



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

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

SIGNATURE

DATE: 11 June 2025

Case No. 2023-065428

In the matter between:

BOPHELO KUBANE MALAPELA

First Applicant

YVETTE BELINDA PIETERSE

Second Applicant

and

SANELE RODERICK ZONDO

First Respondent

ELIZABETH LILY ZONDO

Second Respondent

JUDGMENT

D'OLIVEIRA AJ:

- 1 On 23 January 2024, default judgment was granted against the First Applicant (the Applicant). In terms of that judgment, the Applicant was ordered to pay

the Respondents R4 500 000.00, plus interest at the prime rate plus two per cent per annum, from 1 August 2023 to date of final payment.

- 2 The basis of the judgment was a written loan agreement concluded between the Applicant and the Respondents on 1 October 2021.
- 3 In terms of that loan agreement, the Respondents loaned a capital amount of R4 500 000.00. The capital amount would bear interest at the prime rate plus two per cent per annum, calculated from August 2019. The Applicant was obliged to repay loan in monthly instalments of R1 500 000.00.
- 4 Default judgment was taken after the Applicant had failed to deliver a plea and was placed under bar. The Respondents delivered a notice of bar on 20 September 2023.¹
- 5 In conjunction with the application for rescission, the Applicant applies for the uplifting of the bar and leave to file a plea.
- 6 In the founding affidavit, the Applicant explained that he was unaware of the steps taken by the Respondents to obtain judgment against him because he had entrusted the matter to his attorney and had been given the assurance that his plea would be filed.
- 7 The Applicant attached WhatsApp and text message communications with his attorney on 3 and 4 October 2023 and on 17 January 2024, in which he made enquiries about the progress with his case. The attorney had replied to him

¹ The Notice of Bar itself was not part of the papers. It had been uploaded to CaseLines and was available at CaseLines 02-10 to 02-13

on 3 October 2023, assuring him that the plea would be filed imminently. The Applicant's attempts to find out the status of the matter in January by text message and by telephone were met with no response. The Applicant says he was shocked when he learned of the default judgment on 7 February 2024. He finally heard from his attorney on 10 February 2024. The attorney was in hospital at the time.

- 8 The explanation offered is weak, given that the Applicant is an attorney himself and was apparently aware he was under bar. Having said that, the text message on 3 October 2023, provides an indication that the Respondents may have been amenable to his filing the plea notwithstanding the bar. But what actually transpired is not contained in the affidavits before me. It should have been.
- 9 Also in the founding affidavit, the Applicant alleged that he had two *bona fide* defences.
- 10 The first defence was that he had been pressurised into signing the loan agreement by the First Respondent, whose spouse, the Second Respondent, was allegedly not aware that the First Respondent had lent the Applicant money to do construction work on his house. The Applicant says that the loan agreement was never supposed to be enforced.
- 11 The Applicant's second defence was that the monies which had been advanced to him, or at least his obligation to repay them, had prescribed prior to the conclusion of the lease agreement. He asserted that the loan agreement

had been concluded in conflict with section 126B(1)(b) of the National Credit Act 34 of 2005.

12 It is not necessary that I decide whether there is any merit to these alleged defences.

13 This is because I have determined that the judgment must be rescinded for reasons not raised by the Applicant.

14 Rule 42 provides that:

“42(1) The court may, in addition to any other powers it may have, mero motu or upon the application of any party affected, rescind or vary:

(a) an order or judgment erroneously sought or erroneously granted in the absence of any affected party thereby...”

15 During my consideration of the application as well as the debate with counsel at the hearing, it became apparent to me that the loan agreement that forms the basis of the default judgment is void *ab initio*.

16 Section 40(1) of the NCA provides that *“a person must apply to be registered as a credit provider if the total principal debt owed to that credit provider under all outstanding credit agreements, other than incidental credit agreements, exceeds the threshold prescribed in terms of section 42(1)”*.

17 In terms of section 42(1), the Minister has set the threshold at R nil in Government Notice 512, published in *Government Gazette* 39981 of 11 May 2016.

- 18 Section 89(2)(d) provides that a credit agreement is unlawful if, at the time the agreement was made, the credit provider was unregistered and the NCA requires that the credit provider be registered.
- 19 And section 89(5) provides that, *“if a credit agreement is unlawful in terms of section 89, then, despite any other legislation or any provision of an agreement to the contrary, a court must make a just and equitable order including but not limited to an order that the credit agreement is void as from the date the agreement was entered into”*.
- 20 The loan agreement between the parties is not an incidental credit agreement because, as I have indicated above, the capital amount would bear interest at the prime rate plus two per cent from August 2019, a date several years prior to the conclusion of the loan agreement. Interest does not become payable when the applicant fails to repay an amount on or before a predetermined period or date. The loan agreement qualifies as a credit agreement under section 8(4)(f) of the NCA.
- 21 There is no allegation in the particulars of claim that the Respondents are registered credit providers. It is also clear from the affidavits that the Respondents are not credit providers, and that the origin of the loan agreement in this instance was personal assistance by the First Respondent to the Applicant in repairing the defects to his home.
- 22 On the facts before me, therefore, the loan agreement is void *ab initio*.

23 For the above reasons, the default judgment cannot stand. It was erroneously sought and erroneously granted within the meaning of Rule 42(1)(a). It falls to be rescinded and set aside.

24 I now revert to the application for condonation (upliftment of the bar) and leave to file a plea.

25 Given the weakness of the explanation and the fact that the Applicant is an attorney, the court might have been disinclined to grant this relief. But it seems to me that the Respondents will effectively have to start again, and the claim set out by the Respondents in the Particulars of Claim will have to be substantially reformulated.

26 The Applicant should be allowed to deal with the new cause or causes of action that will be made out against him. It would be appropriate in this instance for the court to exercise its discretion under Rule 27 to uplift the bar and permit the Applicant to file a plea, notwithstanding the inadequacy of the explanation for his default.

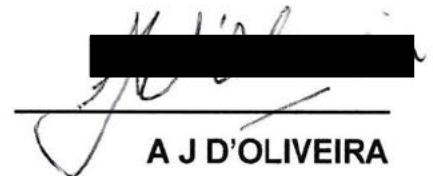
27 Finally, both the application for rescission and the application for upliftment of the bar and leave to file a plea are applications in which the Applicant seeks indulgences. It is appropriate that the Applicant pay the costs.

28 The following order is made:

28.1 The default judgment granted against the Applicant on 23 January 2024 and uploaded to CaseLines on 27 January 2024 is rescinded and set aside.

28.2 The notice of bar dated 20 September 2023 is uplifted and the Applicant is granted leave to file a plea.

28.3 The Applicant is ordered to pay the costs of the application.


A J D'OLIVEIRA
Acting Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading to Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 11 June 2025.

HEARD ON: 5 June 2025

DECIDED ON: 11 June 2025

For the Applicants: P Mabena
Instructed by M R Phala Attorneys

For the Respondent P Marx
Instructed by Tracy Sischy Attorneys