IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 038433/2024

DATE: 10.02.2026

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED

[redacted]

SIGNATURE DATE: 10 February 2026

In the matter between

MATTHEW PAUL LOTTER & ANOTHER Applicants

and

STINKIE SAMUEL POOE Respondent

J U D G M E N T *EX TEMPORE*

WILSON, J: On 17 October 2024, default judgment was granted in favour of the respondent against the applicants for a sum said to be owed in damages resulting from a motor vehicle collision.

The applicants, being the owner and the driver of one of the vehicles involved in the collision, seek rescission of the default judgment. All the parties to the collision were insured. After the collision, the first applicant received summons for the amount in which the default judgment was eventually granted.

The first applicant says he forwarded the summons to his broker, who he expected to forward it on to his insurer so that the claim could be assessed and dealt with.

For reasons that are plainly beyond the first applicant's ken, the summons was not dealt with by the insurer. It was in fact lost somewhere between the first applicant's broker and the insurer.

The first applicant had no further notification that default judgment had been granted on the summons, until a writ of execution was served on upon him. The first and the second applicant now seek to rescind the default judgment. They say that neither of them was in wilful default of appearance and that they have a defence in the main action which stands some prospect of success.

Most of the argument before me today revolved around whether there had been an adequate explanation of the applicants' default. Mr Kruger, who appeared for the respondent, made the point that the confirmatory affidavits from the first applicant's broker do not adequately explain what happened once the summons was handed on to them by the first applicant.

In my view, on the facts of this case, the first applicant cannot be expected to give a detailed explanation of how the summons fell between the cracks after it was sent to his broker. He has no knowledge of that and could not reasonably have been expected to acquire that knowledge, since he was given no indication that anything was wrong until after the default judgment was granted.

In contracts of insurance of this nature, the insured is not merely entitled but is obliged to pass on any process in which damages in connection of a motor vehicle accident are claimed to their broker or their insurer. On discharge of that obligation, they are reasonably entitled to expect the claim will be dealt with appropriately by their insurer.

If there was any sign that anything had gone wrong before the default judgment in this case was granted, and if that indication came to the attention of the applicants, things would be different. But that is not what happened. The first applicant handed the summons on and expected it to be dealt with. It was not dealt with. He does not know why it was not dealt with and he had no reason to suspect it had not been dealt with until well after the default judgment was granted. In those circumstances, it cannot be said the that either of the applicants was in wilful default.

The founding affidavit sets out the applicants' defences to the main claim fairly sparsely, but Mr. Kruger accepted that the facts disclosed there would, if proved at trial, constitute a defence to the claim.

I now turn to the question of costs. An applicant for rescission seeks an indulgence and would usually have to pay the costs of the rescission proceedings, unless there was opposition which was unreasonable.

I do not think that the opposition to this rescission application was reasonable, since it consisted, in the main, of criticising the first applicant for failing to set out facts relating to the way that his insurer and broker conducted themselves, of which he plainly had no personal knowledge.

Nevertheless, I am not satisfied that the respondent's opposition to the rescission application was so unreasonable that he should be mulcted in costs. It seems to me that the fairest order in the circumstances is that each party pay their own costs.

For all those reasons –

1. The default judgment granted against the applicants on 17 October 2024 is rescinded and set aside under Rule 31(2)(b).
2. Each party will pay their own costs.

[redacted]

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WILSON, J
JUDGE OF THE HIGH COURT
10 February 2026