**IN THE HIGH COURT OF SOUTH AFRICA**
**FREE STATE DIVISION, BLOEMFONTEIN**

**Not reportable**
Case no: 6406/2024

In the matter between

**THE STANDARD BANK OF SOUTH AFRICA LIMITED** **APPLICANT**
(Registration Number: 1962/000738/06)

and

**THABO JOHANNES MALEFANE** **RESPONDENT**
(Identity Number: 6[...])

**Neutral citation:** *The Standard Bank of South Africa Ltd v Thabo Johannes Malefane* (6406/2024) [2025] ZAFSHC 322 (16 October 2025)
**Coram:** MHLAMBI J
**Heard:** 28 August 2025
**Delivered:** 16 October 2025
**Summary:** Application for rescission of default judgment – Uniform Rules of Court – rules 31(2)*(b)* and 42(1)*(a)* – common law – debt review in terms of the National Credit Act 34 of 2005 – requirements – personal service of

summons – failure to establish good cause.

## ORDER

The application is dismissed with costs.

## JUDGMENT

**MHLAMBI, J**

[1] This is an application to rescind a default judgment issued by this Court on 27 December 2024. The applicant stated in the founding affidavit under the heading 'Good Cause' that the judgment was issued in error. One of the grounds cited is that he did not receive the summons and, therefore, was not in willful default for failing to file a notice to defend. He had approached a debt counselor under s 86 of the National Credit Act 34 of 2005 (the NCA), and the debt review process was unlawfully terminated. He never received the termination notice outlined in s 86(10) from the plaintiff, which could have led to the reinstatement of that review under s 86(11). He continues to pay the disputed account under the debt review program, even after the judgment was granted.

[2] The respondent opposed the application, stating that the applicant's last payment toward settling the outstanding debt was made on 11 April 2025. The applicant referred the credit agreement to a debt collector for review, a process that was terminated by the respondent under the provisions of s 86(10) of the NCA. On 12 September 2024, the respondent issued a notice under s 86(10) to the applicant, informing him of the upcoming termination of the debt review process. The notice was sent to the applicant's chosen mailing address via prepaid registered mail on 12 September 2024, and an email was also sent to the debt counselor and the National

Credit Regulator on the same date. Despite the default notice, the applicant failed to remedy the breach of the agreement. The respondent was entitled to cancel the agreement as it did.

[3] The respondent further stated that the application for rescission was filed under rule 31(2)(b) of the Uniform Rules of Court, and challenged the claim that the judgment was granted in error because the applicant did not receive the summons. The applicant failed to demonstrate a basis for the relief requested in the rescission application because he was personally served with the combined summons by the sheriff on 14 November 2024. The return of service explicitly noted that the summons, particulars of claim, and annexures were personally served on the defendant, with their nature and urgency explained. The applicant's sworn statement that he did not receive the summons was a misrepresentation, and his failure to appear to defend was intentional.

[4] Furthermore, the applicant failed to specify the date he became aware of the default judgment, and the application, on its face, was filed outside the prescribed time limits of the Uniform rules. The current application included no request for condonation for its late service, making it defective.

[5] In his replying affidavit, the applicant stated that he became aware of this default judgment when he referred the dispute to the mediator, as per the mediation notice he attached as JD2. This notice of mediation for the applicant, dated 24 January 2024, was issued before the judgment was granted on 27 December 2024.

[6] He stated further that

‘[M]y default stems from the fact that I was not aware of the action against me as I did not receive the summons, even from the person who the Respondent alleges that the summons were left with of which by that time the summons were issued, I have already referred the matter to be resolved through the mediation process. I have appointed a neutral person, the mediator to assist on this confusion as I am of the view that I am currently under debt review and the Respondent is still receiving monthly payments via debt review program.’

The distribution statement indicated that payments were made up to 13 May 2025. He only became aware of the s 86(10) notice when the mediator directed him to get a copy of the summons from the court file.

[7] It is unclear why and when a copy of the summons was requested or what happened afterward. What is clear is that the mediator knew a summons had, at minimum, been issued. It is uncontested that the s 86(10) notices were sent out, as the respondent argues.

[8] Uniform rule 42(1) provides that a court may, 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.'

[9] Uniform rule 31(2)*(b)* states that a defendant may, within 20 days of learning about such judgment, request the court upon notice to the plaintiff to set aside a default judgment by giving notice to the plaintiff. The court may, for good cause, set aside the default judgment on terms it considers appropriate.

[10] I was referred to the decision in *Lodhi 2 Properties Investments CC v Bondev Developments (Pty) Ltd*,[1] where it was held that a judgment to which a plaintiff is procedurally entitled in the absence of the defendant cannot be considered 'granted erroneously' merely because a subsequently disclosed defence exists. The presence or absence of a defence on the merits is irrelevant, and if disclosed later, it cannot turn a valid judgment into an erroneous one.

[11] In *Chetty v Law Society, Transvaal*,[2] the court stated that in terms of the common law, it has the power to rescind a judgment obtained on default of appearance, provided sufficient cause therefor has been shown. Sufficient cause entails two essential elements, which are: (1) that the party seeking relief must present a reasonable and acceptable explanation for his default, and (2) that on the merits, such party has a *bona fide* defence which, *prima facie*, carries some prospect of

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[1] *Lodhi 2 Properties Investments CC v Bondev Developments* (Pty) Ltd [2007] ZASCA 85; [2007] SCA 85 (RSA); 2007 (6) SA 87 (SCA) para 27.

[2] *Chetty v Law Society, Transvaal* 1985 (2) SA 756 (A) at 764J.

success. It is not sufficient if only one of these requirements is met; for obvious reasons, a party showing no prospect of success on the merits will fail in an application for rescission of a default judgment granted against him, no matter how reasonable and convincing the explanation of his default.

[12] Proper and personal service was effected on the applicant and he failed to enter an appearance to defend. He has failed to show that he is entitled to rescind the default judgment either in terms of the Uniform rules or the common law. Consequently, his application stands to fail and he should be liable for the costs, including the costs of counsel.

[13] Therefore, I make the following order:
The application is dismissed with costs.

**J J MHLAMBI**

**JUDGE OF THE HIGH COURT**

**Appearances**

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| For the appellant: | TJ Malefane |
| Instructed by: | In Person |
| For the respondent: | NA Feza |
| Instructed by: | Noordmans Attorneys |