IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, JOHANNESBURG)

REPUBLIC OF SOUTH AFRICA

CASE NO: 003577/2022

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

3/6/2025 [redacted]

DATE SIGNATURE

In the matter between:

SA TAXI FINANCE SOLUTION (PTY) LTD **Applicant**

and

NKOSINGIPHILE SHOBA NO **Respondent**

Neutral Citation:

Delivered: By transmission to the parties via email and uploading onto Case Lines the Judgment is deemed to be delivered.

JUDGMENT

SENYATSI J

Introduction

[1] This is an application for rescission of default judgment in terms of which the applicant, Nkosingiphile Shoba("Shoba"), in his capacity as an executor of the estate of the late Thembinkosi Enoch Shoba ("the deceased") seeks the rescission of judgment entered against the estate on 11 October 2022. The judgment was for the termination of the agreement and the repossession of the combi motor vehicle used as a taxi. For convenience's sake, the parties will be referred to their respective names in the main application.

Background

[2] The SA Taxi Finance Solution (Pty) Ltd ("SA Taxi Finance"), the respondent in this application, acquired through sale and/cession, the rental credit agreement concluded between Potpale Investments (RF) (Pty) Ltd (Potpale) and the deceased for the funding of a 2018 Toyota Quantum combi which was used in the taxi business. The terms of the agreement are not disputed as well as the fact that when summary judgment was obtained by default on the 11 April 2022 that the arrear rentals were more than R333 000.

[3] The cause of controversy for seeking the rescission of the judgment is that there was a life cover insurance over the deceased and that for that reason, the proceeds of life cover insurance should have been used to settle the full balance of the loan. The further quibble raised by Shoba is that the notice

did not comply with the Rule 32(2) (c) which requires that the hearing of the summary judgment application shall be set down for a date not less than 15 days from the service of the application. Shoba contends that the application was set down two days less than the required minimum 15 days and that for that reason alone, the summary judgment should be rescinded because the judgment was granted in error. Shoba states that the fact that the deceased had a life insurance cover was a defence for the claim to return the combi to SA Taxi.

[4] SA Taxi contends that the is no *bona fide* defence because the insurance claim was made with Guard Risk during January 2021 and was repudiated during August 2021.It contends furthermore that since there was no denial that the repayments were in arrears, the fact that the insurance claim was repudiated by Guard Risk is no defence for the repossession of its combi as the repayments remain behind.

Issue

[5] The controversy of this matter is whether there is a defence based on the life insurance cover the proceeds of which, so contends Shoba, should have used to settle the full debt can be sustained at trial. The second controversy is whether the judgment was entered in error because of the date of set down of the application was a delay less that the Rules provide. I will deal with

the general principles on rescission of judgment and there after consideration the two issues identified above.

The legal principles in consideration of rescission of judgment

[6] The rescission of default judgment is regulated by Rule 42 of the Uniform Rules ("the Rules"). Rule 42 provides as follows:

> "(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 party affected thereby;
>
> (b) an order or judgment in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission;
>
> (c) an order or judgment granted as the result of a mistake common to the parties."

[7] A party seeking rescission under common law must show that sufficient cause exists[1]. In principle and in the long-standing practice of our courts, two essential elements of "sufficient cause" for the rescission of judgment by default are:

> (i) that the party seeking relief must present a reasonable and acceptable explanation for his default; and
>
> (ii) that on the merits such party has a *bona fide* defence and
>
> (iii) which, *prima facie*, carries some prospect of success.[2]

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[1] *Johannesburg Roads Agency (Pty) Limited v Superway Construction (Pty) Limited and another [2013] JOL 29848 (GNP)* para 6. *Government of the Republic of Zimbabwe v Fick and others [2016] JOL 37271 (SCA)* para 16

[2] *Chetty v Law Society, Transvaal 1985 (2) SA 756 (A) at 765).*

[8] The guiding principle of the common law is certainty of judgments. Once judgment is given in a matter it is final. It may not thereafter be altered by the judge who delivered it. He becomes *functus officio* and may not ordinarily vary or rescind his own judgment.[3] That is the function of a court of appeal. There are exceptions. After evidence is led and the merits of the dispute have been determined, rescission is permissible only in the limited case of a judgment obtained by fraud or, exceptionally, *justus error*[4].

[9] Secondly, rescission of a judgment taken by default may be ordered where the party in default can show sufficient cause. There are also, thirdly, exceptions which do not relate to rescission but to the correction, alteration and supplementation of a judgment or order. These are conveniently summarised in the headnote of *Firestone SA (Pty) Ltd* v *Gentiruco A.G. supra*[5] as follows:

> "1. The principal judgment or order may be supplemented in respect of accessory or consequential matters, for example, costs or interest on the judgment debt, that the court overlooked or inadvertently omitted to grant.

[3] *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills Cape (127/2002) [2003] ZASCA 36; [2003] 2 All SA 113 (SCA); 2003 (6) SA 1 (SCA)* para 4.

[4] *Childerly Estate Stores* v *Standard Bank of SA Ltd* 1924 OPD 163. *De Wet and others* v *Western Bank Ltd* 1979 (2) SA 1031 (A) at 1040. And see Harms, *Civil Procedure in the Supreme Court,* B42-10 and the authorities collected in footnotes 3, 4 and 5.

[5] The headnote is an accurate summary of the passage in the judgment appearing at pages 306H-308A.

2. The court may clarify its judgment or order, if, on a proper interpretation, the meaning thereof remains obscure, ambiguous or otherwise uncertain, to give effect to its true intention, provided it does not thereby alter "the sense and substance" of the judgment or order.

3. The court may correct a clerical, arithmetical, or other error in its judgment or order to give effect to its true intention. This exception is confined to the mere correction of an error in expressing the judgment or order; it does not extend to altering its intended sense or substance.

4. Where counsel has argued the merits and not the costs of a case (which nowadays often happens since the question of costs may depend upon the ultimate decision on the merits), but the court, in granting judgment, also makes an order concerning the costs, it may thereafter correct, alter or supplement that order."

[10] The authorities also refer to an exceptional procedure under the common law in terms of which a court may recall its order immediately after having given it, or within a reasonable time thereof, either *meru motu* or on the application of a party, which need not be a formal application.[6] This procedure has no bearing on this case.

[6] *De Wet and others* v *Western Bank Ltd* 1979 (2) SA 1031 (A) at 1044 E 1045G; *First national Bank of SA Ltd* v *Jurgens 1993 (1) SA 245 (W) 2416*; *Tom v Minister of Safety and Security Tshivhase Royal Council and another v Tshivhase and another: Tshivhase and another v Tshivhase and another* [1992] ZASCA 185; 1992 (4) SA 852 (A) 862J – 863A.

[11] It is against this common law background, which imparts finality to judgments in the interests of certainty, that Rule 42 was introduced. The rule caters for mistake[7]. Rescission or variation does not follow automatically upon proof of a mistake. The rule gives the courts a discretion to order it, which must be exercised judicially[8].

Discussion and reasons

[12] Mr. Maponya, on behalf of Shoba, contends that the notice of application for summary judgment did not specify the hearing date for the application and that this violates the Rules of the Court. This contention has no factual and legal basis. This is so because the application for summary judgment, in my view, complied with the Rules as the hearing date was more than 15 days after the delivery of the application. Rule 32's timeframe ensures a defendant has enough time to file an affidavit against summary judgment. In the instant case, the applicant had sufficient time in terms of Rule 32.

[13] According to the new court directives of this division, summary judgment applications are filed on Case Lines. Hearing dates are applied for and

[7] *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills Cape above foot note 3 para 5*

[8] *Theron NO* v *United Democratic Front (Western Cape Region) and others*) 1984 (2) SA 532 (C) at 536G.

allocated after the application is lodged. It therefore makes logical sense why the hearing date of the application for summary judgment is left blank. However, once the date of hearing of the summary judgment is allocated, the defendant will be served with the Notice of Set Down of the summary judgment application which happened in this application.

[14] Mr. Maponya contended on behalf of the application that when the Notice of Set Down was served on 28 September 2022 for the hearing on 11 October 2022 this date was a day less than the ten days period. This argument misses the fact that the blank application without a date had already been served and that all the parties were waiting for was the hearing date. To argue that because the date is a day less and that it is violation of the Rules and that the application should have been dismissed is in my view, without merit. Accordingly, I am not persuaded that the application for summary judgment was done in violation of the Rules.

[15] The applicant also contends that because there was a policy for insurance of the life of the deceased, the proceeds of the policy should have been used to settle the full debt. This is a logical argument to make, however, for the argument to be sustained, there ought to be a demonstration that the insurance policy proceeds were indeed paid out. The papers before me

provides no evidence of such payment to either SA Taxi or the estate of the deceased. It is common course between the parties that the claim for life policy proceeds was repudiated by Guard Risk. During the hearing of the matter, counsel for Shoba argued that Guard Risk and SA Taxi Finance were the related entities. Even if they were, the submission does not take the matter any further as far as the defence is concerned in these proceedings. If the two parties were indeed related as contended for by Mr. Maponya, there would be no reason to repudiate the payment of the life policy.

[16] The papers show that the claim was repudiated by Guard Risk and consequently, the debt was not settled. Can the existence of a life insurance be the ground of defence under the present circumstances? In my view, it cannot. This is so because once repudiation takes place, the trustee of the estate can pursue his rights against the insurance company if he believes the grounds of repudiation are in violation of the insurance contract.

[17] To impute the repudiation of the policy on SA Taxi Finance under the circumstances where the monthly repayment obligations were behind, is in my view, flogging the proverbial dead horse. This is so because in the normal business practice, either the lender would pay premiums from the monthly repayments of instalments and in rear cases, allow the borrower to

make such contributions himself. This is just my statement in passing which has no bearing on the reputation of the claim. The overdue monthly repayments justify the summary judgment against the estate; reversing it would not serve justice.

Conclusion

[17] Consequently, on the issue of defence, I am not persuaded that the applicant has demonstrated that he has a good defence and accordingly, the application stands to be dismissed.

Order

[18] The application for rescission of the summary judgment is dismissed with costs.

ML SENYATSI
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

<u>DATE APPLICATION HEARD</u>: 14 April 2025

<u>DATE JUDGMENT HANDED DOWN</u>: 03 June 2025

<u>APPEARANCES</u>

Counsel for the Applicant: Adv K Maponya

Instructed by: Marie-Lou Bester Inc

Counsel for the Respondent: Adv Rosalind Stevenson

Instructed by: Mathonsi Attorneys Inc

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ML SENYATSI
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<u>DATE APPLICATION HEARD</u>: 14 April 2025

<u>DATE JUDGMENT HANDED DOWN</u>: 03 June 2025

<u>APPEARANCES</u>

Counsel for the Applicant: Adv K Maponya

Instructed by: Marie-Lou Bester Inc

Counsel for the Respondent: Adv Rosalind Stevenson

Instructed by: Mathonsi Attorneys Inc