



**IN THE HIGH COURT OF SOUTH AFRICA, MPUMALANGA DIVISION,
(MBOMBELA MAIN SEAT)**

Case No: A042025

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED YES/NO
<u>17 June 2025</u> DATE	 SIGNATURE

In the matter between:

K201711676 (PTY) LTD T/A NELGEAR

APPELANT

And

RUEBEN FANI MPANGANE

RESPONDENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be 10:00 on 17 June 2025.

Summary: Summary: Appeal against dismissal of rescission of judgment application— good cause – bona fide defence

JUDGMENT

Moleleki AJ

[1] This is an appeal arising from a judgment granted by the Magistrates' Court, Mbombela (the court *a quo*) handed down on 3 October 2024, in which it dismissed an application for the rescission of a default judgment brought in terms of Rule 49(1) of the Magistrates' Court.

[2] In terms of Rule 49(1) an application for rescission of judgment should be brought within 20 (twenty) days after obtaining knowledge of judgment. The application was brought 64 days from the date on which the appellant became aware of the default judgment against it. As a result, the appellant had simultaneously with the application for rescission, filed an application for condonation of the late filing of the rescission application.

The Facts

[3] On 9 November 2020 the respondent delivered his motor vehicle, an Audi TT Coupe to the appellant's workshop due to a gearbox and clutch malfunction. The respondent instructed the appellant to identify the problem in the vehicle. The appellant conducted tests and established that both the mechatronic unit and gearbox were damaged. The appellant presented the respondent with a quotation for the necessary repairs which the respondent duly accepted. Upon completion of the repairs, the appellant discovered that the vehicle also had an electrical fault. The respondent instructed the appellant to attend to the electrical fault. Further to that, the wiring of the vehicle was faulty. The

respondent resolved to take the vehicle to a third party for further repairs. The appellant ceased all further work on the vehicle.

[4] On 12 November 2021 the respondent's attorneys dispatched a letter to the appellant demanding payment of the amount of R60 000 (Sixty Thousand Rand) for the work allegedly not done by the appellant pertaining to the respondent's motor vehicle. On 8 December 2021 the appellant's attorneys sent correspondence to the respondent's attorneys setting out the appellant's defence. On 11 April 2023 the respondent caused summons to be served on the appellant's director, Mr. Dirk Cornelius Human (Mr Human). On 31 May 2024 the respondent sought default judgment against the appellant. The default judgment was granted in light of the failure of the appellant to enter appearance to defend the action pursuant to service of the summons on the appellant's director.

[5] The relevant sub rules for purposes of this appeal are sub-rules (1) and (3) of Rule 49, which read as follows:

(1) A party to proceedings in which a default judgment has been given, or any person affected by such judgment, may within 20 days after obtaining knowledge of the judgment serve and file an application to court, on notice to all parties to the proceedings, for a rescission or variation of the judgment and the court may, upon good cause shown, or if it is satisfied that there is good reason to do so, rescind or vary the default judgment on such terms as it deems fit: Provided that the 20 days' period shall not be applicable to a request for

rescission or variation of judgment brought in terms of sub-rule (5) or (5A).

[emphasis added]

(2) ...

(3) Where an application for rescission of a default judgment is made by a defendant against whom the judgment was granted, who wishes to defend the proceedings, the application must be supported by an affidavit setting out the reasons for the defendant's absence or default and the grounds of the defendant's defence to the claim.

[6] It is trite that for an application for rescission of a default judgment to be successful as contemplated in Rule 49, the court must be satisfied that an applicant has proven that there is good cause for the court to rescind the judgment and that the applicant has a substantial defence to the action.¹

The Rescission Application

[7] The respective contentions of the parties pertaining to the rescission application will not be dealt with in detail. The judgment will be confined to those matters and submission that are deemed to be relevant for purposes of this appeal.

[8] The appellant furnished a lengthy explanation for its failure to defend the action, and gave a detailed account of what is contended to constitute *bona fide* defences to the respondent's claim.

[9] **A reasonable explanation for the default**

¹ Jones and Buckle: *The Civil Practice of the Magistrates' Courts in South Africa 10th ED*, 2022.

[10] Mr Human, the appellant's sole director stated under oath that, having received the summons, he instructed the administrative manager in the employ of the appellant to attend to claims against the appellant and to pay service providers. Unbeknown to Mr Human, the administrative manager failed to do as instructed. While the respondent obtained default judgment against the appellant on 31 May 2024, the appellant became aware of the default judgment on 24 June 2024 when it received correspondence from the respondent's attorneys to which a copy of the default judgment was attached. At this point in time the administrative manager of the appellant had long resigned (six months prior). The appellant's attorneys were approached regarding the default judgment. Only then did it become apparent to Mr Human that the matter was never defended. The attorneys sought all the information pertaining to the matter. Mr. Human encountered difficulties in gathering all the information as the administrative manager had already left the employ of the appellant. The necessary information was ultimately found on 25 July 2024 and was handed over to the attorneys on 26 July 2024. As a result, an application for rescission of judgment was brought out of time.

[11] As stated, the requirements for rescission of default judgment are twofold. First, a reasonable and satisfactory explanation for the default must be furnished. Second, it must be shown that on the merits there is a *bona fide* defence which *prima facie* carries some prospects of successes.² The court in *Chetty v Law Soc, TVL*³ stated that:

² *Government of the Republic of Zimbabwe v Fick* 2013(5) SA 325 (CC) at 85.

³ *Chetty v Law Soc, TVL* 1985(2) SA 756 (A) at 765.

“it is not sufficient if only one of these two requirements is met; for obvious reasons a party showing no prospects 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. An 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 him rescinded on the ground that he had reasonable prospects of success on the merits. The reason for my saying that the appellant’s application for rescission falls 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 total failure to offer any opposition whatever...”

At 767J to 768:

“As I have pointed out, however, the circumstance that there may be reasonable or even good prospects of success on the merits would satisfy only one of the essential requirements for rescission of a default judgment. It may be that in certain circumstances, when the question of the sufficiency or otherwise of a defendant’s explanation for his being in default is finely balanced, the circumstance that his proposed defence carries reasonable or good prospects of success on the merits might tip the scale in his favour in the application for rescission.⁴ But this is not to say that the stronger the prospects of success the more indulgently will the Court regard the explanation of the default.”

Bona fide Defence

⁴ *Melane v Santam Insurance Co Ltd* 1962(4) SA 531 (A) at 532.

[12] The second enquiry is whether the appellant has raised a *bona fide* defence to the respondent's claim against it. A plethora of authorities confirm that a court seized with an application for rescission of judgment should not, in determining whether good or sufficient cause has been proven, look at the adequacy or otherwise of the explanation of the default or failure in isolation, instead ..., must be considered in the light of the nature of the defence, which is an important consideration, and in the light of all the facts and circumstances of the case as a whole⁵.

[13] The defences raised by the appellant may be summarised as follows:

- a. Summons were defective as the parties were not accurately identified;
- b. the respondent, as a party relying upon an oral contract, failed to accurately state the date upon which it was concluded, by whom and the terms thereof;
- c. The respondent failed to clearly and sufficiently distinguish different claims that he purported to bring against the appellant in respect of two different motor vehicles;
- d. The respondent failed to furnish the court with evidence, either orally or by affidavit detailing the nature and extent of his claim, to ensure that the court had sufficient information to make an informed decision about the amount of damages payable;
- e. The deponent of the respondent's purported 'damages affidavit' lacked the necessary expertise, did not lay the factual basis for his conclusions nor did he explain his reasoning to the court and cannot be accepted as

⁵ *Mokgatle v Allegiance JHB South (PTY) Ltd (47615/2020) [2024] ZAGPPHC 661 (2 July 2024)*

damages affidavit. There was therefore no basis upon which the respondent could claim from the appellant.

[14] In the matter before us, there is no doubt that the appellant has not sufficiently explained its failure to defend the action, particularly because Mr Human was not only served personally with the summons, but rather, had been aware of looming litigation as far back as 12 November 2021 when the appellant received a letter of demand from the respondent. The letter of demand was handed to the appellant's attorneys for a response. It is apparent that this is a classic case of a client that failed to keep contact with its legal representatives. This is evidenced by the fact that the attorney's accounts for work previously done on behalf of the appellant, were never settled.⁶ The documents pertaining to this matter were misplaced and not attended to in the appellant's own offices, in what appears to be inexcusable inefficiencies on the part of its administrative manager.

[15] The appellant's version that it became aware of the default judgment on 24 June 2024 remains uncontested. The court is therefore satisfied that appellant has, at least, shown *prima facie* that it has good defences to the action. The weak explanation proffered is therefore, cancelled out by the appellant having put up several *bona fide* defences, which do not merely have some prospects, but reasonable prospects of success.⁷

Application for Leave to Appeal

⁶ *Bristow v Hill* 1975(2) SA 505 (N) at 507E-G.

⁷ *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills (Cape)* 2003(6) SA 1 (SCA) at par 12.

[16] In its notice to appeal, the appellant averred that the *court a quo* erred and/or misdirected itself in the following respects:

- a. By failing to place the relevant amount of weight on the merits of the defences that were advanced by the appellant, despite that to a great degree such merits remained unchallenged;
- b. By failing to accept that good cause, alternatively sufficient cause was shown for the rescission of judgment;
- c. By failing to find that the appellant was not in wilful default;
- d. By failing to accept that it would be sufficient for the appellant to make out a *prima facie* defence in the sense of setting out averments which, if established at trial would entitle the appellant to the relief sought;
- e. By failing to take proper regard that the respondent failed to comply with the various provisions of the Rules and that, had these aspects been taken into proper regard, the application for rescission of judgment would have succeeded;
- f. By failing to accept that: the respondent did not prove locus standi; the evidence accepted was not of an expert nature; the appellant was held liable for the damages under circumstances where damage was caused by a totally different person; the respondent failed to separate claims where they should have been separated.

[17] The appellant in the rescission application dealt thoroughly with the defences to the claim. The respondent elected not to deal with the defences at all in its answering affidavit. Instead, the only issues the respondent dealt with relate to the appellant's failure to present reasonable and acceptable

explanation for its default and that the appellant was in wilful default. The respondent went as far as conceding that, the appellant may have a valid defence but has not given a plausible and cogent reason for the default. Essentially, in considering whether a good cause has been shown, a question that entails prospects of success on merits of the case, the only version before the court is that of the appellant.

[18] The averments set out by the appellant, if established at the trial, would constitute good defences. Consequently, the appellant is entitled to an order upholding the appeal.

Order

[19] The following order is made:

19.1 The appeal succeeds.

19.2 The order of the Magistrates' Court, Mbombela; is set aside and replaced with the following:

- a) The late filing of the condonation application brought by the applicant is condoned.
- b) The default judgment granted on 31 May 2024 under case number: 844/2023 is rescinded and set aside;
- c) Leave is granted to the applicant to defend the action;
- d) The applicant is to deliver a plea within 20 (twenty) court days from the date of this order;
- e) Costs in cause.

19.3 The respondent is ordered to pay the costs of this appeal.


M.R MOLELEKI AJ
ACTING JUDGE OF HIGH COURT
MBOMBELA, MPUMALANGA

I agree and it is so ordered


T.V RATSHIBVUMO
DEPUTY JUDGE PRESIDENT
MBOMBELA, MPUMALANGA

Heard on: 16 May 2025
Judgement delivered on: 17 June 2025

Appearances:

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