



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

**CASE NO: 26720/2007**

(1) REPORTABLE: NO  
(2) OF INTEREST TO OTHER JUDGES: NO  
(3) REVISED.

**14 FEBRUARY 2022**

**Date**

**K. La M Manamela**

In the matter between:

**DORIS SHADIDI PULE**

**Applicant**

and

**NEDBANK LIMITED**

**1<sup>st</sup> Respondent**

**SHERIFF OF COURT, JOHANNESBURG SOUTH**

**2<sup>nd</sup> Respondent**

**REGISTRAR OF DEEDS, JOHANNESBURG**

**3<sup>rd</sup> Respondent**

**EVANS ODIRA ESIONE**

**4<sup>th</sup> Respondent**

**SIGINISILE HAPPINESS ESIONE**

**5<sup>th</sup> Respondent**

**UBAH IKECHUKWU CHRISTIAN**

**6<sup>th</sup> Respondent**

**DATE OF HEARING: 08 NOVEMBER 2021**

**DATE OF JUDGMENT:** This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time of hand-down is deemed to be 10h00 on **14 FEBRUARY 2022**.

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**JUDGMENT**

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**KHASHANE MANAMELA, AJ**

## ***Introduction***

[1] The applicant, Ms Doris Shadidi Pule (Ms Pule), concluded a loan agreement with the first respondent, Nedbank Limited (Nedbank), in 2007. Nedbank lent and advanced an amount of R700 000 to Ms Pule for her to purchase an immovable property situated at Erf 43 Rewaltch Johannesburg (the Property). Over the course of time, Ms Pule had problems in repaying the loan and consequently breached the terms of the loan agreement.

[2] In 2007 Nedbank instituted legal proceedings against Ms Pule. Nedbank was granted default judgment in 2009 for the payment of the amount of R729 822.37. Nedbank bought the Property at a sale in execution and, thereafter, sold it to the sixth respondent, Mr Christian Ikechukwu Ubah (Mr Ubah). Mr Ubah further sold the Property to the fourth and fifth respondents, Mr Evans Odira Esione and Siqinisile<sup>1</sup> Happiness Esione (the Purchasers).

[3] A period of 10 (ten) years elapsed between the granting of the default judgment in favour of Nedbank and the institution of the current application by Ms Pule. She instituted this application for the reinstatement of the loan agreement with Nedbank; rescission of the default judgment and warrant of execution in favour of Nedbank; declaration - as invalid - of the sale in execution whereat Nedbank purchased the Property and all subsequent transactions, and re-registration of the title to the Property in her name. The application is opposed only by Nedbank. The other respondents, including the Purchasers, are not taking part.

[4] The opposed motion came before me on 08 November 2021. Mr M Webbstock appeared for Ms Pule and Ms R Carvalheira appeared for Nedbank. They had both filed written

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<sup>1</sup> Although the fifth respondent's name is cited as "Siginisile", the other available records in this matter has it as "Siqinisile", replacing the letter "G" with "Q". The latter sounds correct.

argument in terms of the practice directives of this Court. This judgment gratefully benefits from both oral and written argument by counsel. I reserved this judgment after listening to counsel's oral argument. Next, I deal with the statements and submissions in support of each of the party's case.

***Applicant's (i.e. Ms Pule's) case***

[5] As stated above, Ms Pule obtained a loan from Nedbank to purchase the Property in 2007. She uses the Property as a kindergarten and, at times, to house homeless children. Still in 2007 she defaulted in her repayment of the loan and thus breached the agreement with Nedbank. In September 2007, Nedbank served her with summons for the repayment of the loan. She admits to the receipt of the summons by Nedbank. Naturally, this aspect is relevant for the rescission of the default judgment.

[6] Ms Pule now says that she doubts that Nedbank had complied with sections 129 and 130<sup>2</sup> of the National Credit Act 34 of 2005 (the NCA) before issuing the summons against her. In fact, she has not seen any documentary proof of compliance. But still she did not oppose the legal action. She appears to suggest that she did not have the required financial resources for legal representation at the time.

[7] On 29 December 2008, she paid an amount of R30 000.00 towards her loan amount with Nedbank. Evidently, this was after her receipt of the summons. Ms Pule says the payment was meant to settle an amount of R23 041.48 indicated as the arrears on her account in terms of the certificate of balance (the COB) dated 01 August 2007 by Nedbank included in the

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<sup>2</sup> See pars [24] and [25] below for the reading of ss 129 and 130 of the NCA, respectively.

summons. She states that she assumed that by paying the “full” arrear amount before the default judgment was granted, the loan agreement would be reinstated.

[8] But 02 February 2009 default judgment was granted against Ms Pule in favour of Nedbank for payment of the amount of R729 822.37, together with interest and costs. The Property was also declared specially executable. Nedbank had accelerated the repayment of the loan due to the breach of the terms of the loan agreement by Ms Pule.

[9] Ms Pule confirms that she became aware of the default judgment after it was granted. She says that she accepted the judgment as valid. Thereafter, she did her best - over the years - to prevent the sale of the Property in execution of the default judgment. She made various repayment arrangements. But she could not keep to the arrangements made. She even published a notice of surrender of her estate in terms of the Insolvency Act 24 of 1936, but did not follow through with a voluntary surrender application.

[10] Eventually, Nedbank sold the Property in 2013. Nedbank bought-in the Property for an amount of R310 000.00, then sold it on to Mr Ubah for R500 000.00. Mr Ubah further sold it to the Purchasers for R700 000.00. The three transactions or transfers appear to have been concurrent.<sup>3</sup> Ms Pule, thereafter, concluded a lease agreement with the Purchasers, as the latest registered owners of the Property, for her continued occupation of the Property. She says she had no basis to doubt the validity of the sale of the Property and was in need of the Property to continue with her kindergarten business.

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<sup>3</sup> The numbers of the three title deeds (i.e. for Nedbank, Mr Ubah and the Purchasers) are sequential in order.

[11] But Ms Pule's problems persisted. She did not keep to the terms of her lease agreement with the Purchasers, in as far as payment was concerned. The Purchasers launched eviction proceedings against her in the Johannesburg Magistrates Court. She is still worried of the prospect of an eviction.

[12] In this application Ms Pule asserts that she is still the lawful owner of the Property, despite the registration of the title in the name of the Purchasers. She says that sections 129(3)(a) and (4) of the NCA provide for an automatic reinstatement of a credit or loan agreement once all overdue amounts, together with prescribed default administration charges and reasonable legal costs incurred before the transfer of the Property following a sale in execution, are paid. The payment of R30 000.00 was for this purpose or had the same effect, she points out. The corollary of a reinstatement of her agreement would be that the "judgment and consequences of the judgment, including any warrant of execution issued pursuant to the judgment would be rendered of no further force or effect", she says.

[13] The above consequences, according to Ms Pule, are also due to the fact that Nedbank did not cancel the loan agreement but only exercised its right to accelerate repayment of the debt. But despite the acceleration Nedbank continued to claim or add charges; legal costs and installments to the debt, as if there was no acceleration. This, Ms Pule labels "not permissible" and "unconscionable".

[14] Also, Ms Pule says that, once the loan agreement was reinstated due to payment of all due amounts or arrears (through the payment of the R30 000.00), Nedbank could not subsequently use the same process to obtain default judgment against Ms Pule. This includes the use of letter in terms of section 129 of the NCA which formed part of the summons.

Following the payment and therefore automatic reinstatement of the loan agreement, Nedbank had to commence the enforcement of the agreement afresh. But Nedbank, instead, continued acting under the “defunct summons” to obtain judgment against her. Therefore, according to Ms Pule, all subsequent steps, including the warrant of execution and transfers, are void in law. The effect of all these is that she never lost her Property, Ms Pule contends. For no party (read Nedbank and Mr Ubah) could transfer more or greater rights than she/he/it has, hence the restitutionary relief sought by Ms Pule in terms of this application.

***First Respondent’s (i.e. Nedbank’s) case***

[15] To recap, Nedbank is the only respondent opposing this application. Nedbank sought to address the various grounds for relief raised by Ms Pule. But I cannot blame Nedbank. Ms Pule – with respect - has raised all possible grounds under the circumstances. With respect, some of these grounds are obviously farfetched. I deal with Nedbank’s responses to Ms Pule’s grounds for relief, next.

[16] Ms Pule alleges that she could not find proof of compliance with the requirements of section 129(1) of the NCA in the default judgment documents. Nedbank’s response is that it has no reason to believe that its erstwhile attorneys did not comply with the requirements of the NCA. Due to the lapse in time its attorneys no longer have the relevant documents. But it is Ms Pule who made the allegation of non-compliance and thus she is the one to establish it as a fact. Nedbank also mentions that the Registrar of this Court would not have granted default judgment without being satisfied of compliance with section 129(1) of the NCA. This, in my view, is very logical.

[17] Nedbank admitted the payment of R30 000 by Ms Pule on 29 December 2009. But Nedbank disputes the effect of the payment, as insinuated by Ms Pule, on the litigation and the loan agreement between the parties. First, Nedbank points out that the payment was made very late and only approximately 15 months after legal action had been instituted on 27 September 2007 against Ms Pule. Second, this payment was the only payment made by Ms Pule between the issuing of the summons and the granting of the default judgment in February 2009. Third, the payment did not settle the entire or full arrear amount. The amount had significantly increased in the period of 15 months from the issuing of the COB. As at the time payment was made the arrears had increased to an amount of R132 807.65. By the time default judgment was granted - on 02 February 2009 – the arrears had reached R152 208.98. Fourth, as an evolving or “living” instrument, the loan agreement entails that any amount due and payable are to be charged or added on a daily basis. Therefore, invariably, the amount owing when a summons is issued would not be the same as when a default judgment is granted.

[18] Further, Nedbank acknowledges that there have been material developments in law. Currently, a debtor is merely entitled to settle the arrears owing on an account, instead of payment of the entire accelerated debt or amount. This was not previously possible including when Nedbank obtained the default judgment against Ms Pule in 2009. Be that as it may, the arrears were not extinguished when the default judgment was granted on 02 February 2009.

[19] Nedbank also denies that it had added legal costs or interest on legal costs when calculating the arrear amount, as alleged by Ms Pule. But the arrear amount does not get “frozen” as at the date of summons or the COB, Nedbank points out. The indebtedness continues to accrue until fully settled. Ms Pule had simply not made payments, especially between the dates of the summons and default judgment. In fact, Ms Pule has just made

sporadic payments during the entire currency of the loan agreement. This is so, despite being granted an ample opportunity to clear the arrears or make regular payments after the default judgment was granted and the subsequent transfer of the Property. For example, when Nedbank took transfer of the Property the arrears amounted to R308 738.28.

[20] Regarding the sale of the Property, Nedbank says that it did not make any profit by buying-in and on-selling the Property to Mr Ubah. It had to settle the arrear rates and taxes owed to the local authority for the Property in order to obtain a clearance certificate for the transfer to Mr Ubah. The Property was further sold by Mr Ubah to the Purchasers. Nedbank does not have knowledge of the further sale.

[21] Apart from its opposition of the relief sought, Nedbank simply bemoans the conduct of Ms Pule in this litigation. It charges that this application lacks merit. That Ms Pule is abusing the process of the law as she previously did. Ms Pule previously would publish a notice to voluntarily surrender her estate every time the sale in execution at the instance of Nedbank was imminent. But once the sale in execution was cancelled, Ms Pule would not proceed with the actual application for the voluntary surrender of her estate. This occurred twice. Nedbank had to obtain a court order to ensure that the third sale in execution was not impeded by the same tactic. But, also seen from another angle, the voluntary surrender process contradicts Ms Pule's professed quest to retain the Property.

[22] Overall, Nedbank considers this application to be simply Ms Pule's attempt to avoid the pending eviction application by the Purchasers. Nedbank argues that Ms Pule is resolute about retaining possession of the Property, despite the fact that many occurrences have since taken place. These proceedings were instituted after a hiatus of 6 (six) years from the sale in



execution. The proverbial horse has since bolted. And now the rights of innocent third parties who purchased the Property are at stake.

### ***Applicable legal principles***

[23] Ms Pule raised a number of issues or grounds in her quest to rescind the default judgment and vitiate all concomitant transactions and/or processes. Equally, a variety of legal principles finds application in this matter. Some of these principles are dealt with under this part.

[24] First, there is reliance upon section 129(1) of the NCA. It is submitted on behalf of Ms Pule that Nedbank failed to comply with this provision. It reads as follows:

“(1) If the consumer is in default under a credit agreement, the credit provider-

- (a) may draw the default to the notice of the consumer in writing and propose that the consumer refer the credit agreement to a debt counsellor, alternative dispute resolution agent, consumer court or ombud with jurisdiction, with the intent that the parties resolve any dispute under the agreement or develop and agree on a plan to bring the payments under the agreement up to date; and
- (b) subject to section 130(2), may not commence any legal proceedings to enforce the agreement before-

- (i) first providing notice to the consumer, as contemplated in paragraph (a), or in section 86(10), as the case may be; and
- (ii) meeting any further requirements set out in section 130.”

[25] Linked to section 129(1) above, the submission for Ms Pule is that there was also non-compliance with section 130 of the NCA by Nedbank. This provision reads as follows in the material part:

“(1) Subject to subsection (2), a credit provider may approach the court for an order to enforce a credit agreement only if, at that time, the consumer is in default and has been in default under that credit agreement for at least 20 business days and—

(a) at least 10 business days have elapsed since the credit provider delivered a notice to the consumer as contemplated in section 86 (10), or section 129 (1), as the case may be;

(b) in the case of a notice contemplated in section 129 (1), the consumer has—

(i) not responded to that notice; or

(ii) responded to the notice by rejecting the credit provider’s proposals; and

(c) in the case of an instalment agreement, secured loan, or lease, the consumer has not surrendered the relevant property to the credit provider as contemplated in section 127.

(2) ...

(3) Despite any provision of law or contract to the contrary, in any proceedings commenced in a court in respect of a credit agreement to which this Act applies, the court may determine the matter only if the court is satisfied that—

(a) in the case of proceedings to which sections 127, 129 or 131 apply, the procedures required by those sections have been complied with ...”

[26] Ms Pule relied on the following *dicta* by Gautschi AJ from the decision in *Tarita v Absa Bank Ltd and another* 2010 (3) SA 443 (GSJ) or part thereof:

“It will be observed that there is no time period specified in the Act for the continued validity of a s 129 notice, nor can one be implied. Its ongoing validity then depends upon the facts of the case. For instance, if the arrears specified in the notice were fully extinguished after the notice had been given, the notice could not then be utilised for any legitimate purpose if further arrears occurred thereafter. On the other hand, if after the giving of a s 129 notice the arrears were not extinguished (albeit that payments were made), there is nothing in the Act that demands that the notice has to be acted upon by the issue of summons within a short or limited period of time, or that it may only be used for one summons. The only imperative is that certain time periods have to elapse before the notice may be acted upon.”<sup>4</sup>

[quoted without the accompanying footnotes]

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<sup>4</sup> *Tarita v Absa Bank Ltd and another* 2010 (3) SA 443 (GSJ) at par [10].

[27] In *Nhlapo v Toyota Financial Services SA*<sup>5</sup> it was also held:

“In other words upon so extinguishing in full her arrears as so specified in the said notice it was incumbent upon Toyota in compliance with the provision of section 129 (1) (a), to give Ms Nhlapo a new or further section 129 Notice predicated on such subsequent or later default, as a mandatory pre-litigation step for the enforcement of the agreement”.<sup>6</sup>

[28] In *Kubyana v Standard Bank of South Africa Ltd*<sup>7</sup> it was held:

“In his papers Mr Kubyana set out various grounds of appeal, including a claim that Standard Bank had breached section 106 of the Act by impermissibly debiting his account with insurance premiums ...”<sup>8</sup>

[29] In *Nkata v Firststrand Bank Limited and Others*<sup>9</sup> it was held as follows:

“Both Cameron J and Nugent AJ hold that Ms Nkata failed to pay reasonable costs of enforcing the credit agreement. While I agree that those costs existed in fact, I do not agree that they constituted reasonable costs of enforcing the credit agreement. In my view, as a matter of law, no legal fees were due because the institution of the legal action without compliance with section 129(1) was irregular and the default judgment was a nullity because the registrar had no power to grant it. For one to conclude that section 129(3) was not met for purposes of reinstating the agreement, one must be satisfied that costs which Ms Nkata failed to pay were those envisaged in the section.”<sup>10</sup>

[30] These legal principles are considered against the submissions made on behalf of the parties, next.

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<sup>5</sup> *Nhlapo v Toyota Financial Services SA Ltd* (81122/14) [2016] ZAGPPHC 692 (4 August 2016).

<sup>6</sup> *Nhlapo v Toyota Financial Services SA* at par [35].

<sup>7</sup> *Kubyana v Standard Bank of South Africa Ltd* 2014 (3) SA 56 (CC); 2014 (4) BCLR 400 (CC).

<sup>8</sup> *Kubyana v Standard Bank of South Africa* at par [10].

<sup>9</sup> *Nkata v Firststrand Bank Limited and others* (CCT73/15) [2016] ZACC 12; 2016 (6) BCLR 794 (CC); 2016 (4) SA 257 (CC) (21 April 2016)

<sup>10</sup> *Nkata v Firststrand Bank Limited* at par [166].

### ***Submissions and applicable legal principles (discussed)***

#### **Compliance with sections 129 and 130 of the NCA; full settlement of arrears and automatic reinstatement of a credit**

[31] It is part of Ms Pule's case that she doubts that Nedbank had complied with sections 129 and 130<sup>11</sup> of the National Credit Act 34 of 2005 (the NCA) before issuing the summons. In fact, she has not seen any documentary proof of compliance. I do not find merit in this submission. It is a mere conjecture without any basis. In any way it is Ms Pule who should have proffered proof of her allegation and she did not.

[32] There is further reliance on the provisions of the NCA by Ms Pule. She says that the loan agreement was reinstated by payment of the amount of R30 000.00. It ought to be borne in mind in this regard that Ms Pule's case is that the R30 000.00 payment settled all due amounts or arrears owing to Nedbank. Therefore, Nedbank's letter or notice under section 129 of the NCA could not be used to proceed with the case against Ms Pule. This submission purportedly relies on the decision in *Tarita v Absa Bank Ltd and another* in which it was held that "the continued validity of a s 129 notice" depends upon the facts of the case and that "if the arrears specified in the notice were fully extinguished after the notice had been given, the notice could not then be utilised for any legitimate purpose if further arrears occurred thereafter".<sup>12</sup> This view was supported in *Nhlapo v Toyota Financial Services SA* which also held that a new notice under section 129 of the NCA was required for the continued enforcement of the agreement once the arrears in old one have been fully extinguished.<sup>13</sup> But the arrears in this matter were never extinguished. No payment was made until after 15 months later. By then the arrears had increased to an amount of R132 807.65 and even higher by the time default judgment was granted on 02 February 2009. I do not understand the

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<sup>11</sup> See pars [24]-[25] above, for the reading of ss 129 and 130 of the NCA, respectively.

<sup>12</sup> *Tarita v Absa Bank Ltd and another* 2010 (3) SA 443 (GSJ) at par [10].

<sup>13</sup> *Nhlapo v Toyota Financial Services SA* at par [35].

abovementioned authorities to suggest that the amount of the arrears stated in the notice would remain the same and the actual or accrued amount of the arrears irrelevant. Ms Pule was not making payments to reasonably assume that there will be no change to the amount of the arrears. It is common cause that any payments made by Ms Pule during the entire currency of the loan agreement were sporadic. Summons had been issued to Ms Pule's knowledge. One would have expected her to approach Nedbank or its attorneys when making payment to determine the amount of the arrears at the time. But she did not. She simply chose to consider matters frozen-in-time in as far as her relationship with Nedbank was concerned. Accordingly, she has herself to blame. I also find that there was no reinstatement of the loan agreement. Nedbank complied with the requisite provisions of the NCA. I also reject Ms Pule's accusation that Nedbank added legal costs or interest on legal costs when calculating the arrear amount.

#### Acceleration of debt

[33] Ms Pule also bemoaned the fact that whilst Nedbank proceeded against her on the basis of an accelerated debt or an amount which resulted from Nedbank's exercise of its rights under the acceleration clause in the loan agreement, there was also indication of on-going monthly instalments and interest charges. I understand Ms Pule to be saying the two cannot go hand in hand. It is either the accelerated debt or a balance which represent the accruing monthly instalment, interest and other charges added at intervals. But this simply holds no water. Ms Pule was not asked to pay more, due to the conduct of Nedbank. She did not settle the actual arrears owing on her account to be justified in saying that the accelerated debt or amount should be ignored. Default judgment was granted against Ms Pule for an amount of R729 822.37. Therefore, I find that Nedbank properly relied on the accelerated repayment of the loan due to the breach of the terms of the loan agreement by Ms Pule. It is also significant that Ms Pule

despite the default judgment made payment arrangements with Nedbank but failed to honour the arrangements.

[34] I could not find anything in the decision of the Supreme Court of Appeal in *Standard Bank v Miracle Mile Investments*<sup>14</sup> including the *dicta* in paragraph [15] to support Ms Pule's contention with regard to the acceleration of the balance.

#### Requirements for rescission of judgment

[35] Ms Pule confirmed that she received the summons and contemporaneously became aware of the default judgment. In her own words she accepted the judgment was valid. It is reasonable to understand her conduct as amounting to acquiescence.<sup>15</sup> But Ms Pule also says that over the years she did her best to prevent the sale of the Property in execution of the default judgment. Therefore, she may say that her conduct or part of it contradicted any suggestion of her acquiescence to the judgment she seeks to set aside or rescind. But even this does not alter the outcome of this matter.

#### **Conclusion**

[36] I agree with Nedbank that Ms Pule did not indicate whether her application for rescission was based on the Uniform Rules (i.e. Rule 31(2)(b) or Rule 42(1)) or the common law. The common law allows the rescission of a default judgment obtained upon the default of appearance by a party, provided the defaulting party establishes or show sufficient cause or

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<sup>14</sup> *Standard Bank v Miracle Mile Investments* (187/2015) ZASCA 91 (1 June 2016).

<sup>15</sup> *Hartley and another v FirstRand Bank Limited and another* (27612/2010) [2014] ZAGPJHC 282 (24 October 2014) in which it was held (at par [13]) that "[a]ccording to the common law doctrine of peremption, a party who acquiesces to a judgment cannot subsequently seek to challenge the judgment to which he has acquiesced. This doctrine is founded on the logic that no person may be allowed to opportunistically endorse two conflicting positions or to both approbate and reprobate, or to blow hot and cold. It may even be said that a party will not be allowed to have her cake and eat it too."

good cause<sup>16</sup> for the rescission.<sup>17</sup> Nedbank argues that Ms Pule has not given a reasonable explanation for the delay as she has been aware of the litigation since the receipt of the summons, including the default judgment.

[37] I find that Ms Pule did not provide a reasonable and acceptable explanation for the default. She also did not show that this application is *bona fide* and not merely aimed at frustrating the default judgment and its consequences through delays. Also, she has not established the existence of a *bona fide* defence on the merits of the matter.

[38] Whether considered on the basis of the common law or the Uniform Rules, this application discloses no basis to justify interference with the default judgment, the sale in execution and the transactions for the transfer of the Property. In fact, there is credence to Nedbank's claim that this application was launched by Ms Pule simply to avoid her eviction from the Property. This would amount to abuse of the process of this Court. But it is not necessary to express a firm view on the latter issue.

[39] Therefore, this application is unmeritorious and, thus, will be dismissed. Ms Pule will be held liable for costs of the application.

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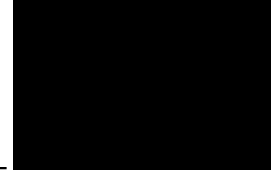
<sup>16</sup> Whilst the phrases "good cause" and "sufficient cause" are practically synonymous and, therefore, interchangeable (see and *Silber v Ozen Wholesalers (Pty) Ltd* 1954 (2) S A 345 (A) at 352-353; *Harris v ABSA Bank Ltd t/a Volkskas* 2006 (4) SA 527 (T) at 529), but not capable of a precise, exhaustive or comprehensive definition (see *Colyn v Tiger Food Industries* at 9B-D), a rescission application ought to show: (a) a reasonable and acceptable explanation for the default; (b) show that the application is *bona fide* and not merely aimed at delaying execution of the judgment, and (c) establish existence of a *bona fide* defence on the merits of the matter, which *bona fide* defence *prima facie* carries some prospect or probability of success. See *Government of the Republic of Zimbabwe v Fick* 2013 (5) SA 325 (CC) at 350D; *Chetty v Law Society, Transvaal* 1985 (2) SA 756 (A) at 764J-765D; *Promedia Drukkers and Uitgewers (Edms) Bpk v Kaimowitz and Others* 1996 (4) SA 411 (C) at 417J-418B; *Grant v Plumbers (Pty) Ltd* 1949 (2) SA 470 (O) at 476-477; *Ngutshane v Standard Bank of South Africa Ltd and Others* 2013 JDR 2768 (GNP); (31843A/2012) [2013] ZAGPPHC 421 (6 December 2013).

<sup>17</sup> *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills (Cape)* 2003 (6) SA 1 (SCA) at par [11] and *Silber v Ozen Wholesalers (Pty) Ltd* 1954 (2) S A 345 (A) at 352H-353A .

***Order***

[40] In the premises, I make the following order:

- a) the application is dismissed with costs.



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**Khashane La M. Manamela**  
**Acting Judge of the High Court**  
**14 February 2022**

**Appearances:**

|                          |   |                                                                                                                  |
|--------------------------|---|------------------------------------------------------------------------------------------------------------------|
| For the Applicant        | : | Mr M Webbstock                                                                                                   |
| Instructed by            | : | Matthew Webbstock Attorney<br>Sandringham, Johannesburg                                                          |
| For the First Respondent | : | Ms R Carvalheira                                                                                                 |
| Instructed by            | : | Enderstein & Van der Merwe Inc<br>Bedford Gardens, Johannesburg<br>c/o Le Roux Du Plessis<br>Centurion, Pretoria |