AZIZ TARIQ
and
FALCON FOODS (PVT) LTD
versus
MOZAZA LOGISTICS (PVT) LTD

HIGH COURT OF ZIMBABWE
MAMBARA J
HARARE; 4 and 8 April 2025

Opposed Application

A Mobbs, for the 1st and 2nd applicants
S Mangwengwende, for the respondent

MAMBARA J

INTRODUCTION

1. This is an application for the rescission of a default judgment granted by this Court on the 8th of June 2023 in Case No. HCHC 1992/22. The Applicants, viz. Mr. Tariq Aziz (the First Applicant) and Falcon Foods (Pvt) Ltd (the Second Applicant), seek an order setting aside the default judgment. They premise their application on the assertion that they were not served with the notice of set down for the Pre-Trial Conference ("PTC"), were unaware of the proceedings leading to their default, and that the judgment was "erroneously granted" in their absence. They further claim to possess a bona fide defence which, so they aver, was never tested at trial.
2. The Respondent, Mozaza Logistics (Pvt) Ltd, vigorously opposes the application, arguing that the application is fatally defective by reason of being filed outside the one-month period stipulated in the rules, absent any application for condonation. The Respondent also contends that the Applicants have, in any event, no valid defence on the merits, that they were indeed served through electronic means in compliance with the rules governing the Integrated Electronic Case Management System ("IECMS"), and that the application amounts to an abuse of process designed solely to delay execution.

3. The application is further complicated by allegations that the Applicants never sought or obtained an affidavit from their former legal practitioners confirming the circumstances of their alleged non-attendance. Moreover, the Applicants place heavy reliance on their purported ignorance of the IECMS platform. It is common cause that the relevant High Court Rules, particularly as amended by Statutory Instrument 81 of 2024, require litigants to register electronic addresses and phone numbers on IECMS for service of pleadings and notices.
4. The matter has, therefore, presented two broad questions for determination:

- First, whether the Applicants have satisfied the procedural and substantive requirements for rescission of a default judgment under the High Court Rules, 2021 (as amended), including the requirement that they act timeously or seek condonation where out of time.
- Second, whether the Applicants have shown "good and sufficient cause," meaning (a) a reasonable explanation for their default, (b) a bona fide application made without dilatory motive, and (c) a *prima facie* defence that carries prospects of success on the merits.

5. The Applicants also raised various arguments regarding the alleged peregrine status of the Respondent, seeking to impugn the validity of the main proceedings. However, they never raised such arguments in their plea, nor at the preliminary stages up to the granting of the default judgment. In addition, they suggested that the Second Applicant had ceased operations some years back, an assertion not substantiated by credible evidence.
6. For the reasons that will become apparent in this judgment, the points in limine raised by the Respondent—though strongly argued—will not prove dispositive of the matter on their own, because even on the merits the Applicants' position is fraught with fatal shortcomings. In line with the established approach of this Court, I shall first outline the factual background, then examine and dismiss the preliminary points raised, and thereafter proceed to the merits of the application.

FACTUAL BACKGROUND

7. The factual matrix is gleaned from the parties' affidavits, the record of proceedings under Case No. HCHC 1992/22, the documents filed on IECMS and the oral arguments made at the hearing. The Respondent commenced action in or around August 2022, alleging that it had provided transportation and logistics services from Zimbabwe to Beira on behalf of Ahmed Tariq Trading (cited as First Defendant in the main matter) and that the Second Applicant, Falcon Foods (Pvt) Ltd, through its directors—which included the First Applicant—was involved in these transactions. The Respondent sought payment of outstanding fees and charges, said to total USD 295,284.80 after partial settlement of USD 101,494.00.
8. The summons cited six defendants, including the present Applicants. The record shows that the Second Applicant and others initially entered appearance to defend through the law firm T. Pfigu Attorneys. This appearance was filed on or about the 30th of August 2022. A renunciation of agency by T. Pfigu Attorneys was later filed in April 2023, explicitly advising that the address for service henceforth would be the personal or direct address of the various defendants, including the Applicants in this matter.
9. Notice of set down for the Pre-Trial Conference was generated via IECMS and served electronically in accordance with the then-operative rules. No attendance was recorded from the Second Applicant or the First Applicant on the date of the PTC, and Respondent successfully moved the Court to grant default judgment, effectively finalizing the matter in its favour.
10. On 12 June 2023, the Registrar issued an electronic notification to all litigants on record stating that the Court order was now available for collection upon payment of the requisite fees. On the same day, an email or SMS notification was likewise sent through the IECMS platform to the addresses and mobile numbers registered for each defendant, including the present Applicants.
11. Seventeen months later—on 6 November 2024—the Applicants filed this present application for rescission of the default judgment. They did not, however, lodge any parallel or prior application for condonation of late filing, despite Rule 29(2) of the High Court Rules, 2021 (as amended) prescribing that rescission applications be instituted within one month of the Applicants becoming aware of the judgment. Their

founding affidavit attempts to justify the delay by blaming their former legal practitioners, claiming ignorance of the on-going case after the latter's renunciation of agency, and appealing to alleged "confusion" over how the electronic service system operates.

12. The Respondent disputes these explanations, highlighting that the Applicants (i) had personal email addresses on record, (ii) were served with the renunciation and subsequent set down notice, and (iii) ignored all process until the Sheriff attempted execution on the 4th of November 2024, whereupon they finally awakened to the reality of the default judgment.
13. It is in this context that the Applicants now approach this Court, praying that the default judgment be set aside on the alleged ground that it was "erroneously granted" and that they possess good prospects of success.

POINTS *IN LIMINE*

14. The Respondent raises at least two preliminary objections, which it urges as capable of disposing of this matter at the threshold stage:

1. **Time Bar under Rule 29(2)**

   The Respondent avers that the Applicants' rescission application is fatally out of time, having been filed seventeen months after knowledge of the judgment. Rule 29(2) of the High Court Rules, 2021 states that any application for rescission of default judgment must be filed within one month of the applicant's becoming aware of such judgment. The Respondent contends that the Applicants were aware—or at the very least must be deemed aware—of the judgment as early as 12 June 2023 (the date of the Registrar's notice). They neither complied with nor sought condonation for non-compliance with this time limit.
2. **Absence of an Affidavit from the Former Legal Practitioners**

   The Respondent underscores that the Applicants attribute their absence from the PTC to miscommunication by their former legal practitioners. Yet the Applicants have not filed any confirmatory affidavit from T. Pfigu Attorneys or from any other firm explaining or corroborating that the Applicants were indeed kept in the dark. The Respondent thus argues that no explanation for the default can be accepted as genuine,

because it lacks any evidentiary foundation beyond the Applicants' unsubstantiated say-so.

15. The Respondent, in urging these points in limine, prays that the Court dismiss the application outright. However, for reasons set forth below, I find it more prudent—in the interests of justice and finality—to address the merits in full. That said, it bears emphasis that these preliminary points, if found to be meritorious, are themselves enough to disentitle the Applicants from the relief they seek.
16. It is settled law that points in limine ought to be upheld where they are dispositive of the matter or so glaring as to render the entire application invalid. (See *Mukahlera* v *Clerk of Parliament & Others* 2005 (2) ZLR 365 (H) at 370, where the Court observed that a point in limine, if meritorious, can be decisive.) However, in practice, courts may elect to consider the totality of the evidence on both the technical issues and the merits so as to avoid piece-meal litigation.
17. Indeed, the Applicants themselves, in their heads of argument, treat these objections as technicalities aimed at defeating what they characterize as a substantive inquiry into whether the default judgment was properly granted. They urge the Court to dismiss the points in limine as "frivolous and vexatious," contending that they do indeed have a defence on the merits, and that the alleged procedural lapses should not overshadow the interest of justice.
18. Having perused all the papers and hearing arguments, I find that the points in limine bear considerable weight. However, the Court's preference is to analyze the application in its entirety, including whether there is any triable defence or reasonable basis for rescission. If, after considering the merits, the application is found lacking, the result would be the same. Consequently, the points in limine are hereby dismissed *for present purposes* not because they lack merit, but because they do not by themselves conclusively determine the matter in the Applicants' favour. Rather, as will be evident, the Applicants' own failure to show good cause dooms their application on the merits.

THE APPLICABLE LEGAL PRINCIPLES

19. The law on rescission of default judgments under the High Court Rules, 2021 (as amended) is relatively straightforward. Rule 29(1)(a) stipulates that a party against whom a default judgment has been granted may apply for rescission of that judgment on the basis that it was erroneously sought or erroneously granted in the absence of the applicant, or on other recognized grounds.
20. In *Songore* v *Olivine Industries (Pvt) Ltd* 1988 (2) ZLR 210 (S), the Supreme Court set out well-known considerations relevant to rescission:

> "The applicant must show good and sufficient cause, which in essence means the applicant must provide a reasonable explanation for his default, must show the application is made bona fide and not merely to delay the respondent's claim, and must demonstrate a bona fide defence which prima facie carries some prospect of success."

21. The same principle was affirmed in *Deweras Farm (Pvt) Ltd* v *Zimbabwe Banking Corporation* 1998 (1) ZLR 368 (H), where the High Court insisted on a rigorous test to ensure that litigants do not trifle with procedural rules.
22. In addition, the question of timeous filing looms large. An application for rescission must be made within one month of the applicant's learning of the judgment. Failing that, a substantive application for condonation—demonstrating good cause for the delay—must be lodged. (See also *Madzivire & Others* v *Zvarivadza & Others* 2006 (1) ZLR 514 (S).)
23. In this matter, the Applicants did not file any condonation application. On their own version, they learned of the judgment well before November 2024. They concede they only took action when the Respondent attempted to execute.
24. Further, to succeed under the rubric of an "erroneously granted" judgment, the applicant must show that the court was misled into granting the default judgment in circumstances where it would have refused it had certain facts or information been brought to its attention. Typically, an order is deemed "erroneously granted" if service was invalid, or if the summons had been withdrawn, or if it was granted against a party who had complied with a peremptory procedural requirement. (See *Mutebwa* v *Mutebwa & Another* 2001 (2) SA 193 (TkHC) at 198F-G, often cited with approval in local contexts.)

25. With these legal principles in mind, I now address the merits of the Applicants' application.

ANALYSIS OF THE MERITS

(i) Was the Judgment "Erroneously Granted"?

26. The Applicants claim that the default judgment was granted in error, primarily because they never received notice of the PTC and were unaware that the matter was proceeding. They cite the alleged "mistake" of the Registrar in continuing to serve notice on their former legal practitioners, or in failing to ensure they were physically served once the legal practitioners renounced agency.
27. The factual record, however, paints a different story. The renunciation of agency explicitly stated that all future process was to be served on the Applicants at a stated address. Meanwhile, under the IECMS, the Applicants' own email addresses had been registered when their initial appearance to defend was filed. Section 15(4) of the newly amended High Court Rules, introduced by SI 81 of 2024, clarifies that, beyond the initial summons, the standard mode of service is electronic. The same instrument stipulates that a "sent status report" on IECMS is *prima facie* proof of valid service.
28. Once the notice of hearing for the PTC was uploaded onto IECMS—and the system automatically generated notifications to the Applicants' verified email addresses—that alone constituted valid service. Indeed, the Respondent produced documentary evidence of "sent status reports" from IECMS. The Applicants have not effectively challenged the authenticity or correctness of those records; they simply say they never saw them or that they were ignorant of how the IECMS system operates.
29. Our courts have repeatedly underscored that "ignorance of the law is no defence." Similarly, "ignorance or negligence in checking an officially recognized service platform does not invalidate proper service." The entire premise of e-filing, embedded in the rules, would be undermined if parties could casually disclaim all responsibility by asserting ignorance.
30. It follows that the Court's granting of default judgment did not rest on any misrepresentation or misunderstanding of fact so material as to vitiate the order. The court record indicated that all named defendants, including the present Applicants, were

served electronically in accordance with the controlling rules. There is nothing erroneous about that.

31. Moreover, the Applicants' reliance on allegations that they "thought the matter had died a natural death" is manifestly insufficient. As noted in *Fraine* v *Nigrini* 1929 AD 245, litigants are under a duty to be vigilant in following up on their cases, especially when they have once entered appearance. They cannot simply assume, without inquiry or verification, that proceedings have lapsed.

(ii) Reasonable Explanation for the Default

32. A second leg of analysis focuses on the Applicants' explanation for non-attendance at the PTC. The standard requirement is that the Applicants produce a "reasonable and acceptable" explanation for their absence. This explanation must be fully supported by the record or by affidavits from any relevant parties—particularly their former counsel, if the default is being laid at counsel's door.
33. In *Salojee & Another N.N.O.* v *Minister of Community Development* 1965 (2) SA 135 (A) at 141, the court famously stated that "there is a limit beyond which a litigant cannot escape the negligence or lack of diligence of his legal practitioner," underscoring that an affidavit from the legal practitioner is often essential to corroborate allegations of that nature.
34. Here, the Applicants produced no affidavit from their former counsel. They offered no documentary evidence (such as an email trail) indicating they inquired into the status of the matter. They have effectively asked this Court to rely on nothing more than their bare assertion that, because the legal practitioner resigned, they were left clueless.
35. In an era where the rules expressly require each litigant to maintain an IECMS account, that explanation is neither credible nor exculpatory. The Applicants' inaction for some seventeen months betrays a wilful disregard for the normal procedures of the Court. By the time they filed this rescission application, they were well outside the one-month limit. They never sought condonation or gave any meaningful justification for that lengthy delay.
36. In sum, the explanation for default advanced by the Applicants does not satisfy the Court that they were prevented by any excusable cause from attending the PTC or from taking timely steps to defend.

(iii) *Bona Fide* Defence

37. Even assuming, for argument's sake, that the Applicants had surmounted the hurdles regarding service and default, an application for rescission must also demonstrate a bona fide defence that carries some prospect of success. See *Masocha* v *Damascus Trust (Pvt) Ltd* 1998 (1) ZLR 167 (H).
38. The Applicants purport to deny any business arrangements with the Respondent. Yet the Respondent has exhibited a series of invoices, proofs of deliveries, and an account statement linking the shipments to the Applicants and to an affiliate entity (Ahmed Tariq Trading). The record includes emails referencing "Falcon Foods," copying or addressed to the First Applicant's known email address. There is also documentary evidence of partial payment toward the debt.
39. The Applicants do not refute these documents with any specificity; they offer no contrary invoices or logs. Nor do they deny that the Second Applicant was once operational and had an interest in the shipments. Instead, they allege that the company "ceased operations four years ago," but adduce no credible documentation—such as official company deregistration notices, liquidation proceedings, or anything of that sort—to support the claim of insolvency or dissolution.
40. The argument that the Respondent is *peregrinus* likewise lacks merit at this late hour. The question of the Court's jurisdiction was effectively waived when the Applicants participated in the suit (by entering appearance to defend and continuing up to pre-trial stage) without ever challenging jurisdiction. The common-law position is that by defending an action on the merits without raising a jurisdictional challenge at the earliest opportunity, a defendant is taken to have submitted to the Court's jurisdiction.
41. Consequently, the so-called "defence" the Applicants put forth amounts to an unsubstantiated denial of a plainly documented claim. A defence that is bald or sketchy, failing to address the substance of the claim, does not suffice. (See *Kingston Ltd* v *Demos* 1958 R & N 226 at 228; also, *Manewe* v *Chiwara* 2012 (2) ZLR 400 (H) for the principle that a party must show more than bare denials to found a bona fide defence.)
42. In short, the Applicants have failed to show a *prima facie* defence. Their stance rests on unsupported contentions and contradictory statements, overshadowed by the detailed documentary evidence furnished by the Respondent.

CONCLUSION

43. In light of the foregoing analysis, the Court finds that:

a) The Applicants filed their rescission application well outside the one-month window mandated by Rule 29(2) of the High Court Rules, 2021, as read with the relevant amendments introduced by SI 81 of 2024. They did not seek condonation, nor did they provide any plausible explanation for such an egregious delay.

b) The Applicants' explanation for default is neither reasonable nor excusable. They were validly served via IECMS. They had every opportunity to keep themselves apprised of developments in the matter, especially after their counsel renounced agency. Their claim to ignorance is manifestly untenable given the legal framework of e-filing and the emails on record.

c) They do not possess a *bona fide* defence. Their attempt to disclaim any relationship with the Respondent is contradicted by substantial documentary evidence (invoices, proof of delivery, partial payments). Their belated assertion that the Respondent is a *peregrinus* does not avail them, as they never challenged jurisdiction in a timely manner and in fact participated in the proceedings.

44. Ultimately, the default judgment cannot be said to have been granted in error. Far from it, the Court properly granted the order after satisfying itself that the Defendants (including the present Applicants) had been duly served and had not appeared to contest the matter. The subsequent delay in applying for rescission, and the absence of condonation, confirm that the Applicants have not acted in good faith or with diligence.
45. In exercising its discretion, this Court is mindful that rescission of a judgment is a serious matter, not lightly to be granted, and only where "good and sufficient cause" is shown. The Applicants have failed, on every score, to discharge that onus.
46. As was emphasized in *Stockill* v *Griffith* 1992 (1) ZLR 172 (S) at 174A-B, "the policy of the law is to bring finality to judicial proceedings," and while the Court should not close its doors to a deserving litigant, it equally must not allow unscrupulous or dilatory litigants to abuse process.

47. Accordingly, the application for rescission of the default judgment stands to be dismissed.

COSTS

48. The Respondent seeks costs on the scale of legal practitioner and client, citing the Applicants' gross disregard for procedure, the long delay, and the spurious nature of the explanation. It is well-established that a higher scale of costs may be awarded where the litigant's conduct is found to be frivolous, vexatious, or an abuse of process. (See *Nhidza v Unifreight Ltd* 1997 (2) ZLR 569 (S).)
49. In this instance, the Applicants have put the Respondent to unnecessary expense over a matter that is plainly without merit. They have offered no credible explanation for failing to act for well over a year, and their heads of argument dwell on issues—such as the Respondent's alleged peregrine status—that were never pleaded initially and are devoid of substance.
50. As no legitimate or bona fide grounds were advanced to warrant the relief sought, the Court finds that a punitive costs order is justified.

DISPOSITION

51. In the result, IT IS ORDERED THAT:
52. The application for rescission of the default judgment granted on the 8th of June 2023 under Case No. HCHC 1992/22 be and is hereby dismissed.
53. The Applicants shall, jointly and severally, the one paying the other to be absolved, bear the Respondent's costs on the scale of legal practitioner and client.

MAMBARA J……..

Venturas & Samukange, for the Applicants
Phillips Law, for the Respondent