



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 3154/2023

In the matter between:

**THE TRUSTEES FROM TIME TO TIME OF THE
MAZIRETI FAMILY TRUST (IT NO:1421/1998) BEING
BENJAMIN THAKAMPHOLO KHOALI N O
MALERATO NOMSA KHOALI N O**

APPLICANT

and

**LAND AND AGRICULTURAL DEVELOPMENT BANK
OF SOUTH AFRICA t/a THE LAND BANK**

RESPONDENT

In re: the matter between:

**LAND AND AGRICULTURAL DEVELOPMENT BANK
OF SOUTH AFRICA t/a THE LAND BANK**

PLAINTIFF

and

**THE TRUSTEES FROM TIME TO TIME OF THE
MAZIRETI FAMILY TRUST (IT NO:1421/1998) BEING
BENJAMIN THAKAMPHOLO KHOALI N O
MALERATO NOMSA KHOALI N O**

DEFENDANT

Neutral citation: *The Trustees from time to time of the Mazireti Family v land and Agricultural Development Bank of South Africa t/a The Land Bank* (3154/2023) [2026] ZAFSHC 98 (13 March 2026)

Coram: PARKS AJ

Heard: 29 January 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for the hand-down is deemed to be 13h00 on 13 March 2026.

Summary: Rescission of default judgment – rule 31(2)(b) – rule 42 – common law – good cause – *bona fide* defence – *in duplum* rule – mortgage bond – knowledge of summons – delay.

ORDER

- 1 The application to rescind the default judgment granted on 30 July 2024 is dismissed.
 - 2 The applicant is ordered to pay the costs of the respondent's counsel on scale B.
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JUDGMENT

Parks AJ

[1] This application concerns the setting aside of a default judgment granted in this Division on 30 July 2024. The applicant seeks rescission of the judgment issued in favour of the respondent. Mr. Khoali deposed to both the founding and replying affidavits in his capacity as a trustee of the trust. The underlying loan, in the amount of R100 000, was offered on 29 March 1999 for a 25-year term at an interest rate of 20%, with equal annual instalments of R20 212.00. The offer was accepted on 26 April 1999. Upon becoming aware of the impending execution against the property, the applicant made a payment of R50 000 during July 2025.

[2] The applicant contends, firstly, that the respondent levied interest on interest, which he understood to constitute a contravention of the *in duplum* rule. Secondly, he avers that, since the inception of the mortgage, he has paid in excess of 60% of the capital amount, and that the respondent failed to take this into account when issuing the simple summons.

[3] The applicant further disputes several certificates issued by the respondent. In particular, he challenges the certificate of balance dated 31 January 2024, which reflected an amount of R68 555.91, bearing the same interest figure for the same cause of action that resulted in the judgment of 29 May 2025. He also contests the certificate of balance dated 31 December 2024, which increased dramatically to R271 654.85. This amount comprised a revised capital balance of R159 512.13, legal fees totalling R107 504.45, and monthly compounded interest at 10.75%. In the applicant's view, this constitutes unjustified enrichment on the part of the respondent, thereby necessitating him defending the matter.

In addition, he points to the outstanding balance as of 31 January 2025, amounting to R200 112.67, consisting of capital and interest of R137 111.82, together with further legal fees of R58 376.60 and cancellation costs.¹

[4] The applicant further avers that he consulted with the respondent's attorneys prior to the court date on 31 July 2025, when a settlement was reached. Pursuant to that agreement, he paid R50 000.00 and undertook to make additional payments of R50 000.00 at the end of July, August and September 2025, with the remaining balance payable by the end of October 2025. He contends that this arrangement, too, amounts to unjustified enrichment on the part of the respondent.

[5] The applicant explains that the delay in bringing this application arose from not receiving the summons after relocating from Bloemfontein to the Eastern Cape. He only became aware of the proceedings when he consulted with the respondent's attorney approximately two weeks before 31 July 2025, at which point a settlement was reached. He avers that, had he received the summons, he would have defended the action, and the default judgment would not have been granted. His defence is premised on the contention that the plaintiff unlawfully charged interest on interest, and that the inflated capital balance constitutes unjustified enrichment. He accordingly concludes that he has shown good cause for the rescission sought.

[6] The applicant further elaborates on this contention in his replying affidavit, stating that he made payments totalling R59,310.62 towards the bond, as reflected in the account transaction schedule marked *Annexure MM14*. He submits that these payments substantially reduced the capital amount from R85 531.47 to R26 220.85, and that interest ought to have been levied on the reduced balance.

[7] The respondent, in its answering affidavit, avers that, due to the applicant's failure to make payments in terms of the loan agreement, a summons was issued and served on 24 July 2023 by affixing it at the applicant's chosen *domicilium* address. No notice of intention to defend was filed, resulting in the default judgment being granted on

¹ The amounts and the date of the Certificate of Balance are incorrectly reflected. As appears from annexure MM15 on page 57, the Certificate of Balance is dated 31 January 2024. It records capital of R68 555.91 and interest of R68 555.91 (totalling R137 111.82), legal fees of R58 376.60, and bond cancellation costs of R4 629.25, which together amount to R200 117.67.

30 July 2024. Pursuant thereto, a writ of execution was issued, which yielded a *nulla bona* return of service. This was followed by an application under rule 46(1), read with rule 46A, after which the court determined a reserve price of R120 000.00 on 29 May 2025.

[8] The respondent further avers that the *in duplum* rule had not been triggered when the summons was issued in June 2023. According to the certificate of balance then in existence dated 30 April 2023, the capital amount stood at R68 555.91 and the accrued interest at R62,506.20, resulting in the default judgment being granted in the amount of R131 062.11. Counsel for the respondent additionally relied on *Paulsen and Another v Slip Knot Investments 777 (Pty) Ltd*,² in which it was held that the *in duplum* rule permits post-judgment interest to commence afresh at the rate stipulated in the loan agreement, running from the date of judgment until the date of payment.

[9] The respondent further contends that any payments made are allocated first to interest, thereafter to legal costs, and only subsequently to the capital amount owing. It is emphasised that the legal costs were not incorporated into the default judgment, but were recovered pursuant to the costs order granted in favour of the respondent. The respondent submits that the applicant has failed to demonstrate a *bona fide* defence or good cause, nor has he shown that the default judgment was erroneously granted.

[10] Judgments may be set aside in terms of rule 31(2)(b), rule 42, or under the common law. Under rule 31(2)(b), an applicant must demonstrate that the judgment was granted by default either by the court or the registrar and that the default resulted from the applicant's failure to enter an appearance to defend. An application in terms of this rule must be brought within 20 days after the applicant becomes aware of the judgment. In addition, the applicant must show an absence of wilfulness, provide a reasonable explanation for the default, demonstrate that the application is *bona fide* and not intended merely to delay the plaintiff's claim, and set out a *bona fide* defence to the action. Rule 42, on the other hand, provides a mechanism for rescinding judgments that were erroneously granted.

[11] The rescission of a judgment at common law is ordinarily invoked in circumstances where an application does not fall within the ambit of Rule 31 or Rule 42. In terms of the

² *Paulsen and Another v Slip Knot Investments 777 (Pty) Limited* [2015] ZACC 5; 2015 (3) SA 479 (CC); 2015 (5) BCLR 509 (CC) paras 96-97.

common law, an applicant bears the onus of establishing good cause, which requires providing a reasonable and satisfactory explanation for the default, as well as demonstrating the existence of a bona fide defence with prima facie prospects of success.

[12] In *Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption, and Fraud in the Public Sector, Including Organs of State and Others*,³ the court reaffirmed the common law requirements as highlighted in *Government of the Republic of Zimbabwe v Fick*,⁴ and held:

'[T]he requirements for rescission of a default judgment are twofold. First, the applicant must furnish a reasonable and satisfactory explanation for its default. Second, it must show that on the merits it has a bona fide defence which prima facie carries some prospect of success. Proof of these requirements is taken as showing that there is sufficient cause for an order to be rescinded. A failure to meet one of them may result in the refusal of the request to rescind.'

[13] The applicant's counsel was unable to indicate the specific rule under which the application should be considered, but submitted that it is a hybrid application. He accordingly urged the Court to commence its analysis with the common law and to consider the various rules in conjunction therewith. Counsel argued that the applicant's case rests on the contention that he has a *bona fide* defence, as the calculations relating to the arrear amounts are erroneous, and that the default judgment was therefore erroneously granted.

[14] Default judgment was granted on 30 July 2024 in the amount of R131 062.11, together with interest at the rate of 10.75% per annum from 1 May 2023 to the date of payment, such interest to be calculated, capitalised, and compounded monthly. Pursuant thereto, a portion of the property was declared executable for purposes of satisfying the judgment. On 29 May 2025, the Court granted a further order setting the property's reserve price at R120 000.00. The applicant thereafter launched the present application on 28 August 2025, seeking the rescission of both the default judgment and the order declaring the property executable.

[15] I am seized with a rescission application comprising three bundles, totaling 227 pages, dated 15 December 2025. This is supplemented by an additional bundle, filed on

³ *Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption, and Fraud in the Public Sector, Including Organs of State and Others* [2021] ZACC 28; 2021 (11) BCLR 1263 (CC).

⁴ *Government of the Republic of Zimbabwe v Fick* [2013] ZACC 22; 2013 (5) SA 325 (CC); 2013 (10) BCLR 1103 (CC) (*Fick*) para 85.

23 January 2026, consisting of 68 pages. During the applicant's submissions, reference was made interchangeably to annexures contained in the initial set of three volumes and those included in the later bundle.

[16] The first bundle contains the loan agreement concluded in March 1999, under which the plaintiff advanced R100 000.00 to the applicant at an interest rate of 20% per annum. The loan was repayable, together with interest on the outstanding capital from time to time, in equal annual instalments of R20 212.00, with the final instalment comprising the remaining capital balance together with the interest accrued thereon. This bundle further includes various certificates of balance, detailed account statements, proof of services, and email correspondence exchanged between the parties.

[17] The default judgment granted in July 2024 concerned a capital amount of R68 555.91 and accrued interest of R62 506.20, resulting in a total judgment debt of R131 062.11. It is this judgment, and the order embodying it, that the applicant now seeks to have rescinded.

[18] The applicant's assertion that he only became aware of the judgment in July 2025 cannot be sustained. He attended a consultation approximately two weeks prior to 31 July 2025, which contradicts his claim. In addition, although he denies having received the summons, the returns of service reflect that the summons was served by way of affixing on 24 July 2023 at his chosen *domicilium* address. The papers further show that the applicant communicated with the respondent by email on 12 September 2023, and the respondent refers to a telephone conversation with the applicant on 29 August 2023. Following these engagements, the applicant requested a full, detailed account and suggested avoiding the involvement of attorneys in collecting arrears. A further summons was served on 26 March 2024 on an employee of the applicant, and once again, the applicant emailed the respondent on 10 April 2024, asking that the sheriff cease 'harassing' the workers on the farm and requesting, yet again, a detailed statement.

[19] It is a matter of logic that the Sheriff served court process, indicating that, as early as September 2023 and again in April 2024, when the applicant engaged the respondent via email, he was aware that a summons had been served. This is evident from his requests for a detailed statement and his instruction that the Sheriff refrain from 'harassing' the farm workers, conduct entirely consistent with knowledge of ongoing legal proceedings. The

subsequent payment of R50 000.00 in July 2025 was made pursuant to the execution process under rule 46A and not, as the applicant suggests, because a further default judgment had been granted.

[20] The applicant's contention that he was charged interest exceeding the capital amount is likewise incorrect. The interest reflected on the certificate of balance dated 30 April 2023, which accompanied the request for default judgment, does not exceed the capital amount. On the contrary, the interest is in fact less than the capital reflected therein.

[21] In the same vein, the applicant's contention that the respondents' calculations are incorrect because he has paid an amount of R59 310.62, which he suggests exceeds 60% of the capital and interest of R71 751.49, cannot be sustained. The summons was issued together with the Certificate of Balance dated 30 April 2023, which reflects a capital amount of R68 555.91 and interest of R62 506.20, yielding a total of R131 062.11. The applicant's conclusion that the calculations are erroneous is based solely on his own arithmetic: he aggregated the payments made towards the loan (an amount not reflected on any certificate of balance) and subtracted this from the total amount claimed in the default judgment (R131 062.11). From this, he inferred that the remaining balance of R71 751.49 represented interest. This calculation is entirely of his own making and finds no support in any of the certificates of balance furnished.

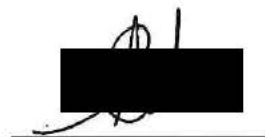
[22] The applicant's averment that the default judgement was erroneously granted due to the incorrect calculations cannot be correct either because the agreement concluded in March 1999 stipulated that the loan amount was for a period of 25 years which is repayable with an interest rate of 20% payable in equal yearly instalments in the amount of R20 212.00 which the applicant has failed to adhere to.

[23] I am accordingly unable to find that the applicant has established a bona fide defence. His purported defence is premised solely on the contention that the respondent's calculation of the outstanding capital was incorrect, an allegation that is unsupported and unfounded. It follows that the applicant has failed to demonstrate a bona fide defence with any prospects of success. There is no further basis upon which costs should not follow the result. Counsel for the respondent requested that costs be awarded on scale B, and I am satisfied that such an order is justified in the circumstances.

Order

[24] I accordingly make the following order:

- 1 The application to rescind the default judgment granted on 30 July 2024 is dismissed.
- 2 The applicant is ordered to pay the costs of the respondent's counsel on scale B.

A handwritten signature in black ink, appearing to be 'C Parks', is written over a solid black rectangular redaction box.

C PARKS
ACTING JUDGE OF THE HIGH COURT

Appearances

For the applicant: M J Ponoane
Instructed by: Ponoane Attorneys, Bloemfontein

For the respondent: R Van der Merwe,
Instructed by: Honey Attorneys, Bloemfontein.