

SOUTH AFRICA / JUDGMENT

Malas (Pty) Ltd v Mossie and Others (15196/21) [2025] ZAGPPHC 570 (5 June 2025) [2025] ZAGPPHC 570

COURT

North Gauteng High Court, Pretoria

BEFORE

GC Wright

CASE / FILE NUMBER

15196/21

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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case

No: 15196/21

(1)

REPORTABLE: No

(2)

OF INTEREST TO OTHER JUDGES: No

(3)

REVISED

5

June 2025

WRIGHT

J

In

the matter between: MALAS
(PTY) LTD
APPLICANT
and
FUNDISWA
ETHEL MOSSIE
FIRST RESPONDENT
NPB
SECURITY SERVICES
SECOND
RESPONDENT
PHOLOGO
TERENCE RASAKANYA
THIRD RESPONDENT

JUDGMENT

WRIGHT J

1. The present first respondent, Ms Mossie was bitten by a dog. Summons was issued on her behalf. The first defendant is NPB Security Services, the present second respondent. The second defendant is Malas Tyres (Pty) Ltd, a company and the present applicant. Malas deals in tyres.
2. The third defendant is Mr Rasakanye, the present third respondent. Allegedly, Mr Rasakanye was the guard in control of the dog at the relevant time.
3. Summons was served on Malas on 17 December 2021.
4. A Rule 28(1) notice of intention to amend the Particulars of Claim was served on NPB on 1 March 2022. This amendment had direct bearing on the allegations against Malas. It included new allegations against Malas. This Rule 28 notice was not served on Malas. Nor were the amended pages served on Malas.
5. The application for default judgment is dated 14 March 2022. In it, Ms Mossie sought an order that the merits be decided 100% in her favour. It was sought that a decision relating to quantum be postponed. This application for default judgment was not served on Malas.
6. Two attempts to set the matter down for hearing appear to have been abandoned. A third notice of set down, for 11 October 2022, is dated 9 September 2022. It was not served on Malas.
7. Default judgment, regarding the merits of the claim, was obtained against Malas on 11 October 2022.
8. Malas now seeks to rescind that order, relying on Rule 31(2)(b), Rule 42 and the common law.

9. In short, Malas says that it received the summons and gave it to a manager of NPB Security who promised to deal with it. Malas had a long-standing arrangement with NPB for NPB to provide security services to Malas. The agreement between Malas and NPB included an indemnity by NPB in favour of Malas which protects Malas against claims such as that in issue here. In my view, there is nothing unreasonable or implausible in this explanation.
10. Malas says that it found out about the judgment on 3 October 2024. It did so when a taxed bill of costs was served on Malas. Apparently, the bill of costs originated out of the costs award which was part of the order of 11 October 2022.
11. Malas launched the present rescission application on 17 October 2024. It had attempted to get Ms Mossie to agree to stand back from the order but she refused.
12. There is on file a return of service in which the sheriff says that he served a notice of intended taxation of costs on an employee of Malas on 10 November 2022 and that the employee, a store manager, apparently older than sixteen years of age, refused to give his or her name. No court order appears to have been attached to the notice of taxation. The sheriff's return does not say that a court order or a copy thereof was served.
13. On file is a return of service, headed " Return: Service of notice of set down. " The sheriff says that on 27 June 2024 he served on Mr Yadesh Rampersadh, the HR Manager of Malas a " Notice of set down (Taxation) - 30 September 2024 " and notices under Rule 36(9)(a) and (b). There is no attempt by the sheriff in the return to reconcile the apparent contradiction between the heading of the return and its further contents.
14. Ms Mossie relies on these two returns of service to show that in fact, Malas knew of the court order long before it admits that it had such knowledge.
15. In a replying affidavit, Mr Bayat, the financial manager of Malas says, regarding service on 10 November 2022, that he has made

enquiries of all staff members and none has any knowledge of the service.

16. A legal practitioner might readily be expected to join the dots, but in my view, it cannot, on present facts, be held that an unknown store manager deduced, or should have been able to deduce, from a notice of taxation, that a judgment had been taken against Malas. No court order is shown to have accompanied the notice of taxation. In the circumstances, I cannot hold that Malas had knowledge of the court order on 10 November 2022.
17. Regarding service on Mr Rampersadh, there is a confirmatory affidavit on file by him. He confirms that in fact he was undergoing training in June 2024 when the sheriff served documents on him. He did not know what they meant and he did not know what to do with the documents and he says that he did not tell any person about them. In these circumstances, I cannot impute knowledge of the court order to Malas via service of the abovementioned documents on Mr Rampersadh.

18. The question here is not the validity or otherwise of the service of the documents. It is whether or not certain knowledge, held by relatively junior lay persons can be imputed to the company, Malas. In my view, on the facts, it cannot be held that Malas knew of the judgment before 3 October 2024.
19. In summary, what is clear is that four documents were not served on Malas between the time that summons was served on it and the granting of the court order by default. These documents are the Rule 28(1) notice under which Ms Mossie sought an amendment to her particulars of claim, the amended pages relating thereto, the application for default judgment and the notice of set down.
20. Mr Mvubu, counsel for Ms Mossie conceded that the documents had not been served on Malas. He submitted that they need not have been. Mr Mvubu submitted that the Uniform Rules do not require such service.
21. Mr Mvubu pointed to Rule 31(5)(a) which reads “ Whenever a defendant is in default of delivery of notice of intention to defend or of a plea, the plaintiff, who wishes to obtain judgment by default, shall where each of the claims is for a debt or liquidated demand, file with the registrar a written application for judgment against such defendant: Provided that when a defendant is in default of delivery of a plea, the plaintiff shall give such defendant not less than five days’ notice of the intention to apply for default judgment. “ Mr Mvubu submitted that there was no obligation to serve the application for default judgment as there had been no notice of intention to defend.
22. Under Rule 4(10) “ Whenever the court is not satisfied as to the effectiveness of the service, it may order such further steps to be taken as it deems fit.”
23. Between service of summons in December 2021 and the date of the set down in October 2022, some ten months elapsed. It has long been the practice in the Gauteng Division that an application for default judgment such as in the present case has to be on notice. This practice requires notice where there is a six month time lapse, or longer, between service of the summons and the date of the set down.
24. Mr Maliwa, the attorney for Ms Mossie, seems to recognize this long-standing practice in that he attempted to serve the application for default judgment and the notice of set down on Malas, as set out below.
25. In an affidavit, dated 22 September 2022 by Mr Maliwa he says that on 1 September 2022, that is about six weeks before the order was sought and granted, he attended to the premises of Malas to serve the application for default judgment and the notice of set down but that the Malas personnel present refused to accept service. The affidavit states “ I then left the premises without effecting the service. “
26. It is not clear from the papers whether or not this affidavit by Mr Maliwa was before the court when the order was sought or granted.

27. The application before the court was erroneously sought and granted. Had my learned brother been aware of the above facts he would not have granted the order. He would have invoked Rule 4(10) and the long standing practice referred to above and declined the order sought pending proper service of the necessary documents on Malas.
28. Malas denies that it was the owner of the dog or in control of it and it denies negligence in relation to the biting of Ms Mossie. It says that the dog was owned and controlled by NPB.
29. In these circumstances rescission is warranted.

ORDER

1. The order of 11 October 2022 is rescinded.
2. The first respondent is to pay the applicant's costs on scale A.

GC Wright

Judge of the High Court

Gauteng Division, Pretoria

HEARD : 4 June 2025

DELIVERED : 5 June 2025

APPEARANCES :

Applicant Adv J Mouton Instructed by Sharief and Associates Inc moshin@sharieflaw.co.za
legal@sharieflaw.co.za First Respondent Adv K Mvubu Adv S Rubela Instructed by T Matu
Attorneys matuthabisa@gmail.com

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Prepared on 11 October 2026 · Esheria