

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2023/115268

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
13 November 2025	
DATE	SIGNATURE

In the matter between:

BONGANI ABEL DLANGALALA

Applicant

and

ABSA BANK LIMITED
[Registration Number: 1986/004794/06]

Respondent

In Re:

ABSA BANK LIMITED
[Registration Number: 1986/004794/06]

Plaintiff

and

BONGANI ABEL DLANGALALA

Defendant

This Judgment is handed down electronically by circulation to the applicant's legal representatives and the respondents by email, publication on Case Lines. The date for the handing down is deemed 13 November 2025.

Civil procedure – Uniform Rules of Court, rule 31(2)(b) – Uniform Rules of Court, – Uniform Rules of Court, rule 42(1)(a) Condonation – Rescission of default judgment – Requirements – Just cause – Bona fide defence – Prospects of success – Explanation for default application- Application dismissed with costs.

JUDGMENT

MUDAU, J

Introduction

- [1] This is an application for the rescission of a judgment granted by this Court in favour of the respondent against the applicant. The application is brought in terms of rule 31(2)(b), alternatively rule 42(1)(a) of the Uniform Rules of Court (the rules), and further alternatively, under the common law.
- [2] The applicant seeks an order setting aside the default judgment on the grounds that it was erroneously granted in his absence and that he has a bona fide defence to the respondent's claim.

Background

- [3] On 6 June 2024, the respondent, Absa Bank, obtained a default judgment against the applicant confirming: (a) the cancellation of the credit agreement; and (b) that the 10 BMW 320D A/T (E90) vehicle with engine number 80637328 and chassis number WBAPN36060NM85284 be returned to the respondent, alternatively attached by the Sheriff and returned to the respondent. The judgment was granted after the applicant failed to file a notice of intention to defend or any opposing papers within the prescribed time frames.

- [4] The present application was launched on 1 October 2024, some 3 months and 3 weeks after the default judgment was granted. It is common cause that the instalment sale agreement entered into between the parties is subject to provisions of the National Credit Act.¹

The applicant's case

- [5] The applicant avers that he was unaware of the proceedings and that the judgment was granted in error. He avers that he was never served with the summons. He only knew of this judgment when he received a call from debt collectors who wanted to repossess the vehicle. However, the applicant provides no supporting documentary evidence to substantiate these assertions.
- [6] Further, the applicant does not contend that he has a bona fide defence and fails to set out any factual basis for any defence or to attach a draft plea or supporting affidavit.
- [7] The founding affidavit is bald and lacks material detail regarding the alleged procedural irregularity or any explanation for the delay in bringing the application. While seeking relief for condonation for the late delivery of the rescission application, the applicant makes no factual basis for the court to consider as grounds for the relief sought.
- [8] When seeking condonation, an applicant is required to explain the delay sufficiently to enable the court to decide whether a full and reasonable explanation has been provided for the entire period of the delay, including any circumstances that prevailed preventing the applicant from applying during the period of the delay.²

The respondent's opposition

- [9] The respondent opposes the application on the basis that the applicant has not satisfied the requirements of rule 31(2)(b), rule 42(1)(a), or the common law. The respondent contends that the judgment was regularly granted and that the

¹ 34 of 2005 ("the NCA").

² See *Silber v Ozen Wholesalers (Pty) Ltd* 1954 (2) SA 345 (A) at 353A.

applicant has failed to demonstrate good cause or a bona fide defence. According to the respondent, on 3 October 2023, before issuing the summons and in compliance with the NCA, the respondent sent a letter in terms of section 129(1) read together with section 130(1)(a) of the NCA via registered mail. In the letter, the applicant was informed of his failure to comply with the instalment sale agreement and was requested to make payment. A period of more than 10 days passed, and no response or payment was made toward the arrears. On 3 November 2023, the respondent once again addressed a letter to the applicant, reminding him of his default and confirming that the agreement had been cancelled.

- [10] According to the respondent, the applicant was properly served with the combined summons. The return of service reflects that the combined summons was served by affixing in terms of rule 4(1)(a)(iv) at the applicant's chosen *domicilium* address at 3088 Zone 10, Meadowlands, 1852. This is the same address the applicant provided in his application for credit, albeit different from the applicant's current address.

The Law

- [11] The principles governing rescission of judgment are well established. Under rule 31(2)(b) of the rules, an applicant must show: (a) a reasonable explanation for the default; (b) that the application is bona fide and not made merely to delay; and (c) that he has a bona fide defence which, prima facie, carries some prospect of success.³
- [12] Under rule 42(1)(a), a court may rescind an order "erroneously sought or erroneously granted in the absence of any party affected thereby." The error must appear from the record itself.⁴

³ See *Grant v Plumbers (Pty) Ltd* 1949 (2) SA 470 (O) at 476–477.

⁴ See *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills* (Cape) [2003] ZASCA 36; 2003 (6) SA 1 (SCA).

[13] At common law, a judgment may be rescinded where “sufficient cause” is shown, which includes both a reasonable explanation for the default and the existence of a bona fide defence on the merits.⁵

Application to the facts

[14] The applicant has not furnished any credible evidence that the judgment was erroneously granted. There is no proof of improper service or any procedural irregularity. The record reflects that proper service was effected at the chosen *domicilium* and that the applicant failed to take any steps to defend the action.

[15] The applicant has also failed to set out any factual foundation for a bona fide defence. A bare allegation of having a defence, without supporting facts, does not meet the threshold required under the rules or the common law.

[16] Furthermore, the applicant has not provided a satisfactory explanation for his default or for the delay in launching the rescission application.

[17] In the absence of evidence establishing an error, good cause, or a bona fide defence, the application must fail.

Conclusion

[18] The applicant has failed to satisfy the requirements of rule 31(2)(b), rule 42(1)(a), or the common law. The application is devoid of merit and falls to be dismissed.

Order

[19] Accordingly, the following order is made:

1. The application for rescission of judgment is dismissed.
2. The applicant is ordered to pay the costs of this application on the attorney and client scale, including costs of counsel.

⁵ See *Chetty v Law Society, Transvaal* 1985 (2) SA 756 (A).



T P MUDAU

**JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG**

Appearances

For Applicant: No appearance

Instructed by: In person

For Respondent: Adv M Madi

Instructed by: Smit Sewgoola
Incorporated

Date of hearing: 03 November 2025

Date of Judgment: 13 November 2025