

SOUTH AFRICA / JUDGMENT

Padayichie N.O and Another v Changing Tides 17 (Proprietary) Limited (52868/2021) [2025] ZAGPPHC 504 (15 May 2025)

[2025] ZAGPPHC 504

COURT

North Gauteng High Court, Pretoria

BEFORE

H F Jacobs

CASE / FILE NUMBER

52868/2021

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE

Number: 52868/2021

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED: NO

15/5/2025

In

the matters between:-

KUMESHNEE

PADAYICHIE N.O.

First

Applicant

SARASWATHI

PADAYICHIE

Second Applicant

and

CHANGING**TIDES 17 (PROPRIETARY) LIMITED****Respondent****IN**

RE: CHANGING
TIDES 17 (PROPRIETARY) LIMITED
Plaintiff
KUMESHNEE
PADAYICHIE N.O.
First
Defendant
SARASWATHI
PADAYICHIE
Second Defendant

JUDGMENT**JACOBS AJ**

- [1] This is an application for rescission of a judgment granted against the two applicants jointly and severally in the sum of R647 936.87 and ancillary relief on 21 September 2022.
- [2] On 5 May 2025 the applicant's attorney of record uploaded a notice of withdrawal as attorneys of record. The hearing notice of set down was served on the applicant's attorney of record on 7 April 2025. On the day of the hearing the first respondent appeared in person and applied for a postponement of the matter. I refused the application for postponement and mentioned that the reasons for the refusal will be contained in this judgment.
- [3] No substantive application for postponement was presented. The first respondent mentioned from the bar that she applied for legal aid. She was requested to supply proof of the application for legal aid but I was informed by her that "legal aid does not provide proof". No information has been supplied to whom at the legal aid department she applied, exactly when the application was made, what screening particulars were required and supplied to obtain legal assistance or what the respondents' prospects of success would be. In open court the first applicant referred to and mentioned the age of the second applicant (73 years of age) as the primary reason why postponement should be granted.
- [4] The judgment sought to be rescinded in this application has been granted almost three years ago and the respondents have brought an urgent application to stay execution during January 2023. In my view no explanation at all exists on record to enable me to exercise my discretion in favor of the applicants to grant postponement of this rescission application. It is in my view it is not in the interest of justice to do so.

[5] Default judgment was granted on 21 August

2022. The rescission application is dated 9 November 2022. At the time the rescission application was launched, the applicant had legal presentation. The applicants were informed on 6 July 2022 that the case against them was on the roll for 18 August 2022 and their legal representatives as early as May 2022. On 16 August 2022 the applicants' legal representatives made a settlement proposal to the respondent.

[6] The applicants show no defense in law (or triable issue) on the merits of the claim against them. I find no error in the granting of the judgment by Phalana J. The applicants had legal representation during the proceedings, until judgment was granted on 18 August 2022. They were under notice of bar to deliver a plea and the notice of enrolment was served on the first applicant personally on 19 May 2022 and, on her attorney two days earlier. A vague and sketchy account of the events that lead to her default is supplied by the first applicant. She was in willful default.

[7] Costs on the same scale as that of the order granted on 21 September 2022 is sought. I can find no reason why the rescission application should not be dismissed with costs on the same scale.

[8] Under the circumstances, I make the following order:

1. The application is dismissed with costs on a scale as between attorney and client.

H F JACOBS

ACTING Judge of the High Court

GAUTENG DIVISION, PRETORIA

Heard on: 12 May 2025 For the applicant: Adv P Oosthuizen Email: isebrand1@icloud.com

Instructed by: Velile Tinto & Associates Inc Email: service@tintolaw.co.za;

meganca@tintolaw.co.za For the respondent: In person Date of Judgment: 15 May 2025

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Prepared on 10 October 2026 · Esheria