



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

Case No: **015477-2022**

(1) REPORTABLE:
(2) OF INTEREST TO OTHER JUDGES:
(3) REVISED:
 SIGNATURE 15 August 2025 DATE

In the matter between:

OUMA MARTINA MOTLOBA

Applicant / Defendant

and

NEDBANK LIMITED

Respondent / Plaintiff

This judgment is prepared and authored by the Judge whose name is reflected as such and is handed down electronically by circulation to the parties / their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date for handing down is deemed to be 15 August 2025.

JUDGMENT

RETIEF J

INTRODUCTION

[1] The applicant, the defendant in the main action, seeks to rescind an order granted against her on the 19 October 2023, *inter alia*, for the attachment of a motor vehicle pursuant to the cancellation of the instalment sale agreement, which was taken due to the default of payment [the order].

[2] The applicant brings her rescission relief in terms of uniform rule 42(1)(c) and in prayer 1, she seeks to rescind an order granting summary judgment. This relief the applicant seeks in circumstances when, it is common cause that the order granted indicated that it was sought and obtained by way of an application for default judgment.

[3] It is for this reason that the basis and procedural history upon which the applicant relies to rescind an order which was not made, must be considered carefully.

UNIFORM RULE 42(1)(b)

[4] It is a fundamental principle of our law that a court order must be effective and enforceable, and therefore it must be formulated in such a way that it leaves no doubt as to what the order requires to be done. Not only must the order be couched in clear terms, but its purpose must also be readily ascertainable from the language used.

[5] Therefore, an ambiguity or a patent error or omission as a result of which a judgment has been granted does not reflect the real intention of the judicial officer. Rule 42(1)(b) caters for such corrections which need to be addressed in an order and/or a judgment so that it can be varied to reflect the real intention of the judicial officer. The purpose of rule 42(1)(b), in other words, caters for patent errors or any ambiguity attributed to the court itself.

[6] Against this brief background, the applicant in her founding papers speaking to an error, states that: *"What I had received was the notice of set down for summary judgment. Which was done erroneously as I was still expecting the respondent to follow the correct procedure of serving summons personally upon me before the matter could proceed for hearing and be allocated a date of hearing."* This the applicant alleges in circumstances when it is common cause that she defended the action in January 2023 and filed a plea.

DISCUSSION

[7] Both the parties accepted that on the 19 October 2023, as per the notice of set down, the respondent intended to move a summary judgment application at the date of the hearing. The practice note uploaded to case lines informed the Judge thereof and, the application before the Judge was in fact an application for summary judgment. It is common cause between the parties that the applicant was entitled and did serve a plea, by agreement.

[8] *The procedural background on the papers indicates that due to the applicant's delay in filing a plea, the respondent initially and on the 21st of June 2023 proceeded to apply for default judgment relying on a notice of bar. The applicant received the set down for the application for default judgment in terms of rule 31(5). This notice of set down had a few minor typographical errors *inter alia*, the date upon which it was signed was unclear. None the less the application was abandoned, and the respondent accepted an unsigned plea served via email on the 28th of June 2023. This arrangement was brought to the Judges attention in the application for summary judgment.*

[9] The template used for the notice of set down for the default judgment was used by the respondent's attorney for the notice of set down in the summary judgment. In consequence the same typographical errors appear in the same notice including, the use of the words summary judgment and default judgment, however, notwithstanding the errors the applicant stated that she received a set down for the

summary judgment application and she wishes to rescind an order granted in terms of summary judgment in this application. After receiving the set down notice, the applicant took no further procedural steps catered for in terms of rule 32. This included any intention on the 26 September 2023, to oppose the application after the receipt of the set down. This inaction is to be considered against the fact that she states that her husband is a practising attorney. She, on her version, rather alleges to have elected to be at court on the 19 October 2023 but, due to a mishap was in the incorrect court and by the time she found the right court with her attorney, judgment had already been granted. The circumstances of the mishap are not confirmed by her attorney under oath and nor was the Judge approached by her attorney to explain the situation.

[10] Be that as it may, it appears that the draft order for the default judgment was erroneously handed up and signed by the Judge instead of the summary judgment draft order. Absent this error, the terms of the order and what the Court was asked to grant remain undisturbed. On the procedural facts, no application for default judgment served before the Judge on the 19 October 2023 nor could it have been taken on the facts. Therein lies the error, a mistake common to both parties on the common cause facts, the wording "default judgment". Unfortunately, this is not the error relied on by applicant as is envisaged in terms of rule 42(1)(b). She contends that the error is that the Judge should not have entertained the summary judgment as she had not received the summons personally and that her plea set out a triable defence. This is a basis catered for in rule 42(1)(a) and not 42(1)(b). The applicant has not made out a case for rule 42(1)(b) on the papers.

[11] The applicant's relief in prayer 1 of this application speaks to the rescission of a summary judgment order which is incorrect *ex facie* the order itself. Therefore, the applicant seeks the incorrect relief on the incorrect basis. The basis of rule 42(1)(b) however, rather addresses that a variation of the order, on the common cause intend and procedural steps accepted by both parties was taken, should be corrected. The respondent's Counsel argued the point and requested the Court to *mero motu* entertain the variation to ensure that the Judge's intention is reflected on the order. The applicant's legal representative made no attempt to reply.

COSTS

[12] It is trite that costs follow the result however, considering the procedural mishaps, in particular the respondent's attorneys at the material time, this Court exercises its discretion, and each party is to pay their own costs.

[13] The following order:

1. The application is dismissed.
2. The words of "*default judgement*" as they appear on the order of the 19 October 2023 before Kumalo J is varied to read "*summary judgement*."
3. Each party to pay their own costs.



L.A. RETIEF

Judge of the High Court
Gauteng Division

Appearances:

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Date of hearing:	12 August 2025
Date of judgment:	15 August 2025