

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

CASE NO.: 2025-121587

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

DATE: 31 July 2025

E van der Schyff

In the matter between

PANAGIOTIS KOUTROULIS

FIRST APPLICANT

MARCIA KOUTROULIS

SECOND APPLICANT

and

ABSA BANK LIMITED

FIRST RESPONDENT

THE SHERIFF OF THE HIGH COURT,
PRETORIA NORTH EAST

SECOND RESPONDENT

NEDBANK LIMITED

THIRD RESPONDENT

JUDGMENT

Van der Schyff J

Introduction

- [1] On 21 May 2025, the first respondent, ABSA BANK, obtained default judgment against the first respondent, Mr. Koutroulis, for the amount of R668 652.88. ABSA issued a warrant of execution on 12 June 2025. The Sheriff attached funds held by the first respondent in an account with the third respondent, NEDBANK, who paid the funds over to the Sheriff. The funds are currently held in trust by the Sheriff.
- [2] Subsequent to being notified of the attachment, Mr. Koutroulis approached the urgent court for relief. Mr. Koutroulis avers that the attachment of his bank account is unlawful and seeks the setting aside of the attachment and the repayment of the amounts attached. He seeks an order declaring that any writ of execution issued under case number 143077/2024 against any of his properties is invalid and set aside. In addition, Mr. Koutroulis seeks that the operation and execution of the default judgment granted on 21 May 2025 be suspended and that the first and second respondents are interdicted and restrained from issuing or acting upon any further writ or warrant of execution that directs the second respondent or any other sheriff to attach and take into execution any amount in the account held with the Nedbank.
- [3] As a result, the issues for determination are:
- i. Whether the application stands to be dealt with as an urgent application?
 - ii. Whether the attachment of Mr. Koutroulis's bank account was lawful and valid, or whether it stands to be set aside?
 - iii. Whether any and all writs of execution issued under case number 143077/2024 are invalid and need to be set aside?
 - iv. Whether the operation and execution of the default judgment granted on 21 May 2025 need to be suspended pending the finalisation of a rescission application?

Urgency

- [4] Urgency is an issue determined having regard to the unique facts of each case. Having regard thereto that the applicants have limited means, and that debit orders need to be paid from the attached bank account in the near future, I am of the view

that the applicants will not be afforded substantial redress at a hearing in due course if the application is not decided now.

Was the attachment of Mr. Koutroulis's bank account valid?

[5] The funds in question were attached by the Sheriff and paid over to him without prior notice to Mr. Koutroulis. The funds were paid over to the Sheriff on 23 July 2025 before Mr. Koutroulis was given notice of the attachment. The Sheriff states in his return:

‘The attachment is not yet complete as satisfaction of the writ was not demanded from the judgment debtor. (Please favour me with the judgment debtor’s address particulars)’

[6] Rule 45(8)(c)(i)(a) provides that the attachment of incorporeal property is only complete when, among others, notice of attachment has been given to all interested parties.

[7] Counsel for ABSA submitted that the attachment did not occur in terms of rule 45(8)(c), but in terms of rule 45(12). The latter does not specifically reference interested parties to be notified of the attachment and, so counsel submitted, that attachment was complete when NEDBANK received the notice.

[8] I disagree. Rule 45(8) and rule 45(12) are not mutually exclusive, in fact, rule 45(8) is a precursor to rule 45(12). Rule 45(12) provides that –

‘Whenever it is brought to the notice of the sheriff that there are debts which are subject to attachments, and are owing or accruing from a third party to the judgment debtor, the sheriff may, if requested thereto by the judgment creditor, **attach** the same...’

Rule 45(8)(c)(i)(a), in turn, prescribes when the attachment of incorporeal property shall be complete. It is only after the debt that accrued and is owing to a judgment debtor by a third party has been attached that the Sheriff must serve on the third party, who is known as the garnishee, a notice to pay an amount to the satisfaction of the judgment debt over to the sheriff.

[9] *Riordan v First National Bank Limited and others*¹ is one of several cases where the court held that an irregular attachment, where no written notice of the attachment was given to the applicant, had to be set aside, and the Sheriff was ordered to repay the relevant amounts.

[10] *Riordan* is a decision of a single judge of this Division, and unless I am of the view that it is clearly wrong, I am bound to follow it. I consider myself bound by the decision. As a result, the attachment stands to be declared incomplete and irregular and consequently to be set aside.

Should the operation and execution of the default judgment granted on 21 May 2025 be suspended?

[11] The question as to whether any and all writs of execution issued under case number 143077/2024 should be set aside is interlinked to the question as to whether the operation and execution of the default judgment granted on 21 May 2025 should be suspended.

[12] If I am ultimately of the view that the operation and execution of the default judgment should be suspended pending the finalisation of the rescission application that stands to be issued, it would follow as a matter of course that existing writs of execution be held in abeyance.

[13] On the papers filed of record, the glaring issue is that the record reflects that summons was served at the following addresses:

- i. Unit 2[...], A[...], C[...] Road, Woodhill Golf Estate, purportedly Mr. Koutroulis's 'chosen domicilium citandi et executandi';
- ii. 7[...] T[...] G[...] V[...] Estate, Jacques Street, Moreletta Park, Pretoria.

[14] The suretyship agreement, the source of Mr. Koutroulis's indebtedness, however, reflects his chosen domicilium citandi et executandi as ' 7[...] T[...] G[...] V[...]

¹[2014] JOL 32423 (GJ). Also see *MEC, Department of Public Works and Others v Ikamva Architects and Others* 2022 (6) SA 275 (ECB) para [75].

Estate, Jacques Street, Moreletta Park, Pretoria.

- [15] It is common cause that there was no personal service of the summons on Mr. Koutroulis. Based on the documents filed of record, it cannot be said that effective service occurred. This in itself indicates reasonable prospects of success in a rescission application.
- [16] Due to the ostensible lack of effective service, the question of whether a sustainable defence against the claim exists becomes less critical.
- [17] In the circumstances, where he is dependent on the funds in the NEDBANK account for his day-to-day living expenses, Mr. Koutroulis will suffer irreparable harm if the execution is not stayed and he ultimately succeeds in obtaining rescission of the default judgment.²
- [18] Mr. Koutroulis's medical condition will not safeguard him against execution of the judgment debt if the rescission application fails or if he eventually cannot defend the claim successfully. In circumstances, however, where the papers filed of record indicate a reasonable prospect of success in a rescission application, his immediate financial needs and the dire effect of not having funds available for his daily living expenses inform this court exercising its discretion in Mr. Koutroulis's favour.

Costs

- [19] The costs of this application will be costs in the rescission application. No case was made out for a punitive costs order to be granted against ABSA Bank.

ORDER

In the result, the following order is granted:

- 1. Condonation is granted for the non-compliance with time periods and service requirements prescribed in the Uniform Rules of Court, and the application is dealt with as an urgent application;**
- 2. The attachment of the First Applicant's bank account under case number**

² See *Gois t/a Shakespeare's Pub v Van Zyl* 2011 (1) SA 148 (LC) at 155H-156B.

1433077/2024 held with the Third Respondent under account number 1[...] (the account')is declared incomplete and invalid and set aside;

- 3. The Second Respondent is ordered to immediately repay all amounts attached into the account specified in paragraph 2 above;**
- 4. Pending the finalisation of a rescission application to be instituted by the First Applicant within 15 days of this order;**
 - 4.1. The operation and execution of the default judgment granted on 21 May 2025 under case number 2024/143077 is hereby suspended; and**
 - 4.2. The First to Third Respondents are interdicted and restrained from issuing or acting upon any further writ or warrant of execution that directs the Second Respondent or any other Sheriff to attach and take into execution any property, corporeal or incorporeal, of the Applicant;**
 - 4.3. In the event that a rescission application is not issued within 15 days of the date of this order, this order shall lapse;**
 - 4.4. In the event that the First Applicant does not actively prosecute the rescission application in accordance with the periods prescribed in the Uniform Rules of Court, the First Respondent may approach the court on notice to the Applicant's current attorney of record for an order declaring the relief granted herein to have lapsed;**
- 5. The costs of this application are costs in the rescission application.**

E van der Schyff
Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. In the event that there is a discrepancy between the date the judgment is signed and the date it is uploaded to CaseLines, the date the judgment is uploaded to CaseLines is deemed to be the date that the judgment is handed down.

For the applicants:
Instructed by:

Adv. T.L. Smith
LLP Attorneys Inc.

For the first respondent:

Adv. J. Eastes

Instructed by:

Delberg Attorneys

Date of the hearing:

30 July 2025

Date of judgment:

31 July 2025