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: 2021-34646

DATE: 27 February 2026

In the matter between:

SUPERDRIVE INVESTMENTS (RF) LIMITED Plaintiff

and

Z G Defendant

Neutral Citation: *Superdrive Investments (RF) v Z G (2021-34646)* **[2025] ZAGPJHC ---** (27 February 2026)

Coram: Adams J

Heard: 23 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 11:00 on 27 February 2026.

Summary: Practice and procedure – application for rescission of default judgment – defendant sought to rescind a judgment relating to an instalment

sale agreement for a motor vehicle – whether defence *prima facie* established – also application by the defendant for a postponement of the application –

Last-minute application for postponement – relied on legally untenable arguments regarding Rule 35(3) discovery in motion proceedings to justify postponement – a postponement is an indulgence, not a right – defendant was required to show good cause and furnish a full and satisfactory explanation for the delay – application for a postponement must always be *bona fide* and must not be used as a tactical manoeuvre to obtain an advantage to which the defendant is not legitimately entitled – postponement application refused –

The Court accepted, as reasonable, the explanation proffered by the defendant for his default – the plaintiff did not know that the defendant was no longer at the domicilium address – therefore, service not irregular –

However, no *bona fide* defence raised on the merits of plaintiff's claim – debt is admitted – there has been compliance with s 129 of the National Credit Act – reliance on ignorance of cession agreement rejected – application itself also found not to be *bona fide* –

Application for rescission dismissed with costs,

ORDER

(1) The defendant’s rescission application is dismissed with costs.

(2) The defendant shall pay the plaintiff’s costs of this opposed rescission application on the attorney and client scale, including Counsel’s charges as contemplated in Uniform Rule of Court 67A(3), read with rule 69, on scale ‘C’.

JUDGMENT

Adams J:

[1]. I shall refer to the parties as referred to in the main action in which the plaintiff sued the defendant, as cessionary, on the basis of a written instalment sale agreement (‘the agreement’) concluded on 11 August 2016 between BMW Financial Services (Pty) Ltd (the Cedent) and the defendant, for *inter alia* the termination of the agreement and the return of a 2014 BMW X6 M5.0d motor vehicle (‘the motor vehicle’).

[2]. On 5 October 2021, this Court (per its registrar) granted judgment by default in favour of the plaintiff against the defendant and ordered: (a) cancellation of the agreement; and (b) the defendant to return to the plaintiff the said motor vehicle.

[3]. In this application, which came before me in the opposed motion court on 23 February 2026, the defendant applies, in terms of Uniform Rule of Court 42(1)(a), alleging the judgment was erroneously sought or erroneously granted, alternatively in terms of the common law, for a rescission of the said default judgment. The plaintiff is the respondent in this rescission application and opposes the application on the basis *inter alia* that the defendant has not

met the requirements to have the default judgment set aside or rescinded.

[4]. The issue to be decided by me is simply whether the defendant has made out a case for rescission.

[5]. In terms of and pursuant to the agreement, the cedent had financed the motor vehicle for the sum of R1 125 350, with the principal debt payable by the defendant in 71 monthly instalments of R18 854.05, commencing on 1 October 2016, and one final balloon payment of R337 673.72 on 1 September 2022.

[6]. During June 2021 the defendant defaulted by falling into arrears with his monthly instalments, prompting the plaintiff to 'call up' the agreement, cancel the contract and to institute legal proceedings against the defendant. The arrears, at that point in time, amounted to R34 431.51 and the outstanding balance due by the defendant to the plaintiff in terms of the agreement was the total sum of R629 581.54. There was still more than a year to run on the contract at that stage.

[7]. At the commencement of the hearing of the rescission application on Monday, 23 February 2026, the defendant applied for a postponement of the application, which application was refused. The reasons for the dismissal of the postponement application are briefly set out in the paragraphs which follows.

[8]. The defendant's application for a postponement rested on a purported need for discovery. He contends that he served a notice in terms of Rule 35(3) on the plaintiff, which remains unanswered. The plaintiff opposed the postponement application and submitted that same was a dilatory tactic, correctly pointing out that Rule 35(3) finds no application in motion proceedings without leave of the court.

[9]. On 5 August 2025, the plaintiff served a notice of set down on the defendant, indicating the hearing date of 23 February 2026. Despite having more than six months' notice, the defendant remained entirely passive until the

eleventh hour.

[10]. The principles governing postponements are trite. In the *locus classicus* of *Myburgh Transport v Botha t/a SA Truck Bodies*[1], a precedent firmly endorsed by the Supreme Court of Appeal, it was held that a postponement is an indulgence, not a right. A defendant must show good cause and furnish a full and satisfactory explanation for the delay. An application for a postponement must always be *bona fide* and must not be used as a tactical manoeuvre to obtain an advantage to which the defendant is not legitimately entitled.

[11]. The defendant's reliance on the plaintiff's failure to answer a Rule 35(3) notice as a basis for postponement is fundamentally flawed. Discovery under Rule 35 applies to trial actions, not motion proceedings, unless a court directs otherwise under Rule 35(13). The invocation of this rule is legally untenable and points inescapably to a tactical contrivance aimed at delaying the proceedings.

[12]. The prejudice to the plaintiff is manifest. The judgment was granted in 2021. The defendant, whilst admittedly making no payments, remains in possession of a rapidly depreciating asset. The postponement application was, in my view, an abuse of process and must fail.

[13]. For all of these reasons, I refused the defendant's application for a postponement of his rescission application.

[14]. That brings me back to the application for rescission.

[15]. Under the common law, a defendant must establish 'good cause', which entails adducing a reasonable explanation for the default and demonstrating a *bona fide* defence which carries some prospect of success (see *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills (Cape)*[2]).

---

[1] *Myburgh Transport v Botha t/a SA Truck Bodies* 1991 (3) SA 310 (NmS).

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

[16]. In his rescission application the defendant explains his default simply by stating that service of the summons on 11 August 2021 on his *domicilium* never came to his attention. In that regard, the Sheriff's return is to the effect that the summons and the annexures thereto were served the defendant's chosen *domicilium citandi et executandi*, being an address in Mapleton, Boksburg, by 'affixing to the gate' seemingly in terms of Rule 4(1) (a)(iv). He also explains that the first time he became aware of the default judgment obtained against him was when the sheriff arrived at his offices with a court order and an warrant of execution.

[17]. The aforegoing is not disputed by the plaintiff and I therefore accept, as a fact, that the defendant did not receive notice of service of the summons despite the fact that service was effected at the *domicilium* address nominated by him in the agreement. This, as I have already indicated, appears to be confirmed by the contents of the sheriff's return of service.

[18]. I accept, as reasonable, the explanation proffered by the defendant for his default. There is, however, no suggestion on the part of the defendant that the plaintiff knew or ought to have known that he was no longer at the domicilium address. It therefore cannot be said with any conviction that the service of the summons was irregular or that the judgment was erroneously sought or erroneously granted. On that basis, this matter is therefore distinguishable from *Sekoati v Standard Bank of South Africa Ltd and Others*[3] and the authorities referred to therein, notably *The Master of the High Court (Northern Gauteng High Court, Pretoria) v Motala NO and Others*[4] and *Richards v Meyers*[5].

[19]. As regards his defence to the plaintiff's claim, the defendant contends that the judgment was erroneously applied for and granted because he had

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

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

[5] *Richards v Meyers* 1909 TS 158.

never received the notice prescribed in terms of section 129 of the National Credit Act 34 of 2005 ('the NCA'). The said notice, so the defendant alleges, was clearly sent to an incorrect address. He never received same and, accordingly, there has been non-compliance with the mandatory requirements prescribed by section 129 of the NCA. The plaintiff's summons was therefore premature and irregular, so the submission on behalf of the defendant is concluded.

[20]. The defendant also questions – and I put it no higher than that – the plaintiff's *locus standi in iudicio*. He has never been notified of the cession in favour of the plaintiff by the cedent.

[21]. As regards the statutory notice in terms of section 129 of the NCA, the plaintiff introduced into evidence a registered post track-and-trace report demonstrating delivery to the relevant Post Office, with a 'First Notification to recipient' issued on 25 June 2021. In *Sebola and Another v Standard Bank of South Africa Ltd and Another*[6], the Constitutional Court held that proof of delivery to the correct post office constitutes sufficient compliance with the Act. The defendant's bald denial of receipt does not trump the objective documentary evidence.

[22]. There is therefore no merit in this defence which the defendant intends raising in the event of the judgment against him being rescinded.

[23]. As for the merits of the defence to the plaintiff's claim for cancellation of the agreement, the defendant concedes concluding the agreement, taking delivery of the vehicle and falling into arrears. His sole defence – that his privity of contract lies with the cedent and not with the plaintiff – is decisively defeated by the written cession agreement produced by the plaintiff. Moreover, the original finance agreement expressly authorised such cession without notice to the consumer. The defence raised is contrived and bad in law.

[6] In *Sebola and Another v Standard Bank of South Africa Ltd and Another* 2012 (5) SA 142 (CC).

[24]. The defendant's complaint that the plaintiff refuses to engage in discussions with him with a view to finding a solution to the impasse between them, is of no moment. A desire to 'negotiate' does not constitute a valid defence to a claim for cancellation based on an admitted breach.

[25]. Therefore, the question whether the defendant disclosed a *bona fide* defence to the plaintiff's claim in the sense of setting out averments, which, if established at trial, would entitle him to a dismissal of the plaintiff's claim, can and should be answered in the negative. The simple fact of this matter is that the defendant failed to establish that he has such a *bona fide* defence to plaintiff's claim. For that reason alone, the defendant's application falls to be dismissed.

[26]. What is more is that 'on good cause shown', as a requirement for an application for rescission, includes a prerequisite that the application must be *bona fide* and not made with the intention of merely delaying plaintiff's claim. The authority for the aforegoing trite legal principle is *Grant v Plumbers (Pty) Ltd*[7], which has been confirmed by numerous subsequent cases.

[27]. In my view, the defendant's application for rescission *in casu* cannot possibly be said to be *bona fide*. The agreement was cancelled by order of this court as far back as 5 October 2021. At that stage, the outstanding balance due by the defendant to the plaintiff in terms of the agreement was the total sum of R629 581.54. The defendant has not made any further payments on account of his indebtedness to the plaintiff since 2021, although he has had the benefit of the use of a vehicle owned by the plaintiff. In this circumstances, how can it possibly be suggested, I ask rhetorically, that the defendant's application is *bona fide*. If anything, the ineluctable conclusion to be drawn is that the defendant's intention is merely to delay the plaintiff's claim.

---

[7] *Grant v Plumbers (Pty) Ltd* 1949 (2) SA 470 (0).

[28]. I am therefore of the view that the defendant has not 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 fail.

Costs

[29]. 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 are good grounds for doing so, such as misconduct on the part of the successful party or other exceptional circumstances. See: *Myers v Abramson*[8].

[30]. In this matter, I can think of no reason why I should depart from this general rule. The defendant should therefore be ordered to pay the plaintiff's costs of this rescission application on the scale as between attorney and client, as provided for in the agreement.

Order

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

(1) The defendant's rescission application is dismissed with costs.

(2) The defendant shall pay the plaintiff's costs of this opposed rescission application on the attorney and client scale, including Counsel's charges as contemplated in Uniform Rule of Court 67A(3), read with rule 69, on scale 'C'.

[redacted]

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

[8] *Myers v Abramson*, 1951(3) SA 438 (C) at 455.

HEARD ON:	23 February 2026
JUDGMENT DATE:	27 February 2026 – Judgment handed down electronically
FOR THE PLAINTIFF / RESPONDENT:	S McTurk
INSTRUCTED BY:	DRSM Attorneys Incorporated, Illovo, Sandton
FOR THE DEFENDANT / APPLICANT:	Z Gqwede
INSTRUCTED BY:	Gqwede Attorneys, Allen's Neck, Roodepoort