

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

Case number: 2021-45563

(1)REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

Date **8 August 2025**

Signature

In the matter between:

KATLEGO RICHARD MASHIANE
(Identity No 9[...])

Applicant/Defendant

and

NEDBANK LIMITED

Respondent/Plaintiff

JUDGMENT – 8 AUGUST 2025

WILLIAMS, AJ

- [1] This is an application for rescission of judgment. There is no appearance for the Applicant. On 12 June 2018 the respondent sold, under a written Instalment Sale Agreement, a Volkswagen Polo motor vehicle to the a\Applicant. The Applicant allegedly fell into arrears with his payments and the Applicant instituted action under the instant Case Number for orders confirming the cancellation of the agreement, attachment of the vehicle,

forfeiture of monies paid by the Applicant, plus authority to sell the vehicle with leave to approach the Court in due course, plus costs.

- [2] The Applicant entered an appearance to defend, but failed to plead. The Respondent was forced to service a Notice of Bar. After expiry of the Bar, default judgment was granted by this Honourable Court (per Nyathi J).¹
- [3] A few weeks later the Applicant served the current application for rescission of judgment on the Plaintiff's representatives (12 September 2022). The Respondent duly filed an answering affidavit, resisting rescission (21 October 2022). The Applicant has not filed a replying affidavit.
- [4] The application for rescission of the judgment taken by the Respondent against the Applicant, is before me on the basis that there is an answering affidavit, but no replying affidavit. No practice note, nor heads of argument have been filed by the Defendant/Applicant for rescission of judgment. The notice setting down this matter for today, 4 August 2025, was duly served on the Defendant's (Applicant for rescission) attorneys of record on 24 June 2025.² I will nonetheless evaluate the grounds of rescission.
- [5] The Applicant states in the affidavit in support of rescission that he was not in arrears with his due payments when the application for default judgment was sought. Also, that he was not afforded an opportunity to apply for debt review – whilst continuing with payment of his due monthly instalments, consequently that the action was prematurely instituted.
- [6] In answer the Respondent, as Plaintiff, attached an account summary,³ indicating several specific months where no payment had been made. It is

¹ Court order granted on 29 August 2022, CL 18-1-1.

² CL 35-1 to 4.

³ Annexure "F" to the Respondent's answering affidavit.

also contended that on 23 July 2021 a notice under section 129 of Act 34 of 2005 had been sent to the chosen *domicilium citandi et executandi*, and that at the time of issuing summons on 9 September 2021, the Applicant for rescission, was in arrears with his monthly payments for some R18,995.73. This is not refuted in a replying affidavit.

- [7] It is also evident from the averments in the answering affidavit that the Applicant admitted that he had defaulted on his contractual obligations.⁴ The terms of the agreement are that the agreement constitutes the whole agreement, and that there is no outside undertaking, representation, term or condition. No proof was furnished by the Applicant for rescission of due and punctual payment, to refute the respondent's case. The Applicant abided in a bald version. As stated above, the Respondent's averments are not met in reply by the Applicant.
- [8] The Applicant's further averments, alleging non-compliance with the provisions of the National Credit Act, 34 of 2005, are also of no moment. The learned Judge who heard the application for default judgment, was satisfied that there had been compliance.
- [9] I thus dismiss the application for rescission of judgment, with costs. Costs are granted on Scale A, on the basis of the matter being an opposed matter. The Plaintiff/Respondent had to anticipate that the matter could be argued. Implicit in my judgment is that the application to rescind the order where Defendant/Applicant was put on terms to file its practice note and heads of argument, is also hereby dismissed, with costs.

J O WILLIAMS AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

⁴ Para 8.2 of the answering affidavit, CL 0005-12.

Date heard : 4 August 2025

Date of judgment : 8 August 2025

Representation for the Applicant : No appearance
Attorneys - Malatji Attorneys

Representation for the Respondent : Adv S McTurk
Instructed by UMS Attorneys Johannesburg