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

CASE NO: 17570/23

(1) REPORTABLE: YES / NO

(2) OF INTEREST TO OTHER JUDGES: YES / NO

(3) REVISED. YES

DATE 23 May 2025

SIGNATURE

In the rescission of judgment application between:

REFILWE MAKHETHA

APPLICANT

and

SB GUARANTEED COMPANY (RF) (PTY) LTD

RESPONDENT

In re:

SB GUARANTEED COMPANY (RF) (PTY) LTD

PLAINTIFF

and

LEBOHANG MAKHETHA

FIRST DEFENDANT

REFILWE MAKHETHA

SECOND DEFENDANT

JUDGMENT

Introduction:

1. On 19 May 2025 I granted an order dismissing the application for rescission with costs on an attorney and client scale. I provide the reasons for my order in this judgment.
2. On 11 March 2024, this court (per the Honourable Justice Holland-Müter) granted default judgment against the applicant and her husband, Lebohang Makhetha, jointly and severally, the one paying the other to be absolved, as follows:
 - 2.1. *Payment of the amount of R2,264,293.18 (Two million two hundred and sixty four thousand two hundred and ninety three rand and eighteen cents).*
 - 2.2. *Interest on the amount of R2,264,293.18 at the rate of 10.45% per annum from 1 January 2023 to date of payment, both dates inclusive.*
 - 2.3. *That the immovable property described as:
Remaining extent of portion 5 of Erf 5[...] L[...], Ext 28 Township
Registration Division I.R., the Province of Gauteng
Measuring 1761 (One thousand seven hundred and sixty one)
square metres
Held by Deed of Transfer: T81989/2019
Subject to such conditions as set out in the aforesaid Title Deed
("the Property")
be declared executable for the aforesaid amount;*
 - 2.4. *An order authorising the issuing of a writ of execution in terms of Rule 46 as read with Rule 46A for the attachment of the Property.*
 - 2.5. *That a reserve price be set for the sale of the Property in the amount of R1,341,889.44.*
 - 2.6. *Cost of suit on an attorney and client scale.*

2.7. *That the execution of the Property be suspended until 30 May 2024.*

3. During June 2024, the applicant instituted an application under the aforementioned case number in terms of which she seeks an order:
 - 3.1. Rescinding the order granted by the above Honourable Court on the 11th day of March 2024, made by the learned justice Holland-Müter, a copy of which order is annexed to the founding affidavit as annexure "A".
 - 3.2. Ordering the applicant to pay the costs of this application, save in the event of any one or more of the respondents opposing this application.
 - 3.3. Granting either and/or alternative relief.
4. It is this rescission application that currently serves before me.
5. The respondent is opposing the rescission application and has filed a comprehensive answering affidavit, demonstrating why the application for rescission ought to be dismissed.
6. Significantly, the applicant has not filed a replying affidavit, nor has the applicant filed any heads of argument.
7. The applicant also failed to appear during the hearing of the matter.

The facts:

8. The applicant, together with her husband, and with the intention of securing the loan advanced by the bank, mortgaged the property in favour of the respondent, with the knowledge that should the principal debt not be repaid and in the event of a material breach of the terms and conditions of the Mortgage Bond, that the respondent would rely on such security and seek an order declaring the immovable property specially executable. It is common cause that the applicant, together with her husband, breached the loan agreement by failing to make all of the payments in terms thereof. It is further common cause that the applicant, despite being given an opportunity

to remedy these breaches, failed to do so.

9. The applicant in her application for rescission does not take issue with the fact that she and her husband fell in arrears and that they failed to comply with their repayment obligations.
10. Accordingly, the applicant has no defence pertaining to her indebtedness.
11. The applicant further contends that the summons was not served on her.
12. According to the return of service,¹ the combined summons was served on 28 February 2023 at the applicant's place of residence and during the applicant's temporary absence, a copy of the combined summons, particulars of claim and annexures thereto was provided to Me M Mogololo, a domestic worker apparently in charge of the premises.
13. It is accordingly not correct for the applicant to contend that she was not served with the summons.²
14. Not only was the combined summons and particulars of claim properly served, the applicant also received a notice of set down of the application for default judgment. In fact, the applicant even attended court during the default judgment proceedings.
15. It, however, appears that she failed to enter an appearance to defend, and as such, default judgment was correctly granted. The applicant further explains that she and her husband intended to sell their motor vehicle and to use the proceeds to settle the arrears owing to the respondent.
16. Despite being given an adequate opportunity to do so, the outstanding amount has not been settled.

¹ Page A123.

² Pae K7, para 6.

17. The applicant has simply made out no case for a rescission at all.
18. Moreover, she has also not given an adequate explanation for the late filing of her application for rescission.
19. The respondent has sought an order for the dismissal of the application, together with costs, on an attorney and client scale.
20. These costs are provided for in the Mortgage Bond.³
21. Accordingly, I granted an order in terms of the draft order (marked "X") that was handed up during the hearing of the matter.
22. In terms of the draft order, the application for rescission was dismissed with costs on an attorney and client scale.

SG MARITZ AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

For the applicant:	No appearance
For the respondent:	Adv SG Webster
	Cell: 083 262 9229
	Email: simone@clubadvocates.co.za
Date of Hearing:	19 May 2025
Date of order:	19 May 2025
Date of judgment / reasons:	23 May 2025

³ Page A64.