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REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NO: 984/2022

(1)	<u>REPORTABLE: YES/NO</u>
(2)	<u>OF INTEREST TO THE JUDGES: YES/NO</u>
(3)	<u>REVISED.</u>
DATE..... SIGNATURE:.....	

In the matter between:

BRAVOPRO T/A MOOKETSI SCRAPYARD

APPLICANT

And

MADUMI MOSES SIVHULA

FIRST RESPONDENT

SOUTPANSBERG AUTO BODY REPAIRS

SECOND RESPONDENT

JUDGEMENT

KGANYAGO J

- [1] The applicant (Bravopro) was the respondent in the main application brought by the first respondent (Madumi). On 15th October 2021 Madumi was involved in motor vehicle accident. Bravopro towed Madumi's vehicle to its premises. Madumi had taken an insurance cover for the vehicle with Old Mutual. Bravopro was not the authorised service provider to tow vehicles insured by Old Mutual which were involved in accidents. Old mutual requested Bravopro to release Madumi's vehicle to its designated representatives. Bravopro rendered an invoice to Old Mutual in the amount of R23 241.50 which Old Mutual had to pay before the vehicle could be released.
- [2] Old Mutual was of the view that the amount which Bravopro had charged was exorbitant, and that according to the industry norms an amount of R7 920.05 constituted a fair and reasonable amount in respect of the towing and other related fees. Old Mutual paid Bravopro the amount of R7 920.05 and tendered to set security in the amount R15 321.45 in respect of the balance of Bravopro's claim. Old Mutual paid the amount it had tendered as security into its attorney's trust account and requested the release of the vehicle. Bravopro refused to release the vehicle if the full amount of the invoice was not paid. That led to Madumi instituting an application against Bravopro seeking orders that it release his vehicle to Old Mutual's nominated representative within 24 hours of service of the order.
- [3] Bravopro opposed Madumi's application. In its answering affidavit Bravopro stated that it had released Madumi's vehicle on 4th November 2021 after Old Mutual had paid all its outstanding costs relating to the motor vehicle. Bravopro denied that Madumi's vehicle was still in its possession.

[4] The matter came before Makweya AJ and both parties through their respective legal representatives attended the hearing and argued the matter. Makweya AJ found in favour of Madumi. In arriving at her conclusion, she found that Madumi and Old Mutual had paid Bravopro for the services it had rendered for towing and storage costs of his vehicle. That despite payment Bravopro failed to return and release the vehicle back to Madumi. She ordered that Bravopro release Madumi's vehicle to her and Old Mutual.

[5] Bravopro has now brought an application in terms of common law seeking an order to rescind and/or set aside the court order granted by Makweya AJ. The grounds upon which Bravopro is relying upon are that there are new documents that came to light and that had they been available at trial, they could have entitled it to judgment in its favour. The reasons for judgment been against it are that it had failed to convince the court of first instant as to whom the motor vehicle was released. That the new documents it is referring to shows a quotation in which Old Mutual approved the second respondent (Soutpansberg Auto Body Repairs) to repair the vehicle. A further document is a client satisfaction clearance signed by Madumi's insurer, which suggest that the vehicle was repaired and released to Madumi on 3rd February 2022. Bravopro contends that it had released the vehicle during November 2021 and therefore the vehicle could not have been in its possession at the time of the institution of the legal proceedings against it.

[6] Madumi and Soutpansberg initially both opposed Bravopro application by raising points of law in terms of Rule (6)(5)(d)(iii) of the Uniform Rules of Court. In their points of law, they have submitted that what Madumi has raised was that the common denominator between Rule 31(2)(b), 31(5), 42(1)(a) and

the common law was that the court is empowered to rescind its judgment and orders given in default of appearance of a party. In the current matter the order that forms the subject matter of the rescission of application was that it was not given in default of appearance of Bravopro, and as such Bravopro had no locus standi to apply for the rescission of the order. Later Soutpansberg filed a notice to abide and was no longer wishing to oppose Bravopro's application.

[7] Before this court counsel for the applicant argued that in the court of first instance the main issue to be determined was whether Bravopro was in possession of the vehicle or whether it released the vehicle to Madumi or service provider/agent of Madumi, which are interlinked proving either one would result in the judgment in favour of Bravopro. Bravopro could not provide the court of first instance with any documentary evidence to prove that it was not in possession of the vehicle or that the vehicle was released to the service provider/agent of Madumi. Bravopro has discovered new documents to prove that the vehicle was not in its possession but in possession of the service provider/agent of Old Mutual. The documents are approved quotation and client satisfaction clearance.

[8] Counsel for Bravopro further submitted that the new documents show that during the litigation process which was instituted by Madumi it was not in possession of the motor vehicle. The motor vehicle was in the possession of Soutpansberg which was the service provider/agent of Old Mutual before the legal proceedings could be instituted. Bravopro had informed Madumi that it was not in possession of the vehicle. It was not the fault of Bravopro that the documents were not produced during trial as they were in possession of

Soutpansberg. Had the documents formed part of the trial it could have altered the judgment in favour of Bravopro as there were sufficient documentary evidence which shows that that Bravopro was not in possession of the vehicle.

[9] Madumi was in default and there were no submissions made on his behalf. Counsel for Soutpansberg submitted that even though they initially filed points of law, they have now filed a notice to abide and have got nothing to add further.

[10] It is common cause that this is not a rescission of a default judgment or order. Both parties were in attendance before Makweya AJ and the matter was properly argued and thereafter a judgment was delivered based on what was argued before her. Bravopro is dissatisfied with the judgment and order of the court of first instance and has brought an application for rescission in terms of common law submitting that it had discovered new documents which had they been placed before the court of first instance, judgment would have been granted in its favour. What this court must determine is whether Bravopro had satisfied the requirements for rescission of the judgment and order of the court of first instance in terms of common law.

[11] It is trite that at common law a judgment may be rescinded on the grounds of fraud; *justus* error; in certain exceptional circumstances when new documents have been discovered; where judgment had been granted by default; and in the absence between the parties of a valid agreement to support the judgment on the grounds of *justus* error.

[12] As I have already pointed out above that this was not a default judgment or order, the general rule is that a court has no power to set aside or alter its own

final judgment/order as opposed to an interim judgment/order. This is based on the fact that once a court pronounce a final judgment it becomes *functus officio* and its authority over the subject-matter ceased, and also that it is in the public interest that litigation be brought to finality. (See *Freedom Stationary v Hassam*¹) Unless it was a default judgment and order, ordinarily a single judge will not have the power to set aside a final judgment of another single judge where the matter has been properly adjudicated, and the judgment was given on merits. To rescind a judgment given on merits the test is very stringent.

[13] In *Fraai Uitzicht 1798 Farm (Pty) Limited v McCullough and Others*² Nicholls JA said:

“What then remains is the question of *justus* error and whether the appellant had shown an entitlement to rescission of the order as a result of the missing documents. The general principle enunciated in *Childerley* is that non-fraudulent misrepresentation is not a ground for setting aside a judgment and *justus* error can be a ground only in rare and exceptional circumstances. After considering Roman Dutch authorities, De Villiers JP concluded:

‘We arrive at this position then that so far as *justus* error is concerned default judgments may in some cases be set aside under the Roman-Dutch Law on the ground of *justus* error, and that judgments, whether default or not may be set aside in the seven exceptional cases above-mentioned on the ground of *instrumentum noviter repertum*, though evidently some of those are nowadays obsolete and inapplicable... There may be other exceptional circumstances. But I must say that I know of no such further general application of the doctrine of *justus* error to the judgments as would entitle the vanquished party to bring an action to set aside a judgment only on the ground that the Court gave a judgment in error, even if such error was just and induced by a non-fraudulent misrepresentation made by the other party to the case”

¹ 2019 (4) SA 459 (SCA) at 465A-C

² [2020] ZASCA 60 at para 20

[14] Bravopro has submitted that the alleged newly discovered documents were obtained through the consent of Soutpansberg. Part of discovered documents is a quotation which Bravopro submit it was approved by Old Mutual authorizing Soutpansberg to repair Madumi's vehicle. Further that there is a satisfaction clearance form issued and signed by Madumi's insurer which suggest that the motor vehicle was released from Soutpansberg to Madumi on 3rd February 2022. It is Bravopro's contention that the motor vehicle was released from its custody during November 2021 and there was no slightest fault on its part that the documents were not part of the trial proceedings. It had no knowledge of the working relationship of Soutpansberg which could have enabled it to obtain the said documents.

[15] Bravopro did not explain if it did not know the working relationship of Soutpansberg, how it came about that it became aware that the said documents were in possession of Soutpansberg. Madumi's motor vehicle has been in the custody of Bravopro from the date it has been towed from the scene of the accident. The condition for the said motor vehicle to be released from the custody of Bravopro was for either Madumi or Old Mutual to pay the amount of money which Bravopro was demanding as storage and towing fees.

[16] It is Bravopro' version that Old Mutual had paid the outstanding amount due to it in full, and that the vehicle was released during November 2021. It is Bravopro who had released the vehicle and should know to whom the motor vehicle was released to. What is needed from Bravopro is to show to whom the vehicle was released to, and that do not require any document from Soutpansberg. It should be facts known to Bravopro. There should be some

release papers which the person who had collected the motor vehicle should have signed. Those documents are expected to be in the custody of Bravopro. If no paper was signed when the vehicle was released, Bravopro should explain how it was released. These are the records which are expected to be kept by Bravopro. Bravopro did not need the papers in possession of Soutpansberg to prove that the vehicle was released from its custody. Bravopro did not explain what happened to its own documents which it should have generated to facilitate the release of Madumi's motor vehicle after payment of the required amount.

[17] With regard to the alleged client satisfaction clearance, it does not assist Bravopro in that it was allegedly signed by Madumi's insurer and not by Madumi. This does not prove that Madumi took possession of the vehicle. If indeed the motor vehicle was repaired by Soutpansberg, when it was ready it was supposed to be collected by Madumi or someone authorised by him. When collecting the motor vehicle, he or the person he had authorized would have been required to sign a release form. Bravopro has failed to attach a single document to prove that Madumi or any person authorised by him took possession of the motor on 4th November 2021 or 3rd February 2022. The client satisfaction document is therefore of no significance to Bravopro's case.

[18] The date on which Bravopro took possession of the vehicle as stated in Madumi's founding affidavit which Bravopro has conceded to in its answering affidavit, was the 15th October 2021 when it towed it from the accident scene. It is not in dispute that the accident occurred on 15th October 2021. According to Bravopro, the quotation prepared by Soutpansberg dated 19th November 2021 shows that the quotation was approved and authorised Soutpansberg to

repair the vehicle. Therefore, the vehicle was in possession of Soutpansberg as per the approved quotation.

[19] This quotation does not show whether it was sent to Old Mutual or First Assist. It only shows that it was a new quotation issued to Madumi, and typed approved on 19/11/2021, but do not show approved by whom. It does not have the approved amount payable by the insurer and excess amount payable by Madumi. If it was approved by either Old Mutual or First Assist, it does not show when it was approved. It does have a stamp of either Old Mutual or First Assist acknowledging receipt of it. This document does not advance Bravopro's case and is therefore of no significance to its case.

[20] The email which Bravopro relies on that Madumi's vehicle was released from its custody on 4th November 2021 read as follows:

"Good Day

The following vehicle is currently standing at your premises. Would you please be so kind as to process an invoice for the release fee in order for the vehicle to be collected as a matter of urgency. Please note if there is storage to make the storage 48 hours in advance.

Vehicle make and model: ISUZU KB300D

Registration: F[...]

Insurer: Old Mutual

Claim number: 1[...]

Please make out the invoice to

First Assist Management

PO Box 9[...]

Norwood

Vat 4[...]

Please attached one of the below documents for security reasons”.

- [21] This email is from First Assist to Bravopro. The plain reading of this email is that Madumi’s motor vehicle was still at Bravopro premise as at the 4th November 2021. Bravopro was requested to prepare an invoice which should be 48 hours in advance of storage. The email on its own do not prove that Madumi’s vehicle has been released from Bravopro’s custody. This is corroborated by the email of 30th November 2021 from Caroline of Omisure when enquiring from Gopane whether the vehicle has been uplifted. Nokuthula from First Assist responded to that email on 15th March 2022 by stating that the vehicle has not been uplifted. As per the email from Nokuthula, it cannot be correct that the vehicle was released to Madumi by Soutpansberg on 3rd February 2022.
- [22] It was therefore upon Bravopro to have proved that it had complied with the request of First Assist by attaching the invoice, proof of payment by First Assist/Old Mutual and its own release form of the motor vehicle duly signed by the person who might have collected it from its premises and on which date. Bravopro has failed to do so and therefore this email is of no significance to Bravopro’s case.
- [23] In my view, the documents that Bravopro has attached as new documents discovered do not advance its case. They therefore do not qualify as one of those rare and exceptional circumstances where they justify as grounds to rescind the judgment under common law. Bravopro has failed to show that if

these documents were available at the time, the court of first instance would have rendered a different judgment. Bravopro's application stands to fail.

[24] In the result I make the following order:

24.1 The applicant's application is dismissed and there is no order as to costs.

KGANYAGO J
JUDGE OF THE HIGH COURT OF SOUTH
AFRICA, LIMPOPO DIVISION,
POLOKWANE

APPEARANCES:

Counsel for the applicant	: Adv EP Kotswana
Instructed by	: Motshekga MK Attorneys
Counsel for the first respondent	: In default
Counsel for the second respondent	: A Rheeder
Instructed by	: Pierre Krynauw Attorneys
Date heard	: 30th July 2026
Electronically circulated on	: 24th August 2026