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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case Number: 2024-029910

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES

20 March 2026

DATE

SIGNATURE

In the matter between:

DE MONTFORD CATHOLIC SCHOOL

Applicant

and

**SOUTH AFRICA SECURITISATION PROGRAMME
(RF) LIMITED308. v**

First Respondent

SUNLYN (PTY) LTD
(formerly known as Sunlyn Rental (Pty) Ltd)

Second Respondent

SASFIN BANK LIMITED

Third Respondent

JUDGMENT

WANLESS J
Introduction

[1] This is an application for the rescission of a default judgment (*“the judgment”*) granted by this Court on 18 November 2024. De Montford

Catholic School (*"the Applicant"*), seeks to have the judgment set aside in terms of Rule 42(1)(a) of the Uniform Rules of Court.

- [2] The First Respondent is South Africa Securitisation Programme (RF) Limited. The Second Respondent is Sunlyn (Pty) Ltd, formerly known as Sunlyn Rental (Pty) Ltd. The Third Respondent is Sasfin Bank Limited. The Respondents were the original Plaintiffs in the action against the Applicant and are the beneficiaries of the default judgment sought to be rescinded. For ease of reference, they will be referred to collectively as *"the Respondents"* herein.
- [3] The application is opposed by the Respondents. At the heart of this dispute are six rental agreements concluded between the Applicant and the Respondents (*or their predecessors*) for the letting and hiring of various items of equipment, including a telephone system, CCTV system and other office equipment.

Background

- [4] The Applicant and the Respondents entered into six written rental agreements during 2022. In terms of these agreements, the Respondents would let certain goods to the Applicant for a period of 60 months, with the Applicant required to pay monthly instalments.
- [5] On 11 July 2024, the Respondents issued summons against the Applicant. The Applicant entered an appearance to defend on 16 August 2024. The Applicant's legal representative, Advocate MN Rambevha (*Advocate with Trust Account*), provided written consent on 14 August 2024 to receive all documents via email at r[...].
- [6] On 2 October 2024, the Respondents served a Notice of Bar upon the Applicant via email at the address r[...]. This email address contained a typographical error (*the letter "t" was inserted after the letter "v"*). Similarly, on 6 November 2024, the Respondents served their application for Default Judgment on the same incorrect email address.

- [7] On 18 November 2024, default judgment was granted against the Applicant. The Applicant only became aware of this judgment on 10 March 2025 when the Sheriff attended at its premises to execute a warrant of attachment.
- [8] On 20 March 2025, the Applicant launched the present rescission application. The Respondents filed their answering affidavit on 8 April 2025. Although no replying affidavit was uploaded to Caselines and was neither filed nor served upon the Respondents, Counsel for the Applicant handed up a hard copy thereof at the hearing. Counsel for the Respondents did not object to this on the basis that the affidavit did not really take the matter any further. This Court is in agreement with that submission.

The facts

- [9] The material facts in this matter which are either common cause or cannot be seriously disputed by the parties, are set out hereunder.
- [10] It is common cause that the email address to which the Respondents sent the Notice of Bar and the Request for Default Judgment was incorrect. The Applicant had consented to service at r[...], but the Respondents served documents at r[...]. At the hearing of the application, it was confirmed that the Respondents have conceded this error.
- [11] It is also common cause that the judgment was granted on 18 November 2024 in the absence of the Applicant and that the Applicant only became aware of the judgment upon the Sheriff's attendance on 10 March 2025.
- [12] The Applicant, through its manager, Morena Jonas Mokwena, alleges that the equipment delivered by the Respondents was defective and not properly installed. The Applicant claims to have sent several emails complaining about these issues and ultimately terminated the agreements on 13 September 2023.

[13] The Respondents, through their deponent, Andries Vorster, deny that the agreements included any maintenance obligations. They point to clause 6 of the agreements, which they contend relates solely to the rental of goods and excludes maintenance obligations. The Respondents further allege that the Applicant's complaints were directed to third-party service providers and not to the Respondents themselves.

The Law

[14] Rule 42(1)(a) of the Uniform Rules of Court 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."*

[15] The requirements for rescission under this rule are well-established. An applicant must show, first, that the order was granted in its absence; second, that the order was erroneously sought or granted.¹ Once these two requirements are met, the applicant is generally entitled to rescission without the need to show good cause or a *bona fide* defence.²

[16] However, as the Constitutional Court has made clear, the enquiry does not end there. The word *"may"* in Rule 42 confers a discretion upon the court. Even where an order was erroneously granted, the Court retains a discretion to refuse rescission.³

[17] Moreover, where an applicant has elected to disclose its defence fully in the rescission application, the Court is entitled to consider that defence. If the purported defence is found to be hopeless or legally untenable, this may weigh against the grant of rescission.⁴

The issues

¹ Matseke v Maine (M198/2020) [2024] ZANWHC 13 (26 January 2024).

² Bakoven Ltd v GJ Howes (Pty) Ltd 1992(2) SA 466 (E).

³ Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture 2021 (11) BCLR 1263 (CC).

⁴ Sheriff, Pretoria, North-East v Flink & Another [2005] 3 All SA 492 (T).

[18] The Respondents have conceded that the Applicant has proven all the requirements for rescission in terms of Rule 42(1)(a), save for one. This is whether the Applicant has shown that it has prospects of success in the main action should the judgment be rescinded.

[19] This is therefore the sole issue for determination by this Court. The crisp question is whether the Applicant has demonstrated a defence to the Respondents' claims that, if proved at trial, would have a reasonable prospect of success.

The Applicant's case

[20] The Applicant contends that the Respondents failed to fulfil their obligations in terms of the rental agreements. The equipment delivered was, according to the Applicant, defective and not properly installed. The Applicant points to emails annexed to its founding affidavit which it claims were sent to the Respondents or their service providers complaining about these issues.

[21] The Applicant submits that it terminated all rental agreements on 13 September 2023 because of the Respondents' breach. At the time of termination, the Applicant claims that all instalments due were paid in full.

[22] In its Heads of Argument, the Applicant submits that it has a *bona fide* defence as explained in *Nedbank v Maredi*,⁵ namely a defence set up honestly which, if proved at trial, would constitute a defence to the Respondents' claim.

The Respondents' case

⁵ Nedbank v Maredi [2014] ZAGPPHC 43 at para 14.

- [23] The Respondents concede the procedural irregularity regarding service. However, they argue that this is not the end of the enquiry. The Court retains a discretion, and in exercising that discretion, must consider whether the Applicant has disclosed a defence that has any reasonable prospect of success.
- [24] The Respondents submit that the Applicant's purported defence is hopeless, misplaced and legally untenable. They point to the express terms of the agreements, particularly clause 6, which they contend relates solely to the rental of goods and excludes any maintenance obligations.
- [25] The Respondents further submit that the emails relied upon by the Applicant are not addressed to the Respondents at all. These emails are directed to third-party service providers such as "t[...]" and "o[...]" . They deal with complaints about internet connection and related services, not with the letting and hiring of the goods by the Respondents to the Applicant.
- [26] In the Respondents' submission, what the Applicant cancelled on 13 September 2023 were service agreements with third parties, not the rental agreements which form the subject matter of these proceedings. The Applicant, submit the Respondents, has failed to appreciate this critical distinction.
- [27] The Respondents submit that the Applicant cannot be permitted, through an impermissible elevation of form over substance, to avoid its contractual obligations on the basis of complaints directed to the wrong parties about matters falling outside the scope of the rental agreements.

Discussion and analysis

- [28] It is appropriate to commence the analysis by acknowledging the Respondents' concession regarding the procedural defect. The Notice of Bar and application for Default Judgment were indeed sent to an incorrect email address. The Applicant did not receive these documents. The

default judgment was granted in the Applicant's absence. On a purely procedural level, the Applicant has established that the judgment was erroneously granted.

[29] However, as already dealt with in this judgment, the enquiry cannot end there. This Court retains a discretion. In exercising that discretion, it is relevant to consider the defence that the Applicant has chosen to disclose. The Applicant cannot have it both ways. It cannot disclose its defence fully in an attempt to persuade the Court that there is a *bona fide* dispute, yet simultaneously resist scrutiny of that defence on the basis that such scrutiny is not required under Rule 42.

[30] When one scrutinises the Applicant's defence, fundamental problems emerge. The Applicant's complaints, as reflected in the emails annexed to its founding affidavit, are directed to third parties. Annexure AA7 is addressed to "t[...]". Annexure AA8 is addressed to "o[...]". Annexure AA9 is addressed to "j[...]". None of these email addresses relate to the Respondents.

[31] The Respondents are South Africa Securitisation Programme (RF) Limited, Sunlyn (Pty) Ltd and Sasfin Bank Limited. There is no evidence before this Court that any of the email addresses to which complaints were directed belong to, or are associated with, the Respondents. The Applicant has failed to establish that it ever communicated its complaints to the parties with whom it contracted.

[32] More fundamentally, the Applicant has failed to engage with the terms of the agreements themselves. The Respondents have pointed to clause 6 of the agreements, which they contend relates solely to the rental of goods and excludes maintenance obligations. The Applicant, in its founding affidavit, Heads of Argument, and even in the Applicant's Replying Affidavit, has not addressed this clause or explained why, despite its terms, the Respondents bore any maintenance obligations.

[33] The distinction drawn by the Respondents between rental agreements and service agreements is compelling. The Applicant's emails complain

about internet connection and telephone coverage. These are services. The agreements before this Court, however, are rental agreements for equipment. The Applicant may well have had separate service agreements with third-party providers. If so, its complaints should have been directed to those providers. They cannot be directed to the Respondents to avoid rental obligations.

[34] The Applicant's termination of the agreements on 13 September 2023 is equally problematic. Even accepting that the Applicant sent the email annexed as AA9, this email is addressed to "j[...]". Again, there is no evidence that this email address belongs to any of the Respondents. The Applicant cannot unilaterally terminate agreements with the Respondents by sending emails to third parties.

[35] In *WM Mentz & Seuns (Edms) Bpk v Katzake*,⁶ the court cautioned against permitting purely technical defences to defeat claims. Whilst that case dealt with summary judgment, the principle is of broader application. Courts exist to decide real disputes between parties on their merits, not to provide a forum for litigants to raise insubstantial technicalities to avoid legitimate claims.

[36] The Applicant's defence, when properly analysed, is not merely insubstantial. It is fundamentally misconceived. It proceeds on the erroneous premise that complaints to third parties about services constitute a defence to claims by different parties for rental of equipment. This is not a defence that could succeed at trial, regardless of how it is presented.

[37] The Applicant has placed significant reliance on the Constitutional Court's decision in *Zuma*.⁷ That case is distinguishable. In *Zuma*, the applicant sought rescission of a judgment granted in proceedings where he was legally represented but where procedural irregularities had occurred. The Constitutional Court emphasised the importance of procedural fairness.

⁶ *WM Mentz & Seuns (Edms) Bpk v Katzake* 1969 (3) SA 306 (T) at 311.

⁷ *Zuma* supra.

However, *Zuma* did not hold that procedural irregularities automatically entitle an applicant to rescission regardless of the merits of any underlying defence.

[38] The court in *Zuma* was alive to the distinction between a litigant who was absent due to lack of notice and one who chose not to participate despite awareness. In the present case, the Applicant participated by entering an appearance to defend. It then failed to take any further steps. Its explanation for this failure is the non-receipt of the Notice of Bar and application for Default Judgment. Accepting that explanation, the question remains: what would have happened had those documents been received?

[39] Had the Applicant received the Notice of Bar, it would have been required to file its Plea within five days. The Applicant's defence, as now articulated, is that the equipment was defective and that it terminated the agreements. This defence, for the reasons already given, is legally untenable. It would not have prevented judgment. It would merely have delayed it.

[40] The Applicant's reliance on *Naidoo v Matlala*⁸ is similarly misplaced. In that matter, the court held that a judgment is erroneously granted if there existed a fact which, had it been known to the court, would have precluded the granting of judgment. In the present case, the fact that was not known to the court was that the Notice of Bar and application for default judgment had not been properly served. However, this fact would not have precluded the granting of judgment. It would merely have required the Respondents to properly serve the Notice of Bar and the aforesaid application. Once properly served, and in the absence of a sustainable defence, judgment would inevitably follow.

[41] The Applicant submitted that the Respondents misled this Court by representing that service had been effected. Whilst it is unfortunate that the incorrect email address was used, this Court is not persuaded that this

⁸ 2012 (1) SA 143 (GNP).

was deliberate or intended to mislead. It was a typographical error, as the Respondents have conceded. The question is whether this error, regrettable as it is, should result in the rescission of a judgment where the Applicant has no sustainable defence.

[42] The Applicant's Replying Affidavit, which Counsel handed up at the hearing, does not alter this conclusion. It adds nothing of substance to the Applicant's case. It does not explain why complaints were directed to third parties. It does not address clause 6 of the agreements. It does not identify any evidence that the Respondents ever undertook maintenance obligations. It does not take the matter further.

[43] In exercising its discretion, this Court must balance the procedural irregularity against the substantive merits of the Applicant's defence. The procedural irregularity is regrettable. The Respondents' attorneys ought to have verified the email address before serving documents of such importance. However, this irregularity cannot be permitted to override the absence of any sustainable defence.

[44] To grant rescission in these circumstances would be to permit the Applicant to avoid its contractual obligations on the basis of a defence that has no reasonable prospects of success. It would compel the Respondents to prepare for trial and incur further costs, only to face a defence that is legally untenable. This would not be just and equitable.

[45] The Applicant has not shown that it has a defence to the Respondents' claims that, if proved at trial, would have a reasonable prospect of success. The purported defence is fundamentally misconceived. It confuses rental agreements with service agreements and complains to the wrong parties about the wrong things.

Conclusion

[46] For all of these reasons, this Court concludes that the application for rescission must be dismissed. The procedural irregularity, while present,

does not outweigh the absence of any sustainable defence. To grant rescission would be an injustice to the Respondents, who would be compelled to litigate further against a defence that cannot succeed.

Costs

[47] There is no reason why costs should not follow the result. The Respondents have been successful and are entitled to their costs. In the exercise of this Court's general discretion in respect of costs, this Court is of the opinion that it would be just and equitable if the Applicant was ordered to pay the costs of the application on the party and party scale (Scale B).

Order

[48] This Court makes the following order:

1. The application for rescission of the default judgment granted on 18 November 2024, is dismissed.
2. The Applicant is ordered to pay the costs of the application, such costs to be on a party and party scale (Scale B).

BC WANLESS
JUDGE OF THE HIGH COURT
JOHANNESBURG

Date of Hearing: 18 February 2026

Date of Judgment: 20 March 2026

Appearances

On behalf of the Applicant: Advocate M.N. Rambevha (Advocate with Trust Account)

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On behalf of the Respondents: Advocate J.C. Viljoen

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