

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

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

Case no. 52097/2019

(1) REPORTABLE: **NO**

(2) OF INTEREST TO THE JUDGES: **NO**

(3) REVISED.

DATE: 17 NOVEMBER 2025

SIGNATURE:

In the matter between:

VOLKMAR PETER FURWEGER
(Identity no. 6[...])

1st Applicant

KIM MICHELLE FURWEGER
(Identity no. 6[...])

2nd Applicant

and

STANDARD BANK OF SOUTH AFRICA
(Registration no: 1962/000738/06)

Respondent

JUDGMENT

The judgment and order are published and distributed electronically.

PA VAN NIEKERK, AJ

INTRODUCTION:

[1] Applicants, who are married to each in community of property, apply for the rescission of a default judgment granted against them in favour of the Respondent. Respondent is a Commercial Bank duly registered in terms of the Laws of the Republic of South Africa. Respondent instituted action against Applicants claiming that instalments in respect of a home-loan agreement are in arrears, and claimed payment of the outstanding amount in terms of such agreement as well as an order that the property forming the subject of the agreement be declared executable.

[2] In the Notice of Motion the Applicants seek an order in the following terms:

- "1. Granting the Applicants condonation for the late filing of the application for rescission of judgment; (sic)*
- 2. Ordering a stay of the warrant of execution;*
- 3. An order in terms of which the default judgment as granted against the Applicants be rescinded;*
- 4. That the Respondent be ordered to pay the costs of this application, in the event that the application is opposed;"*

[3] The default judgment referred to in the Notice of Motion was granted on 22 March 2024 by Mooki J. In that default judgment, an order was granted in favour of Respondent in its capacity as Plaintiff against the Applicants in their respective capacities as First- and Second Defendants for payment of the amount of R1 849 871.97 with interest at the rate of 10.25% per annum from 6 June 2019 to date of payment, both dates inclusive. It was further ordered that a certain immovable property as fully and properly described in the default judgment order, situate at Witkoppen, Gauteng, be declared executable for the aforesaid amount and that the Registrar be authorised to issue a writ of execution in terms of Rule 46 as read with Rule 46A for the attachment of the property with a reserve price set at R1 890 000.00. In terms of the default judgment order, the operation of the order was suspended for a period of six months.

[4] Default judgment was granted after the action as set out above was instituted and Applicants then caused a Notice of Intention to Defend to be served on the 13th of November 2019, but thereafter failed to serve a plea. On 5 June 2020 the Respondent's attorney of record (Plaintiff in the default judgment application) caused a Notice of Bar to be delivered on Applicants' attorneys of record directing that a plea had to be delivered within 5 days from service of the Notice of Bar failing which the Applicants would be in default of such pleading and would be *ipso facto* barred.

[5] No plea was subsequently filed by Applicants whereafter Respondent applied for default judgment in terms of Rule 31(2)(a) and Rule 46A, which application for default judgment was issued from this court on 12 November 2019 and served on Applicants. The notice of set-down of the default judgment application was similarly served on the Applicants whereafter the Applicants' attorney of record withdrew on 27 February 2024. The notice of set-down of the default judgment application was then electronically served on the Applicants on 27 February 2024. As will be referred to hereunder, it is common cause that the Applicants personally attended court when the default judgment order was granted and was present in court at the time when the default judgment order was granted.

APPLICANTS GROUNDS FOR RESCISSION:

[6] In the Founding Affidavit the Applicants allege that they fell into arrears on the payments due in terms of the home-loan agreement when the Second Applicant "*lost her job*". In the Opposing Affidavit it is illustrated that the Applicants fell in arrears during 2019 and that Respondent dispatched default notices in terms of Section 129 of the National Credit Act 34 of 2005 around the 4th of June 2019. Since that date, Applicants failed to effect any payments in terms of the Home Loan Agreement upon which the Respondent's cause of action was found in the action which resulted in the default judgment.

[7] Applicants further allege in the founding affidavit that they were present in court on 22 March 2024 but did not hear the judgment given by the court, and that the Respondent's Advocate then explained to them after the hearing that the order was suspended for a period of six months. It is then alleged that, being a lay person,

the First Applicant was under the impression that the judgment was postponed for a period of six months. Applicants further explain that, during July 2024, the First Applicant sought legal advice and was advised to obtain the court order to establish "... *exactly what the order was that was given by the court*". First Applicant then avers that he accessed the (court online) profile on 16 July 2024 and noted what the exact terms of order was.

[8] The application for rescission of the default judgment was thereafter launched on 13 August 2024, which therefore implies that the Applicants, on their version, became aware of the contents of the default judgment order four months after the order was granted, and then one month later, launched the application for rescission of the default judgment order.

[9] Applicants further aver that they have a bona fide defence to the default judgment order and the totality of the averments to support the averment of a bona fide defence are set out by First Applicant in paragraph 8 of the Founding Affidavit which reads:

"8.

BONA FIDE DEFENCE:

8.1 *I do admit that I am in arrears with my bond payments but it is my humble submission that I wrote several letters to the Respondent's attorneys indicating to them that the interest was incorrectly calculated on my arrears;*

8.2 *It is a well-established principle (in duplum rule) in our law that the interest cannot surpass the arrears. In this case it has. It is my submission now and I address it (sic) on several occasions to the Respondent's legal representatives that the interest was calculated incorrectly"*

[10] Under the heading of "*Stay of Execution*" Applicants aver that it is in the interest of justice and that it would be fair to both parties that the Warrant of Execution be stayed "*indefinably*" which presumably should be read as "*indefinitely*". It is further submitted by Applicants that the stay of the Warrant of Execution should endure at least until "... *the correct amount of interest was calculated*".

[11] Under the heading "*Condonation*" it is curtly alleged that the Applicant, as a layman, did not fully comprehend the terms of the order until his legal advisor explained same to him when he gained access to the Case Lines profile. Applicant then proceeds to submit the following in paragraph 11.3 of the Founding Affidavit:

"I further submit that I was not in wilful default of this order as no one made me aware of the order nor was this order ever served upon me by the Respondent's attorney of record".

APPLICABLE LEGAL PRINCIPLES:

[12] In the Heads of Argument filed on behalf of Applicants it was submitted that the application is brought under the provisions of Rule 42(1) as well as the common law.

[13] In terms of Rule 42(1) the court may 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 to such an ambiguity, error or omission, or (c) an order or judgment granted as a result of a mistake common to the parties. In my view the provisions of Rule 42(1) do not assist the Applicants, for the following reasons:

[13.1] The order for summary judgment was not erroneously sought or granted in the absence of any party affected thereto. The order was granted in terms of the provisions of Rule 31(2)(a) after the Applicants failed to serve a plea, was barred by way of a notice and became *ipso facto* barred having failed to comply with the Notice of Bar. These notices were duly served on the Applicants, and so was the application for default judgment. In the application for default judgment notice was duly given that Respondent will apply for default judgment for payment of the amount of R1 849 871.90 with interest, which is the same amount as ordered in the judgment. Respondent thus followed due process in terms of the rules to obtain the judgment.

[13.2] The application for default judgment was supported by an affidavit deposed to by a functionary of the Respondent and the amount of R1 849

871.90 was proven by way of a certificate and affidavit, in terms of the provisions of the underlying loan agreement as comprehensively set out in the application for default judgment.

[14] At all relevant times the Applicants were aware of the amount, and the computation thereof, that would be claimed during the proceedings to obtain default judgment as the application for default judgment was served on them, and they took no steps to oppose that application.

[15] There is further no ambiguity or patent error or omission in the default judgment order as a result of which neither Rule 42(1)(b) nor Rule 42(1)(c) assist the Applicants.

[16] It then remains to consider whether the Applicants have shown sufficient cause for a rescission order to be granted in terms of the common law. In *Van Heerden v Bronkhorst*¹ it was held as follows:

"[19] That brings to the relief under the common law. An applicant for rescission of judgment taken by default against him is required to show good cause. [18] Whilst the courts have consistently refrained from circumscribing a precise meaning of the term 'good cause', [19] generally courts expect an applicant to show 'good cause' (a) by giving a reasonable explanation of his default; (b) by showing that his application is bona fide; (c) by showing that he has a bona fide defence to the plaintiff's claim which, prima facie, has some prospect of success".

[17] The aforesaid principles under which a court will rescind an order on good cause shown is a restatement of various judgments which consistently held that the applicant has to show the following:

[17.1] a reasonable explanation for the default;

[17.2] that the application is *bona fide*;

¹ (Case no. 846/19) [2020] ZASCA 147 (13 November 2020)

[17.3] a *bona fide* defence.

[18] In my view the Applicants failed to satisfy the common law requirements for the rescission of the default judgment granted against them, for the following reasons:

[18.1] Applicants failed to show good cause for their default. The founding affidavit does not disclose certain material facts, namely that Applicants were initially represented by attorneys, failed to file a plea, was placed under bar and that the application for default judgment was served on them. These facts are disclosed by Respondent in the opposing affidavit. No explanation for these omissions are offered by Applicants. Furthermore, there is a complete *lacuna* in the Applicants' Founding Affidavit in relation to the time when they attended court on 22 March 2025 when the default judgment order was granted, until approximately four months later when they enquired as to the contents of the order. The Founding Affidavit is further silent as to the reason why the Applicants sought further legal advice during July 2025, having attended court some four months earlier after being served the application for default judgment. The absence of a proper explanation for this time delay and the vague reference to the Applicants obtaining legal advice on the contents of the order clearly does not satisfy the requirement of a reasonable explanation.

[18.2] Applicants further dismally failed to provide any factual basis which exhibits a *bona fide* defence. The mere reference to an alleged miscalculation of interest is a bold averment not substantiated by any facts. The same applies to the reference to the "*in duplum rule*". The Founding Affidavit in support of the application for default judgment contained particulars on the computation of the amount of R1 849 871.90 claimed in the application for default judgment, and the Applicants therefore could have raised any such defences to the computation of that amount which may have exhibited a *bona fide* defence at that time. It is a trite principle that *facta probanda* in motion proceedings must be supported by *facta probantia*.

CONCLUSION:

[19] Considering the aforesaid, the application for rescission stands to be dismissed. It therefore follows that the application for the stay of execution should similarly be dismissed as a result of which the following order is made:

1. The application is dismissed;
2. Applicants are ordered to pay the costs to be taxed on scale B.

PA VAN NIEKERK AJ
Acting Judge of the High Court
Gauteng Division, Pretoria