IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NO: 15889/2022P

In the matter between:

NGUSE GAS AND FUEL COMPANY (PTY) LTD **FIRST APPLICANT**

BONGINKOSI FORTUNE NGUSE **SECOND APPLICANT**

and

VRYHEID PETROLEUM (PTY) LTD **RESPONDENT**

ORDER

(a) The judgment granted by the Registrar on 19 May 2023 is varied to record that the judgment is against the first and second defendants, jointly and severally.

(b) The application is dismissed.

(c) The applicants are directed to pay the costs of the application, jointly and severally, as between attorney and client, with the costs of counsel to be on scale B.

JUDGMENT

Seegobin J

Introduction

[1] This is an application for rescission of a default judgment granted by the Registrar of this court in the absence of the defendants on 19 May 2023. The judgment amount is in the sum of R6 834 866, 56, together with interest and costs. The application for rescission is premised solely in terms of rule 42(1)(a) of the Uniform Rules on the basis that the judgment was erroneously sought and granted in the absence of the defendants.

[2] The application is opposed by the plaintiff/respondent which delivered an answering affidavit. No replying affidavit has been delivered by the applicants.

[3] The background facts are briefly the following. The first applicant, a company, made written application for credit with the respondent for the purchase of gas and petroleum related products. The second applicant, Mr Guse, signed the credit application on behalf of the first applicant. Mr Guse further bound himself as surety for the first applicant's obligations towards the respondent. The only domicilium address recorded by both applicants on the application form was 1[...] J[...] C[...] Road, Blackridge, Pietermaritzburg.

[4] Pursuant to the signing of the agreement the first applicant purchased goods from the respondent and incurred a debt in the sum of R 6 834 866, 56. The respondent issued summons out of this court on 17 November 2022 in which it cited both applicants as co-defendants. The summons was duly served by the sheriff at the chosen domicilium address of the applicants at 1[...] J[...] C[...] Road, as previously referred to. In respect of both applicants, the sheriff recorded that there was no one present to accept service and that the principal front door was inaccessible as the gates were locked.

[5] In an answering affidavit filed on behalf of the respondent, the deponent, Mr Cockbain, a co-director of the respondent, averred that on 10 January 2023, the second applicant, Mr Guse, arrived at his office unannounced. Mr Guse was armed with a firearm. Mr Guse indicated that they should settle the matter “like gentlemen”. According to Mr Cockbain the dispute was duly settled on certain terms agreed to between them and subject to Mr Guse signing an acknowledgment of debt. The respondent’s attorneys were duly instructed to prepare such an acknowledgment of debt.

[6] Despite the undertaking by the applicants to settle the debt, no payments were made. The respondent’s attorneys were accordingly instructed to apply for judgment. This was duly done and judgment was granted by the Registrar on 19 May 2023. A writ of execution was served on 2 November 2023. Notwithstanding the allegations contained in the answering affidavit, the applicants did not think it necessary to file a replying affidavit. The allegations made by Mr Cockbain were left unchallenged.

[7] In the opposed motion that served before me on 16 September 2025, the only ground for rescission pursued by the applicants was that summons was not served in terms of the Uniform Rules providing for service on a company [Rule4(1)(a)(v)]. For the reasons that follow, I consider the submissions advanced on behalf of the applicants on this ground to be without merit. Firstly, the first applicant elected the address, at 1[...] J[...] C[...] Road, Blackridge, Pietermaritzburg, as its domicilium address. Secondly, the second applicant, as surety, similarly elected the aforesaid address as his domicilium

address. Thirdly, as pointed out already, the sheriff served a copy of the summons at the address in question. In light of the fact that no other address was chosen by the applicants on the credit application form, I consider that there was proper service on both of them in terms of the provisions of Rule 4(1)(a)(iv). In my view, the second applicant is not being truthful about his ignorance of the summons as he was in possession of a copy of the summons when he arrived unannounced at Mr Cockbain's offices on 10 January 2023 and concluded a settlement agreement with him.

[9] In the result, I take the view that the judgment that was eventually granted against the applicants, was not granted in error. I am fortified in this view by the fact that at the time of applying for judgment, the respondent was able to satisfy the Registrar that the service of the summons was in order.

[10] It is also significant, in my view, that throughout these proceedings the applicants did not raise any defence to the merits of the respondent's claim against them. Quite clearly, they have none. In all the circumstances, I consider that the judgment was not granted in error and therefor cannot be set aside under Rule 42.

[11] Before I conclude, there are two other matters that require attention. Mr Schaup, who appeared on behalf of the respondent, drew my attention to the fact that the judgment as recorded by the Registrar was not made to run jointly and severally against the applicants. This was clearly a mistake on the part of the Registrar as the application for judgment was in respect of both applicants. I see no reason why this cannot be varied even at this stage in order to reflect the true position.

[12] The second matter concerns the issue of costs and the relevant scale on which it should be paid. Mr Schaup contended that given the manner in which this application was pursued by the applicants, a punitive costs order was justified. He argued that the application was initially premised on three grounds, namely, (a) the non-signature of the particulars of claim by an attorney or advocate, (b) the non-compliance with the provisions of the National Credit Act, and (c) that no proper service of the summons had

occurred. As it transpired, the only ground pursued in argument related to the issue of non-service with the other grounds being abandoned altogether.

[13] I agree that the manner in which this application was pursued amounted to nothing more than an abuse. This, in my view, justifies a punitive costs order with such costs to be paid on scale B. The order I propose making is contained in a draft order which was provided by Mr Schaup.

Order

[14] In the result, I make the following order:

(a) The judgment granted by the Registrar on 19 May 2023 is varied to record that the judgment is against the first and second defendants, jointly and severally.

(b) The application is dismissed.

(c) The applicants are directed to pay the costs of the application, jointly and severally, as between attorney and client, with the costs of counsel to be on scale B.

SEEGOBIN J

Date of hearing:	16 September 2025
Date of judgment:	19 September 2025

APPEARANCES

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