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# Troon seeks to have court ruling rescinded

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The  
Herald

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After twice missing the deadline to file his plea, which led to a court order eventually blocking him from doing so later, GOOD councillor Lawrence Troon now wants the Gqeberha regional court to overturn the R130,000 default ruling against him.

Troon applied in December to rescind the April ruling that ordered him to pay EFF councillor Khanya Ngqisha for making defamatory remarks during a TV interview and on social media.

In the court yesterday, Troon's lawyer, Neal Cunningham, said his client had failed to instruct him to file court papers because he was busy with the 2024 national elections.

"He was extremely busy, travelled extensively and could not appear in court or receive the email correspondences on time due to network issues."

Cunningham said Ngqisha's founding affidavit was not properly commissioned.

Afterwards, when asked for a copy of the application to rescind, Cunningham declined and said he would do so when the matter was concluded.

Troon, when contacted, requested the reporter to ask Cunningham for the papers.

When pushed for comment, Troon said he was in a virtual meeting.

Attorney Litemba Ncanywa, representing Ngqisha, told magistrate Thobile Jikela that after the delivery of the notice of intention to rescind the ruling, Troon failed to deliver a plea.

"As a result, the respondent [Ngqisha] delivered a notice of bar upon the applicant [Troon] on March 1 2024 giving him a further five days to file his plea."

Troon initially had 20 days to file his plea in terms of the regional court rules.

"[Troon] failed to deliver his plea within the period stipulated in the notice of bar and, as a result, [Troon] is now barred from filing his plea regardless of whether he succeeds in this application or not," Ncanywa said.

"Under [Troon's] barring, [Ngqisha] applied for and obtained a default judgment against the applicant."

"Thereafter, [Troon] instituted an application to rescind the judgment [which is the current application] obtained against him notwithstanding being barred from filing his plea."

"[Ngqisha] opposed this application and, apart from the merits, raised a jurisdictional issue."

Regarding the commissioning of Ngqisha's founding affidavit not being properly commissioned, Ncanywa said that it was not for the regional court to make such a determination.

"[Troon] further submits that the above court, being a creature of statute, cannot condone the defectiveness of the [Ngqisha] founding affidavit due to lack of jurisdiction to do so."

"I humbly submit that the above applicable provisions are peremptory and ought to be complied with by the deponent and the commissioner of oaths."

"My submission is that the only courts that can condone such material defect are the superior courts exercising the inherent jurisdiction conferred to them by Section 173 of the constitution."

Ncanywa told the court that Troon's application for rescission had to be dismissed with punitive costs for disrespecting the court by failing to adhere to its rules with the only reason being he was busy.

"[Troon] is now barred from filing his plea by operation of law."

"Therefore, even if the applicant succeeds in this application, that would be a hollow victory because the applicant would still be unable to file

its plea." Judgment was provisionally reserved for March 3.

Troon accused Ngqisha of soliciting bribes worth R1m from Hydrogen Hive among others.

At the time, Troon allegedly said: "On the seventh of December, when the item of Hive had to be passed in council, Khanya solicited R1m from Hive and Khanya must pay for that."

"In Nelson Mandela Bay, there is no councillor that is more corrupt than Khanya Ngqisha."

Troon made further defamatory statements against Ngqisha outside the Hume-wood police station, where he alleged the EFF councillor was using the Expanded Public Works Programme (EPWP) to strengthen his position in the party by dishing out jobs to EFF members.

He repeated the accusation about the EPWP jobs in a Facebook post.

Speaking outside court, Ngqisha said Troon had made facetious and dangerous remarks against him which he failed to prove.

"He has failed to prove those allegations severally," he said.

"He is wasting the court's time and treats it like there's nothing else to do."