

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1)	NOT REPORTABLE
(2)	NOT OF INTEREST TO OTHER JUDGES

CASE NO: 2022-006976

DATE: 27 February 2026

In the matter between:

BMW FINANCIAL SERVICES (SOUTH AFRICA) (PTY) LIMITED

Plaintiff

and

KOKA JAMES RAMETSE

Defendant

Neutral Citation: *BMW Financial Services (South Africa) v Rametse* (2022-006976) [2026] ZAGPJHC --- (27 February 2026)

Coram: Adams J

Heard: 23 and 26 February 2026

Delivered: 27 February 2026 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 9:30 on 27 February 2026.

Summary: Practice and Procedure – application for rescission of default judgment – whether defence *prima facie* established – application for rescission granted

ORDER

- (1) The defendant is granted condonation, insofar as it may be necessary, of the late filing of his application for rescission.
- (2) The defendant's application for rescission succeeds.
- (3) The judgment granted by default by this court (per its Registrar) on 10 November 2023 is rescinded and set aside.
- (4) The defendant shall deliver notice of appearance to defend within ten days from date of this order.
- (5) The costs of the application for rescission shall be in the course of the main action.

JUDGMENT

Adams J:

[1]. I shall refer to the parties as referred to in the main action in which the plaintiff sued the defendant on the basis of a credit agreement concluded between the parties during January 2016 ('the agreement'), for a shortfall allegedly payable by the defendant to the plaintiff after cancellation of the agreement and the resale of the vehicle. The amount claimed by the plaintiff from the defendant in the said action was the sum of R97 509.69, which amount, according to the plaintiff, represented at the time of issue of the summons the balance outstanding, owing, due and payable by the defendant to the plaintiff under the agreement.

[2]. On 10 November 2023, this Court (per its Registrar) granted judgment by default in favour of the plaintiff against the defendant for payment of the sum of

R97 509.69, together with interest thereon and costs of suit on the scale as between attorney and client.

[3]. In this application, which came before me in the opposed motion court on 23 and 26 February 2026, the defendant applies for a rescission of the said default judgment. The plaintiff is the respondent in this rescission application. The defendant seeks relief under Uniform Rule of Court 31(2)(b), alternatively in terms of the common law, and further alternatively under Uniform Rule 42(1)(a).

[4]. The main issue to be decided in this application is whether the defendant has shown good cause for rescission under Rule 31(2)(b) or the common law.

[5]. The matter arises from a written agreement concluded between the parties on or about 27 January 2016, relating to a 2016 BMW X6 Xdrive 4.0d M Sport motor vehicle ('the motor vehicle'). The defendant contends that the agreement constituted a lease agreement, whilst the plaintiff maintains it was an instalment sale agreement read with a buy-back agreement. Not much turns, in my view, on this factual dispute.

[6]. The background facts, which are largely common cause, are as set out in the paragraphs which follow.

[7]. The agreement provided for monthly instalments of R20 338.31, with a final payment of R635 558.38 due on 1 March 2020. On 26 March 2020, the defendant signed a notice in terms of section 127(1)(a) and (b) of the National Credit Act 34 of 2005 (NCA), indicating his intention to return the vehicle. The vehicle was collected on behalf of the plaintiff on 11 June 2020. On 18 June 2020, a valuation was conducted, valuing the vehicle at R584 700. The vehicle was sold at a public auction on 26 November 2020 for R600 300.

[8]. Summons was issued on behalf of the plaintiff on 21 July 2022 and served on 4 August 2022 by affixing to the principal door at the defendant's chosen domicilium address in the agreement. The defendant did not defend the

action, and default judgment was granted on 10 November 2023. A warrant of execution was issued on 6 December 2023 and served on the defendant at his present residential address.

[9]. The defendant launched this rescission application on 9 July 2024.

[10]. The defendant's case for rescission is that he was not served with the summons or the application for default judgment, as these were served at an address he had left during or about July 2016. He had informed the plaintiff of his new address, including in an email of 26 March 2020. The sheriff's return of service in relation to the summons recorded that the defendant was no longer at the said address. The defendant only became aware of the judgment on 12 June 2024 when his attorneys obtained copies of the court documents.

[11]. The defendant furthermore contends that he has a *bona fide* defence in that he elected to return the vehicle under the lease option provided for in the agreement, and accordingly is not liable for any shortfall. In any event, so the defendant submits, the plaintiff failed to comply with the mandatory provisions of section 127 of the NCA, particularly regarding the timing of the valuation and the notices required.

[12]. The case on behalf of the plaintiff is that the application was brought outside the twenty-day period prescribed in Rule 31(5)(d), without any application for condonation. Furthermore, so the plaintiff contends, service was properly effected at the defendant's chosen domicile address in terms of the agreement, and the defendant failed to formally change his domicile address as required by the agreement. The plaintiff also submits that the defendant has no *bona fide* defence, as the agreement was an instalment sale agreement read with a buy-back agreement, not a lease agreement. The defendant was in arrears when he returned the vehicle, as the final residual payment of R635 557.50 was due and payable on 1 March 2020 and was not paid. Plaintiff also denies that it did not comply with the relevant provisions of the NCA.

[13]. Rule 31(2)(b) provides that a defendant may, within twenty days after acquiring knowledge of a default judgment, apply to court to set it aside, and the court may, upon good cause shown, set aside the judgment on such terms as to it seems meet. The common law requirements for rescission are similar and an applicant for rescission is required to show good cause, which entails: (a) giving a reasonable explanation for the default; (b) showing that the application is *bona fide* and not made merely to delay the plaintiff's claim; and (c) showing the existence of a *bona fide* defence which *prima facie* has some prospect of success. See *Grant v Plumbers (Pty) Ltd*¹; *De Wet and Others v Western Bank Ltd*².

[14]. Rule 42(1)(a) provides that the court may rescind or vary an order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby. In such a case, it is not necessary for the defendant to show good cause; it is sufficient that the judgment was erroneously granted. See *Rossitter v Nedbank Ltd*³.

[15]. The plaintiff raises a point *in limine* that the application was brought outside the twenty-day period prescribed in Rule 31(5)(d), without any application for condonation. The defendant contends that he only became fully apprised of the judgment on 12 June 2024, and that the application was served on 9 July 2024, within twenty days thereof.

[16]. I have no reason not to accept the defendant's *ipse dixit* in that regard. That means that, on first principles, the rescission application was launched timeously. But even if that conclusion is incorrect, the explanation proffered by the defendant is reasonable and entitles him to condonation of the late filing of the application. The simple point is that after the visit on 5 June 2024 by the Sheriff at the defendant's residence, the defendant immediately consulted his legal representatives, who did the necessary investigations with a view to

¹ *Grant v Plumbers (Pty) Ltd* 1949 (2) SA 470 (O).

² *De Wet and Others v Western Bank Ltd* 1979 (2) SA 1031 (A)

³ *Rossitter v Nedbank Ltd* 2015 JDR 2629 (SCA) at para [16].

establishing what the warrant of execution was about.

[17]. As soon as his legal representatives ascertained the details relating to the judgment underpinning the warrant of execution, the defendant launched his rescission application. I am therefore satisfied that the defendant has provided a reasonable explanation for the timing of the application. The point *in limine* accordingly falls to be dismissed.

[18]. That brings me to the requirement that the defendant must demonstrate that he has a *bona fide* defence to the plaintiff's claim in the main action.

[19]. The defendant contends that he elected to return the vehicle under the buy-back option, and he is accordingly not liable for any shortfall. The plaintiff contends that the agreement was an instalment sale agreement read with a buy-back agreement, and that the defendant was required to pay the residual amount of R635 557.50 on 1 March 2020.

[20]. The credit agreement is described as an 'Instalment Sale / Lease Agreement', which provides the defendant with four options prior to the date on which the last payment ('residual value') is due and payable. Those options are: (a) trade in the vehicle; (b) refinance the residual value; (c) keep the vehicle and settle the residual in full; or (d) return the vehicle to the dealer of his choice.

[21]. The defendant's case is that he elected to return the vehicle on the expiration of the credit agreement, that being during March 2020. He communicated such election to the plaintiff in a written communiqué dated 26 March 2020 and arrangements were made to collect the vehicle, which apparently only occurred on 11 June 2020. By the time he returned the vehicle or tendered to return it to the plaintiff, so the defendant avers, he was up to date with his instalments and there were no amounts outstanding on his account, excepting only the so-called 'balloon payment', payable as a residual amount by him in the event of him electing to retain the vehicle.

[22]. This means, so the contention on behalf of the defendant goes, that he is not liable to the plaintiff for the amount claimed or for any sum for that matter. In that regard, the defendant makes reference to a statement of account dated 12 February 2020 showing a nil balance under audit summary. He contends that the instalment of R635 557.60 was only applicable if he kept the vehicle.

[23]. Additionally, the defendant raised a defence that the plaintiff in selling the vehicle did not comply with the peremptory requirements of the NCA, in particular s 127(2), which requires the credit provider to give the consumer written notice of the estimated value of the goods within ten days after receiving the goods. This notice, so the defendant contends, was given out of time and was, in any event, addressed to an incorrect address, which resulted in him not receiving the notice.

[24]. The test for a *bona fide* defence is whether the defendant has set out facts which, if established at trial, would constitute a defence to the claim. It is not required that the defendant prove his defence at this stage; it is sufficient that he set out facts which, if proved, would entitle him to succeed. See *Grant v Plumbers (Pty) Ltd* (supra).

[25]. The defendant has, in my view, done what the aforesaid case authority requires him to do. He has set out a coherent version that he leased the vehicle, elected to return it under the buy-back option, informed the plaintiff timeously, returned the vehicle in good condition, and was not in arrears. He has raised substantial issues regarding compliance with the NCA. These are triable issues. A court hearing evidence may find in his favour.

[26]. I find that the defendant has shown the existence of a *bona fide* defence which has reasonable prospects of success.

[27]. In light of my foregoing findings, it is strictly speaking unnecessary for me to consider the defendant's rescission application based on Rule 42(1)(a). I am, however, of the view that the defendant also has a strong case under this

subrule, if one has regard to what was said by the SCA in *Rossitter v Nedbank Ltd* (supra). In that case, the SCA (per Mbha JA) held that if a default judgment was erroneously sought or granted, a court should, without more, grant the order for rescission. A judgment is erroneously granted if there existed at the time of its issue a fact which the court was unaware of, which would have precluded the granting of the judgment and which would have induced the court, if aware of it, not to grant the judgment. *In casu*, that may very well be the position in that the service of the summons and the application for default judgment was irregularly served at an address where the defendant was no longer resident. See also *Sekoati v Standard Bank of South Africa Ltd and Others*⁴ and the authorities referred to therein, notably *The Master of the High Court (Northern Gauteng High Court, Pretoria) v Motale NO and Others*⁵ and *Richards v Meyers*⁶.

[28]. I therefore conclude that the defendant has given a reasonable explanation for his default – he did not receive the summons or request for default judgment as they were served at an address he had left, which the plaintiff knew or ought to have known. The defendant's application is *bona fide* – he acted promptly upon learning of the judgment. And he has demonstrated a *bona fide* defence with reasonable prospects of success.

[29]. The defendant has complied with all of the requirements for the granting of an order for the rescission of the default judgment. The application for rescission should therefore succeed.

Costs

[30]. The general rule in matters of costs is that the successful party should be given his costs, and this rule should not be departed from except where there

⁴ *Sekoati v Standard Bank of South Africa Ltd and Others* 2025 (5) SA 581 (GP).

⁵ *The Master of the High Court (Northern Gauteng High Court, Pretoria) v Motale NO and Others* 2012 (3) SA 325 (SCA) ([2011] ZASCA 238).

⁶ *Richards v Meyers* 1909 TS 158.

are good grounds for doing so, such as misconduct on the part of the successful party or other exceptional circumstances. See: *Myers v Abramson*⁷.

[31]. In applications for rescission, like the one presently before me, it would only become clear whether the application was justified once the issues are finally ventilated at trial. The answer to the question whether the defendant has a defence to the plaintiff's claim will only definitively be answered after all of the evidence have been heard and a judgment given on the merits of plaintiff's claim.

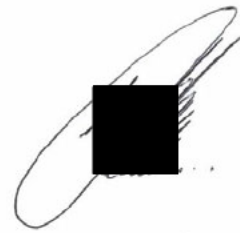
[32]. In the exercise of my discretion, I therefore intend ordering the costs of this application for rescission to be in the course of the main action. Such an order, in my view, is just, fair and in the interest of justice.

Order

[33]. In the result, I make the following order:

- (1) The defendant is granted condonation, insofar as it may be necessary, of the late filing of his application for rescission.
- (2) The defendant's application for rescission succeeds.
- (3) The judgment granted by default by this court (per its Registrar) on 10 November 2023 is rescinded and set aside.
- (4) The defendant shall deliver notice of appearance to defend within ten days from date of this order.
- (5) The costs of the application for rescission shall be in the course of the main action.

⁷ *Myers v Abramson*, 1951(3) SA 438 (C) at 455.



L R ADAMS
Judge of the High Court
Gauteng Division, Johannesburg

HEARD ON:	23 and 26 February 2026
JUDGMENT DATE:	27 February 2026 – Judgment handed down electronically
FOR THE PLAINTIFF / RESPONDENT:	(Ms) S F Fisher-Klein
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