



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case No: 2024-063294

Reportable: Yes
Of interest to other Judges: Yes
Revised: No
Date: 26 August 2026 N Strathern AJ
Signature: _____

In the matter between:

KHUM MK INVESTMENTS CC

Applicant

and

**JOHANNESBURG DEVELOPMENT AGENCY SOC
LIMITED**

First Respondent

MAYIBUYE I-AFRIKA TRADING CC

Second Respondent

Heard on: 24 July 2026

Decided on: 25 August 2026

Coram: N Strathern AJ

Summary: Rescission of default judgment granted by the Registrar under Uniform Rule 31(5) — clerical error in the capital amount in the order as granted — a corrected draft order thereafter uploaded by the plaintiff's attorneys and signed and stamped by the Registrar under the date of the original order — two signed versions of the same judgment

in existence — no application, no notice and no judicial act preceding the second version — which version was served in dispute — explanatory affidavit delivered, but identifying no source of power and disclosing no notice to the affected party — limits of the Registrar’s powers under Rule 31(5) and section 23 of the Superior Courts Act 10 of 2013 — court *functus officio* subject to correction of patent error only — patent error must be attributable to the court itself — Rule 42(1)(a), (2) and (3) — *Chetty* requirements considered in the alternative — explanation for default unsatisfactory, but the order served erroneously sought and erroneously granted in the absence of an affected party — rescission granted under Rule 42(1)(a) — costs in the cause.

JUDGMENT

N Strathern AJ

Introduction

- [1] This is an application for the rescission of a default judgment granted by the Registrar on 17 March 2025 against Khum MK Investments CC (“*Khum MK*”), in the absence of Khum MK, in favour of Johannesburg Development Agency SOC Limited (“*JDA*”). The judgment followed upon Khum MK’s failure to file a notice of intention to defend timeously.
- [2] The application does not fall to be decided solely on the ordinary question whether Khum MK has given a satisfactory explanation for its default. The case presents a more troubling feature. There are two signed versions of the order, each bearing the stamp of the Registrar of this Division dated 17 March 2025. The version referred to in this judgment as Order A is the version in the terms in which judgment was granted on that day. The version referred to as Order B is a corrected draft order which JDA’s attorneys uploaded to CourtOnline on 8 April 2025, and which the Registrar signed, stamped and uploaded on 9 April

2025, again under the stamped date 17 March 2025. Which of the two versions was served on Khum MK is in dispute.

- [3] The difficulty posed by the existence of the two orders was raised by this Court with counsel in chambers when the matter first served before me in July 2026. Because the discrepancy required an evidential explanation, the matter stood down so that JDA could obtain an explanation as to how the second order, Order B, came about. The matter thereafter proceeded to argument on 24 July 2026.
- [4] JDA has delivered an explanatory affidavit, supported by confirmatory affidavits. It explains, candidly, how Order B came to be produced. It does not identify any rule or other source of power authorising the Registrar to issue it, and it discloses that no application, no notice and no judicial act preceded it. In my view, that is decisive. The Registrar's powers under Rule 31(5) are limited. Neither the Rules nor the common law permit a substantive post-judgment alteration of a default judgment by the Registrar, at the instance of one party and without notice to the other.
- [5] For the reasons that follow, rescission must be granted.

Background

- [6] It is common cause that JDA instituted action proceedings arising from the underlying construction contract, that each of its claims was for a debt or liquidated demand, and that Khum MK did not deliver a notice of intention to defend. JDA thereafter applied in writing to the Registrar for default judgment under Rule 31(5)(a), and judgment was granted by the Registrar of this Court on 17 March 2025.

[7] It is common cause that Khum MK first became aware of the judgment when an order was served on it on 22 April 2025, and that it launched the rescission application on 29 May 2025. Which version of the order was served on that day is in dispute. Khum MK's evidence is that it was served with Order A, and it is Order A which it annexed to its founding affidavit. JDA relies on the sheriff's return of service attached to its supplementary affidavit and which describes the document served as the "*AMENDED ORDER*". I deal with that dispute below.

[8] JDA opposes rescission on the footing that service of the summons was proper, that Khum MK's explanation for its default is unsatisfactory, that the application was launched late, and that no *bona fide* defence has been shown. It submits that the application ought to be dismissed with costs.

Orders A and B

[9] For convenience, I refer to the version of the order granted on 17 March 2025, annexed to Khum MK's founding affidavit as annexure "A", as *Order A*; and to the alleged corrected version signed and uploaded by the Registrar on 9 April 2025, annexed to JDA's answering affidavit as annexure "JM3", as *Order B*.

[10] Order A bears the stamp of the Registrar of this Division dated 2025-03-17, over the Registrar's signature. The marks at the top right — "*17/3/2025-12:00:50 PM*" and "*4/3/2025-4:20:20 PM*" — are CourtOnline page header stamps recording when the page was uploaded. They are not the date of the order. In its body, Order A provides, relevantly, as follows (the manuscript deletions and insertion appearing on the face of the order are noted in square brackets):

*"DEFAULT JUDGMENT is granted against the second Defendant
for:*

1. *Payment of the sum of R4,77, 036.14.*

2. *Interest thereon calculated in clause of 31.12 of the JBCC Principal Building Agreement – Edition 5.0, 2007.*
3. *Cost of suit on an attorney and client scale.* [“on an attorney and client scale” deleted in manuscript and replaced with “in terms of Rule 31(5)(e)(ii)”]
4. Further and/or alternative relief [deleted in manuscript].”

[11] Order B, too, bears the stamp of the Registrar of this Division dated 2025-03-17, over the signature of the same Registrar. The marks at the top right — “9/4/2025-3:18:43 PM” and “8/4/2025-10:31:42 AM” — are again CourtOnline page header stamps, recording that the corrected draft was uploaded by JDA’s attorneys on 8 April 2025 and that the signed version was uploaded by the Registrar on 9 April 2025. They are not the date of the order. In its body, Order B provides, relevantly, as follows:

“DEFAULT JUDGMENT is granted against the second Defendant for:

1. *Payment of the sum of 4 744 036.14.*
2. *Interest thereon calculated in clause of 31.12 of the JBCC Principal Building Agreement – Edition 5.0.*
3. *Cost of suit on an attorney and client scale.* [“on an attorney and client scale” deleted in manuscript and replaced with “in terms of Rule 31(5)(e)(ii)”]
4. Further and/or alternative relief [deleted in manuscript].”

[12] Although both versions bear the same date and the stamp of the same Registrar, they differ in the following respects:

- a. the word “*DRAFT*” in the heading “*DRAFT COURT ORDER*” is deleted in manuscript on Order A but not on Order B;

- b. the capital amount differs, Order A reflecting “R4,77, 036.14” and Order B reflecting “4 744 036.14”. It is common cause that the amount claimed in the particulars of claim, and in the written application for default judgment, was R4,744,036.14, so that the figure in Order A is erroneous and the figure in Order B is the amount in fact claimed; and
- c. the interest clause differs, Order A referring to “*Edition 5.0, 2007*”, while Order B refers only to “*Edition 5.0*”.

The request for an explanation

[13] The existence of the two versions of the order, and the discrepancies between them, was raised by this Court with counsel in chambers when the matter first served before me in July 2026. I required an explanation for the discrepancy between the two versions, and for the procedure by which the second version was obtained.

[14] For that reason, the matter stood down and JDA was directed to file an explanatory affidavit dealing with how the amendment came to the Registrar’s attention and with the process that was followed. Khum MK was afforded an opportunity to answer that affidavit, and both parties delivered supplementary heads of argument. The matter thereafter proceeded to argument on 24 July 2026. I am satisfied that both parties have had a full opportunity to deal with the point, which was raised by the Court on its own accord.

[15] That enquiry called for a direct factual answer under oath from JDA if it wished the Court to treat Order B as a competent correction or continuation of Order A.

[16] JDA duly delivered an explanatory supplementary affidavit. It is deposed to by Mr Mkhululi Nonjola, a legal practitioner at the attorneys of record of JDA, and

is supported by confirmatory affidavits from Mr Nhlakanipho Mkhabela, a candidate legal practitioner, and Mr December Mkhonto, a messenger, both of that firm. The account given is this. The amount claimed was R4,744,036.14. A copy of Order A was sent to JDA's legal advisor on 3 April 2025, and on 7 April 2025 she drew attention to the incorrect amount reflected in it. Mr Mkhonto was asked to attend at the Registrar's office to ascertain whether the clerical error could be corrected. He did so on the same day and was told that it could be, that the original order should be presented to the Registrar the following day, and that a corrected clean version of the order should be uploaded to CourtOnline. Mr Mkhabela corrected the draft order and uploaded it on 8 April 2025. On 9 April 2025 the Registrar uploaded the signed and stamped version, being Order B. Both versions were signed by the same Registrar, Ms T Maponya, and both are stamped 17 March 2025. The deponent states that after the hearing on 24 July 2026 Mr Mkhonto again attended at the Registrar's office to ascertain why Order B does not reflect 9 April 2025, and was told that Ms Maponya no longer works at the Court, so that he is unable to speak to that aspect.

[17] Khum MK answered that affidavit. It does not dispute the chronology. Its contention is that the explanation, on its own terms, establishes only that discussions took place with the Registrar's office and that a revised draft order was thereafter uploaded by JDA's attorneys and signed by the Registrar; that no application, notice, affidavit, explanatory memorandum or judicial directive preceded or accompanied that upload; and that no judicial officer ever determined whether the alleged error was a patent error capable of correction.

[18] I accept the account given in JDA's affidavit as to how Order B came to be produced. The difficulty for JDA is not that its explanation is untruthful. It is that the explanation, taken at its highest, is fatal to the order it seeks to preserve. The affidavit establishes that Order B came into existence through an administrative process in the Registrar's office, set in motion by one party,

without any application, without notice to Khum MK, and without any judicial act. It is, moreover, an affidavit by JDA's attorney of record; what passed at the Registrar's office is given at second hand, on the strength of a confirmatory affidavit by a messenger who does not identify the official he spoke to. In particular, the affidavit does not answer:

- a. the rule or other source of power under which the Registrar was entitled to issue a second signed version of an order already granted and recorded;
- b. why Khum MK was given no notice of the proposed correction before Order B was issued; and
- c. why Order B bears the date 17 March 2025 when, on JDA's own version, it was signed and uploaded on 9 April 2025.

[19] The last of those is not a peripheral matter. It means that the order JDA seeks to enforce presents itself as an order granted on 17 March 2025 when it was in truth signed some three weeks later. This is not a case in which the Court is faced with a single self-evident typographical slip corrected by the court that made it. It is a case in which a party, having discovered an error in an order it had itself drawn, procured a second signed version from the Registrar's office without notice to the party against whom the order operates.

Legal framework

[20] Section 23 of the Superior Courts Act 10 of 2013 provides that a judgment by default may be granted and entered by the Registrar of a Division in the manner and in the circumstances prescribed in the Rules, and that a judgment so entered is deemed to be a judgment of a court of that Division. Rule 31(5)(a) of the Uniform Rules of Court permits a plaintiff, in the case of a debt or liquidated demand, to apply in writing to the Registrar for default judgment where the defendant is in default of delivery of a notice of intention to defend or a plea.

Rule 31(5)(b) identifies the powers of the Registrar on such an application: the Registrar may grant judgment as requested; grant judgment for part of the claim only or on amended terms; refuse judgment wholly or in part; postpone the application on such terms as may be considered just; request or receive oral or written submissions; or require that the matter be set down for hearing in open court. Rule 31(5)(c) provides that the Registrar shall record any judgment granted or direction given. Rule 31(5)(d) further provides that any party dissatisfied with a judgment granted or direction given by the Registrar may, within 20 days after acquiring knowledge of it, set the matter down for reconsideration by the court.

[21] Rescission for good cause remains governed by settled principle. In *Chetty v Law Society, Transvaal* 1985 (2) SA 756 (A) at 764J–765E, the Appellate Division reaffirmed that an applicant for rescission must show both a reasonable and acceptable explanation for the default and a *bona fide* defence which *prima facie* carries some prospect of success. It is not sufficient to satisfy one requirement only. In *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills (Cape)* 2003 (6) SA 1 (SCA) para [11] the requirement that the application itself be made *bona fide* is stated as a third element.

[22] The law is equally clear that, once a judgment or order has been granted, it is generally final. In *Colyn* paras [4]–[6], the Supreme Court of Appeal explained that the guiding principle is certainty and finality of judgments, and that a court becomes *functus officio* once judgment has been given, subject only to limited recognised exceptions.

[23] Those exceptions, collected in *Firestone South Africa (Pty) Ltd v Genticuro AG* 1977 (4) SA 298 (A) at 306H–307E, include the correction of an ambiguity, patent error or omission, or other clerical or arithmetical mistake, but only to the extent necessary to give effect to the true intention of the order and not so as to

alter its sense or substance. That principle was restated by the Supreme Court of Appeal in *HLB International (South Africa) (Pty) Ltd v MWRK Accountants and Consultants (Pty) Ltd* 2022 (5) SA 373 (SCA) paras [19]–[23]. Importantly, the Court there held (para [22]) that “[t]he ambiguous language or the patent error or the omission must be attributable to the court itself”, a patent error being one “as a result of which the judgment granted does not reflect the intention of the judicial officer pronouncing it”.

[24] Rule 42 of the Uniform Rules of Court restates, for the most part, that familiar position; it does not purport to amend or extend the common law (*Colyn* para [6]). It provides that the court may rescind or vary an order erroneously sought or erroneously granted in the absence of any party affected thereby (Rule 42(1)(a)); correct an ambiguity, patent error or omission, but only to the extent of such ambiguity, error or omission (Rule 42(1)(b)); or vary an order granted as the result of a mistake common to the parties (Rule 42(1)(c)).

[25] Critically, Rule 42(2) requires that application be made on notice to all parties whose interests may be affected, and Rule 42(3) precludes the court from rescinding or varying an order unless it is satisfied that all such parties have notice of the order proposed. Equally critically, the powers conferred by Rule 42 are conferred on the court. They are not conferred on the Registrar.

Evaluation

[26] JDA submits that the application was launched late. It is common cause that Khum MK first became aware of the judgment on 22 April 2025 and that the application was launched on 29 May 2025, some 25 court days later.

[27] A delay of five court days beyond the period in Rule 31(5)(d) is short, and the application was in any event launched within some five weeks of Khum MK

acquiring knowledge of the judgment. In circumstances where the validity and continued operation of the default judgment itself has been placed in serious issue, that is a reasonable time. To the extent that condonation, or an extension of time under Rule 27, is necessary, it ought to be granted.

Explanation for default

[28] I am not persuaded that Khum MK has furnished a full and satisfactory explanation under oath for its original default. JDA is correct to submit that the sheriff's return and the account of service at Khum MK's principal place of business present difficulty for Khum MK. The summons was received by Mr Dumisani Manentsa, who identified himself to the Sheriff of this Court as the administration officer of Khum MK. Khum MK acknowledges that Mr Manentsa is known to it and confirms that the address at which the Sheriff served the summons was indeed its principal place of business.

[29] Were that the only issue, Khum MK would have faced considerable difficulty in meeting the standard described in *Chetty*. But that is not the only issue. The Court must also decide whether the judgment which JDA seeks to preserve is procedurally regular and sufficiently certain to stand.

[30] That second issue is this, that a second version of the order was procured from the Registrar's office in April 2025, without notice to Khum MK and without any judicial act. That complaint does not depend on the strength of Khum MK explanation for the default.

[31] Before turning to it, I must resolve which version of the order was served on Khum MK on 22 April 2025. The sheriff's return describes the document served as the "*amended court order*". Counsel for JDA submitted that the sheriff would have taken that description from the CourtOnline cover page under which the order was transmitted to him. In my view that submission tells against JDA rather

than for it: if the description was drawn from the cover page generated when the Registrar uploaded the corrected version, it records how the document was labelled on CourtOnline and does not establish which version of the order was in fact delivered.

- [32] Against that stands Khum MK's evidence on affidavit that the order served on it was Order A, and the fact that Order A — the version reflecting the erroneous and lesser amount, which Khum MK had no reason to prefer — is the version it annexed to its founding affidavit. On the probabilities I find that the order served on Khum MK on 22 April 2025 was Order A. It follows that Khum MK was never served with Order B, which is the order JDA seeks to enforce.

The two orders and the Registrar's limited powers

- [33] The differences between Orders A and B are neither minor nor peripheral. The capital amount differs. The wording of the interest provision differs. More importantly still, each document bears the signature and date stamp of the Registrar, so that there exist two signed versions of a single judgment; and the second of them bears a date some three weeks earlier than the day on which it was in fact signed.
- [34] In my view, neither the Uniform Rules nor the common law confer on the Registrar a free-standing post-judgment power to alter the substance of an order after it has been granted. Rule 31(5)(b) confers real powers on the Registrar, including the power under sub-paragraph (ii) to grant judgment for part of the claim only or on amended terms. But those are powers exercisable in the disposal of the application for default judgment. Once judgment has been granted and recorded under Rule 31(5)(c), the application is at an end. The rule does not authorise the Registrar thereafter to sign a fresh version of the order,

on different terms, merely because one party approaches the Registrar's office and asks that it be done.

[35] JDA submitted that, because a judgment entered by the Registrar is by section 23 of the Superior Courts Act deemed to be a judgment of the Division, and because the Registrar remained seized of the application, the Registrar was entitled to correct the order so that it reflected what had always been intended. It relied in that regard on *Nedbank Ltd v Mollentze* 2022 (4) SA 597 (ML) and *Nedbank Ltd v Mashaba* 2024 (3) SA 155 (GJ), and on *Nkata v FirstRand Bank Ltd* [2016] ZACC 12 and *Du Plessis v FirstRand Bank Ltd t/a WesBank* (GP, case no 62570/2015, 2 May 2018).

[36] Those authorities do not assist JDA. Each is concerned with the Registrar's power to grant default judgment, and with the circumstances in which judicial oversight must displace that power. None addresses the different question that arises here, which is whether the Registrar may sign a second version of a judgment already granted and recorded. Nor does the deeming provision in section 23 carry JDA further: if the Registrar's judgment is deemed to be a judgment of this Court, it is a judgment of this Court that may be corrected only in the manner, and by the body, that the common law and Rule 42 permit. And on JDA's own version the Registrar was not still seized of the application: judgment had been granted and recorded on 17 March 2025, and the order had been issued and extracted before anyone approached the Registrar's office again.

[37] If the second version was intended merely to correct a patent clerical or arithmetical error so that the order reflected the true original intention, the proper route was a corrective process before the court, within the recognised limits described in *Colyn* and *HLB International*, and, in terms of Rule 42(2) and (3), on notice to all affected parties. There is the further difficulty that, on JDA's own

version, the error lay in the draft order prepared and uploaded by its own attorneys. It was not an error attributable to the Registrar, and it was therefore not a patent error of the kind that the correction jurisdiction reaches (*HLB International* para [22]).

[38] Khum MK, as the judgment debtor under the order, was plainly a party whose interests were affected. Fairness and the integrity of court process required that any proposed correction with substantive effect be brought to its attention and be placed properly before the court. That did not happen. Khum MK was given no notice of the proposed correction before Order B was issued, and, on the finding I have made, was not served with Order B at all.

[39] The Court is therefore left with two signed versions of the order, material differences between them, and an explanation which, although candid, identifies no power for the issue of the second and no explanation for the date it bears.

[40] In those circumstances, the Court cannot treat Order B as a mere benign administrative correction. Nor can it allow a default judgment to stand where the operative order is uncertain and where the later version appears to have been procured through a process for which no power has been demonstrated.

The basis for rescission

[41] It follows that Order B was erroneously sought, and erroneously granted, in the absence of Khum MK, a party whose interests were affected by it. That brings the matter squarely within Rule 42(1)(a), which prescribes no time limit and which does not require an applicant to satisfy the requirements of *Chetty*. The discretion which the rule confers must of course be exercised judicially. Given that the judgment which JDA seeks to enforce exists in two signed versions of

differing content, that the version it relies upon was procured without notice, was never served on Khum MK, and bears a date it did not bear when signed, and that no power for its issue has been demonstrated, this is a plain case for the exercise of that discretion in favour of rescission.

[42] The rescission granted below rests on Rule 42(1)(a).

[43] I therefore conclude that, notwithstanding the weakness of Khum MK's explanation for its original default, the default judgment falls to be rescinded under Rule 42(1)(a). The irregularity in the manner in which the order relied upon came into existence is material and, coupled with the absence of any demonstrated power for its issue, makes it unsafe to permit the default judgment to remain in force.

Costs

[44] Khum MK's explanation for its original default is unsatisfactory. That is a factor which cannot be ignored. But JDA has sought to uphold an order which it procured from the Registrar's office without notice, and for which no legal basis has been demonstrated.

[45] In my view, the appropriate order is that the costs be costs in the cause.

The following order is made:

[1] To the extent necessary, condonation for the late bringing of the rescission application is granted.

- [2] The default judgment granted by the Registrar against Khum MK Investments CC on 17 March 2025, in both of the versions appearing at pages 27-15 and 27-63 of the rescission bundle, is rescinded and set aside.
- [3] Khum MK Investments CC shall deliver its notice of intention to defend within 10 days of the date of this order.
- [4] The costs of the rescission application are costs in the cause.

N STRATHERN
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Appearances:

For the Applicant:

Adv S P M Vorster

Instructed by: Suhail Hoosen, Cuzen Randeree Dyasi Inc

For the First Respondent:

Mahlape Sello SC and Cecilia Marule

Instructed by: Mncedisi Ndlovu & Sedumedi Attorneys