

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case Number: 2024-069469

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

In the matter between:

**ALIDA MEIRA
(IDENTITY NUMBER: 7[...])**

First Applicant

and

**NEDBANK LIMITED
(REGISTRATION NUMBER: 1951/000009/06)**

First Respondent

SHERIFF SANDTON NORTH

Second Respondent

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 17 November 2025.

Civil Procedure – Default judgment – Rescission application – Requirements – Effective service of summons – *Bona fide* defence- Application dismissed with costs.

JUDGMENT

MUDAU, J

Introduction

- [1] This is an application for the rescission of a default judgment granted against the applicant on 30 July 2024. The applicant also seeks condonation for the late filing of the rescission application, which was brought approximately 40 days out of time. The application is founded on the common law, as the applicant correctly concedes that Rules 31(2) and 42(1) of the Uniform Rules of Court do not apply to the present circumstances.
- [2] The applicant further sought urgent interim relief in Part A of her application to interdict the sale of the vehicle pending the outcome of this rescission application. I am informed that this aspect has been resolved between the parties, with the first respondent having provided an undertaking not to proceed with the sale pending the determination of this rescission application. Consequently, only Part B of the application, dealing with rescission and condonation, remains for determination.
- [3] The factual matrix giving rise to this application is largely common cause. On or about 21 January 2022, the applicant and the first respondent concluded an Instalment Sale Agreement in respect of a 2021 MAZDA CX-30 motor vehicle. The applicant fell into arrears with her monthly instalment payments from approximately January 2024 onwards.
- [4] The first respondent, in compliance with the National Credit Act 34 of 2005, dispatched a section 129 notice to the applicant's chosen domicilium citandi et executandi on 13 May 2024. The Applicant failed to respond to this notice. Consequently, the first respondent caused combined summons to be issued out of this Court on 25 June 2024, which was personally served upon the applicant at her domicilium address on 5 July 2024, as evidenced by the return of service.
- [5] The Applicant failed to enter an appearance to defend within the prescribed time periods. The first respondent accordingly applied for default judgment, which was granted by this Court on 30 July 2024. A warrant for the delivery of goods was subsequently issued, and the vehicle was repossessed by the Sheriff on 29 November 2024.

- [6] The applicant alleges that she only became aware of the default judgment on 20 October 2024, when she discovered the court documents behind a pot plant on her patio. She instituted this application for rescission on 14 January 2025.

Legal Principles Governing Rescission

- [7] The legal principles governing rescission of judgment at common law are well-established in our jurisprudence. The Applicant bears the onus of satisfying two essential requirements:
- a. First, she must provide a reasonable and acceptable explanation for her default. This entails demonstrating that her failure to defend the action was not wilful or due to gross negligence.
 - b. Second, she must show that she has a bona fide defence to the plaintiff's claim. This does not require her to prove that she will ultimately succeed at trial, but she must demonstrate that she has a defence which, prima facie, carries some prospect of success and raises a triable issue.
- [8] Our courts have consistently emphasized that these two requirements must be considered conjunctively. While a strong defence may compensate for a weak explanation for the default, and vice versa, both elements must be present to some degree for the application to succeed. It has always been the hallmark of a bona fide defence, which has to be established before rescission is granted, that the defendant honestly intends to place before a court a set of facts, which, if true, will constitute a defence.¹).

Analysis of the Applicant's Explanation for Default

- [9] The Applicant contends that her default was not wilful as the combined summons "did not come to her attention" despite being served at her domicilium address. She claims to have only discovered the documents on 20 October 2024, approximately three and a half months after service was effected.

¹ *Saphula v Nedcor Bank Ltd* 1999 (2) SA 76 (W) at 79C-D.

- [10] The first respondent has provided conclusive proof of service in the form of the Sheriff's return of service, which confirms that the summons was personally served at the Applicant's chosen domicilium address on 5 July 2024. The legal consequences of service at a domicilium citandi et executandi are settled in our law. Once service is effected at the chosen domicilium, it is deemed to be proper and effective service, regardless of whether the documents actually came to the attention of the recipient.
- [11] The applicant's explanation that she did not see the documents until months later, even if accepted at its highest, does not constitute a reasonable explanation for her default. Our courts have repeatedly held that a party who designates a domicilium address assumes the risk of ensuring that documents served at that address are brought to their attention. The applicant's failure to regularly check for legal documents at her chosen address amounts to negligence at best, and wilful default at worst.
- [12] Furthermore, the applicant's explanation for the delay in bringing this rescission application after discovering the documents on 20 October 2024 is equally unsatisfactory. She attributes the delay to difficulties in consulting with her attorney but provides no specific details or corroborating evidence to substantiate this claim.

Assessment of the Alleged Bona Fide Defence

- [13] The Applicant's purported defence rests primarily on two contentions:
- (a) That she had taken out an insurance policy with the first respondent (the "MFC Purchase Protection Plan"), which was intended to cover her instalment payments in the event of unemployment; and
 - (b) That the first respondent misrepresented the terms of this policy to her, leading her to believe she would be covered when she lost her employment.
- [14] Regarding the insurance policy defence, the applicant has failed to provide the actual policy document or any evidence of its specific terms and conditions. Without the policy document, this Court cannot assess what the parties actually

agreed upon, what risks were covered, or whether the first respondent's repudiation of the claim was justified.

- [15] More fundamentally, even if the policy existed and the claim was wrongfully repudiated, this does not constitute a defence to the cancellation of the instalment sale agreement. The obligation to pay the monthly instalments remained squarely with the applicant throughout. Any claim for wrongful repudiation of the insurance policy would give rise to a separate cause of action for damages, but it does not affect the validity of the cancellation of the principal agreement for non-payment.
- [16] Concerning the alleged misrepresentation, the applicant has provided no corroborating evidence whatsoever. She has not identified the first respondent's employee who allegedly made the misrepresentation, nor provided any documentation, recordings, or other evidence to substantiate her claim. Our courts have consistently held that bald allegations of misrepresentation, without particularity or supporting evidence, cannot form the basis of a bona fide defence to rescission.
- [17] The Applicant's defence is further undermined by her own admission that she defaulted on her payments and that she was aware of the first respondent's refusal to honour the insurance claim before the litigation commenced. Despite this knowledge, she took no steps to defend the action when the summons was served. A decision freely taken to refrain from filing a notice to defend or a plea or from appearing will ordinarily weigh heavily against an applicant required to establish sufficient cause.²
- [18] In the circumstances, I find that the applicant has failed to establish that she has a bona fide defence to the first respondent's claim. The defences raised are speculative, unsubstantiated, and in any event, do not constitute a legal defence to the claim for cancellation of the instalment sale agreement based on non-payment.

Condonation for Late Filing of Rescission Application

² *Harris v Absa Bank Ltd t/a Volkskas* 2006 (4) SA 527 (T) 2006 (4) SA p530.

[19] The applicant seeks condonation for the late filing of her rescission application. It is trite that an applicant seeking condonation must provide a full and reasonable explanation for the delay and must show that she has reasonable prospects of success on the merits.

[20] For the reasons already set out above, the applicant has failed to provide an adequate explanation for the delay and has not demonstrated prospects of success on the merits. Consequently, the application for condonation must likewise fail.

Conclusion

[21] In summary, the applicant has failed to satisfy the requirements for rescission of judgment under the common law. Her explanation for the default is unsatisfactory, and she has not demonstrated the existence of a bona fide defence with any prospect of success. The application for condonation for the late filing of the rescission application similarly cannot be granted.

[22] In reaching this conclusion, I am mindful of the applicant's personal circumstances and the hardship she may experience as a result of this judgment. However, our courts must apply the law consistently and impartially, and the requirements for rescission are not lightly dispensed with. The interests of justice require finality in litigation, and the applicant had ample opportunity to defend the action when the summons was served.

Order

[23] In the result, the following order is made:

1. The application for condonation for the late filing of the rescission application is dismissed.
2. The application for rescission of the default judgment granted on 30 July 2024 is dismissed.
3. The Applicant is ordered to pay the costs of this application.

TP MUDAU
JUDGE OF THE HIGH COURT
JOHANNESBURG

Appearances

For the Applicant:	No appearance
Instructed by:	None
For the Respondent:	Adv WKC Pretsch
Instructed by:	Tim du Toit Attorneys

Date of hearing	:03 November 2025
Date of Judgement	:17 November 2025

