

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

CASE NO: 2021/55976

(1)	REPORTABLE: NO/YES
(2)	OF INTEREST TO OTHER JUDGES: NO/YES
(3)	REVISED: NO/YES

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SIGNATURE

DATE 25 August 2026

In the matter between:

ROAD ACCIDENT FUND

Applicant

and

**T[...]: K[...] E[...]
obo N[...] T[...] T[...]**

Respondent

JUDGMENT

VERVEEN AJ:

This judgment is handed down electronically by circulating it to the parties' representatives by email and by uploading on CaseLines.

Introduction

[1] The applicant, the Road Accident Fund ("the RAF"), applies under Uniform Rule 42 and the common law to rescind the order granted by Weideman AJ

on 16 February 2024. The material part of that order directed the RAF to pay R5 537 040.00 for the respondent's loss of earnings.¹

- [2] The RAF was served with the judgment by 25 February 2024, according to its own founding affidavit. It served this application on 28 November 2024.²

The applicable principles

- [3] Rule 42(1)(a) permits rescission only of an order erroneously sought or granted **in the absence** of a party affected by it. A party who was procedurally entitled to judgment is not deprived of that entitlement merely because a defence is later advanced.³
- [4] Under the common law, an applicant must establish good cause: a reasonable explanation for the default; bona fides; and a bona fide defence carrying prima facie prospects of success. The requirements are considered in the circumstances as a whole.⁴
- [5] In particular, *Colyn* at para 9 confirms that an internal or attorney-side failure does not, without more, constitute the procedural error contemplated in Rule 42(1)(a). Paragraph 12 confirms that an inadequate explanation for default is not cured merely by a stronger case on the merits. *Lodhi* at paras 25–27 makes clear that a later-disclosed merits defence cannot transform a procedurally valid default judgment into an erroneously granted order.

Rule 42

- [6] The RAF cannot satisfy the absence requirement. Its representative, Ms Nziyanziya, appeared for it at the hearing. When invited to address the

¹ Bundle, p207.

² Bundle, p 38, 248.

³ *Lodhi 2 Properties Investments CC and Another v Bondev Developments (Pty) Ltd* 2007 (6) SA 87 (SCA) paras 25–27.

⁴ *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills (Cape)* 2003 (6) SA 1 (SCA) paras 11–12; *Grant v Plumbers (Pty) Ltd* 1949 (2) SA 470 (O) at 476.

Court, she recorded that the RAF was barred and that she had no instructions on general damages or loss of earnings.⁵

- [7] Concerningly, in these proceedings the founding affidavit expressly states that it representative was not present in court. The applicant has now conceded that the allegation in its founding affidavit that it was absent when the order was granted is incorrect. That concession is decisive of its reliance on Rule 42(1)(a). The transcript establishes that the applicant was represented, was afforded an opportunity to address the Court, and was not precluded from participating. Its representative stated only that the applicant was barred and that she held no instructions. The applicant cannot convert its own election not to advance submissions into an absence for purposes of Rule 42(1)(a).
- [8] Nor was the order erroneously sought or granted. The Court heard the respondent's submissions, interrogated the actuarial assumptions and contingencies, and independently determined the amount eventually awarded. The later allegation that the minor progressed more favourably at school than the experts had predicted is an attempted challenge to the merits of the assessment. It does not disclose a procedural error which rendered the order rescindable under Rule 42.⁶

Common-law rescission

- [9] The explanation for the approximately nine-month delay is inadequate. The RAF says that an internal memorandum had to be prepared and that the matter was later allocated to the State Attorney after settlement efforts failed. It gives no sufficient account of the material periods of inactivity, nor does it identify the dates, steps, or persons responsible. The explanation is materially based on information supplied by another official, without confirmatory evidence.⁷

⁵ Bundle, p 251, 252.

⁶ Bundle, p 254, 255.

⁷ Bundle, p 38.

[10] The RAF has also not demonstrated a *bona fide* defence with prospects of success. It accepts that the respondent is entitled to compensation for loss of earnings, but challenges the amount on the basis that the minor passed Grade 11 and that the experts' projections were therefore wrong.⁸ That contention does not engage with the Court's own evaluation of the evidence and contingencies. More importantly, the factual allegations underlying it are expressly said to have been conveyed to the deponent by the RAF's claim-investigation officer. No confirmatory affidavit from that officer or admissible source material supporting the alleged school progression was placed before the Court.⁹

[11] The application therefore seeks, in substance, a reconsideration of the *quantum* order upon incomplete and inadmissible evidentiary material. Rescission is not an appeal. The RAF has not made out a case under Rule 42 or at common law.

Costs

[12] The respondent sought attorney-and-client costs and a referral of the RAF's legal representative to the Legal Practice Council. Although the application cannot succeed, it does not automatically warrant attorney-and-client costs or a referral to the LPC. Those exceptional consequences would ordinarily require a finding that the incorrect allegation was knowingly made, recklessly persisted in, or inadequately withdrawn, and that the conduct merits censure.

[13] Costs should follow the result on the ordinary scale.

Order

[14] The following order is made:

⁸ Bundle, p 280.

⁹ Bundle, p 35.

1. The application for rescission is dismissed.
2. The applicant shall pay the respondent's costs on the party-and-party scale, including the costs of counsel on Scale B.

P VERVEEN

Acting Judge of the High Court
Johannesburg

APPEARANCES:

Applicant: ADV. H SCHOUTEN
Instructed by: WIM KRYNAUW ATTORNEYS

Respondent: PUMZA NZIYANZIYA
Instructed by: STATE ATTORNEY

Hearing: 24 August 2026
Judgment: 25 August 2026