a failure of the office of the State Attorney to ensure that all matters it was seized with were given proper attention. The respondent should not have to bear the burden of costs for that failure. I am satisfied that the applicant should, notwithstanding its success, bear the costs of the application on an attorney and client scale.
19. I make the following order:
1. The order of the court in this matter on 19 June 2025 in respect of damages awarded is rescinded and the award of R500 000 is set aside.
 2. The issue of quantum is referred back to the trial court for proper determination.
 3. The applicant is to pay the costs of this application on an attorney and client scale.


S YACOOB
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines/ Courtonline. The date for hand-down is deemed to be 20 August 2026.

For the Applicant:	Ms JD Mabelane
Instructed by:	The State Attorney, Johannesburg
For the Respondent:	Mr BM Khumalo
Instructed by:	HC Makhubele Inc