IN THE HIGH COURT OF ESWATINI

HELD AT MBABANE **CASE NO. 592/2022**

In the matter between:

BHEKIMPI NDWANDWE	Applicant
and	
STEFFEN HOLDINGS (PTY) LTD	1st Respondent
DEPUTY SHERIFF LUBOMBO DISTRICT	2nd Respondent
In re:	
STEFFEN HOLDINGS (PTY) LTD	Plaintiff
and	
BHEKIMPI NDWANDWE	Defendant

Neutral Citation: *Bhekimpi Ndwandwe vs Steffen Holdings (Pty) Ltd and Another (592/2022 [2024] SZHC 31 (12 March 2024)*

CORAM: **N.M. MASEKO J**

FOR THE APPLICANT: **P.K. MSIBI**

FOR 1ST RESPONDENT: **M. MOTSA**

DATE HEARD: **31/03/2023**

DATE DELIVERED: **12/03/2024**

Preamble: Civil Law and Procedure – Application for rescission of judgment by default – requirements to be met by an applicant seeking to rescind a judgment granted by default, and whether the applicant has met such requirements in terms

of Rule 42 (1) (a), Rule 31 (3) (b) and the Common Law – Legal authorities discussed.

JUDGMENT

MASEKO J

[1] This is an application for the rescission of judgment by default granted by this Court on the 16th June 2022 wherein the Applicant (defendant in the main action) was ejected from premises described as Lot 35 of Portion 15 of Farm 513 situate at Matata, Big Bend in the Lubombo District.

[2] A Combined Summons was issued on the 31/03/2022 by the 1st Respondent, the plaintiff in the main matter. For ease of reference, I will refer to the parties as Applicant and 1st Respondent respectively in these rescission proceedings.

[3] The Combined Summons was served on the Applicant on the 6th April 2022, and on the 27th April 2022 the Applicant's former attorneys (Mbhamali Attorneys) filed a Notice of Intention to Defend.

[4] The Applicant did not file a plea to the Combined Summons, and on the 30th May 2022 the 1st Respondent issued a Notice of Bar which was served on the applicant's then attorneys (Mbhamali Attorneys) on the same date 30th May 2022. Eventually on the 16th June 2022 judgment by default was granted by this Court. This is the judgment which is the subject of these rescission proceedings.

FACTS OF THE MATTER

[5] The Applicant states that he is the biological son of one Luke Ndwandwe who is since deceased. During his lifetime Luke worked for Herman Steffen at Matata Big Bend until he met his untimely death. It is common cause that the aforesaid Luke Ndwandwe was the right handman of Herman Steffen.

[6] Mr. Luke Ndwandwe was allocated a house within the farm. The Applicant states that in 1998 his father Luke passed on. The Applicant was 17 years old and doing Form V when his father passed on.

[7] It is common cause that Herman Steffen assisted the bereaved Ndwandwe family during that difficult period. The Applicant states that after the burial of the late Luke Ndwandwe, Herman Steffen came to his home and a meeting was held where he was chosen to be adopted by the Steffen family in honour and replacement of his late father Luke.

[8] I must state at the outset that the adoption part is denied by both Mr. Hans Stefffen and Mr. Willen Jacobus Snyman. Mr. Hans Steffen's Answering Affidavit is found at pages 44-45 of the Book.

[9] The Applicant states that after his adoption he was given a house permanently because he was now a member of the Steffen family. He states that he was also assigned to perform certain duties in the business as well as family chores since he was treated as a new member of the family. He states that he adapted quickly to the work or business environment. He states further that he was given a survival stipend and was also paid E30.000-00 every year in October as some kind of appreciation of the hard work.

[10] Again the issue of the permanent allocation of the house and the E30.000-00 per year and survival stipend are denied by Mr. Snyman, who has proceeded to attach employment documentation, including the retrenchment package, letter of employment, letter of retrenchment, First Warning Letter and Final Warning Letter found at pages 64-70 of the Book. In his Replying Affidavit, the Applicant denies that he was employed by the 1st Respondent but alleges that he was part of the **investors** of the family business (para 19 page 102 of the Book).

[11] At page 104 para 20.1 of the Replying Affidavit the Applicant does not deny the Warning letters issued at work but maintains that he was an adopted child of the Steffen family.

[12] The Applicant alleges further that the did not abandon the defence of the Summons but that upon receipt of same he promptly instructed his erstwhile attorneys (Mbhamali Attorneys) to defend the matter and file the necessary pleadings, however, his erstwhile attorneys did not attend to his matter, until judgment by default was granted in favour of the 1st Respondent. The Applicant states further that he is not in willful default of the process of the Court and that the judgment was granted by the Court erroneously in his absence.

[13] Applicant states further that he has *bona fide* defence to the eviction summons, and that his failure to file pleadings timeously was due to the ineptitude of his erstwhile attorneys. The 1st Respondent on the other hand states that all the pleadings that were filed in this matter leading to the judgment by default on the 16th June 2022 were served on Mbhamali Attorneys Applicant's attorneys of record. The filing of the plea and Notice of Appointment and Substitution as Attorneys of Record by his current attorneys was on the 5th august 2022 and was way out of time considering that judgment by default was granted on the 16th June 2022.

[14] The 1st Respondent, however, further denies that the Applicant has a *bona fide* defence, and states further that he has failed to establish a clear right to the relief which he seeks before Court.

[15] The Applicant further states that the judgment by default was granted in error because the Court assumed that by his silence, that means he was no longer intending to pursue his defence to the prayers contained in the 1st Respondent's particulars of claim, yet that is not the position. He explains that his erstwhile attorney did not file his pleadings hence the judgment by default was granted.

[16] Mr. Snyman, the Director of the 1st Respondent states that the farm wherein the house is situate is owned by the 1st Respondent and in turn the 1st Respondent is owned by the Steffen Family Trust No. 35 of 2008, and therefore there is no way by which the Applicant may claim title there. In response, the Applicant states that he does not care about the intricacies and exigencies of the actual ownership of the property whether it be vested onto 1st Respondent and or family trust, but that all he knows is that he is a permanent dweller in the house situate within the 1st Respondent's property after having been adopted onto the Steffen family in terms of Swazi Law and Custom way even before Steffen Holdings donated its property to the family trust as alleged. Applicant alleges further that the house was donated to him first before it was ever donated to the family trust, therefore the donation to the trust was unlawful and of no effect.

[17] During submissions Mr. Msibi for the Applicant submitted that the Application was being moved on the basis of Rule 42, Rule 31 and the Common Law. Counsel submitted further that in order to succeed in a rescission application, the Applicant must first establish to the

satisfaction of the Court the reasons for the default in filing the defence papers. Mr. Msibi submitted that the Applicant has narrated in his Founding Affidavit that the applicant was let down by his erstwhile attorneys who did not file the **"defendant's plea"** timeously and eventually judgment by default was granted against the Applicant.

[18] Mr. Msibi argued that Rule 42 of the Rules of this Court require that there must be error on the part of the Court that granted the judgment sought to be rescinded. Counsel submitted that the Court that granted the default judgment took the view that the Applicant had abandoned his defence yet in reality it was his former attorneys who, apparently, has difficulty in formulating a defence out of the facts given to them by the Applicant and were apparently shy to admit same.

[19] Mr. Msibi submitted that the Applicant has shown good cause because firstly, he has given a reasonable explanation of his default, and secondly, he has shown that his application is made *bona fide*, and thirdly, that he has a *bona fide* defence to the Respondent's claim which *prima facie* has prospects of success. Counsel submitted that the Applicant has made a case for the grant of the relief in the Notice of Motion. Mr. Msibi referred to a number of legal authorities in support of his case.

[20] On the other hand Mr. M. Motsa for the 1st Respondent submitted that the Applicant's justification for the default is vague and insufficient in that Applicant fails to provide detail of what necessary steps he took to ensure that his attorneys were proceeding with the matter. Mr. Motsa argued that the Applicant makes bald allegations that he has **"always been calling"** attorneys Mbhamali but the latter was **"evading"** the calls and not returning them.

[21] Mr. Motsa submitted further that the Applicant despite being aware that his erstwhile attorney was not picking his calls does not even state in his papers whether he physically went to his attorney's offices to seek for progress report on this important matter. Mr. Motsa submitted further that in the circumstances of the case, the Applicant's explanation falls short of the required standard in that it is not reasonable, and not satisfactory. Mr. Motsa argued that the Applicant has not filed an affidavit from his erstwhile attorneys to explain their failure to proceed with this matter.

[22] Mr. Motsa argued that it is unbelievable that a competent attorney would accept instructions in a matter and then deliberately avoid communication with his client on the proceedings of the case, whilst at the same time receiving correspondence and documentation concerning the matter from opposing Counsel.

[23] Mr. Motsa further submitted that the Applicant has not established a *bona fide* defence to the matter which carries some prospect of success because:-

> **firstly**, Applicant claims to have been adopted by the late Herman Steffen who is not the owner of the farm, instead the registered owner is the 1st Respondent.
>
> **secondly,** since the late Herman Steffan the **'alleged adoptive father'** was not the owner of the immovable property, he could not therefore donate the house built on that land which he didn't own and did not have any right at law to donate property which belongs to the 1st Respondent, a Company.

[24] Mr. Motsa further submitted that the Applicant has not discharged the onus imposed on him by Rule 42 (1) (a) of the Rules of Court by

proving that the judgment was erroneously granted by the Court in the absence of any party, because at the time when the Court granted the judgment by default, there was a Notice to Defend, a Notice of Bar, which was never removed in terms of the Rules of Court, therefore the Court did not commit any error when it granted the judgment by default.

[25] Mr. Motsa submitted that the papers before the Court when it granted the judgment by default was indicative of Applicant's neglect of the matter and/or neglect of the intention to defend the matter, and therefore the Court could not be said to have been in error when it granted the judgment by default. Mr. Motsa submitted that the blame for non-appearance must fall squarely on the Applicant's shoulders for his failure to prove an error on the part of the Court when the judgment by default was granted. Mr. Motsa referred to legal authorities in support of his submissions.

ANALYSIS OF THE EVIDENCE AND THE LAW APPLICABLE

Adoption

[26] Adoption in the Kingdom of Eswatini was governed by the Adoption of Children Act No. 64 of 1952 as Amended in 1998 when the Applicant claims to have been adopted by the deceased Herman Steffen. The Constitution was enacted into the Supreme Law in 2005, and the Children's Protection and Welfare Act No. 6 of 2012 repealed the Adoption of Children Act No. 64 of 1952 to the extent that it is inconsistent with the provisions of Act No. 6 of 2013.

[27] It is common cause that the Applicant alleges that Herman Steffen adopted him in accordance with Siswati Law and Custom in 1998 after the death of his father Luke Ndwandwe. Section 16 of the repealed Adoption of Children Act provides as follows:-

Swazi Law and Custom preserved.

16. Nothing in this Act shall be construed as preventing or affecting the adoption of a child in accordance with Swazi Law and Customs.

[28] It is clear therefore that the repealed Act also recognized adoption in accordance with Siswati law and custom. The Applicant has not adduced any evidence of any competent authority on Siswati law and custom concerning his alleged or purported adoption by Herman Steffen as his son in 1998. There is no supporting affidavit from any person who corroborate or support the allegations of adoption of the Applicant by Herman Steffan. Further the 1st Respondent's Mr. Snyman together with Hans Steffen deny the allegations of adoption, permanent allocation and/or donation of a house to Applicant. They further deny that he was always paid E30.000-00 in or around October of every year, and they further deny that he was paid a monthly stipend.

[29] Instead Mr. Snyman and Hans Steffen have attached documentation which prove that Applicant was an employee at Matata and allocated a house like all the other employees who were allocated houses. In fact Mr. Snyman has proven that Applicant was even charged housing allowance for the house he was allocated, the very same house which he is claiming now.

[30] For ease of reference I will refer to the documentation as contained at pages 64-70 of the Book and respectively marked **Annexures "SH3"-"SH7"**:-

(i) **Annexure "SH3": letter dated 10th August 2005.**

This is a letter from LC Von Wissel (Pty) Ltd the company which has employed the applicant from 07/12/1998 until he was retrenched around 31st May 2019. This letter was addressed to Nedbank Manzini Branch and gave details about his monthly salary of E2 753.00, his severance pay of E6 353.00. There is also his monthly performance bonus of E759 and accommodation valued at E1 600-00 per month. The letter also states that the applicant is entitled to a 13th cheque paid in December of every year subject to the company performance. The Applicant's particulars of employment are contained at page 65 of the Book.

(ii) **Retrenchment letter "SH4" dated 22nd May 2019.**

This is a retrenchment letter addressed to the applicant which he received and acknowledged receipt by endorsing his signature on the 22nd May 2019.

(iii) **Annexure "Annexure "SH5".**

This is a computer printout of Applicant's salary details.

(iv) **1st Warning letter Annexure "SH6" dated 28th April 2010.**

This is a first warning letter wherein the Applicant was charged with incompetence for failing to comply with company procedures. The Applicant acknowledged same by appending his signature on the document.

(v) **Final warning letter Annexure "SH7" dated 21st March 2011.**

In this warning letter the Applicant was charged for dishonesty, failing to comply with company procedures and causing subordinates to be guilty of the same charge, it being alleged that he removed a cow from the feedlot without paying cash on delivery. Again the Applicant acknowledged these charges by appending his signature on this document.

[31] The cumulative effect of Annexures "SH3" – "SH7" is simply that the Applicant was an ordinary employee of LC Von Wissel (Pty) Ltd trading as Matata, and by the time he was retrenched he was holding a senior position, being Manager. These documents provide a clear picture of the history of his employment at Matata from 7th December 1998 until he was retrenched on the 31st May 2019 and he was paid his retrenchment package. His company employment number was 1298440 and was stationed at the Receiving Department as Supervisor on the 7th December 1998 when he was employed. He served a probation period of three (3) months and thereafter confirmed. He was entitled to annual leave from completing his first year with the company, and was always paid for working on public holidays and during illness.

[32] These documents herein referred to as **Annexure "SH3"-"SH7"** clearly demonstrate that the Applicant was an employee of Matata i.e. LC Von Wissel (Pty) Ltd who was retrenched and paid his employment benefits. The Applicant claims to have been an investor in the Steffen business empire without adducing any documentary proof. There is no way by which this Court can accept that the Applicant was the adopted child of Herman Steffen when all these employment documents points to one conclusion, and that is, the Applicant was an employee who was treated as such and also subjected to disciplinary processes where he had committed acts of misconduct at his workplace. This documentation dates back to the year 2005 when the company Matata addressed **Annexure "SH3"** to the Nedbank Manzini supporting a loan application which Applicant had submitted to the bank.

[33] I have taken time addressing these documents because of their importance in proving that the Applicant was an employee at Matata and allocated a company house valued at E1600-00 per month. There

is nowhere in these documents where it states that the company house was permanently allocated to him because he was an adopted child of Herman Steffen. It would be very strange that such an allegation of adoption would not be known to Hans Steffen and Mr Snyman. Applicant states in his testimony that his relationship with Hans broke down because of his occupancy of the house, and even Snyman talked to him about the same issue and eventually the Summons for his eviction was issued.

[34] The Applicant was aware even before the Summons was issued that the 1st Respondent wanted him to vacate the house, and when the Summons were issued he should have been vigilant to ensure his erstwhile attorney files his defence timeously. It is surprising why the Applicant became lax in attending to his matter with his erstwhile attorneys when they did not pick his calls, that is when he should have hurried to attend to the matter, but he did not do that, and judgment by default was eventually granted against him.

[35] The Deed of Donation and Trust **Annexure "SH1"** clearly demonstrates the credibility and trustworthiness of Mr. Snyman's evidence in so far as the ownership of the farm wherein the house in issue is situate. The deceased Herman Steffen and his son Hans Steffen neither has any ownership of Steffen Holdings (Pty) Ltd, the 1st Respondent.

[36] The 1st Respondent (Steffen Holdings) is 100% owned by the Steffen Family Trust as per the Deed of Donation and Trust No. 35 of 2008. The Trustees of the Trust are Lizette Burger (born Steffen) and Oscar Anthony Taylor, and the only beneficiaries of the Trust are Hans Oscar Helmuth Steffen and his sister Lizette Burger (born Steffen).

[37] The Applicant does not feature anywhere in the Deed of Donation and Trust No. 35 of 2008.

BONA FIDE DEFENCE AND PROSPECTS OF SUCCESS

[38] The facts disclosed in **Annexures "SH1"** the Deed of Donation and Trust, as well documents **Annexures "SH3"-"SH7"** the employment documents speaks greatly to the lack of Applicant's *bona fide* defence which exhibit reasonable prospects of success to the 1st Respondent's particulars of claim.

[39] The claim against the 1st Respondent by the Applicant is not capable of being enforced, and is certainly misdirected. The evidence adduced by Mr. Snyman and Hans stands uncontroverted, their answering affidavit supported by credible documentation clearly demonstrate that the adoption story advanced by the Applicant and which is the source of these proceedings does not have merit, and is too improbable to be believed. Snyman and Hans deny that Applicant was adopted by Herman Steffen, and also deny that Applicant was given permanently the house which he occupies and they have explained convincingly aided by documentary evidence that the Applicant was employed in 1998 until 2019 when he was retrenched and paid his terminal benefits, and that now he is refusing to vacate the house which was allocated to him by Herman when Applicant was in the employ of Matata i.e. LC Von Wissel (Pty) Ltd.

[40] This causes problem for the Applicant because it negates his defence to the 1st Respondent's participation of claim, and further diminishes any possibility of prospects of success in the action wherein he seeks to have the judgment by default granted by this Court rescinded.

[41] It is trite at common law that in applications for rescission of judgment, the Applicant must show good cause for his/her default, and also demonstrate the existence of a *bona fide* defence which give rise to reasonable prospects of success on the merits of the case. Has the Applicant *in casu* established these two cardinal requirements? My view is that the Applicant has not succeeded to establish these requirements.

[42] Rescission of judgment proceedings are governed by the common law as well as Rule 42 of the Rules of Court. Rule 42 (1) (a) provides as follows:-

> "42 (1)The Court may in addition to any other powers it may have, *mero motu* or upon the application of any party affected, rescind or vary
>
> (a) an order or judgment erroneously granted in the absence of any party affected thereby."

[43] Rule 31(3) (b) also provides an opportunity for the rescission of a judgment by default where the party in default must show good cause in order to have the said judgment rescinded. The rule provides as follows:-

> "31 (3) (b) A defendant may within twenty-one days after he has had knowledge of such judgment, apply to Court upon notice to the plaintiff to set aside such judgment and the Court may upon good cause shown and upon the defendant furnishing to the plaintiff security for the payment of the costs of the default judgment and of such application to a maximum of E200 set aside the default judgment on such terms as to it seems fit."

[44] **Herbstein and Van Winsen** in their textbook titled *THE CIVIL PRACTICE OF THE HIGH COURTS OF SOUTH AFRICA VOL.1 5th Ed, Juta 2012 at page 938* state as follows when dealing with rescission of judgments:-

> "As stated, a final judgment, being res judicata is not easily set aside, but the Court will do so on various grounds, such as fraud, discovery

of new documents, error or procedural irregularity. At common law, any cause of action that is relied on as a ground for setting aside a final judgment must have existed at the date of the judgment. There must be some casual connection between the circumstances that gave rise to the claim for rescission and the judgment.

In terms of the common law, the Court has power to rescind a judgment obtained on default of appearance provided that sufficient cause for rescission has been shown. The term sufficient cause defies precise or comprehensive definition, but it is clear that in principle and in the long-standing practice of our courts two essential elements are:

(1) that the party seeking relief must present a reasonable and acceptable explanation for default, and
(2) that on the merits that party has a *bona fide* defence which, *prima facie*, carries some prospect or probability of success."

[45] It was submitted on behalf of the Applicant that he was moving the rescission application on the basis of the common law, Rule 31 (3) (b) and rule 42 (1) (a). It is my view that despite this multi-pronged strategy by the Applicant, he has not met or established the requirements that are essential in order for the Court to grant the rescission of the judgment by default which he seeks because of the following factors:-

(i) the Applicant has not provided a reasonable and satisfactory explanation (good cause) for his absence or default. The Applicant was aware timeously that his erstwhile attorney was not picking his calls, but, however chose not to vigilantly engage him or to instruct another attorney timeously. The Applicant himself is thus in willful default. The Applicant has not proven that the Court was in error when it granted the judgment by default, this is because the Court had all the necessary pleadings before it, which warranted it to grant the judgment by default.

(ii) the Applicant does not have a bona fide defence and therefore no prima facie prospects of success. The Applicant's story about his adoption and permanent gift

or allocation of the house in issue is so improbable and does not sustain his purported adoption and the gift of the house by Herman Steffen. Mr. Snyman and Mr. Hans Steffen have provided sufficient documentary proof that the Applicant was an employee of Matata from 1998 to 2019 as I demonstrated above.

[46] I must highlight further that where immovable property on title deed land is donated to any beneficiary, such a transaction is always in writing by having a deed of donation issued by the Registrar of Deeds after all the relevant transfer of ownership documents have been submitted by the Conveyancers effecting such transfer. The purported donation or permanent allocation of the house in issue can never be lawful in the absence of a deed of donation even if the Applicant were to be believed, however, which is not the case in the circumstances *in casu.*

[47] In the case of **Nyingwa v Moolman 1993 (2) SA 508 (TK) at pg 511** White J stated as follows:-

> 'In Childerley Estate Stores v Standard Bank of SA Ltd 1924 OPD 163 referred to in the above extract, De Villiers JP held that in terms of the common law a judgment can be set aside on the grounds of fraud, *justus* error (on rare occasions), the instances provided for in our modern Rules where judgment has been granted by default and, in certain exceptional circumstances, when new documents have been discovered.
> Trengove AJA continued as follows in the De Wet and Others Case, at 1042F:
>
> > "Thus, under common law the Courts of Holland were, generally speaking empowered to rescind judgments obtained on default of appearance, on sufficient case shown. This power was entrusted to the discretion of the courts. Although no rigid limits were set as to the circumstances which constituted sufficient cause --- the Courts nevertheless laid down certain general principles, for themselves, to guide them in the exercise of their discretion. Broadly speaking, the exercise of the Court's discretionary power appears to have been influenced by considerations of justice and fairness, having regard to all the facts and circumstances of the particular case. The onus of showing the existence of sufficient cause for relief was on the applicant in each case, and he had to satisfy the Court, *inter*

alia, that there was some reasonably satisfactory explanation why the judgment was allowed to go by default. It follows from what I have said that the Court's discretion under common law extended beyond, and was not limited to, the grounds provided for in Rules 31 and 42 (1), and those specifically mentioned in the Childerley case. Those grounds do not, for example cover the case of a litigant, or his legal representative, whose default is due to unforeseen circumstances beyond his control, such as sudden illness, or some other misadventure; one can envisage many situations in which both logic and common sense would dictate that defaulting party should, as a matter of justice and fairness, be afforded relief."'

[48] I have considered the facts and circumstances *in casu* as per the principles enunciated in the **Nyingwa v Moolman** case (supra), and it is my view that fairness and justice would be served by the dismissal of these rescission proceedings because the judgment was not in error by the Court, but procedurally so and in terms of the Rules of Court. When the Court granted the judgment by default, Applicant's erstwhile attorneys were attorneys of record. There is also no reasonable and sufficient explanatory good cause made and/or shown by the Applicant necessitating that this Court grants the rescission of the judgment by default for the reasons demonstrated above. Justice and fairness is considered from the interests of both parties i.e. the Applicant and 1st Respondent respectively. As I observed that the Applicant was aware that his erstwhile attorney was no longer picking his calls, he should have become more vigilant in attending to his case, whose dies were decreasing rapidly.

[49] In the case of **Salooje and Another NNO v Minister of Community Development 1965 (2) SA 135 (A)** Steyn CJ stated as follows at pg. 141:-

"I should point out, however, that it has not at any time been held that condonation will not in any circumstances be withheld if the blame lies with the attorney. There is a limit beyond which a litigant cannot escape the results of this attorney's lack of diligence or the insufficiency of the explanation tendered. To hold otherwise might have a disastrous effect upon the observance of the Rules of this Court. Consideration *ad misericordian* should not be allowed to

> become an invitation to laxity. In fact this Court has lately been burdened with an undue and increasing number of applications for condonation in which the failure to comply with the Rules of this Court was due to neglect on the part of the attorney. The attorney after all, is the representative whom the litigant has chosen for himself, and there is little reason why, in regard to condonation of a failure to comply with a Rule of Court, the litigant should be absolved from the normal consequences of such a relationship, no matter what the circumstances of the failure are ... A litigant, moreover, who knows, as the applicants did, that the prescribed period has elapsed and that an application for condonation is necessary, is not entitled to hand over the matter to his attorney and then wash his hands of it. If, as here, the stage is reached where it must become obvious also to a layman that there is a protracted delay, he cannot sit passively by, without so much as directing any reminder or enquiry to his attorney and expect to be exonerated of all blame; and if, as here, the explanation offered to this Court is patently insufficient, he cannot be heard to claim that the insufficiency should be overlooked merely because he has left the matter entirely in the hands of his attorney. If he relied upon the ineptitude or remissness off his own attorney, he should at least explain that none of it is to be imputed to himself. That has not been done in this case. In the circumstances I would find it difficult to justify condonation unless there are strong prospects of success **(Melane v Santam Insurance Co. Ltd 1962 (4) SA 531 (AD) at 532).**

[50] As alluded above herein, I find it difficult to accept the Applicant's version that he was let down by his erstwhile attorney which resulted to the judgment by default being granted because, he was aware of the *dies* from the time he was served with the Summons. Further there is no reasonable explanation forthcoming from the Applicant why his erstwhile attorney dumped the case when he was or ought to have been on full instruction to defend the matter. No affidavit was obtained from his erstwhile attorney ever filed in support of his assertions to put the Court in a clear picture as to who was at fault here, and therefore this Court is left with no doubt but to conclude that the Applicant was lax in dealing with his matter and is now making the erstwhile attorney a scapegoat.

[51] I have also stated in detail that the Applicant has not shown good cause for his default, and further he has not shown any *bona fide* defence to and *prima facie* prospects of success in the 1st

Respondent's particulars of claim. Lastly, the judgment by default was not granted in error by this Court, but rather the judgment was granted in accordance with the Rules of Court.

[52] For the foregoing, I hereby hand down the following order:-

1. The application for the rescission of the judgment granted by this Court on the 16th June 2022, together with all the prayers as contained in the Notice of Motion dated 17th August 2022 is hereby dismissed with costs.

N.M. MASEKO
JUDGE