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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 2022/1752

NOT REPORTABLE

NOT OF INTEREST TO OTHER

JUDGES

REVISED

16/10/23

In the matter between:

**DMB TRUCK HIRE (PTY) LTD (“DMB”)
APPLICANT**

1ST

NEFALE ARIFANI MAVIN (“MAVIN”)

2ND APPLICANT

and

MFC FINANCIAL SERVICES (PTY) LTD (“MFS”)

RESPONDENT

(APPLICATION IN THE MAIN APPLICATION) – ABSA BANK LIMITED

JUDGMENT

WRIGHT J

1. Absa bank, the present respondent, lent money to the present first applicant, DMB Truck Hire. Mr Nefale, the moving force behind DMB signed surety. He is the present second applicant.
2. DMB fell into arrears. Absa launched an application for judgment against both DMB and Mr Nefale which was granted on a default basis on 3 August 2022. The present applicants now seek rescission of the default judgment.
3. The present applicants admit missing payments for December 2021 and January 2022. They say that they were not behind with payments as at date of judgment. They refer in their founding affidavit to certain payments made, after they were admittedly in arrears, which they say brought the account up to date.
4. The answering affidavit gives chapter and verse, showing that the account was well in arrears as at date of judgment.
5. In the replying affidavit, the detail in the answering affidavit is not challenged. The point is made that if Mr Nefale had been aware of the arrears he would have settled them. Despite this assertion, the arrears have not been settled.
6. The application therefore does not disclose a triable issue on the merits of the case.
7. The question remains whether or not the judgment was properly granted. Had there been any irregularity in the proceedings, not brought to the attention of the court when judgment was granted, the judgment falls to be rescinded even in the absence of good cause. See *Promedia Drukkers v Kaimowitz* 1996(4) 411 CPD at 417 G-I.

8. The original application was served on the second present applicant, Mr Nefale at his chosen domicilium. He admits moving and not informing the bank of his change of address or that of DMB. There was no irregularity regarding the judgment granted against him.
9. In the written agreement the bank concluded with DMB, the registered address of DMB is recoded as [...] Centurion. The physical address is recorded as [...] Centurion.
10. Under clause 16, DMB agreed always to provide Absa with DMB's current physical address, phone, email and cellphone numbers. It was also there expressly agreed that Absa could use *"the contact details that were last provided to us for all legal purposes."*
11. In short, the chosen domicilium, to use outdated language, was [...] Centurion. That is where the original application was served. There is no suggestion, nor could there sensibly be such suggestion, that the omission of reference to Modisane Street in the choice of physical address is relevant.
12. There was accordingly no irregularity in the seeking of judgment against DMB.
13. The applicants were not in court or represented when the case was called.
14. Mr Alli, for the respondents handed up a draft, seeking dismissal and punitive costs.

ORDER

1. x -

GC Wright

Judge of the High Court

Gauteng Division, Johannesburg

HEARD : 16 October 2023

DELIVERED : 16 October 2023

APPEARANCES :

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