

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 13276/2014

- (1) REPORTABLE:  
(2) OF INTEREST TO OTHER JUDGES:  
(3) REVISED.

.....  
DATE

.....  
SIGNATURE

In the matter between:

**MUTUMWA DZIVA MAWERE**

Applicant

And

**INDUSTRIAL DEVELOPMENT CORPORATION**

First

Respondent

**OF SOUTH AFRICA (IDC)**

**PARMANATHAN MARIEMUTHU**

Second Respondent

**JOHANN HEUNIS**

Third Respondent

**CAWEKAZI MAHLATI**

Fourth Respondent

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**JUDGMENT**

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**MAKUME J.**

- [1] On the 11<sup>th</sup> February 2019 I delivered judgment in which I found Applicant liable in terms of Section 424 of the Companies Act to the IDC in respect of

the manner in which the business of Aldolex was conducted. The indebtedness is the amount of R67 million. That judgment was delivered after a trial that had lasted for 5 days in open court during which time the Applicant stayed in Court and elected not to participate in the proceedings.

- [2] On the 1<sup>st</sup> of March 2019 the Applicant brought an application to rescind the judgment stated above. The Applicant claimed that fraud had been committed alternatively that he was entitled to rescission in terms of Rule 42 (1) (b) of the Uniform Rules of Court.
- [3] On the 5<sup>th</sup> April 2019 the IDC filed their Answering Affidavit in opposition to the application for rescission. The Applicant failed to reply and sat back.
- [4] On the 29 September 2020 the IDC filed their heads of argument. Thereafter the matter was referred to me for Case Management in terms of chapter 8(2) (b) of the Commercial Court Practice Directive.
- [5] On the 25<sup>th</sup> November 2020 I issued a directive that the Applicant file his heads of argument within 10 days. The directive was served on the Applicant on the 8<sup>th</sup> December 2020. The Applicant failed to abide by that order.
- [6] On the 15<sup>th</sup> February 2021 the Applicant filed an application seeking mu recusal as a Case Manager and also that the directive issued by me on the 25<sup>th</sup> November 2020 be set aside. IDC filed an affidavit opposing the recusal application.
- [7] On the 23 March 2021 I issued a further directive in which the Applicant was to file his replying affidavit in the rescission application as well as to file heads of argument including his replying affidavit in the recusal application. The

Applicant did nothing instead he filed a notice in terms of Rule 7(1) challenging the authority of IDC to oppose the recusal application. This was followed by notices in terms of Rule 30 from both sites seeking to declare each other's steps irregular. The Applicant also brought an application to strike out certain paragraphs in the affidavit answering the recusal application.

[8] On the 7<sup>th</sup> February 2022 I instructed the Registrar to notify the parties that all interlocutory application including the main rescission application will be heard by me on the 23<sup>rd</sup> March 2022 at 10am.

[9] On the 22<sup>nd</sup> March 2022 the Applicant served a notice supported by affidavit in which he indicated that he will on the 23<sup>rd</sup> March 2022 apply for a stay of the proceedings.

[10] On the 23<sup>rd</sup> March 2022 at 10am the Applicant was not at Court when the matter was called. My secretary sent him an email message to advise him to come on line as the matter will proceed at 10h30. Calls to his cell phone and landline by my secretary as well as by counsel for IDC were not answered.

[11] At 10h30 the matter was called and still there was no appearance by the Applicant neither did he make any telephone contact with his opponents about his availability I then directed that the matter proceed.

[12] The Applicant's interlocutory applications stated above are filled with legal words meant to obfuscate the real issue. I accordingly dismissed same with costs as indicated on the draft order.

[13] Counsel for the Respondent addressed me on the merits of the rescission application. The Applicant's founding affidavit in the rescission application

does not articulate the precise fraudulent acts or omission which he relies on. His affidavit contains no evidence that controverts or places in dispute the evidence lead at the hearing by all the IDC witnesses.

[14] The affidavit further fails to set out the requirements of Rules 42(1) (b) nor any grounds based on Common Law. It is instead a woolie document with no specific mention of any grounds for rescission. A reading of his affidavit does not make it clear whether the Applicant relies on fraud or recklessness save to say that recklessness is not a ground for rescission he fails in respect of fraud to say if it was fraudulent misrepresentation or concealment.

[15] The history of this matter clearly indicates the deliberate abuse of Court process by the Applicant. He not only ignored Court orders and directives that I issued and has instead mounted a protracted “Stalingrad” type of process aimed at preventing the IDC from executing a judgment in its favour.

[16] I am in conclusion persuaded that the application for rescission of judgment is frivolous and unmeritorious and falls to be dismissed with costs on a punitive scale.

[17] In the result I grant judgment in favour of the IDC as set out in the order attached hereto marked “X”.

Dated at Johannesburg on this day of March 2022.

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**M A MAKUME**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG LOCAL DIVISION, JOHANNESBURG**

**Appearances:**

DATE OF HEARING : 23 MARCH 2022  
DATE OF JUDGMENT : 25 MARCH 2022

FOR APPLICANT : NO APPEARANCE  
INSTRUCTED BY :

FOR RESPONDENT : ADV SL MOHAPI  
INSTRUCTED BY : WERKSMANS ATTORNEYS