

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG HIGH COURT, PRETORIA)**

Case no: 40990/2021

In the matter between:

THABANG KEFENTSE NONYANE

Applicant

and

NEDBANK LIMITED

Respondent

IN RE:

NEDBANK LIMITED

Plaintiff

And

THABANG KEFENTSE NONYANE

Defendant

JUDGMENT

JANSE VAN NIEUWENHUIZEN J

1. This is an application for the rescission of a judgment granted by the Registrar on 15 December 2021 in terms of which the defendant (applicant herein) was ordered to return a 2014 Mercedes Benz C180 motor vehicle to the plaintiff (respondent herein). The defendant, furthermore, seeks an order for the setting aside of a warrant issued on 25 January 2022 in terms of which the vehicle was attached and removed by the Sheriff.

2. The plaintiff's claim emanates from an Instalment Sale Agreement entered into between the parties on 15 September 2017 in terms of which the plaintiff sold the vehicle to the defendant. The defendant had to repay the purchase price of the vehicle together with financing costs and interest by way of monthly instalments.

3. The plaintiff maintains that the defendant fell into arrears with his monthly instalments, which led to the summons being issued and default judgment being granted by the Registrar.

Registrar competent to grant default judgment?

4. From the documents filed of record, the following appears:

4.1 Summons was issued on 17 August 2021 and served by the Sheriff at the defendant's chosen *domicilium* on 1 September 2021;

4.2 The defendant did not file a notice of intention to defend the matter and on 13 October 2021, the plaintiff brought an application for judgment by default.

4.3 Default judgment was granted by the Registrar on 15 December 2021.

5. The defendant maintains that the judgment stands to be rescinded due to the fact that the Registrar in this division is not empowered to grant default judgment in matters regulated by section 130(3) of the National Credit Act, 34 of 2005. The point is well taken and is supported by the finding of Jafta J in *Nkata v Firstrand Bank* 2016 (4) SA 257 CC at para [173]:

"[173] Here the legal fees claimed by the bank arose in

circumstances where the bank had acted in breach of the Act in a number of respectsSecond, it sought and obtained a default judgment from the registrar of the High Court, something that is incompatible with s 130(3) which requires such matters to be determined by the court"

6. This point was previously upheld in this division in *Theu v First Rand Auto Receivables (RF) Limited and Another* (89371/19) [2020] ZAGPPHC 319 (12 June 2020). The Honourable Acting Judge President Ledwaba, furthermore, and on 14 February 2022, issued a notice which pertinently states that default judgments regulated by the National Credit Act shall be dealt with by a judge in chambers.

7. In the result, it is patently clear that the registrar did not have the power or statutory authority to grant the default judgment and that the judgment stands to be reviewed and set aside.

Warrant for delivery of goods

8. Having found that the judgment stands to be set aside, it follows that the warrant issued in terms of the judgment should also be set aside.

Costs

9. Usually, an applicant in a rescission application is ordered to pay the cost of the application or costs in the cause. A respondent will only be ordered to pay the costs of the application if the opposition of the application is frivolous or unreasonable. In *casu*, the applicant sought a punitive cost order against the respondent.

10. I find the respondent's persistence in opposing the review application, notwithstanding the clear authority and directive in this division, inconceivable. The legal fees that had to be incurred and the substantial

amount of court time that was wasted by the plaintiff's opposition calls, in my view, for a punitive cost order to be granted against the respondent.

Order

The following order is granted:

1. The default judgment granted by the registrar on 15 December 2021 is rescinded and set aside.
2. The warrant for delivery of goods issued on 25 January 2022 is set aside.
3. The respondent is ordered to return the 2014 Mercedes Benz C180 BE Classic A/T, more fully described in the abovementioned warrant, forthwith, to the applicant.
4. The respondent is ordered to pay the costs of the application on an attorney client scale.

JANSE VAN NIEUWENHUIZEN J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

DATE HEARD:

20 & 21 February 2023

DATE DELIVERED:

6 March 2023

APPEARANCES

For the Applicant: Adv P Nonyane
Instructed by: Nonyane Incorporated

For the Respondent: Adv K Reddy
Instructed by: Vezi & de beer Inc