

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 2024-114616

In the matter between:

MICHAEL VERNE GRICE N.O

**(In his representative capacity as Trustee of the
Green ICE Family Trust I[...])**

First Applicant

TRUST MEDIATOR (PTY) LTD

**Represented by JACOBUS NICOLAAS VENTER N.O
(In his representative capacity as independent trustee
of the Green ICE Family Trust I[...])**

Second Applicant

and

BRENDAN MICHAEL GRICE

First Respondent

DEAN SHAUN GRICE

Second Respondent

THE MASTER OF THE HIGH COURT, PRETORIA

Third Respondent

Corum: MORGAN AJ
Heard: 20 October 2025
Delivered: 21 August 2026

This judgment was circulated electronically to the parties' representatives by email. The date and time of hand-down are deemed to be 10:00am on Friday, 21 August 2026.

JUDGMENT

MORGAN AJ

[1] The applicants seek the rescission of an order granted by Lenyai J on 4 June 2024 under case number 66014/2020. They rely on Rule 42(1)(a) of the Uniform Rules of Court.

[2] In that order, the Court terminated the Green-ICE Family Trust under section 13 of the Trust Property Control Act 57 of 1988. The Court directed that the trust assets be distributed equally between the beneficiaries.

[3] The first respondent opposes the application. He says that the applicants knew about the proceedings, had enough time to oppose them, but did not do so. He raises points in limine based on this failure and on the applicants' reliance on Rule 42(1)(a).

[4] Rule 42(1)(a) allows a court to rescind or vary an order that was erroneously sought or erroneously granted in the absence of a party affected by it.

[5] The Rule deals with a procedural error. It is not an appeal. It does not allow a court to reconsider the merits because a party later wishes to raise a defence or a different version.¹

[6] If a party was entitled to the order when it was granted, the order is not rendered erroneous merely because a defence is raised later. But if notice was required and an affected party was not given notice, the order may have been granted in error.²

¹ *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills (Cape)* (127/2002) [2003] ZASCA 36; [2003] 2 All SA 113 (SCA); 2003 (6) SA 1 (SCA) (31 March 2003) at paras 6 - 9.

[7] A litigant who had a proper opportunity to take part in proceedings, but did not do so, cannot use Rule 42(1)(a) to raise a case after judgment.³

[8] The applicants must therefore prove two things. First, that the order was granted in their absence. Second, that it was erroneously sought or granted. It is in my view, not enough for them to show that they now disagree with the order or wish to raise a defence.

[9] The order of 2020 directed the first respondent to institute the contemplated proceedings within 30 court days. It gave the trustees leave to set down their own application if he did not do so and postponed the matter *sine die*.

[10] In September 2023, the first respondent filed a supplementary affidavit in the original matter. His evidence is that Dempster McKinnon Incorporated represented the applicants at that stage; that the firm had access to CaseLines; and that it was told by letter and email that the supplementary affidavit had been uploaded. The applicants do not deal directly with this evidence. They accept that the supplementary affidavit reached the first applicant but say that this was not notice of the hearing date.

[11] The first applicant and second respondent at the time the supplementary affidavit was uploaded and placed on CaseLines were represented by Dempster McKinnon Incorporated who were already on CaseLines “BG 2”. A letter was written to the attorneys and copied to the first Applicant on 2 October 2023 wherein they were made aware of the supplementary affidavit having been uploaded to CaseLines. Although the supplementary affidavit was successfully served on the first applicant, the service of an affidavit does not constitute sufficient notice of a hearing date.

² *Lodhi 2 Properties Investments CC and Another v Bondev Developments (Pty) Ltd* (128/06) [2007] ZASCA 85; [2007] SCA 85 (RSA); 2007 (6) SA 87 (SCA) (1 June 2007) at paras 19,26, 26 and 27.

³ *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* (CCT 52/21) [2021] ZACC 28; 2021 (11) BCLR 1263 (CC) (17 September 2021) at para 61.

[12] The first respondent also says that the first applicant was served with the hearing date and the supplementary affidavit on 3 June 2024. The applicants deny that they received it and point out that there is no proof of service attached. The applicants rely on the absence of a final notice of set down on the CaseLines audit report. From the reading of the papers to me it seems that the first applicant was served with a date of the hearing and re-served with the supplementary affidavit on 3 June 2024. On the perusal of CaseLines, there is no uploaded final 'notice of set down' for the hearing date for the 4th of June 2024.

[13] The second applicant was authorised to act as trustee on 6 December 2023. That was after the supplementary affidavit was filed and brought to the attention of the first applicant's attorneys. The applicants have not shown that the separate citation of the second applicant was necessary before the Court could decide the original application, or that the original parties could no longer represent the Trust in those proceedings.

[14] It is my view that a person who receives no notice of a hearing cannot be said to have deliberately stayed away. But an applicant under Rule 42 must prove the absence and the error relied on.

[15] The first applicant's attorneys knew in October 2023 that the supplementary affidavit had been filed. The applicants had several months before the matter was heard. They did not file an answering affidavit. They did not oppose the matter. They do not explain why they took no steps after their attorneys were informed about the proceedings.

[16] The first respondent says that the hearing date was served on the first applicant on 3 June 2024. The applicants deny this. Their denial, however, does not answer the central difficulty in their case: they knew the proceedings had been revived, yet they did nothing about them for months.

[17] The applicants have therefore not established that they were absent in the sense required by Rule 42(1)(a). Their case is not one where the proceedings were unknown to them until after the order was granted. The first point in limine succeeds.

[18] The points in limine must succeed. I deem it not necessary to decide finally whether the second applicant was properly appointed or has standing. I assume, in favour of the applicants, that both applicants are parties affected by the order. Even with that assumption, they have not shown that the June 2024 order was erroneously sought or granted.

[19] The remaining grounds do not show that the order was granted in error for the reasons fully stated below.

[20] The applicants say that the supplementary affidavit asked that the original application be dismissed with costs, while the heads of argument sought termination of the Trust. The first respondent states that paragraph 10 of his supplementary affidavit asked that the Trust be dissolved. Whether the papers were sufficient to support the relief was an issue that should have been raised in the original application. It does not turn the order into an erroneous order under Rule 42(1)(a).

[21] The same applies to the complaints about condonation, leave to renew the matter, and an amendment of the notice of motion. These were issues that were known, or could have been discovered, once the supplementary affidavit was brought to the attention of the first applicant's attorneys. The applicants could have raised them before Lenyai J. They have not shown that the first respondent misled the Court or concealed a fact that made the relief unavailable.

[22] The eviction point also fails. The letter of 9 May 2024 cancelled the lease and gave the first respondent 30 days to vacate. It stated that eviction proceedings would follow if he did not do so. The eviction application was only issued on 9 July 2024, after the order of 4 June 2024.

[23] The letter was a demand. It was not a pending eviction application. The applicants have not shown that the letter prevented the first respondent from seeking the relief under section 13 or that its disclosure would have caused Lenyai J to refuse or postpone the matter. The allegation that the first respondent sought the order to avoid eviction is not proved.

[24] The applicants also rely on issues about the administration of the Trust, the appointment of the independent trustee, arbitration under the trust deed, and alleged non-compliance with earlier orders. These may have been matters for opposition on the merits. They do not establish an error under Rule 42(1)(a). Rule 42(1)(a) cannot be used to reopen a matter so that a party may advance defences which it did not raise when it had the opportunity to do so.

[25] Accordingly, the applicants have failed to make out a case under Rule 42(1)(a). There is no basis for a punitive costs order against the applicants in casu. Costs must follow the result on the ordinary party and party scale.

ORDER

[26] In the circumstances, the following order is made:

[1] The application for rescission in terms of Rule 42(1)(a) is dismissed.

[2] The applicants are ordered, jointly and severally, the one paying the other to be absolved, to pay the first respondent's costs on the party-and-party scale, including the costs of one counsel on scale A.

LM MORGAN

Acting Judge of the High Court of South Africa,

PARTIES REPRESENTATIVES

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