

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

Case Number: 060093/23

REPORTABLE: YES/ NO

OF INTEREST TO OTHER JUDGES: YES/NO

REVISED: YES/NO

In the matter between:

N KATAKA

APPLICANT

and

STANDARD BANK

RESPONDENT

Heard on: 10 March 2025

Delivered: 16 May 2025. The judgment was prepared and authored by the judge whose name is reflected and handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on Caselines.

JUDGMENT

Moila, AJ

Introduction

[1] The Applicant seeks an order to rescind the warrant for the delivery of goods and

the default judgment order granted on 30 August 2023 in terms of Rule 31(2)(b) of the Uniform Rules of the court.

[2] The Applicant asserts that she did not receive the summons, default judgment application, and the warrant for the delivery of goods, thus she could not defend herself in this matter.

[3] The Respondent opposed the application, submitting that the applicant was aware of the legal proceedings and ignored it until the motor vehicle was attached; the application must be dismissed with costs.

The parties

[4] The Applicant is Ngokoana Benedicta Kataaka, a major female with her chosen *domicilium et executandi* at Unit 7[...] S[...] T[...], M[...], C[...], Pretoria.

[5] The Respondent is the Standard Bank of South Africa (Pty) Ltd with (Registration number 1962/ 000738/306) duly registered and incorporated in accordance with the company laws of the Republic of South Africa, and a registered credit provider with registration number and NCRCP. 15, its principal place of business is on the second floor, [...] S[...] Street, M[...], Johannesburg, Gauteng Province.

Background facts

[6] On 23 May 2022, the Applicant and the Respondent entered into a written instalment sale agreement in Northcliff. According to the terms of the agreement, the Respondent agreed to sell, and the Applicant agreed to purchase, a 2018 Mercedes-Benz V-250 Blue Tee AVANTGARDE A/T. The vehicle has the following specifications: engine number 6[...] with Chassis number W[...].

[7] The principal debt to be advanced to the Applicant under the agreement was R 696 107.50. The total cost of the agreement, including interest, costs, and charges, will be R 1 077 359.53, which will be repaid to the Respondent by the Applicant in 72 consecutive monthly instalments, 71 monthly instalments of R 10

990.43, each commencing on 1 July 2022, with a final instalment of R 297 039.00 payable on 1 June 2028.

[8] The Applicant breached the terms of their agreement. As of 10 May 2023, the amount the Applicant owes to the Respondent under the agreement was R70 360.49.

[9] The Applicant was indebted to the Respondent under the agreement in the amount of R 1 103 751.89, together with interest at the rate of 15% per annum from 1 May 2023 to the date of payment.

[10] On 7 June 2023, a notice in terms of section 129 (1) read with section 130 of National Credit Act 34 of 2005 (NCA) was issued and served upon the Applicant by registered electronic mail transmitted through the South African Post Office (SAPO) in accordance with this section 19(4) of the Electronic Communication and Transactions Act 25 of 2002 (ECTA). The Applicant did not respond to the notice. Summons were subsequently issued and served with a notice in terms of Rule 41A of the Uniform Rules on 27 July 2023 by affixing a copy thereof on the principal door of the Applicant's chosen domicilium.

[11] The applicant did not respond nor pay the debt. Subsequent thereto, the Respondent applied for Default Judgment against the Applicant. On 30 August 2023, Default Judgment was granted against the Applicant as follows:

- a. Confirmation of cancellation of the agreement.
- b. An order directing the Applicant to restore the possession of the goods to the Respondent Plaintiff, being a 2018 Mercedes Mercedes-Benz V 250 Bluetech Avantgarde A/T, with engine number 6[...] and Chassis number W[...].
- c. Retention of all monies paid to the Respondent by the Applicant.
- d. Leave was granted to the Respondent to apply for damages, if any, in the amount to be calculated by subtracting the current market value of the goods. Interest on the said damages is at a rate of 15% per annum from 1 May 2023 to the date of payment.

[12] On 1 September 2023, the Registrar of the High Court issued a warrant for

the delivery of goods addressed to the Sheriff. The warrant authorised the Sheriff to take or remove the motor vehicle, the 2018 Mercedes-Benz, from the Applicant.

[13] On 14 December 2023, the Sheriff served a copy of the warrant for delivery of goods upon Mr. Stembiso Patrick Mosito, at the Applicant's place, and the motor vehicle was removed and placed in the sheriffs possession.

[14] The Applicant's reasons for the default was that the summons was served at the Applicant's residential complex by affixing the said summons at the complex gate. The Applicant never received the summons and thus did not have an opportunity to defend the matter.

[15] From the foregoing, this court is enjoined to determine the following disputed issues:

- a. Was the Applicant in wilful default?
- b. Did the Applicant show good cause for the default?
- c. Does the Applicant have a *bona fide* defence?

Submissions by the Applicant

[16] Applicant's Counsel, Mr. Ramoromisi, submitted that on 27 July 2023, the Respondent served summons by affixing them at the complex's gate. The Applicant's complex has security officers who are eligible to receive the summons. The Respondent did not receive the summons, application for default judgment, or notice of set down, so she did not have an opportunity to defend the matter.

[17] Counsel asserted further that the Respondent had undermined the Practice Directives; paragraph 1 of 9.14 states that "in addition to any requirement which the Registrar may impose, a notice of set down shall be served and filed in all default cases."

[18] Mr. Ramoromisi argued that the Applicant was not served with the judgment. On 4 September 2023, the Respondent issued a warrant for the delivery of goods to repossess the Applicant's motor vehicle. On 14 December 2023, the Applicant

emailed the Respondent to arrange payment of the arrears. The Applicant was not aware that there were legal proceedings. The conduct of the Applicant clearly shows the intention to settle arrears.

[19] Counsel submitted that the Applicant only became aware of this matter on 17th January 2024 through the sheriff's email. Therefore, the Applicant was not in wilful default.

[20] According to Counsel, the Applicant did not have sufficient income to meet the monthly payments during the agreement. Her financial position has now changed. She will be able to meet the monthly payments. Multiple sources now employ the Applicant, and she can pay the Respondent.

[21] The Applicant's Counsel referred the Court to various cases in support of her argument:

a. In *National Pride Trading 452 v Media*¹, Alkema J held that "any order or judgment made against a party in his absence due to an error not attributable to him is such profound intervention in his right to a fair trial and right to be heard that, for this reason alone, judgment or order should be set aside without further ado"

b. In *Berea v De Wet NO and another*², the Constitutional Court held that generally a judgment is erroneously granted if there exist at the time of its issue, a fact of which the court was unaware, which would have induced the court, not to grant the judgment.

c. In *Fraind v Nothmann and Another*³, judgment by default was granted on the strength of a return of service, which indicated that the summons had been served at the defendant's residential address. In an application for rescission, the Defendant alleged that the summons had not been served to him as the address at which service was effected had no longer been his residential address at the relevant time. The default judgment was rescinded on the basis that it had been granted erroneously.

¹ 2010 (6) SA 587 (ECP) at para 56.

² 2017 (5) SA 346 (CC).

³ 1991, Volume 3, SA 837 (W).

[22] Mr Ramoromisi argued that on the premises of the cited authorities, it is clear that where notice of proceedings to a party is required, and judgment is granted against such party in his absence, without notice of the proceedings being given to him/her, such judgment is granted erroneously.

[23] The Applicant's Counsel further asserted that the Respondent's answering affidavit was filed on 13 August 2023. It was 5 months late, and no reasons were given to account for the delay. In the unreported case of *MD Maris v Minister of Safety and Security and the MEG for Roads and Transport* (case no 1521/2010), Jordan J held that the explanation for the delay should be full, at least sufficient, and acceptable. Respondent's application for the condonation should be dismissed with costs.

[24] In conclusion, the Applicant's Counsel submitted that the Applicant has demonstrated that the default judgment was granted erroneously and in the Applicant's absence. Furthermore, the Applicant has demonstrated that it has prospects of success and that the application for a rescission of judgment was issued and filed timelessly. The application should be upheld with costs, and the matter should be referred to mediation in terms of Rule 41 A.

The Respondent's Submissions

[25] The Respondent's Counsel, Advocate Kerusha Reddy submitted that the Respondent opposes the application. The Respondent complied with its obligation under the agreement. The Applicant defaulted on the agreement between the two parties. As of 10 May 2023, the amount owed by the Applicant was R 70 360.49. In total, the Applicant is indebted to the Respondent for R1 103 751.89, with interest at the rate of 15% per annum from 1 May 2023 to the date of payment.

[26] Counsel further asserted that the summons was issued and served by the Sheriff on 27 July 2023 at the Applicant's chosen *domicilium* by proper service in terms of Rule 4 (1)(a)(i) of the Uniform Rules by affixing it at the principal door. It is incorrect that the summons was affixed at the complex gate because the Sheriffs Return of Service states that it was affixed on the principal door of the chosen *domicilium*.

[27] Counsel argued that the Applicant is failing to take this Court into her confidence as she cannot tell the exact date and manner through which she became aware of the summons, default judgment, and delivery of goods. The Applicant attached the default judgment and warrant for delivery of goods to her founding affidavit but does not state how they came into her possession.

[28] Mr Reddy submitted that it is clear from the wording of the rule that Uniform Rule 31(2) (b) does not find application in orders granted on an unopposed motion basis. Thus, the Rule has no scope in the recession application, and it is unnecessary for this Court to determine whether the Applicant has demonstrated a reasonable and acceptable explanation for a defence to the claim with prima facie prospects of success.

[29] Counsel in considering a similar set of facts, referred the court to *ADB Financial Services, (Pty) Ltd and another v Mercantile Bank Limited and Another*⁴, Fourie J said:

"Generally speaking, a default judgment may be rescinded in terms of the provisions of Rule 31(2)(b), or under the common law or by virtue of the provisions of Rule 42. Rule 31(2)(a) and (b) applies to a default judgment granted "*in an action*", whereas default judgment in general, also those granted in motion proceedings, may be rescinded under the common law in the exercise of the High Court's inherent jurisdiction."

[30] The judicial facts required for an application under uniform Rule 31(2)(b) are the following;

1. default judgment has been given in an action, and
2. within 20 days after obtaining knowledge of the judgment, deliver a notice
3. upon good cause shown.

[31] Mr Reddy argued that the requirement for good cause shown is no different in the context of common law than in the context of Uniform Rule 31(2)(b). That

⁴ (42352/2020) [2023] ZAGPPHC 67 (8 February 2023) at para 20.

being said, if one of the jurisdictional facts does not exist, the court has no jurisdiction to rescind in terms of the Uniform rule 31(2)(b) or the common law.

[32] Respondent's Counsel submitted that the proposition was put in Government of the *Republic of Zimbabwe v Fick*⁵ the court held that;

"At common law the requirements for rescission of a default judgment are twofold. First, the applicant must furnish a reasonable and satisfactory explanation for its default. Second, it must show that on the merits, it has a bona fide defence, which prima facie carries some prospects of success."

[33] Proof of this requirement is taken as showing that there is sufficient cause for an order to be rescinded. A failure to meet one of them may result in refusal of the request to rescind. In *Chetty v Law Society, Transvaal*⁶, Miller JA formulated the test in these terms:

"It is not sufficient if only one of these two requirements is met. For obvious reasons, a party showing no prospect of success on the merits will fail in an application for rescission of a default judgment against him, no matter how reasonable and convincing the explanation of his default. And ordered judicial process would be negated if, on the other hand, a party who could offer no explanation of his default other than his disdain of the rules was nevertheless permitted to have a judgment against him rescinded on the ground that reasonable prospects of success on the merits. The reason for my saying that the appellant's application for rescission fails on its own demerits is that I am unable to find in his lengthy founding affidavit or elsewhere in the papers any reasonable or satisfactory explanation of his default and the total failure to offer any opposition whatever to the confirmation on 16 September 1980 of the rule nisi issued on 22 April 1980."

[34] Counsel further argued that it is incorrect that the Applicant became aware of the legal proceedings on 17 January 2024. The motor vehicle was removed from Mr. Mosito, who, in all probabilities, is a client of Teka Famba Vehicle

⁵ 2013 (5) SA 325 (CC) at para 85.

⁶ 1985 (2) SA 756 (A) at 765C-G.

Rental. The Applicant approached the Plaintiff on the same date, 14 December 2023. This cannot be coincidental; it shows how the Applicant failed to take the Honourable Court into her confidence by providing accurate, complete, and truthful information. From the Applicant's application, it is clear that the Applicant admits to having breached the agreement by failing to make timeous payments. Therefore, the Applicant lacks a bona fide defence to the Respondent's claim. There are no valid grounds for the rescission of the default judgment.

[35] Mr Reddy further asserted that the Applicant applied for the rescission of the warrant for delivery of goods and of a default judgment order in terms of Rule 31(2)(b) of the uniform rules of court. It is submitted that the prayer for rescission of the warrant of delivery of goods is an objective impossibility as the warrant for delivery has already been executed. The Respondent is currently in possession of the vehicle.

[36] Counsel further submitted that the proposition by Applicant that the Respondent's condonation for the late filing of the answering affidavit should be dismissed, solely due to its lateness, by the same token suggests that the Court should not have regard to the Applicant's founding and replying affidavits, as they were delivered out of time and without any application for condonation. Be that as it may, the fact that the Applicant delivered a replying affidavit demonstrates that it condoned the late filing of the Respondent's answering affidavit.

[37] The Respondent's Counsel opposes the referral of this matter to mediation in terms of Rule 41A and further denies that the matter is capable of mediation. The Respondent's Counsel asked that this application be dismissed with costs on the scale as between attorney and client.

Relevant legal principles and discussion

[38] Rule 31(2) provides that;

- a. Whenever in an action the claim or, if there is more than one claim, any of the claims is not for a debt or liquidated demand and a defendant is in default of delivery of notice of intention to defend or of a plea, the plaintiff may set the

action down as provided in subrule (4) for default judgment and the court may, after hearing evidence, grant judgment against the defendant or make such order as it deems fit.

b. A defendant may, within 20 days after acquiring knowledge of such judgment, apply to court upon notice to the plaintiff to set aside such judgment, and the court may, upon good cause shown, set aside the default judgment on such terms as it deems fit.

[39] I agree with Counsel for the Respondent that Rule 31(2)(b) deals with rescission of default judgment emanating from actions. The requirements of Rule 31(2)(b) do not differ from the requirements for rescinding a default judgment under common law.

In *Colyn v Tiger foods industries Ltd*⁷; the Court referred to *Grant v Plumbers*⁸, *Chetty law society*⁹;

Stating that it is trite that the common Jaw also requires good cause to be shown for setting aside a default judgment. The principles of good cause are well established: An applicant;

a. *is expected to give a reasonable explanation of its default*

b. *Show that its application is made bona fide and show that it has a bona fide defence to the Plaintiff's case, which prima facie has some prospect of success.*

[40] The Applicant and the Respondent entered into a written sale agreement on 23 May 2025. The Applicant did not comply with the terms of their agreement. She fell into arrears. She was aware that she was in arrears. She did not approach the bank to negotiate payment.

[41] The Respondent served the Applicant with notice in terms of section 129(1) of the NCA. It was served by registered communication (SAPO) to the Applicant's email address. The Applicant uses the motor vehicle for business. She waited until it was removed on 14 December 2023 and emailed to negotiate payment. It is incorrect that

⁷ 2003 (6) SA 1(SCA) at para 11.

⁸ 1949 (2) SA 470 (O) 476.

⁹ Ibid fn. 6.

she only started knowing about the legal proceedings in January 2024.

[42] Applicant's defence is that she was not served with notice of set down as per the Practice Directive. Paragraph 9.20 of the Practice Manual of October 2018 deals with stale summons, it provides that:

"Where any unopposed application is made 6 months or longer after the date on which the application or summons was served, a notice of set down must be served on the Defendant or Respondent."

[43] In this case, the summons was served to the Applicant on 27 July 2023, and the Default judgment was heard on 30 August 2023. Paragraph 9.20 of the Practice Directive, as stated above, will not apply.

[44] The summons was served to the Applicant's chosen *domicilium* in terms of Rule 4(1)(a)(iv) of the Uniform Rules of Court. The Applicant denied that the summons was affixed to her principal door on her founding affidavit. In the replying affidavit, she conceded that it was affixed to her principal door; someone could have taken it. The Applicant chose a *domicilium citandi et executandi*, unit 7[...] S[...]one Terrace Monavoni, Centurion, as the address for service on her of legal documents pursuant to the agreement. It is the same address appearing on the Sheriff's return. The manner of service at her *domicilium* constituted good service, and it was effective.

[45] The Applicant submitted that she became aware of the legal process on 17 January 2024. She does not mention how she became aware of summons, default judgment and delivery of goods. The Applicant failed to advance reasons why she only sent an email to negotiate payment of the arrears the same day, on 14 December 2023, when the motor vehicle was attached.

[46] It is trite that the court must consider the reasons for default, the potential prejudice to the Respondent and whether the rescission is pursued in good faith. The court's primary goal in the application for rescission of judgment is to ensure fairness and justice between the parties. I am of the view that the Applicant knew about the legal process and decided to ignore it. The Applicant failed to give a reasonable explanation for his default. In the circumstance, the court found that the Applicant was

in wilful default. She failed to show any good cause why the judgment should be rescinded.

[47] Importantly, in *Zuma v Secretary of the Judicial Service Commission of Inquiry into Allegations of State Capture*¹⁰. The Constitutional Court stated that a litigant who ignored court processes cannot later seek to rescind, whereas he knew the consequences of the order sought against him. The court emphasised that in the absence of a reasonable explanation for the default, the court is not obligated ever to assess the prospects of success.

[48] The Applicant confirmed that she is in arrears. She explained that she did not have the means to pay. I am of the view that the Applicant failed to demonstrate a reasonable explanation for the default and a *bona fide* defence.

[49] Therefore, I agree with the Respondent's Counsel that the Applicant knew about the action brought against her and elected not to defend the proceedings because she had no means. In her founding affidavit, the Applicant stated that the summons was affixed on the gate of the complex. At the same time, the return of service was clear that it was affixed at the principal door of her domicilium citandi. Section 129 notice of the NGA was served on her email address, and she elected not to confirm or deny receipt. The Respondent stated negotiating for payment after the motor vehicle was attached. It is, therefore, clear that she knew about the legal proceedings. The applicant is in wilful default; she failed to show any good cause for her default and failed to show a bona fide defence.

Costs

[50] The general rule in matters of costs in civil suits is that costs follow the event. *In re Alluvial Creek Limitecd*¹¹, Gardiner JP said:

"Now sometimes such an order is given because of something in the conduct of a party which the court considers should be punished, malice, misleading the court and things like that, but I think the order may also be granted without any

¹⁰ 2021 (11) BCLR 1263 (CC).

¹¹ 1929 CPD 532 at 535.

reflection upon the party where the proceedings are vexatious, and by vexatious I mean where they have the effect of being vexatious, although the intent may not have been that they should be vexatious. There are people who enter into litigation with the most upright purpose and a most firm belief in the justice of their cause, and yet whose proceedings may be regarded as vexatious when they put the other side to unnecessary trouble and expense which the other side ought not to bear.

Order

[51] Application for rescission of the default judgment is dismissed with costs on scale B

N L MOILA
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Heard: 10 March 2025

Delivered: 16 May 2025

For the Applicant: Ramoromisi Attorneys

For the Respondent: Advocate K Reddy