



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

- (1) REPORTABLE: Yes ☐ / No ☒
(2) OF INTEREST TO OTHER JUDGES: Yes ☐ / No ☒
(3) REVISED: Yes ☒ / No ☐

Case no: 196583/2025

Date: 13 February 2026

In the matter between:

FREESTONE PROPERTY INVESTMENTS (PTY) LTD	Plaintiff
and	
JELIV ANALYTICS (PTY) LTD	Defendant

JUDGMENT

DU PLESSIS J

Introduction

[1] This matter came before me in the unopposed motion court on 29 January 2026 as an application for default judgment in terms of the Uniform rule 31(2)(a).¹ Freestone Property Investments (Pty) Ltd (hereinafter referred to as “the plaintiff”) sought judgment for arrear rental, damages flowing from the early termination of a commercial lease, ejectment, and costs on the attorney and own client scale.

¹ Uniform Rules of Court 31(2)(a), hereafter “the rule(s)”.

[2] The default process assumes that a defendant who has been properly and effectively served with summons and particulars of claim and is warned in the summons that judgment may be granted in its absence, will take the opportunity to defend if it wishes to do so. Where the defendant does nothing, the plaintiff is entitled to approach the court for judgment, but the court must still be satisfied that service met the standard required by the rules and by fairness.

[3] The Plaintiff sues JELIV Analytics (Pty) Ltd (hereinafter referred to as “the defendant”), its former commercial tenant, under a written lease for office premises at Grosvenor Gate in Hyde Park. It claims ejectment, arrear rental, damages arising from the early termination of the lease for the balance of the lease term, and costs on an attorney-and-own-client scale.

[4] The defendant chose the leased premises as its *domicilium citandi et executandi* in the lease. The plaintiff states that there was proper service, and refers to the sheriff’s return, which records that on 4 November 2025 the deputy sheriff attended at the defendant’s chosen domicile and “served” the combined summons by leaving a copy “at the main door” of the premises, which were “locked and occupied”. No person was found at the address, and no further steps were taken at that stage.

[5] Rule 4(1)(a)(iv), in its current form, provides that where a person has chosen a *domicilium citandi*, service of process is to be effected by delivering a copy to a person apparently not less than sixteen years of age at the domicile. Only if no person is present may the sheriff leave a copy at the domicile.² This wording reflects a two-step structure: personal delivery at the domicile as the primary method, and “leaving a copy” as a fall-back where that is not possible. The purpose of both is to achieve effective service, in the sense that the documents are reasonably likely to come to the attention of the defendant.

² *Nebank Limited v Conco* [2026] ZAWCHC 38.

[6] Historically, as explained in *Amcoal Collieries Ltd v Truter*,³ service at a chosen domicilium has been generally regarded as good even where the defendant is absent or has left the property. However, in *Absa Bank Ltd v Mare*,⁴ the court added that it must be satisfied as to the effectiveness of service. In other words that the manner of service is reasonably calculated to notify the defendant of the proceedings and their contents. Similarly, in *Gamede v Wesbank*,⁵ the court held that “delivering or leaving a copy” at the domicilium must be understood to mean doing so in a way that will, in the ordinary course, bring the process to the defendant’s attention.

[7] The principles underlying rule 4 are not merely formal. The purpose of service is, first, to notify the person or juristic person to be served of the nature, contents and exigency of the court process, and secondly, to return to the court proof that this has been done in the manner prescribed by law. The rule is designed to provide a mechanism by which a degree of certainty can be obtained that service was effected in such a way that it ought to have reached the defendant’s attention. Mere formalistic adherence to the text of the rule, where other obvious and practical means exist to bring proceedings to the attention of the counterparty, will not suffice in a constitutional democracy that takes seriously the right of access to courts (section 34 of the Constitution)⁶ and the *audi alteram partem* principle.

[8] These considerations apply with particular force in default matters where only the summons and particulars of claim are served. Under the rules it is not necessary, in some instances, to serve a separate notice of set down on a defendant who has failed to enter an appearance. In such cases the combined summons is, in practical terms, the only notice the defendant will ever receive that judgment may be taken against it in its absence. It is therefore especially important that the court be satisfied that the summons was served in a manner reasonably calculated to bring it to the defendant’s attention, and not merely in a way that is formally reconcilable with the wording of rule 4.

³ *Amcoal Collieries Ltd v Truter* (128/88) [1989] ZASCA 99; [1990] 1 All SA 248 (A) para 15.

⁴ *Absa Bank Ltd v Mare and Others* (A56/2019) [2020] ZAGPPHC 372; 2021 (2) SA 151 (GP) para 26.

⁵ *Gamede v Wesbank, A Division of FirstRand Bank Ltd* (24707/2020) [2023] ZAGPJHC 804 (20 July 2023) para 25.

⁶ Constitution of the Republic of South Africa, 1996.

[9] Rule 4(10) reinforces this by providing that, whenever the court is not satisfied as to the effectiveness of service, it may order such further steps to be taken as it deems fit. The court, therefore, retains a discretion, even in a default judgment setting, to insist on service that is not merely formally compliant but substantively effective.

[10] In the unopposed motion court, I raised with counsel that the return is sparse. During the hearing, I also drew counsel's attention to a letter on the defendant's letterhead in the papers, which reflects a telephone number, an email address and an alternative address for the defendant. I indicated that, in the face of a bare return stating that the summons was "left at the main door", nothing prevented the plaintiff's attorneys from taking additional, practical and collegial steps, such as telephoning that number and sending the summons and particulars of claim to the email address on the letterhead, and then coming to court to say that, even though the sheriff's return reflects service at the domicile, they have also made these further efforts to bring the proceedings to the defendant's attention. Such steps would have gone some way towards reassuring the court that the defendant had a fair opportunity to know of and respond to the claim, and that the defendant elected not to do so.

[11] The fact that the premises were recorded as "occupied" is important. This is not a case where the defendant has abandoned the address, as is sometimes the case. There is no indication that further practical alternatives were unavailable.

[12] Having considered the sheriff's return, the nature of the premises, the relief sought, the contact details available in the papers, and the principles underlying Rule 4 as developed in the case law, I was not satisfied that service by "leaving [the summons] at the main door" of locked, occupied commercial premises, without more, met the requirement of effective service. In those circumstances, I considered it inappropriate to grant default judgment and therefore ordered that the matter be removed from the roll for want of effective service.

[13] These are then the reasons for my order of removal in the unopposed court.


WJ du Plessis
Judge of the High Court
Gauteng Division,
Johannesburg

Date of hearing:	29 January 2026
Date of request for written reasons:	12 February 2026
Date of judgment:	13 February 2026
For the applicant:	Mr ST Mosomane instructed by Reaan Swanepoel Inc.