



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

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

SIGNATURE [REDACTED] DATE: 6 June 2025

Case No. 2017/27931

In the matter between:

MUSEKWA KUNDWANI TREVOR

Applicant

and

SA TAXI DEVELOPMENT FINANCE (PTY) LTD

Respondent

JUDGMENT

D'OLIVEIRA AJ:

1. This is an application in which the Applicant applies to rescind the default judgment granted against him.

2. The Applicant is a taxi driver that concluded a lease agreement with the Respondent. In terms of the lease agreement, the Applicant was entitled to possess and use a 2017 Toyota Quantum Sesfikile 16-Seater Diesel (*"the Quantum"*) against payment of an agreed monthly instalment for a period of 64 months. Upon payment of all instalments and other amounts owed under the agreement, the Respondent would be entitled to purchase the Quantum from the Respondent for R 100.
3. In May and June 2017, the Applicant repeatedly defaulted on payment of the monthly instalments owed under the lease agreement. The Respondent duly delivered notice of breach by registered post to the Applicant's chosen *domicilium citandi et executandi*. When the Applicant failed to respond, the Respondent elected to cancel the agreement and serve summons. The summons was also served on the Applicant's chosen *domicilium*.
4. For reasons that are not well explained by the Applicant in the application, the notice of breach and the summons did not come to the Applicant's attention despite that the Applicant's chosen *domicilium* was his residence. When the Applicant failed to react to the summons, the Respondent applied to the registrar for default judgment in terms of Rule 31(5) for orders confirming the cancellation of the agreement and directing that the Applicant return the Quantum to the Respondent. Default judgment was granted by the registrar on 20 September 2017.
5. The Applicant learnt that default judgment had been granted against him on 16 July 2018, when the sheriff took possession of the Quantum under writ of execution.

6. The Applicant launched the application for rescission on 29 April 2022. The application is opposed by the Respondent.
7. The Applicant applies to rescind the default judgment in terms of Rule 42(1)(a) on the basis that the default judgment was erroneously sought or erroneously granted by the registrar.
8. The purpose of Rule 42 is “*to correct expeditiously an obviously wrong judgment or order*” (*Bakoven Ltd v G J Howes (Pty) Ltd* 1992 (2) SA 466 (E) at 471E–F).
9. In order to be successful in a rescission in terms of Rule 42, an Applicant must satisfy two requirements. First, the Applicant must bring the application within a reasonable time. Second, the Applicant must make out one of the grounds enumerated in Rule 42(1).
10. I am unable to find that the Applicant has satisfied the first requirement. The application was brought 3 years and 9 months after the Applicant acquired knowledge of the default judgment, and the explanation for the delay is *prima facie* inadequate.
11. Nevertheless, even if I were to overlook the inadequacy of the Applicant’s explanation and assume in favour of the Applicant that he has satisfied the first requirement, it seems to me that he has not made out a case in terms of Rule 42(1)(a).
12. There are two lines of authority giving content to the ground of rescission contained in Rule 42(1)(a).

13. The first line of authority holds that Rule 42(1)(a) is only available in cases where an Applicant was not procedurally entitled to the order (See *Lodhi 2 Properties Investments CC v Bondev Developments (Pty) Ltd* 2007 (6) SA 87 (SCA) and the cases following it). According to this line, a judgment to which a party is procedurally entitled cannot be considered to have been granted erroneously within the meaning of this subrule by reason of facts of which the court was unaware at the time of granting the judgment (see *Lodhi* at 95D-F). Since the Applicant does not claim that Respondent failed to duly deliver notice of breach or duly serve the summons, he is not entitled to a rescission according to the first line of authority.
14. The second line of authority holds that a judgment is erroneously sought or erroneously granted if there existed at the time of the judgment a fact of which the court was unaware, which would have precluded the granting of the judgment and which would have induced the court, if aware of it, not to grant the judgment (see *Nyingwa v Moolman NO* 1993 (2) SA 508 (Tk) and cases referred to therein).
15. The Applicant sought to make a case under the second line of authority.
16. In this regard, the facts are as follows:
 - 16.1. In May and June 2017, the Applicant defaulted on payment of monthly instalments.
 - 16.2. On 10 July 2017, the Respondent delivered notice of breach by registered post.

- 16.3. On 16 August 2017, the Respondent caused summons to be served in which its election to cancel the agreement was recorded.
- 16.4. On 24 August 2017, the Applicant was hi-jacked and dispossessed of the Quantum. The Applicant immediately notified the Respondent that he had suffered a hi-jacking and the Quantum had been stolen. The Applicant also lodged an insurance claim with a short-term insurer that is a sister company of the Respondent.
- 16.5. Despite having been notified of the hi-jacking and dispossession of the Respondent, the Respondent applied to the registrar for default judgment. In so doing, the Respondent did not disclose to the registrar, that the Applicant had suffered a high-jacking and that the Quantum was not in his possession. The Respondent also did not disclose to the registrar that the Applicant was comprehensively insured.
- 16.6. Default judgment was granted by the registrar on 20 September 2017.
- 16.7. On 5 January 2018, the Quantum was recovered by the police and possession of the Quantum was restored to the Applicant.
- 16.8. On 16 July 2018, the sheriff took possession of the Quantum under writ of execution.
17. The Applicant submits that the fact that he had been hi-jacked and was no longer in possession of the Quantum, and the fact that he was comprehensively insured, were material facts that the Respondent should have brought to the attention of the registrar. He submits that the failure of the Respondent to

disclose these facts caused the default judgment to be erroneously sought and erroneously granted.

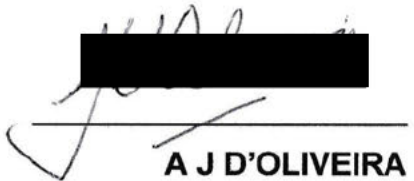
18. The question, then, is whether the disclosure of the above undisclosed facts would have precluded the granting of the judgment and would have induced the registrar not to grant the judgment.
19. In my view, this question is to be answered in the negative.
20. The orders sought and obtained by the Respondent by default were as follows:
 - 20.1. order one, confirmation that the Respondent had terminated the lease agreement;
 - 20.2. order two, an order directing the Applicant to return the Quantum to the Respondent forthwith; and
 - 20.3. order three, costs of R 200 plus sheriff's fees.
21. It is clear that the facts that the Applicant had been hi-jacked and was no longer in possession of the Quantum or had insurance, were irrelevant to, and had no impact on, the Respondent's cause of action.
22. By the time summons was served, the Applicant had breached the agreement, the Respondent had duly given notice of breach, the Applicant had failed to remedy his breach, and the Respondent had cancelled the agreement.
23. Disclosure of the above facts would not have precluded the granting of orders one and three, nor induced the registrar not to grant these orders.

24. But the same can be said also of order two.
25. Order two, the order directing the Respondent to return the Quantum to the Respondent, was an order in consequence of, and ancillary to, the order confirming the termination of the lease agreement.
26. It was because the agreement had been terminated, that the Applicant was no longer entitled to possess and use the Quantum. And it was because the agreement had been terminated, that the Respondent was liable to return the Quantum to the Applicant.
27. The fact that the Applicant had been dispossessed of the Quantum, or had insurance, did not mean that the Respondent was entitled to possess the Quantum, or was not liable to return the Quantum to the Respondent.
28. The fact that the Applicant was physically unable to return the Quantum because of the hi-jacking at the time default judgment was taken, therefore did not preclude the granting of order two. Nor can it be said that disclosure of this fact would have induced the registrar not to grant order two. The same is true of the fact that the Applicant had insurance.
29. It can also not be said that the disclosure of the fact that the Quantum had been hi-jacked, or the fact that the Applicant had insurance, would have induced the registrar not to grant the order for another related reason. This is that a vehicle that has been hi-jacked may well in the ordinary course, due to vehicle tracking and law enforcement, be recovered and returned to the driver or owner of the vehicle. The default judgment had to cater for that possibility since the consequence of order one was that the Respondent no longer had the right to

possess and use the Quantum. And it so happens order two operated in precisely that way in this instance. The Quantum was subsequently recovered and restored to the Applicant, who was not entitled to possess and use the Quantum. The sheriff then rightly deprived the Applicant of possession under writ of execution on the strength of order two.

30. Accordingly, the Applicant's claim for rescission of the default judgment under Rule 42(1)(a) falls to be dismissed.
31. For the sake of completeness, I record that I have considered whether the Applicant would be entitled to a rescission under Rule 31 or at common law. The conclusion I have come to is that the Applicant is not so entitled. The Applicant has no *bona fide* defence to the cause of action contained in the summons, and is thus unable to show good cause.
32. In the circumstances, the following order is made:

"The application is dismissed with costs."


A J D'OLIVEIRA
Acting Judge of the High Court

HEARD ON: 2 June 2025

DECIDED ON: 6 June 2025

For the Applicant:

P Springveldt
Instructed by GW Mashele Attorneys

For the Respondent:

R Stevenson
Instructed by Marie-Lou Bester Inc