

REPUBLIC OF SOUTH AFRICA



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

(1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO
(3) REVISED.

CASE NUMBER: **2025-010419**

29 June 2025

In the matter between:

SEETSA PAULOS MOFOKENG

Applicant

and

**MERCEDES-BENZ FINANCIAL SERVICES SOUTH AFRICA
(PTY) LIMITED**

Respondent

Heard: 20 June 2025

Delivered: 20 June 2025 (Ex tempore)

J U D G M E N T

H NOCHUMSOHN AJ:

[1] This is an application for rescission of a judgment granted by this court against the Applicant on 3 March 2025. The judgment orders the Applicant to return a certain Mercedes Benz Sprinter 516 cdi motor vehicle to the Plaintiff, together with ancillary relief.

- [2] The Applicant states in paragraph 5.2 of the Founding Affidavit that he only became aware of the judgment on or about 10 April 2025.
- [3] The Applicant acknowledges having been served with the summons, and states in his Founding Affidavit that he immediately contacted the Respondent's Attorneys, Strauss Daly Inc. He states that he understood from these communications that they would not proceed with the action, as he was negotiating with them. He also states that he does not know "how legal issues work". He asserts that he did not deliberately fail to serve notice of intention to defend.
- [4] The Applicant also alleges that in April 2024, he was shot due to taxi violence and was admitted to hospital. He attributes this as one of the reasons for the fact that he did not pay the instalments due on the vehicle.
- [5] The Applicant goes on to state in paragraph 8.12 of the Founding Affidavit that in September 2024 there was taxi violence in the industry, and as a result his taxi did not get to operate. In consequence, so he says, he did not have the money to service the car payment instalments, and he failed to effect payment (according to him) for the months of September, October and November 2024. He asserts that he paid only R13,000.00.
- [6] The Defendant's defense to the action is encapsulated in paragraph 9.1.1 of the Founding Affidavit, which I quote as follows:

"I herein humbly submit that I have a bona fide defence against the Respondent as my failure to pay the instalments was due to the nature of the industry that I am involved in and the Respondent is expected to understand that there might have been some instances where there is violence within the taxi industry. As a result we will fail to service the instalments of the cars."

- [7] Applications for rescission of this nature are governed by Rule 31(2)(b) of the Uniform Rules of Court, which states: 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.
- [8] The Applicant's version as to his failure to timeously enter notice of intention to defend is not contested by the Respondent, who does not oppose this application. I thus accept that he was not in wilful default of the entry of appearance to defend, as his understanding, as a layperson, was that the action would not be proceeded with because he was ostensibly in negotiation (or so he thought) with the Respondent's attorneys.
- [9] That said, the requirements for an application for rescission under the above quoted rule have been stated to be as follows:
- (a) The Applicant must give a reasonable explanation of his default. I accept, as signified above, that the Applicant has done this;
 - (b) The application must be *bona fide* and not be made with the intention of merely delaying the Plaintiff's action;
 - (c) He must show that he has a *bona fide* defense to the Plaintiff's claim. It is sufficient if he makes out a *prima facie* defense in the sense of setting out averments which, if established at the trial, would entitle him to the relief asked for. He need not deal fully with the merits of the case and produce evidence (***See Erasmus – Superior Court Practice Vol. 2 at page D1-366***).
- [10] It is this last requirement of showing where he has a *bona fide* defence, that the Applicant in this matter does not begin to satisfy the requirements.
- [11] From the Applicant's Founding Affidavit, it is crystal clear that he admits being in breach of the agreement, and that he is in arrear with his monthly instalments. The reason

which he attributes to this *“was due to the nature of the industry that I am involved in and the Respondent is expected to understand that there might be some instances where there is violence within the taxi industry and as a result we will fail to service the instalment of the cars”*. This allegation does not begin to set out a defence, and it is in point of fact quite absurd for the Applicant to predicate his rescission application on this ground.

[12] From the above, it is clear that the Applicant has no prospects of success whatsoever in the main action (should this application be granted), and granting the relief which he seeks would hugely prejudice the Respondent to no end, who would be forced to pursue the action to trial on a defended basis, where there is clearly no real *bona fide* dispute. To grant the application would also unnecessarily burden a trial court with having to deal with a matter which makes out no defence whatsoever.

[13] For the reasons set out above, I make the following order:

[14] The application under case number 2025-010419 for rescission is dismissed with costs.

This judgment was handed down electronically by circulation to the parties' representatives by email.



H NOCHUMSOHN
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

APPEARANCES

For the Applicant:

AM Sibanyoni

Instructed by:

Matela Sibanyoni & Associates Inc

For the Respondent:

No appearance