IN THE HIGH COURT OF SOUTH AFRICA,

FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	**NO**
Of Interest to other Judges:	**YES**
Circulate to Magistrates:	**YES**

Appeal number: A80/2017

In the Appeal between:

SEPHAPHO JACOB MOSAI 1st Appellant

MOIPONE JULIA MOSAI 2nd Appellant

and

MUHAMMED M M MASIKE 1st Respondent

DURAH MASEGO MASIKE 2nd Respondent

CORAM: DAFFUE, J *et* VAN SCHALKWYK, AJ

HEARD ON: 31 JULY 2017

JUDGMENT BY: DAFFUE, J

DELIVERED ON: 24 AUGUST 2017

I. INTRODUCTION:

[1] The focal point in this appeal is the manner in which two pensioners and previously registered owners of certain immovable property in Kroonstad have been evicted from such property by order of the magistrate in Kroonstad in their absence and his failure to rescind the judgment thereafter.

II. THE PARTIES:

[2] The appellants are Sephapho Jacob Mosai and Moipone Julia Mosia of [...] T. S., Kroonstad ("the property"). The appellants' identity numbers are [5...] and [5...] respectively which means that they are now 66 and 60 years old respectively. At all relevant time appellants were represented by Rampai Attorneys in Bloemfontein who instructed Majavu Inc of Kroonstad as the local attorneys during the Magistrates' Court proceedings. Mr Rampai still acts as attorney for the appellants in the High Court. Adv Khokho, who argued the rescission application on behalf of the appellants in the Magistrates' Court in Kroonstad, again appeared on their behalf before us.

[3] The respondents are Muhammed Mosiuwa Muhajid Masike and Durah Masego Masike, married in community of property, the current registered owners of the property. Mr Day, an attorney of Kroonstad, appeared on behalf of the respondents in the Magistrates' Court proceedings, but Adv P C Ploos Van Amstel

argued the matter on behalf of the respondents before us. In order to avoid confusion I shall refer to the parties as cited in this appeal.

III. MATERIAL HISTORY:

[4] It appears from the papers that the following are common cause, unless the contrary is indicated.

[5] The appellants were the registered owners of the property.

[6] *Ex facie* respondents' application for eviction a deed of sale was entered into between appellants and respondents on 18 August 2010 and about two years later, *i.e.* on 31 May 2012, registration of transfer was effected in the names of respondents. Reference is made to these facts in the affidavit deposed to by first respondent in the eviction application and although the deed of sale and deed of transfer were apparently attached to his affidavit, these documents do not form part of the record before us. It is therefore not possible to consider the veracity of the information contained therein. However for the reasons set out *infra*, there is no reason not to accept that respondents are at present the registered owners of the property.

[7] It must be emphasized that although appellants admitted the written documents relied upon by respondents in the eviction application – the deed of sale and deed of transfer - they denied the legality thereof and claimed that the deed of sale was entered into

fraudulently. I shall deal with this issue again *infra* when I evaluate the evidence.

[8] Appellants were provided with a letter of demand in accordance with s 14 of the Consumer Protection Act, 68 of 2008 in terms whereof they were requested to vacate the property before 8 May 2015. Appellants tried to obtain the services of legal representatives and even went so far to contact the University of the Free State's Law Clinic as well as the Law Society of the Free State, but to no avail.

[9] During 2015 an application was issued on behalf of respondents out of the Kroonstad Magistrates' Court, seeking appellants' eviction from the property. It was *inter alia* alleged that appellants were unlawful occupiers in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998 ("PIE") and that they were not occupiers in terms of the Extension of Security of Tenure Act, 1997. The Moqhaka municipality within whose jurisdiction the property falls, was not cited as a party to the application and it also does not appear from the record whether the documents were served on the Moqhaka municipality and/or whether it filed a report as provided for in PIE. The respondents' notice of motion does not form part of the record of proceedings before us.

[10] It is also apparent from the record of proceedings that no order in terms of s 4(2) of PIE was issued by the court *a quo.* However, the appellants received sufficient opportunity to oppose the application and it was even postponed to allow them to approach the High Court to which I shall refer *infra.*

[11] As mentioned, appellants opposed the application for eviction and as indicated *supra*, based their defence upon the fact that the deed of sale was fraudulently entered into. According to first appellant he and first respondent were friends for a long time and when he started having financial difficulties, Absa threatened to repossess their house. He approach first respondent for financial assistance who was prepared to grant him a loan. First appellant therefore believed that the document signed by them was in respect of a loan obtained, and certainly not a deed of sale.

[12] The matter was not proceeded with in the Magistrates' Court, but kept in abeyance pending an application by appellants to the High Court for the setting aside of the deed of sale and deed of transfer pertaining to the property. The parties agreed to postpone the eviction application to 12 April 2016 pending finalization of the High Court proceedings. Such application was brought in November 2015, but withdrawn in February 2016.

[13] The contents of the following letter by Naude Thompson attorneys (reference Mr Day) dated 1 April 2016 is important for the consideration of the appeal and it is therefore quoted *verbatim*:

> "We refer to the above-mentioned matter.
>
> We confirm that the application was <u>postponed to 12 April 2016 to monitor</u> the progress of the High Court Application, which application was withdrawn as stipulated in your letter dated 2 February 2016.

Kindly provide is with two suitable dates as to place the Magistrate's Court matter down accordingly.

Kindly also inform us whether your clients dispense with any further notifications as stipulated in Section 4(2) of Act 19 of 1998, once a date for the hearing of the proceedings are awarded."

Appellants' attorney, Mr Rampai, did not respond to this letter before the 12 April 2016, but only a few days thereafter.

[14] On 12 April 2016 Mr Day on behalf of the respondents appeared before the magistrate in Kroonstad, apparently handed in his letter of 1 April 2016 and contrary to the agreement between the parties and the contents of his letter proceeded to request the eviction of appellants in accordance with the notice of motion. An eviction order was granted as he requested.

[15] An application for rescission of judgment was eventually issued on behalf of appellants which was opposed. The rescission application was dismissed with costs on 4 November 2016. I shall deal with the reasons for judgment *infra*.

[16] Hereafter and after some delay due to ineptness of the legal representatives of the appellants a notice of appeal was eventually filed and the record of appeal submitted where after a date of appeal was provided by the registrar of this court.

IV. JUDGMENT OF THE COURT A QUO:

[17] The court *a quo inter alia* made the following remarks in its judgment of 4 November 2016 which I quote *verbatim*:

1. Ad para 3.6.1: "In the papers the contention is that the date on which the order was obtained was not agreed date of hearing. This fact is conceded by the Respondent……On the court date, Respondent's attorney went to court and obtained and eviction order by default citing non-appearance and non-communication by the Applicants and their attorney."
2. Ad para 3.6.2: "…..The question that arises is what should the Applicant (it should read "Respondent") have done in the absence of the Applicants and his attorney on the 12/04 with no communication and most importantly the reason for which the case was remanded had fallen away (High Court application). There are many answers to this question. What seem to make sense is that the Applicant or his attorney might have forgot about the court date or were less concerned."

1. Ad para 3.7.2: "What remains clear is the fact that the property in question is now registered in the name of the Respondents. There could be arguments whether such registration was just or otherwise. It has also been accepted that such a question cannot be answered by the Magistrate Court."
2. Ad para 3.7.7: "Given the circumstances outlined above, I'm not convinced that the Applicants are likely to convince a court that the eviction order was erroneously granted. This is because Respondents have a clear right over the property and have not authorised Applicants to occupy."

3. Ad para 3.7.8: "Evidence shows that Applicants did not attend court on 12/04/16 and judgement was obtained. Applicant's explanation for being in default is flimsy. It can be attributed to the negligence on the part of the Applicants or the attorney. The fact that the case was not for hearing can

never be an excuse to stay away from court and worse; not follow up until you catch a wakeup call after the fact."

4. Ad para 4: "I accordingly find that Applicants have failed in showing that there exists good cause or good reason warranting rescission of eviction order herein….. I also find that Applicants have failed to show that there is substantial defence to Application for eviction." (emphasis added)

V. GROUNDS OF APPEAL:

[18] The appellants rely on five grounds of appeal, but for purposes of adjudication of this appeal it is necessary to quote the first two grounds only.

"1. The Learned Magistrate erred in finding that the eviction order was properly and justifiably obtained. The learned Magistrate ought to find that the manner in which the default judgment was obtained was irregular.

2. The Honourable Magistrate misdirected himself in finding that the Applicants failed to satisfied the requirements for the granting of rescission of default judgment."

VI. NON-COMPLIANCE:

[19] The appeal record is in shambles which made it extremely difficult to adjudicate the appeal. Documents that should have been

contained in the record are absent and documents that should not have been included such as the transcript of the arguments in the court *a quo* - in total 173 pages - caused the record to be unnecessary voluminous.

[20] As mentioned, the notice of appeal was filed late. Clearly the attorney did not know what to do insofar as he initially tried to file the notice of appeal at the High Court instead of the Magistrates' Court. The allegation that it took time for the transcribers to prepare the record is without substance. It was unnecessary for the oral arguments in the court *a quo* to be typed. The record of appeal consisting of the relevant documentation could have been prepared within a few days.

[21] *Ex facie* the record of appeal security was not given by appellants as provided for in rule 51(4) of the Magistrates' Courts Rules. The point was not raised on behalf of respondents, but by the court, whereupon appellants' counsel provided us with proof that an amount of R1 000.00 was paid in at the Magistrates' Court, Kroonstad as security for respondents' costs. Mr Ploos van Amstel did not submit that the appeal was not properly noted and in view of the outcome to which we arrive herein, any non-compliance should be and is hereby condoned. However, this shall not be seen as a precedent and appellants' legal representatives must be fully aware that a similar non-compliance may not be condoned again. In similar vein, no power of attorney was filed as provided for in rule 7(2) of the Uniform Rules of Court. Again, the issue was not raised by Mr Ploos van Amstel, but by the court. We are satisfied that both Messrs Rampai and Khoko appeared for appellants in the

court *a quo* and have no reason to doubt that they were duly authorised to act in the High Court. Fact of the matter is that the registrar allowed the appeal to be set down notwithstanding non-compliance with the provisions of rule 7(2).

[22] Appellants filed an application for condonation for late filing of the notice of appeal. This application is not formally opposed, but Mr Ploos Van Amstel submitted that appellants should bear the costs of the application and that those costs should not form part of the costs of the appeal. Although I need to express my dissatisfaction with the manner in which appellants' attorney executed his duties, it is in the interest of justice that condonation be granted, bearing in mind the merits of the appeal which I shall consider *infra*.

[23] Therefore condonation should be granted for the late filing of the notice of appeal.

VII. LEGISLATION AND RELEVANT AUTHORITIES:

[24] The relevant part of s 36 of the Magistrates' Courts Act, 32 of 1944 reads as follows:

> "(1) The court may, upon application by any person affected thereby, or, in cases falling under paragraph (c), *suo motu*-
>
> (a) rescind or vary any judgment granted by it in the absence of the person against whom that judgment was granted;

(b) …
(c) …
(d) …"

[25] Rule 42 of the Uniform Rules of Court dealing with variation and rescission of orders in the High Court provides as follows:

"1. The court may, in addition to any other powers it may have *mero motu* or upon the application of any party affected, rescind or vary:
(a) An order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby.
(b) ….
(c) …." (emphasis added)

[26] It should immediately be clear that the words "erroneously sought" and "erroneously granted" contained in rule 42 do not appear in s 36. No doubt rule 42 provides for specific instances, but also allows the High Court to make use of its inherent powers such as to set aside judgments in accordance with the provisions of the common law. The Magistrates' Court, being a creature of statute, does not have such inherent powers. In my view s 36(1)(a) provides for much more leniency towards an applicant than rule 42(1)(a). In the Magistrates' Court any judgment granted in the absence of any person against whom the judgment was granted may be rescinded or varied, subject to the other requirements stipulated in rule 49 of the Magistrates' Courts Rules. The Magistrates' Courts' powers are therefore not limited to judgments erroneously sought or erroneously granted, but obviously include the power to set aside any judgments granted in the absence of the affected party.

[27] It appears from respondents' version in the eviction application that the deed of sale provided for a right of pre-emption to appellants. It is not appellants' case that a deed of sale was entered into and consequently they do not rely on a right of pre-emption. As mentioned, the deed of sale does not form part of the record of appeal and it is impossible to speculate about the right of pre-emption and/or the allegation that appellants failed to exercise this right. However, it is instructive to refer to a very recent judgment of the Constitutional Court, *i.e. Mokone v Tassos Properties CC and Another* and *Mokone v Blue Canyon Properties CC, case number CCT113/16 [201] ZACC25,* delivered on 24 July 2017 where the majority found that the formalities of the Alienation of Land Act apply to the alienation of land, but that the right of pre-emption does not constitute an alienation of land. The right of pre-emption in that case was not invalid for lack of signature by Ms Mokone and consequently the well-known judgment of *Hirschowitz v Moolman* was overruled. The Constitutional Court held that s 173 of the Constitution empowered that court to hold the appeal relating to Ms Mokone's eviction in abeyance pending the determination of the issues left pending before the High Court in the right of pre-emption dispute.

[28] Section 4(2) of PIE stipulates the procedure to be followed by a registered owner of land who wants to enforce the eviction of an unlawful occupier. That procedure has not been undertaken *in casu*. Instead, in their notice of demand respondents relied on s 14 of the Consumer Protection Act, 68 of 2008 which is totally irrelevant for purposes of the eviction of an unlawful occupier. The particular section deals with consumer agreements for a fixed term

and aspects pertaining to the expiry and renewal of such fixed term agreements. It is irrelevant *in casu*.

[29] Section 4(7) of PIE stipulates that if an unlawful occupier has occupied the land in question for more than six months at the time when the proceedings are initiated, a court may grant an order of eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including whether land has been made available or can reasonably be made available by a municipality, an organ of state, or another land owner for the relocation of the unlawful occupier and including the rights and needs of the elderly, children, disabled persons and households headed by women.

[30] Section 4(8) of PIE provides that if the court is satisfied that all the requirements of s 4 have been complied with and that no valid defence has been raised by the unlawful occupier, it must grant an order for his/her eviction and determine a just and equitable date on which the unlawful occupier must vacate the land. The respondents became the registered owners of the property and had the necessary *locus standi* to apply for the eviction of appellants, once the procedures and formalities of PIE had been met. See *Jackpersad NO and Others v Mitha and Others 2008 (4) SA 522 (D &CLD)* at 528H with reference to *Ndlovu v Ngcobo; Bekker and Another v Jika 2003 (1) SA 113 (SCA)*.

[31] The Magistrates' Court does not have jurisdiction to adjudicate upon the validity of the deed of sale or the deed of transfer *in casu* or even to raise questions as to whether these documents are

defective or not. Only the High Court may cancel a deed of transfer in accordance with the provisions of s 6 (1) of the Deeds Registries Act, 47 of 1937, read with s 102 thereof and in such event the deed under which the land or real right in land was held immediately prior to the registration of the deed which is cancelled, shall be revived. See s 6(2). Appellants were on the right track to approach the High Court whilst the Magistrates' Court proceedings were kept in abeyance. It is uncertain why the High Court application was withdrawn, but in any event, the High Court is not *functus officio* and nothing would prevent the appellants to approach the High Court again for appropriate relief.

[32] A party who snatches a judgment or order should not complain afterwards if the order is rescinded. More than a century ago Buchanan J expressed himself in no uncertain terms in *Frier v Vos* 1913 CPD 465 in respect of a judgment obtained by default and I quote the following from p 467:

"He (the attorney) was not aware of the withdrawal of the power when the demand for plea was served upon him, and judgment was taken without any notice being given to the respondent. … The obstacle to taking further proceedings - that is, the sequestration - being removed, the application for reopening the case now comes on for hearing. … The Court under Rule No. 319, may then consider the circumstances of the case, and set aside the judgment obtained by the plaintiff by default, upon such terms as to costs and otherwise as it may deem expedient. In this case, the respondent, who is not an attorney, has claimed for his work and labour something like £170, a very much larger sum than that charged by the attorneys who did the work. I use the expression advisedly when I say that in this case <u>the judgment seems to me to have been snatched</u>, and for that reason the case ought to be further

investigated. Yet, while of that opinion, I think that certain terms must be fulfilled by the applicant before the judgment should be set aside. The order of the Court will be that the judgment by default be set aside, the applicant to pay, as for wasted costs in obtaining the judgment the sum of £10 … On making these payments, leave will be given to the applicant to reopen and to defend the case, plea to be filed by the 15th July.

[33] In *Pitso v Sanlam Home Loans Guarantee 2007 JDR 0499 (D)* Ms Pitso brought an application for rescission of a default judgment and setting aside of a sale in execution. She filed a notice of appearance to defend the action against her out of time, but before judgment was granted by the registrar. Notwithstanding submissions on behalf of the plaintiff (first respondent in the application) that serious doubt existed as to whether Ms Pitso has a defence, and that the court should not exercise its discretion in the applicant's favour, the court continued as follows at para 13:

"These submissions are all very well, but as Ms Leonard for the Applicant pointed out, the First Respondents own conduct is subject to scrutiny. There is no proper explanation as to why the First Respondent or is attorney did not withdraw the application for default judgment from the Registrar once the notice of intention to defend had been delivered. In my judgment there is a fundamental and clear duty on a litigant to take steps to prevent the Court from being misled, or from labouring under a misapprehension. That duty is also owed to the Registrar when she is about her duties under Rule 31 (1). The First Respondent failed in that duty. The First Respondent thereafter went ahead within an attachment and sale in execution on a palpably erroneous judgment. In my view the First Respondent snatched at a judgment, and its behaviour bordered on the improper. I cannot allow the judgment to stand in the circumstances." (emphasis added)

[34] In *Johannesburg Roads Agency (Pty) Ltd v Midnight Moon Trading 105 (Pty) Ltd* 2013 JDR 0739 (GNP) the applicant in an application for the setting aside of a warrant of execution alleged that the respondent snatched the judgment amidst an agreement that the matter be held in abeyance pending investigations of the matter. The following remarks are apposite:

> "14. It is without doubt that it would take an entity like the Applicant quite a significant number of days to investigate a claim of this magnitude. Therefore, the First Respondent by taking default judgment notwithstanding an undertaking from the Applicant that it sought to investigate and would revert to the First Respondent, leave a bad taste.
>
> 15. Therefore, I accept the Applicant's version that it did not wilfully and deliberately enter notice of intention to defend. I am therefore satisfied that the Applicant advance sufficient reasons for his failure to enter notice of intention to defend."

[35] Cilliers *et al*, Herbstein & Van Winsen: *The Civil Practice of the High Courts of South Africa,* 5th ed, vol 1 at p 717 deal with rescission of judgments by default with specific reference to *Frier v Vos* and the snatching of a judgment. The authors, relying on *Scott v Trustee, Insolvent Estate Comerma 1938 WLD 219 at 316* are of the view that a court should be "slow to refuse a defendant leave where he has never acquiesced in the plaintiff's claim but actually persisted in disputing it."

VIII. EVALUATION OF THE EVIDENCE:

[36] It may be argued that insofar as appellants failed to obtain an order from the High Court pertaining to the invalidity of the deed of sale and subsequent deed of transfer, they have no defence at all in the eviction application and that the court *a quo* was entitled to dismiss the application for rescission. No doubt, an unlawful occupier cannot claim to remain indefinitely on the premises of the registered owner. Eventually, a day will come when such unlawful occupier will have to vacate.

[37] The deed of sale relied upon by respondents entitled appellants to possession of the property for a period of two years until 20 August 2012 without having to pay rent. Furthermore appellants obtained a right of first refusal after expiration of the aforesaid two year period. It is respondents' case that appellants waived such right and they became entitled to apply for eviction. Appellants do not rely on any entitlement in that regard insofar as they denied having signed a deed of sale. They believed that they were requested to sign a loan agreement and I quote from paragraph 7.6 of the answering affidavit in the eviction application: "On arrival myself and second Respondent were given the contract and without any explanation or been given an opportunity to ask questions or even peruse it, we were hurriedly ordered to sign the contract." Appellants' right to approach the High Court to ask for the declaration of invalidity pertaining to the deed of sale and subsequent deed of transfer remains open. If they succeed in the High Court, the respondents' *locus standi* to apply for their eviction would obviously fall away. It cannot be found that appellants, by withdrawing the High Court application, forfeited the

right to approach the High Court again. They might have received certain advice in this regard or some other factor prevented them from proceeding with the application. It is unnecessary to speculate as to the reasons for not proceeding with the High Court application.

[38] Even if it is accepted that appellants waived their right to approach the High Court for a declaration of invalidity, it is doubtful whether the court *a quo* properly considered respondents' eviction application in accordance with the provisions of PIE and the applicable authorities. Apparently no reasoned written judgment was prepared as an order was made at the request of Mr Day on behalf of respondents in the absence of appellants.

[39] Under the circumstances it has to be accepted that the learned magistrate did not consider the provisions of s 4(7) of PIE at all. The municipality was not cited as a party and no report of the municipality was placed before the court *a quo*. There is no indication that alternative housing and/or other accommodation was available to appellants at that stage of the proceedings.

[40] If the matter was properly argued on behalf of appellants and/or if the learned magistrate was provided with written heads of argument by both parties, relying on authorities as is expected in opposed motion procedure, the magistrate might have come to a different conclusion, even on the basis of an acceptance of respondents' version of the facts as correct, pertaining to the date when appellants had to vacate. Fact of the matter is that the matter

was considered as if it was placed on the opposed roll for argument of the merits whilst this was obviously not the case and both Mr Day and the learned magistrate knew this. I am satisfied that appellants have shown good cause for rescission of the judgment by default, but even if I am wrong in this regard, there was good reason to rescind the judgment and the court *a quo* should have found as such.

[41] I find Mr Day's reply in his letter of 19 April 2016 in response to the letter of Mr Rampai on behalf of appellants dated 15 April 2016 unacceptable and bordering on being unethical. I quote:

> "We refer our letter dated 1 April 2016 (the one referred to earlier in this judgment) as well your reply thereto dated 15 April 2016.
>
> Kindly take note that an order as prayed for in the Applicants Notice of Motion was granted on 12 April 2016 seeing that neither the Respondents, nor any representative was present at Court."

This is nothing else than confirmation of the snatching of a judgment in the absence of the appellants and/or their legal representatives. The matter was not set down for hearing, but for the arranging of dates on which the opposed application would be argued. I find the attitude of respondents' attorney deplorable in the circumstances. Even if he believed that appellants did not have a valid defence, he had no right whatsoever to snatch an order.

[42] Although there was no timeous response from appellants' attorneys as requested in his letter of 1 April 2016, I would have expected Mr Day to try and get hold of either the local correspondent or Mr Rampai in Bloemfontein telephonically in order to establish why they were absent from court. A date for the hearing of the opposed application could have been arranged telephonically and Mr Day could have appeared asking for the matter to be postponed to such agreed date. However, Mr Day refused and/or neglected to take such steps, but preferred to utilize the opportunity to obtain an unfair advantage on behalf of his clients. This cannot be countenanced. As mentioned earlier, the unfortunate actions taken on the 12th April 2016 constitute good reason to rescind the judgment that was granted that day.

[43] Appellants merely stated in their application for rescission that neither they nor their attorney was wilful in not attending the proceedings on 12 April 2016 and first appellant continued as follows: "I was under the impression that the matter will be argued once a date has been agreed upon by the two legal teams." Sadly, their attorney did not deem it necessary to file an explanatory affidavit. It is not unusual for courts to penalise parties for wrongdoings of their attorneys and not come to their assistance in the event of the attorneys' negligence. I would not be prepared to assist appellants in different circumstances, but the material, erroneous and fatal request for eviction and the consequent erroneous order cannot be sanctioned.

[44] Mr Ploos Van Amstel submitted that the appeal should be struck from the roll due to the manner in which the appeal record had been prepared, alternatively that the appeal be dismissed with costs on the merits. I have given sufficient consideration to his arguments which I shall not repeat, bearing in mind the manner in which I have approached the appeal. I would have approached the matter differently, if it was not for the manner in which default judgment was obtained on behalf of respondents. I accept that there was already a long delay in obtaining finality in the eviction application and that appellants might be accused of using delaying tactics in order to remain in possession of the property, but whatever accusations may be made towards them, the inappropriate action of respondents' attorney overrides all such actions and/or inaction.

IX. CONCLUSION:

[45] I am satisfied that the appeal should succeed. I made remarks pertaining to the record *supra* and for that reason appellant should not be entitled to all their costs. As a mark of displeasure I intend to order respondents to pay only 50% of appellants' costs of the appeal.

X. ORDERS:

[46] Wherefore the following orders are issued:

1. Condonation is granted for the late filing of the notice of appeal; the parties to pay their own costs in respect of this application.
2. The appeal succeeds.
3. Respondents are ordered to pay 50% (fifty percent) of appellants' costs of the appeal.
4. The judgment of the court *a quo* dated 4 November 2016 is set aside and the order of the court *a quo* is substituted with the following order:

"Applicants' application for rescission of the eviction order granted against them in favour of respondents on 12 April 2016 is granted with costs."

_____
JP DAFFUE, J

I concur

_____
OJ VAN SCHALKWYK, AJ

On behalf of appellants:	Adv ND Khokho
Instructed by:	Rampai Attorneys Bloemfontein
On behalf of respondents:	Adv PC Ploos van Amstel
Instructed by:	Symington & De Kok Bloemfontein