

**SAFLII Note:** Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

**REPUBLIC OF SOUTH AFRICA**



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

**CASE NO: 2023/031959**

(1) REPORTABLE: NO  
(2) OF INTEREST TO OTHER JUDGES: NO  
(3) REVISED: YES  
DATE 27/03/2026  
SIGNATURE

In the urgent application between:

**MERCY MMALEHLOHONOLO MOKGOLO**

Applicant

and

**NEDBANK LIMITED**

Respondent

---

**JUDGMENT ON APPLICATION FOR RECUSAL**

---

WENTZEL-THOMPSON J:

## *Introduction*

- [1] This is an application for my recusal from urgent proceedings brought by the applicant Ms. Mercy Mokgolo (“Mokgolo”) to interdict the Respondent, Nedbank Limited (“Nedbank”), from repossessing a 2012 Nissan Juke motor vehicle (*“the motor vehicle”*) pursuant to a summary judgment granted against her. The applicant had purchased the vehicle during 2017 through Nedbank with whom she had entered into an instalment sale agreement that was cancelled due to non-payment.
- [2] In the proceedings before me, the respondent brought a counter-application for the immediate return of the motor vehicle to it for safekeeping pending the outcome of the two applications for rescission brought by the applicant.
- [3] The first such application for rescission concerns the summary judgment that had been granted by D'Oliveira AJ against the applicant on 3 September 2025.
- [4] As an application for rescission of a judgment does not automatically suspend execution of the judgment, the applicant brought an application for a stay of execution pending the outcome of her application to rescind D'Oliveira AJ's judgment. This application was heard by Reid J, who delivered judgment on 19 November 2025 refusing to grant an interdict to prevent the execution of the summary judgment.
- [5] In the result, the respondent became entitled to apply for a writ of execution on the basis of the summary judgment.
- [6] On acquiring knowledge of Reid J's judgment, the applicant also sought rescission of that judgment. This is the second pending application for rescission.
- [7] Again, knowing that the application for the rescission of Reid's judgment would not preclude the respondent from seeking a writ of execution pursuant to D'Oliveira's judgment, the applicant brought an urgent application to stay execution of the D'Oliveira judgment pending the outcome of her applications for rescission of the D'Oliveira and Reid judgments.

- [8] It is this application that was allocated to me whilst I was sitting in the urgent court during the week commencing 12 January 2026. During the course of these proceedings, the applicant sought my recusal, I believe to prevent my continuing to hear the proceedings and the risk of my making an adverse ruling.
- [9] In order to properly understand the manner in which I dealt with the matter before me, it is important to have regard to the chronology of events, the findings made by D'Oliveira AJ and Reid J and what transpired in the proceedings before me that prompted the applicant to bring an application for my recusal. This will explain the reasonableness of my actions and the stance I took in dealing with the applicant's application.
- [10] It will also demonstrate incontrovertibly that the applicant has no grounds whatsoever to seek my recusal and that her application is an abuse of process designed to avoid the possibility of my granting the respondent's counter-application.
- [11] In this application, the respondent alleges that it remained the owner of the motor-vehicle and required to preserve its asset that was its only security for the applicant's outstanding and ever-increasing indebtedness. The respondent thus sought an order that the applicant deliver the motor-vehicle to it for safe-keeping pending the outcome of both of her pending rescission applications that have substantially delayed the matter and prevented the applicant from executing on the basis of the summary judgment granted in its favour in September 2023.

#### *The chronology of events*

- [12] The dispute between the parties has a lengthy history, commencing in 2017. The material events are as follows:
- a. During December 2017, the parties concluded a written instalment sale agreement in terms of which the applicant purchased the motor vehicle from the respondent. The agreement provided that ownership would remain with the respondent until all amounts were paid in full.

- b. The last payment made by the applicant under the instalment sale agreement was in November 2022, and even then she only paid an amount of R1000, well below the amount of her required instalment.
- c. During March 2023, the Respondent dispatched a notice of breach in terms of section 129 of the National Credit Act 34 of 2005 ("the NCA") to the Applicant's chosen *domicilium* address, being 6[...] J[...] Avenue, Brakpan. It also dispatched a notice of termination of the debt review proceedings in terms of section 86(10) of the NCA.
- d. On 4 May 2023, the respondent served a combined summons on the applicant, claiming cancellation of the agreement and return of the vehicle. On 15 May 2023, the applicant entered a notice of intention to defend and on 7 June 2023, the applicant served a notice of application to strike out the summons, being her first procedural challenge to the respondent's claim for payment and repossession of the motor vehicle.
- e. On 28 June 2023, after a notice of bar had been served on the applicant, she withdrew her strike-out application and filed a plea and counterclaim. In her plea, she raised, *inter alia*, the defence that the statutory section 129 notice had been sent to the incorrect address.
- f. On 17 July 2023, the respondent applied for summary judgment. On 27 July 2023, the applicant served a notice of irregular step, alleging that the summary judgment application was premature. On 4 September 2023, the applicant served an affidavit opposing summary judgment.
- g. On 4 June 2025, the summary judgment application was argued before D'Oliveira AJ and on 3 September 2025, D'Oliveira AJ granted summary judgment in favour of the respondent.
- h. On 5 September 2025, the applicant launched an urgent application to stay execution of the summary judgment pending a rescission application. This was enrolled on 16 October 2025 and heard by Reid J.

- i. On 22 September 2025, the applicant filed a rescission application seeking to rescind the summary judgment granted by D'Oliveira AJ of 3 September 2025.
- j. On 19 November 2025: Reid J dismissed the applicant's urgent application to stay execution with costs.
- k. On 9 December 2025, the applicant brought an *ex parte* application to stay the issuing of a writ of execution and attachment pending the outcome of Reid J's judgment that had been reserved. It seems that the applicant was informed that the matter could not be brought *ex parte* and needed to be served on the respondent.
- l. On 15 December 2025, the Applicant served an urgent application in similar terms on the respondent's attorney, later advising him to disregard it due to fact that she had been informed that Reid J had already delivered his judgment on 19 December 2025. The Applicant takes issue with this as it was not uploaded onto Caselines at the time that it was stated that the judgment was delivered. In fact, this judgment was only uploaded on 11 December 2025.
- m. On 17 December 2025, the respondent's attorney sent an email to the applicant explaining that she could not simply ignore her 15 December 2025 application and advising her that it was necessary for her to withdraw her 15 December 2025 application.
- n. At the same time, the respondent's attorney impressed upon the applicant that the court was in recess and their offices were closing on 19 December 2025 and only opening on 6 January 2025. The applicant was also informed that the Sheriff's Office was already closed and would also only be re-opening on 6 January 2025 and thus no writ in execution could be obtained by the respondent before then. This was said to dissuade the applicant from serving yet another urgent application over the Christmas holiday period.

- o. This did not deter the applicant as on 18 December 2025, she filed the current urgent application, seeking:

Part A: An interim stay of execution of both the 3 September 2025 and 19 November 2025 judgments, and an interdict restraining the Respondent and the Sheriff from attaching the vehicle.

Part B: Rescission of the 19 November 2025 Reid judgment, leave to supplement her pending rescission application in respect of the 3 September 2025 D'Oliveira judgment, and consolidation of both rescission applications.

- p. On 21 December 2025, the respondent filed a notice in terms of Rule 6(5)(d)(iii) in which a plea of *lis pendens* was raised on the basis that the applicant had raised the same issues in her 19 December 2025 urgent application that served before me that had already been raised before Reid J, in her 9 December 2025 urgent *ex parte* application and in her 15 December 2025 urgent application, the latter of which had not been withdrawn by the Applicant.
- q. The respondent also pleaded that the issues the applicant wished to have determined in the proceedings before me were *res judicata* and had been determined by Reid J. Apart from non-joinder issues raised that I need not canvass, the respondent alleged that the relief sought was irregular as it was in effect an appeal of the judgment of Reid J (which had not been applied for or granted) and no basis had been laid for its rescission.
- r. On 22 December 2025, the applicant served notices in terms of Rule 30(2)(b) and Rule 30A seeking to set aside the Rule 6(5)(d)(iii) notice that had been served by the respondent, claiming that it had belatedly been served and moreover, had been served on her via email that was not permitted as she had not consented to this. She thus sought to have the respondents Rule 6(5)(d)(iii) notice struck out as an irregular step.
- s. On 13 January 2026, the matter was set down for hearing in the urgent court.

- t. The matter was heard by me on 15 January 2026, then stood down to 16 January 2026 to allow the respondent's attorney to address serious issues raised by the applicant dealt with by me below.
- u. On 16 January 2026 I continued to hear the application and stood it down again for continued hearing on Monday 19 January to allow the applicant time to file an answer to the respondent's attorney's affidavit and to answer the respondent's counter-application that I put the applicant on terms to file by 17h00 on Sunday 18 January 2026.
- v. On Sunday 18 January 2026 the applicant filed an answer to the respondent's attorney's affidavit under protest. At the same time, the applicant brought an application for my recusal under the circumstances dealt with fully by me below.

*The findings made by D'Oliveira AJ and Reid J*

[13] Before dealing with the proceedings before me, it is necessary that I refer to the findings made by D'Oliveira AJ and Reid J as I had regard to both judgments when preparing for the matter before me, both of which coloured the stance taken by me in the proceedings before me. Both judges bemoaned the applicant's continued possession and use of the motor vehicle that she had not paid for since November 2022- a period now in excess of three years.

[14] In his judgment, D'Oliveira AJ dealt with the dilatory defences raised by the applicant (respondent in the application for summary judgment) and were relevant to the *res judicata* defence raised by the respondent in the proceedings before me. D'Oliveira stated:

- "14. *The only defences to the plaintiff's claim contained in the plea and affidavit opposing summary judgment were dilatory defences. The defendant pleaded that she did not receive the notice of breach or the section 86(10) notice terminating debt review prior to the service of the summons.*
- 15. *The defendant pointed out that while it may be true that her domicilium citandi et executandi and her residential address is 6[...] J[...] Avenue, Brakpan, and while it may be true that the plaintiff despatched both the notice of breach and the 86(10) notice to this address, the "tracking*

*slip" of the Post Office shows that the Post Office delivered the postage slip to the wrong address. The postage slip recorded the address as 1[...] J[...] Avenue, Brakpan, not 6[...] J[...] Avenue, Brakpan.*

16. *The question is whether this mistake on the part of Post Office implies that summary judgment should be refused, and the matter should be referred to trial.*
17. *In my view, the answer to the question is no.*
18. *Clause 12.1 of the agreement regulates the giving and receiving of legal notices for the purposes of the agreement. It provides as follows: "You will be deemed to have received any notice from us within 7 (seven) Business Days after we have sent the notice to your chosen address by post .... You agree that registered mail will be used for delivery of legal notices to you."*
19. *In terms of clause 12.1, any legal notices sent to the defendant's chosen address by registered mail are deemed to have been received within seven business days, whether the legal notices have in fact been received or not.*
20. *The defendant agreed to this deeming provision. She also agreed that registered mail may be used for the delivery of any legal notice. She therefore agreed to bear the risk of the Post Office failing to actually deliver a legal notice sent by the plaintiff to the correct address.*
21. *The notice of breach and the section 86(10) notice are both legal notices. It is not disputed that the plaintiff duly sent both the notice of breach, and the section 86(10) notice, by registered post to 6[...] J[...] Avenue, Brakpan. It was the Post Office that apparently captured the address incorrectly, and apparently dispatched the postage slips to 1[...] J[...] Avenue, Brakpan.*
22. *In terms of clause 12.1 of the agreement, the risk of this error is born by the defendant. Notwithstanding the error, the notices were deemed to be delivered within 7 business days of having been sent. The plaintiff was therefore entitled to cancel the agreement and claim recovery of the Nissan after the lapse of 10 days.*
23. *Another difficulty for the defendant in relying on the defence that she did not receive the section 86(10) notice, is section 130(4)(b) of the Act.*
24. *In terms of section 130(4)(b) of the Act, the failure of a plaintiff to deliver a notice in terms of 129(1) or 86(10) of the Act, does not mean that the credit agreement may not be enforced in such proceedings.*
25. *Section 130(4)(b) of the Act provides that if the Court determines that a notice in terms of sections 129(1) or 86(10) of the Act was not delivered, the Court must, in those circumstances, adjourn the matter*

*before it and make an appropriate order setting out the steps the credit provider must complete before the matter may be resumed.*

26. *Therefore, even if the plaintiff had failed to deliver a notice in terms of section 129 or 86(10) of the Act, it would not mean that the plaintiff's claim falls to be dismissed. Rather, section 130(4)(b) of the Act would come into operation.*
27. *But in this instance, a notice in terms of section 86(10) of the Act was delivered. In this regard, it is clear that the defendant received both the notice of breach and the section 86(10) notice by the latest 4 May 2023. It is also not disputed that the section 86(10) notice was duly delivered to the defendant's debt counsellor and the National Credit Regulator on or about 6 March 2023.*
28. *Since the defendant was under debt review at the time that the section 86(10) notice was delivered, there was no obligation on the plaintiff to also deliver a notice in terms of section 129(1) of the Act.*
29. *Finally, despite that she had received both the notice of breach, and the section 86(10) notice, by 4 May 2023 at the latest, the defendant failed to remedy her breach. She also failed to make any attempt to compromise with the plaintiff, or reinstate the credit agreement, or otherwise resolve her admitted default under the agreement.*
30. *Instead, the defendant elected to persist in her default. She elected not to voluntarily surrender the vehicle to the plaintiff. She continued to use and enjoy the Nissan despite knowing that it belonged to the plaintiff and that she was not paying for the vehicle or its use. In so doing, the defendant took advantage of the inherent delay in legal proceedings to hold onto the plaintiff's motor vehicle for as long as possible without paying for it.*
31. *In this regard, the defendant, who appeared in person at the hearing, confirmed that she has not made any payment towards the reduction of the amount owed to the plaintiff since the delivery of the summons on 4 May 2023.*
32. *The result of the defendant's election to persist in her default is:*
  - 32.1 *The agreement ran to completion on 25 December 2023, which was the date the defendant should have paid the last instalment.*
  - 32.2 *The credit agreement cannot be reinstated by payment of arrears.*
  - 32.3 *The amount owed by the defendant to the plaintiff has increased from R141 946.66, at the date of service of combined summons, to R171 278.361, at the date of the hearing. The amount owed will continue to increase with the aggregation of interest at a compound rate of 14.3%.*
33. *In the circumstances:*

33.1 *There is no dispute that the defendant owes the plaintiff R141 946.66, plus interest at a compound rate of 14.3% from date of summons to date of final payment.*

33.2 *There is no dispute that the defendant defaulted on payment.*

33.3 *There is no dispute that the defendant persistent in her default, for over two years, despite receiving the plaintiff notice of breach and notice in terms of section 86(10) of the Act.*

33.4 *There is no dispute that the plaintiff is and remains the owner of the Nissan, because the defendant has not paid for it in terms of the agreement or at all.*

33.5 *There is no dispute that the agreement has been terminated, either because the plaintiff cancelled the agreement or by effluxion of time."*

[15] In her judgment, Reid J referred to these findings made by D'Oliveira AJ and noted that:

"[10] *The applicant has confirmed that the last payment made by herself to the respondent, was on 1 November 2022 in the amount of approximately R1,000. In the instalment agreement the parties agreed to payment of approximately R14,000 per month. At this stage the outstanding amount is approximately R185,000 and it is increasing every month.*

...

[12] *The applicant admits that she remains in arrears and has failed to honour the debt."*

[16] Reid J emphasised that in considering whether to grant a stay of execution, the applicant must establish that *"irreparable harm will result if execution is not stayed and the applicant ultimately succeeds in establishing a clear right."*

[17] Reid J went on to say:

"[14] *In casu, the applicant does not have a clear right to possess, or prevent execution of a summary judgment, where the clear right of ownership of the vehicle lies with the respondent in terms of the agreement. Only after the debt has been paid in full, the vehicle will become the property of the applicant. In terms of the agreement this was supposed to have happened in 2023.*

[15] *The instalment agreement has been terminated by the failure of the applicant to pay the monthly payment, and the termination of the agreement has been accepted by the respondent.*

[16] *The applicant has no clear right to possession of the vehicle in the absence of ownership. The balance of convenience favours the respondent: should the execution be stayed, the arrears amount will increase. This would be to the prejudice of not only the respondent, but also the applicant.*

[17] *As such, I find that the application cannot succeed.”*

[18] The respondent’s counsel asked that Reid J dismiss the matter on the merits and not merely strike the matter from the roll for lack of urgency, which Reid J did. In this regard Reid J stated:

[19] *In the circumstances of this matter, I agree with the respondent that a postponement will delay the inevitable. In addition, the arrear amount will increase to the prejudice of both parties. This would not be in the interest of justice.*

[20] *As such, I deem it appropriate that the application be dismissed rather than being struck from the roll.”*

[19] Both learned judges were accordingly of the view that the applicant had no right to continue to possess the motor vehicle as the instalment sale agreement had been cancelled and/or had ended through the effluxion of time.

[20] As indicated above, the applicant has sought the rescission of both of these judgments.

[21] It is against this background that I heard the applicant’s application and conducted the proceedings before me.

#### *The proceedings before me*

[22] It is important to note that I heard all of the urgent applications before me during the week commencing 12 January 2026 virtually via Microsoft Teams (“Teams”).

[23] The matter was first enrolled for hearing on 13 January 2026 and was stood down until 15 January 2026 at the request of the applicant.

[24] At the commencement of my hearing of the matter on 15 January 2026, the applicant asked for a postponement that I refused as there were insufficient

grounds advanced for a postponement and she had set the matter down in the urgent court. Obviously, where a litigant sets down an application in the urgent court, seeking a postponement negates the urgency.

[25] In the answering affidavit to the applicant's application for my recusal, the respondent's attorney states that applicant was present when I was hearing other urgent matters on 13 January 2026 and had witnessed that parties, including a lay litigant, were asked pertinent questions at the heart of the issues before me. The respondent's attorney surmises that from the outset the applicant wished to avoid having her application heard by me as she wished to avoid difficult questions being raised by me.<sup>1</sup> And indeed difficult questions were raised by me.

[26] When the matter again came before me on 15 January 2026, I commenced by asking the applicant on what basis she believed that she was entitled to retain possession of the motor vehicle that she had not paid for since November 2022. The applicant did not answer this question. Instead she continued addressing me on numerous technical issues and complaints that she had concerning the current proceedings.

[27] I then asked the applicant how she, as a lay litigant, gained her knowledge of the law as she had raised numerous objections based not only on the Rules of Court and Practice Directives, but also on case law. She told me she had studied the Rules of Court and the Practice Directives.

[28] Hereafter, I proceeded to ask the applicant to tell me in her own words what her complaints were that she had raised in her Rule 30 notice. Instead of doing so, applicant disputed that I had authority to hear the matter as her examination of the audit trail on Caselines indicated that I was using a domain that reflected my @ counsel address.

[29] I explained to the applicant that I had been newly appointed as a judge and had been asked by the Acting Deputy Judge President of the division to sit in the urgent court the week before term commenced on 19 January 2026. I had thus

---

<sup>1</sup> AA review application p55-3 paras 11.1-11.2.1--3

not had an opportunity to meet with the Information Technology (“IT”) Department to assign me an @judiciary address which I hoped to do after the recess.

[30] The applicant insisted this was an irregularity and wanted confirmation of my @judiciary email. The applicant argued that this impinged upon her right to a fair trial as she said that “*the integrity of the profile is completely compromised*” and that my @counsel email address was not “*officially recognised*.” She asked that the matter be postponed until Monday 19 January 2026 as that was when I had indicated I would be able to obtain an @judiciary address. I declined to do so and explained that acting judges frequently hear matters online and do not have @judiciary addresses as they are not permanent judges.

[31] The applicant then dealt with the Rule 30 notice she had served in response to the first respondent’s counter-application that she indicated had been belatedly served on her via email and thus was both out of time and invalid as she had not consented to service via email. I indicated that the applicant had obviously seen the counter-application as she had filed a Rule 30 notice in response to it. The applicant claimed not to have received the email and stated she only became aware of it when she had seen the counter-application on Caselines.

[32] I pointed out that this was the urgent court, and that I was permitted to dispense with the Rules regarding service and allow truncated time periods. She then insisted on placing it on record that she had not received the notice and argued that there was a difference between knowledge and service in terms of the Rules.

[33] I indicated that I was not interested in procedural points and wanted to deal with the real issues and that the courts frequently condone non-compliance with the Rules, particularly in the urgent court, particularly where there was no prejudice. There was no prejudice to the respondent as she had knowledge of the counter-claim and had responded to it.

[34] The applicant, however, insisted she was prejudiced as the counter-application had been served the day before the matter was set down for hearing, giving her not time to prepare documents. She claimed this amounted to a “*trial by*

*ambush*". She pointed out that she had served her application on 18 December 2025 and yet, the counter-application was only served via email the day before the matter was due to be heard and not allowing her a fair time to prepare. While I agree that the counter-application was belatedly served, I pointed out again to the applicant that she had in fact responded by filing a Rule 30 notice.

[35] The applicant then informed me that she objected to "*unauthorised system access and data interference and non-compliance with mandatory digital directives in the proper constitution of the court*," and thus persisted in challenging my authority to hear the matter. At this point she did not expand upon what she referred to as "*unauthorised system access*", "*data interference*" and "*mandatory digital directives*".

[36] An issue then brought to my attention by the applicant was that although the judgment of Reid J was dated 19 November 2025, it was only uploaded onto Caselines on 11 December 2025. She indicated that she only became aware that the judgment had been delivered after she had brought her *ex parte* application referred to above. The applicant was suspicious about how this could have occurred as the judge's registrar was obliged to upload the judgment once it was completed.

[37] I queried whether the matter before me had not already been decided by Reid J and referred the parties to paragraph 17 of Reid's judgment stating that the applicant's application for a stay of execution could not succeed as the applicant had no clear right to be in possession of the motor vehicle as the credit agreement had been cancelled and had ended by the effluxion of time as set out above.

[38] The applicant then raised what appeared to me to be a serious issue, namely that after the delivery of Reid J's judgment, the respondent's attorney had applied to the registrar for a writ of attachment, supported by a judgment by Mzuzu J and not that granted by D'Oliveira AJ, who had granted summary judgment against the applicant.

[39] I felt that this was a legitimate complaint that should be immediately addressed by the Respondent's attorney and stood the matter down to allow the respondent's attorney to provide an explanation on oath.

[40] Another issue raised by the applicant was that the respondent's attorney had sent her an email on 18 December 2026 indicating that the court was in recess over December 2025 until early January 2026 dealt with by me already above. This email was in response to the applicant's statement that the Respondent's attorney should disregard her 15 December 2025 urgent interdict application as it had been pointed out to the applicant after she had brought the application that, unbeknown to the applicant, Reid J had already delivered his judgment. The respondent's attorney reasonably anticipated that the applicant would bring a further application to interdict the attachment of the motor vehicle pending her application to rescind this judgment.

[41] The applicant's complaint was that the email providing comfort to her that there was no possibility that a writ of attachment could be executed before 6 January 2026 as the Sheriff's Office was already closed and would not reopen until this date was misleading; this was because at the time of writing this email, the respondent's attorney had on her own version already applied to the registrar for a writ of attachment. This had been applied for in late November 2025 I agreed that this was an issue that also required explanation and thus directed that it should be addressed by the respondent's attorney in the affidavit I had requested she provide.

[42] I perused the affidavit from the respondent's attorney who in my view had satisfactorily addressed the concerns raised by the applicant. When I tried to take the applicant through the affidavit, she objected to the fact that it had not been uploaded on Court-Online and had only been uploaded on Caselines. I asked her if she had access to Caselines. She insisted this was not a technicality but what the law and the directives state and meant that the affidavit was not properly before the court.

[43] I made it plain to the applicant that a litigant does not control the procedure of the court; the court controls the procedure of its own court and quoted *the off*

*quoted statement that “the rules are for the court and not the court for the rules.”* I explained to the applicant that what this ultimately meant was that the court is entitled to have regard to the Rules and determine whether it is just and fair to have a matter heard even if, as she says, the affidavit was not first downloaded on Court-Online. I pointed out that there was no prejudice to the applicant in my considering the affidavit as she had access to it and told me she had been considering it.

[44] I asked the applicant whether she accepted the explanation provided or if she wished to respond to the respondent’s attorney’s affidavit. I also pointed out that the affidavit had been provided in view of the directive given by me the previous day and this had been in response to the irregularities in the application for a writ of attachment that I had taken seriously. I explained that this was the type of objection that I would take seriously but was not prepared to take the objection currently raised by her in the urgent court that the affidavit had not also been uploaded on Court-Online seriously.

[45] The applicant indicated that she wished to have an opportunity to file an opposing affidavit and wanted a fair opportunity in order to do so and again asked for a postponement. I pointed out to the applicant that she had brought her application in the urgent court and thus I would only allow a truncated period for her to answer the affidavit of the respondent’s attorney.

[46] I then referred to the fact that the applicant had asked that all of her pending applications be consolidated. What I proposed was that the applicant return the vehicle to the respondent for safekeeping as had been sought by it in the respondent’s counter-application and be ordered not to proceed with the execution of a writ, that all of the pending matters brought by the applicant be consolidated and the registrar be approached to allocate a date when all the matters could be heard together. That way, I explained, the applicant would have sufficient time to respond to the respondent’s attorneys affidavit, the respondent’s counter-claim and file the supplementary affidavits she had indicated she wished to file in her application for rescission of D’Oliveira AJ’s judgment; at the same time, the respondent would have their rights protected in the interim.

- [47] It is significant that at this point, the applicant pretended not to be able to hear me when up until now, she had been able to hear me perfectly. I also stress that my registrar and counsel for the respondent continued to be able to hear me. I told the applicant that I did not believe her and if needs be I would go to court to continue with the proceedings and asked my registrar to please call the applicant which she did. My registrar asked the applicant whether she could hear me and she said she could not, it was "*quite faint*" and said that "*suddenly the volume was low.*" She stated that she had tried to increase the volume on her side but it was on maximum.
- [48] Nevertheless, my registrar gave the applicant the benefit of the doubt and suggested to the applicant that she leave the Microsoft Teams platform and the rejoin it. The applicant did not do this but merely switched her camera on and off and then stated that she was now able to hear me. She asked that I repeat what I was saying which I did. I then asked her what she thought of the proposal that I had made.
- [49] The applicant stated that she only wanted time to answer the respondent's attorney's affidavit, implicitly stating she did not want time to answer to the respondent's counter-claim. I thus told her I would refer the matter to the urgent court on Tuesday 19 January 2026 so that she would have time to respond to the respondent's attorney's affidavit and the counter-application over the weekend and on Monday 2026. I stated that if the urgent judge was not prepared to hear all of the consolidated applications together in the urgent court, in the interim the applicant would have to deliver up the motor vehicle.
- [50] The applicant immediately sought clarity as to whether I was affording her time to reply. She said she wanted "*to end it at that before having to look at the suggestion of having to take the car to the respondent.*" She asked that this be something that is done after her replying affidavit had been filed. She then asked for temporary interim relief pending the reply to the current "*supplementary affidavit,*" referring to the respondent's attorney's affidavit.
- [51] I then realised I was due to sit in the opposed motion court the following week and told the applicant that I had changed my mind and would not refer the

matter to the urgent court but keep the matter myself and hear it on Monday 19 January 2026 as I was in the opposed motion court. Part of my motivation for doing this was because I felt I could not dictate to the urgent court how it should deal with the matter or burden a very busy urgent court with hearing both the applicant's applications for rescission. I realised it would be both improper and inappropriate for me to do this as I was already seized of the matter. I also knew that referring the matter to the urgent court the following week would allow the applicant to avoid having her matter heard by me, which at that stage I knew she wished to achieve.

[52] Having decided this, I indicated that I intended to direct the applicant to file her response to the respondent's attorney's affidavit and to the respondent's counter-claim by 17h00 on Sunday 18 January 2026 and that she should be prepared to address me on Monday 19 January 2025 on the counter-claim.

[53] The moment I indicated this, the applicant suddenly again pretended not to be able to hear me and stated that "*the volume kept going down.*" I again told her I did not believe her but stated that I would get my registrar to call her again to explain to her what I was going to do. I asked the respondent's counsel to assist me in preparing a draft order in the terms I had indicated and stated that I would hear the matter in open court on Monday 19 January 2026 to avoid the issues with the sound the applicant had stated she was having again I asked counsel to share his screen so that the applicant could see the order that I was making as the applicant was claiming not to be able to hear me. I also requested my registrar to call the applicant so that she could verbally explain the order that I was making.

[54] When my registrar called the applicant she asked whether she could hear me. The applicant said she could hear, but it was "*very faint*" and she was "*not hearing clearly*". I must add that during both times that the applicant claimed not be able to hear me, she theatrically placed her ear close to her computer pretending to be trying to hear me. These theatrics were obvious for all to see.

[55] On Sunday 18 January 2026 the applicant filed the affidavit as requested, but did so under protest as I had ordered her to do so, and at the same time

brought an application for my recusal. This was patently to avoid my hearing argument on the counter-application brought by the respondent for interim relief that she feared may be granted by me.

[56] In her recusal application, the applicant disputed my authority to have made the orders that I made or to continue hearing the merits of the application, by which she meant the counter-application. In this respect the applicant contended that she was not obliged to deal with the merits of the counter-application as I was barred in terms of Constitutional Court authority cited by her from directing that further affidavits be filed on the merits until I had dealt with her recusal application.

[57] What the applicant failed to recognise is that my directives that she file her answer to the counter-application and an answer to the Respondent's attorneys affidavit had preceded her recusal application. I, however, accepted that her recusal application precluded me dealing further with the merits until I had dealt with her recusal application and thus when the matter was heard on Monday 19 January 2026, I ruled that I could no longer continue to hear the urgent interdict proceedings before me and needed first to deal with the applicant's recusal application. I provided times for the filing of the answering and replying affidavits in the application for my recusal that I heard on Friday 23 January 2026, after which I reserved my judgment.

[58] In view of the seriousness of the application for my recusal, I decided to await the record of the proceedings prior to writing my judgment.

[59] Whilst I have been provided with an official record of the proceedings before me in hearing the application for my recusal, I have relied upon an unofficial transcript of the record of the proceedings before me in the urgent court via Teams, that I have read together with my manuscript notes of the proceedings. I have done this as the respondent's attorney quite understandably enquired when the respondent might expect me to hand down my judgment. I knew that awaiting an official transcript of these proceedings would serve only to delay the matter further when I was satisfied that I had sufficient information at my

disposal from my recollection, my notes and the transcript of the Teams hearings to adequately record what transpired during the hearings.

[60] In saying this, I point out that my record of the events that transpired in the proceedings before me is in line with that recorded by the respondent's attorney's answering affidavit to the applicant's application for my recusal

[61] Both in the applicants' replying affidavit and in her recusal application, she has made serious allegations of fraud against the respondent's attorney. She has also raised concerns and suspicions of some underlying conspiracy arising from the fact that Reid J's order was only belatedly uploaded and from the fact that the documents on Caselines had not been "*frozen*", allowing the respondent's attorney free access to manipulate the documentation, referring in this respect to the erroneous judgment that was attached to the respondent's attorney's application for a writ of execution.

[62] A further complaint raised by the applicant was that she has noticed that documents had been uploaded on Caselines and/or Court-Online utilising an unknown .com domain name instead of one utilised by the Office of the Chief Justice, which she claimed compromised the integrity of the digital record. The applicant informed me during the hearing of argument in her recusal application that she had reported both of the above issues to the Office of the Chief Justice and the South African Police Services to investigate.

[63] A litigant cannot be allowed to hold a court to ransom by making implicit threats with no merit. The court commands the proceedings and not the litigants; postponements are not granted simply for the asking and nor are technical points entertained just because they are taken. I repeatedly explained to the applicant that the Rules of Court that she persisted on relying on and holding the respondent to, were for the Court and not the Court for the Rules.

[64] In this respect I repeat the oft-quoted passage by the Constitutional Court in *Mukaddam*<sup>2</sup>:

---

<sup>2</sup> *Mukaddam v Pioneer Foods (Pty) Ltd and Others (CCT 131/12)* [2013] ZACC 23; 2013 (5) SA89 (CC)

*"[32] It is important that the rules of courts are used as tools to facilitate access to courts rather than hindering it. Hence rules are made for courts and not that the courts are established for rules. Therefore, the primary function of the rules of courts is the attainment of justice. But sometimes circumstances arise which are not provided for in the rules. The proper course in those circumstances is to approach the court itself for guidance. After all, in terms of section 173 each superior court is the master of its process."*

[65] In my view the applicant has insisted upon being regarded as a lay litigant in the matter before me and in her previous applications to gain the courts sympathy, assistance and lenience. Although the applicant was a lay litigant, her utilisation of the Rules of Court to raise technical arguments demonstrates that she was not the normal lay litigant. This is particularly so as throughout these proceedings the applicant has not only relied upon and insisted on strict compliance with the Rules of Court but has cited case authority in her heads of argument and in her affidavits and supplementary affidavits. This is also apparent from the content of the respondent's answering affidavit filed under protest and her affidavit filed in support of her recusal application.

[66] What transpired in the proceedings before set out above indicate incontrovertibly that the applicant's true motive in seeking my recusal is to avoid the risk of my ordering her to deliver the motor-vehicle to the respondent for safekeeping. This is an issue I had not decided but had proposed in the interests of justice and wished the parties to address.

[67] My *prima facie* view after hearing argument was that the further delay of the matter was causing the respondent prejudice that I felt may possibly be cured should the interim relief sought in its counter-claim be granted. I thus wished to be addressed on this by both parties as it was unclear to me whether such an order was competent whilst the rescission of the summary judgment upon which attachment was based was still pending . The fact that I wished to be addressed on this does not mean that I had prejudged the matter; nor is it evidence of bias. The counter-application was a matter before me that I was obliged to address.

---

[68] My proposal that the applicant hand over the vehicle to the respondent for safekeeping, that I consolidate all the pending applications and then postpone the matter for a hearing in the normal course seemed to me to be an eminently sensible solution that would enable the applicant to file whatever further affidvits and supplementary affidavits she wished to file without any time period restrictions and, at the same time, preserve the respondent's asset until both rescission applications had been decided.

[69] When it became clear that this was a course that I was considering taking, the applicant abused the court process by pretending not to hear me and then sought my recusal to avoid the risk of my making an order in the terms that I had proposed making in the interests of justice. As such, I believe that the applicant's application for my recusal was made for an ulterior purpose and is not genuinely pursued in view of the applicant's alleged perception of my bias. In truth and in fact the applicant's application for my recusal is none other than a stratagem to prevent me from further hearing and deciding whether to grant the respondent's counter-application.

*The technical points raised by the Applicant in the prior proceedings*

[70] Throughout the various proceedings outlined above, the Applicant has raised a series of technical and procedural challenges in order to avoid what both D'Oliveira AJ and Reid J viewed as inevitable, namely the repossession of the motor vehicle.

[71] The core points raised by the applicant in the prior proceedings can be summarised as follows:

*a. Defective service of the statutory notices:*

[72] The applicant has consistently argued that the section 129 notice of breach and the section 86(10) termination notice were not properly served. She points to the Post Office's track and trace report, which shows delivery to 1[...] J[...] Avenue rather than her correct address o which is 6[...] J[...] Avenue. She submits that this non-compliance with the NCA renders the subsequent

enforcement proceedings and application for summary judgment premature and unlawful.

[73] In line with this argument, the applicant contends that had the section 129 notice been sent to her, she could have availed herself of debt revue and extended the period of the contract. I understood her argument in this regard to be that not only would this have had the effect of reducing the monthly instalments owing, but the contract period would have been extended such that the contract would not have ended by the effluxion of time.

*b. Defective return of service of the combined summons*

[74] The applicant argues that the summary judgment of 3 September 2025 is a nullity because there is no valid return of service for the combined summons on the official Court-Online system. She contends that the return of service relied upon by the respondent is unsigned, undated, and was filed directly on Caselines (bypassing Court-Online) almost a year after the summons was purportedly served, in violation of Practice Directive 1 of 2022. She submits that this defect negates the court's jurisdiction.

*c. Premature summary judgment application*

[75] The applicant argued in her opposition to the application for summary judgment that the application was brought before the pleadings were closed, specifically before the time for her to respond to the respondent's plea to her counterclaim had expired, contravening the amended provisions of Rule 32.

*d. Incomplete contract*

[76] The applicant has raised the point that the copy of the instalment sale agreement annexed to the particulars of claim was incomplete, missing page 3 of 14, which she alleges contained material terms regarding the condition of the motor vehicle. She submits that this omission prevented the full ventilation of her defence and that the deponent to the affidavit in support of summary judgment could not verify a cause of action based on an incomplete contract.

*e. Patent Errors in the 19 November 2025 Judgment*

[77] The applicant seeks rescission of the judgment of Reid J, arguing that it contains patent errors, including references to a “*fictional R14,000*” instalment payment obligation and the erroneous statement that the motor vehicle was “*at auction*” when it was not and was still in her possession. The applicant also submits that this judgment was erroneously sought and granted in her procedural absence.

*The complaints raised by the applicant in the proceedings before me*

[78] In the proceedings before me, the applicant has escalated her challenges to allege a sustained pattern of fraud, manipulation of the digital record and abuse of process by the respondent’s attorney.

[79] The applicant filed a supplementary affidavit from which it is apparent that she is not only seeking a stay of execution but asks for more fundamental relief than that set out in her notice of motion, namely, a referral of the matter to the Deputy Judge President, a forensic investigation into the court’s digital system, and my recusal. She also informed me that she has reported this issue to the South African Police Services and the Office of the Chief Justice to investigate.

[80] The applicant has framed the current application as a crisis of integrity within the High Court’s system administration of justice. In doing so she relies heavily on procedural irregularities and her suspicions about the integrity of the digital court record. The applicant claims that the integrity of the court’s electronic filing system (Court Online and Caselines) has been compromised, potentially with the help of court staff. In this respect she states:

- a. First that key court orders (the 3 September and 19 November judgments) were uploaded by an account using a non-governmental domain (r[...]). She argues that official court communication is strictly from @judiciary.org.za or @justice.gov.za. She contends that using a .com domain is a severe security breach that undermines the authenticity of the orders and could amount to cybercrime.
- b. Second, the applicant claims that her analysis of the audit trail on CaseLines finds it “*dead*” during the months of June-August 2025 when

Acting Judge D'Oliveira was deliberating. She argues it is impossible for a judge to deliberate on a digital record they never accessed, suggesting the judgment was drafted outside the official system. Similarly, she claims the 19 November judgment was not uploaded until 11 December 2025, implying it was back-dated.

- c. Third, the applicant accuses the respondent's attorneys of selective filing, alleging that the respondent's attorneys have violated Practice Directive 1 of 2025 by selectively filing documents on Caselines only, which she claims makes them invisible to the judge's official bundle, creating a "*ghost record*" and misleading the court.
- d. Fourth the applicant maintains that she is *dominus litis* and controls her own filings. Despite this, the applicant complains that the respondent's attorney filed documents on her behalf and thereby interfered with the court record. In this respect, the applicant refers to the references to "S *Minolta*" in the audit trail who she says is a reference to the respondent's attorney. She characterises this as a fundamental procedural violation that she says amounts to fraud on the court.
- e. Fifth, the applicant accuses the respondent's attorney of hiding the defective return of service.
- f. Sixth, she accuses the applicant's attorney of fraudulently attempting to execute a writ based on an unsigned draft order by Mzuzu J, instead of that of D'Oliveira AJ.
- g. Finally she accuses the respondent's attorney of misleading her when she assured the applicant that it would not be possible for the respondent to obtain a writ of attachment before 6 January 2026 when the respondent attorney had already applied for a writ of attachment before the Sheriff's offices had closed for the holiday.

[81] Whilst I had regard to the applicant's arguments on some of these points, I had not yet heard full argument on them before the application for my recusal was

brought. I do not intend to pre-judge these arguments and have purposefully not dealt with them. They are also not relevant to her application for my recusal.

*The test to be applied in applications for recusal*

[82] The test for recusal is well-established in our law. It is an objective test and not a subjective one. This means that the fact that the applicant may perceive that I am biased is not relevant. The Constitutional Court explained in *President of the Republic of South Africa and Others v South African Rugby Football Union and Others*<sup>3</sup> the question is not whether the judge is in fact biased, but whether a reasonable, objective and informed person, with knowledge of all the relevant circumstances, would reasonably apprehend that the judge might not bring an impartial mind to bear on the adjudication of the case. The onus of establishing such an apprehension rests on the applicant.

[83] There is a presumption of impartiality. In *Bernert and Others v Absa Bank Ltd*<sup>4</sup> it was held that a judge is presumed to be impartial, and a court should be slow to accede to an application for recusal, lest it open the door for litigants to seek a judge they perceive to be more favourable to their cause. A recusal application must be based on substantial and reasonable grounds, not on a litigant's subjective fears or dissatisfaction with previous rulings.

[84] The Constitutional Court explained the basis for the presumption of impartiality thus:

*"[31] What must be stressed here is that which this court has stressed before: the presumption of impartiality and the double requirement of reasonableness. The presumption of impartiality is implicit, if not explicit, in the office of a judicial officer. This presumption must be understood in the context of the oath of office that judicial officers are required to take, as well as the nature of the judicial function. Judicial officers are required by the Constitution to apply the Constitution and the law 'impartially and without fear, favour or prejudice'. Their oath of office requires them to 'administer justice to all persons alike without fear, favour or prejudice, in accordance with the Constitution and the law'. And the requirement of impartiality is also implicit, if not explicit, in s 34 of the Constitution which guarantees the right to have disputes decided 'in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum'. This presumption therefore flows directly from the Constitution.*

*[32] As is apparent from the Constitution, the very nature of the judicial function requires judicial officers to be impartial. Therefore, the authority of the judicial process depends*

---

<sup>3</sup> 1999 (4) SA 147 (CC) at paragraph [48]

<sup>4</sup> 2011 (3) SA 92 (CC)

*upon the presumption of impartiality. As Blackstone aptly observed, '(t)he law will not suppose a possibility of bias or favour in a judge, who [has] already sworn to administer impartial justice, and whose authority greatly depends upon that presumption and idea'. And, as this court observed in SARFU II, judicial officers, through their training and experience, have the ability to carry out their oath of office, and it 'must be assumed that they can disabuse their minds of any irrelevant personal beliefs and predispositions'. Hence the presumption of impartiality. (footnotes omitted)*

[85] There is a double requirement of reasonableness. This was set out by the Constitutional Court as follows:

*"[34] The other aspect to emphasise is the double requirement of reasonableness that the application of the test imports. Both the person who apprehends bias and the apprehension itself must be reasonable. As we pointed out in SACCAWU, 'the two-fold emphasis . . . serve[s] to underscore the weight of the burden resting on a person alleging judicial bias or its appearance'. This double requirement of reasonableness also 'highlights the fact that mere apprehensiveness on the part of a litigant that a judge will be biased — even a strongly and honestly felt anxiety — is not enough'. The court must carefully scrutinise the apprehension to determine whether it is, in all the circumstances, a reasonable one.*

*[35] The presumption of impartiality and the double requirement of reasonableness underscore the formidable nature of the burden resting upon the litigant who alleges bias or its apprehension. The idea is not to permit a disgruntled litigant to successfully complain of bias simply because the judicial officer has ruled against him or her. Nor should litigants be encouraged to believe that, by seeking the disqualification of a judicial officer, they will have their case heard by another judicial officer who is likely to decide the case in their favour. Judicial officers have a duty to sit in all cases in which they are not disqualified from sitting. This flows from their duty to exercise their judicial functions. As has been rightly observed, '(j)udges do not choose their cases; and litigants do not choose their judges'. An application for recusal should not prevail, unless it is based on substantial grounds for contending a reasonable apprehension of bias. ( footnotes omitted)*

[86] The Court then went on to set out the test that I must apply in deciding whether or not to recuse myself in the below quoted paragraphs:

*"[36] But equally true, it is plain from our Constitution that 'an impartial Judge is a fundamental prerequisite for a fair trial'. Therefore, a judicial officer should not hesitate to recuse himself or herself if there are reasonable grounds on the part of a litigant for apprehending that the judicial officer, for whatever reason, was not or will not be impartial. In a case of doubt, it will ordinarily be prudent for a judicial officer to recuse himself or herself in order to avoid the inconvenience that could result if, on appeal, the appeal court takes a different view on the issue of recusal. But, as the High Court of Australia warns:*

*'(I)f the mere making of an insubstantial objection were sufficient to lead a judge to decline to hear or decide a case, the system would soon reach a stage where, for practical purposes, individual parties could influence the composition of the bench. That would be intolerable.'*

*[37] Ultimately, what is required is that a judicial officer confronted with a recusal application must engage in the delicate balancing process of two contending factors. On the one hand, the need to discourage unfounded and misdirected challenges to the composition of the court, and, on the other hand, the pre-eminent value of public confidence in the impartial adjudication of disputes. As we said in SACCAWU, in striking the balance, a court must bear in mind that it is 'as wrong to yield to a tenuous or frivolous*

*objection as it is to ignore an objection of substance'. This balancing process must, in the main, be guided by the fundamental principle that court cases must be decided by an independent and impartial tribunal, as our Constitution requires."* (footnotes omitted)

[87] Bearing this in mind, I turn now to deal with the grounds for my recusal.

### *Evaluation of the Grounds for Recusal*

[88] I have carefully considered each of the grounds raised by the applicant against the objective test outlined above to be applied in considering whether or not to grant the applicant's application for my recusal. I will deal with each of these grounds in turn.

#### *a. Procedural irregularity*

[89] The applicant complains that on 16 January 2026 I directed that she file a response to the respondents attorney's affidavit and the respondent's counter-claim over the weekend when she had a pending application for my recusal. The applicant argues that this directive to file further papers on the merits while the recusal was pending was a procedural irregularity. She claims I had "*descended into the arena*" by defending my own impartiality and forcing her to participate in a trial before a judge whose authority she was challenging.

[90] This is quite untrue. I directed the applicant to respond to the supplementary affidavit filed by the respondent's attorney by 17h00 on Sunday 18 January 2026 on Friday 16 January 2026, before she had sought my recusal.

[91] In so far as the applicant's argument in this regard is based on the fact that the Order I made on Friday 16 January 2026 was not uploaded onto Caselines until Monday 19 January 2026 by my registrar and thus her application for my recusal preceded my directions, this is a technical argument raised by the applicant without any merit at all.

[92] The order I made, I made in court and its delivery was 16 January 2026 and not 19 January 2026. The uploading of the order onto Caselines after it had been delivered was purely administrative. In any event, the applicant filed an affidavit

as directed on Sunday 18 January 2026 as she herself says she was compelled to do by me.

*b. Procedural Unfairness*

[93] The Applicant submits that the proceedings have been procedurally unfair to her, citing a lack of proper notice and an inability to present her full case as a lay litigant.

[94] The applicant also objects to my directing that she answer the respondent's counter-application.

[95] The court has a duty to manage its proceedings efficiently and fairly, ensuring that all parties, especially lay litigants, are given a proper opportunity to present their case. The court also has the duty to put issues to litigants that it feels should be addressed and go to what the judicial officer believes to be the heart of the matter.

[96] I reasonably gained the impression from the history of the litigation that the applicant was raising technical arguments of little merit in order to avoid repossession of the motor vehicle. This was certainly the view taken by both D'Oliveira AJ and Reid J. The first issue that I thus asked the applicant to address was why she felt it was just that she be able to retain possession of her car although she admits not having made payment to the bank since November 2022.

[97] The respondent's counsel argued that the respondent's conduct amounted to an abuse of the court process and in particular the urgent court process and was merely a delaying tactic. He urged me to put an end to it and grant his counter-application as the respondent reasonably feared that the vehicle was depreciating and may suffer damage whilst all of the applications that the applicant had brought were pending. He urged me to consider granting the counter-application that the vehicle be delivered to the respondent for safekeeping pending the outcome of the various pending applications brought by the applicant.

[98] I thus directed that the applicant file an answering affidavit to the counter-application. I stood the matter down in order to afford the applicant an opportunity to answer the counter-application and to persuade me in argument why the counter-claim should not be granted. I also intended that the respondent's counsel address me on whether the order proposed was legally competent. Despite being given an opportunity to answer the counter-application, the applicant declined to do so and instead sought by recusal.

[99] I reiterate that I insisted on truncated time periods being complied with as the applicant had brought her matter in the urgent court. What the applicant wished me to do was grant interim interdictory relief so that she could answer the counter-claim. In my view the matter had already been inordinately delayed and the issue of the applicant's continued possession of the vehicle needed to be addressed.

[100] My actions in seeking to be addressed on these issues and affording both parties an opportunity to advance their respective arguments were part of my case management function and are not indicative of bias. A reasonable observer would understand this distinction.

[101] The applicant complained that I interrupted her and would not permit her to argue the issues raised by her fully. I did interrupt her but only when she persisted in addressing the technical issues she had raised when I had specifically asked her to deal with the critical issues I had asked her to address.

[102] The applicant also forgets that her matter was brought before me in a very busy urgent court where she would not ordinarily be afforded the inordinately long period of time to address me that I allowed her as she was a lay litigant. Where I believed her complaints raised by the applicant had merit, I stood the proceedings down and directed the respondent's attorney to deal with these issues as set out above. If I recall correctly, on both days that I heard the applicant's application I sat beyond 4 pm in order to enable the applicant to address me fully on the basis for her application.

[103] Having allowed the applicant to address me fully, I tried to explain to her that the issues raised by her were of a purely technical in nature and did not

address the real issues. I indicated that I wished to address the real issues, to which the applicant objected, insisting that she had the right to raise these issues and hold the respondent strictly to the Rules of Court and the Practice Directives. She would not accept it when I tried to explain to her that the Rules were for the court and not the court for the Rules. Her attitude to me became disdainful and dismissive.

*b. The Allegations of Fraud and Abuse of Process:*

[104]The Applicant argues that the serious allegations of fraud against the Respondent and its attorneys are so fundamental that any judge presiding would be drawn into adjudicating the very misconduct alleged, creating an apprehension of bias.

[105]The would clearly also apply to any other judge who, should I recuse myself, be seized of the matter going forward.

[106]The fact that a litigant makes serious allegations against the opposing party does not, in itself, disqualify a judge from hearing the matter. Judges are routinely called upon to adjudicate disputes involving allegations of fraud, dishonesty, and unethical conduct. It is the essence of the judicial function to weigh evidence and make findings on such allegations. The fact that the allegations involve officers of this court does not change this.

[107]There is no reasonable basis to believe that I could not impartially assess the evidence presented by both sides and come to a fair conclusion. A reasonable, informed observer would appreciate that judges are trained and required to adjudicate such matters without bias and that I was capable of doing so.

[108]In fact when the applicant drew it to my attention that the respondent had applied for a writ of attachment to which it had annexed an erroneous judgment I immediately stood the matter down and directed the respondent's attorney to provide me with a full explanation on oath to explain this.

*c. Perception of bias:*

[109] The Applicant submits that, based on the history of the matter and the fact that previous applications have been decided against her, a reasonable apprehension of bias exists.

[110] This has been expressly found not to be a basis for the recusal of a judge by the Constitutional Court in *Bernett*.

[111] The Applicant's perception of bias appears to stem from her dissatisfaction with the negative outcomes of previous applications and in my refusing her a postponement to answer the respondent's attorneys supplementary affidavit and insisting that she deal with the counter-application. This was totally justifiable in the circumstances outlined above.

[112] It is a fundamental principle of our legal system that an adverse ruling, or a series of adverse rulings, does not constitute evidence of bias. A reasonable, objective observer would understand that a judge may rule against a party on legal or factual grounds or indicate a possible leaning towards an outcome without being biased.

[113] As was said in *Bernert*, “[t]he idea is not to permit a disgruntled litigant to successfully complain of bias simply because the judicial officer has ruled against him or her. Nor should litigants be encouraged to believe that, by seeking the disqualification of a judicial officer, they will have their case heard by another judicial officer who is likely to decide the case in their favour.”

[114] The test is not whether the applicant subjectively perceived that I may be biased, but rather whether a reasonable observer would find that my actions were such that there was a reasonable perception of bias on my part. As was stated by the Constitutional Court in *Bernert*, “mere apprehensiveness on the part of a litigant that a judge will be biased — even a strongly and honestly felt anxiety — is not enough’. The court must carefully scrutinise the apprehension to determine whether it is, in all the circumstances, a reasonable one.”

[115] The Applicant's concerns, if genuinely held, had nothing to do with the conduct of the matter by me or the rulings I made, but I believe were based upon a subjective feeling of unfairness stemming from the history of the matter and the

fact that two courts had now ruled against her; what the applicant terms as her perception of my bias was none other than an expression of her fear that I may rule against her as well.

[116] This does not provide evidence of a reasonable perception of bias or a valid basis for my recusal.

[117] The applicant also accused me of bias for stating that I was satisfied with the explanation provided. However, this was my *prima facie* view on reading the respondent's attorney's affidavit. I did, however, ask the applicant whether she accepted the explanation provided and whether she wished to answer the affidavit. I allowed the applicant to address me on the affidavit and agreed with her that it was concerning that the applicant's attorneys had made this error twice and that despite what was stated, the error was not corrected.

[118] However, my *prima facie* view was that although this was concerning, I was not certain whether one could read something sinister into the fact that Mzuzu J's order had twice been attached to the application for a writ. I cannot imagine what advantage the respondent could possibly have obtained from attaching the wrong judgment, as having done so, the registrar would certainly not have granted the writ and in fact had not granted the writ by the time the proceedings were argued before me. This is particularly so as the applicant had a judgment in its favour and did not need to manufacture one to obtain a writ.

[119] This, however, was only my *prima facie* view as by this stage the applicant had not filed an answering affidavit and this was an issue I obviously intended to revisit when I had read the applicant's answering affidavit and heard argument from both parties on Monday 19 January 2026. I was not able to do so as on Monday 19 January 2026 the applicant sought my recusal.

*d. The Conduct of the Court*

[120] I have dealt with this extensively above. I reiterate that I read the papers thoroughly before the hearing of the matter, notwithstanding my sitting in a busy urgent court. There is nothing in my conduct that could reasonably lead to an apprehension of bias. What the applicant did not like was the nature of the

questions raised by me as she believed that they were suggestive of the direction in which I was heading and may result in the counter-application being granted. Where the court expresses its *prima facie* views, this is not evidence of bias; it is evidence that the court has read the papers and has formed a view that the court wishes to be addressed on.

[121] I believe that all judges form *prima facie* views after reading the papers that are put to the parties and may or may not be changed after argument; indeed it has happened to me on numerous occasions that my initial views have changed after argument or even when preparing my judgment. This is commonplace amongst judges and there is nothing untoward in this; it certainly does not evidence bias and is part and part of the deliberation process a court must go through in coming to a decision.

[122] To grant the applicant's application for my recusal would be to allow a litigant to avoid a hearing by a particular judge who the litigant perceives may have a negative attitude to their case. This would undermine the proper administration of justice and hold courts to ransom by dissatisfied litigants when courts express their negative impressions of their cases.

[123] As was said in *Bernert*, litigants should not be "*encouraged to believe that, by seeking the disqualification of a judicial officer, they will have their case heard by another judicial officer who is likely to decide the case in their favour*". This would amount to forum shopping that is not permissible.

[124] The applicant is not the first litigant to appear before a court where the questions raised by the court serve to indicate in what direction the court is leaning. A judge is not obliged to sit and listen to the arguments and not engage with them. Indeed it is proper that the judge put difficulties he or she has with the matter to the parties so that they might have an opportunity of dealing with them.

[125] The fact that I proposed to deal with the counter-application before me was my duty. The fact that I proposed that the applicant deliver the vehicle to the respondent for safekeeping pending the outcome of both her rescission applications that I suggested be consolidated, but I would make an order

precluding the applicant from executing on the summary judgment, does not evidence misconduct of the proceedings; on the contrary a reasonable person would agree that this may have been a sensible and just approach in the circumstances for which I could not reasonably be faulted. This would have given the applicant sufficient time to answer to both the respondent's attorneys affidavit and the counter-application.

[126] This proposal was not accepted by the applicant who instead pretended not to hear me. I thus directed that she file the required affidavits by 17h00 on Sunday 18 January 2026, which was a sufficient and reasonable time to enable the applicant to do so in the circumstances.

*e. Digital record irregularity*

[127] The applicant complains that the directive I issued on 16 January 2026 standing the matter down until Monday 19 January 2026 was not uploaded on Caselines, although it had been communicated to her telephonically which I witnessed on teams and had been sent to her via email to confirm the order made by me. She alleges that this created uncertainty and prejudice.

[128] There was no prejudice; the directions I gave were communicated to the applicant by my registrar and was visible to me and the respondent's counsel and attorney on Teams; hereafter, the Order I made was sent to the applicant via email. She appeared in court on Monday 19 January 2026 and clearly received these communications.

*Conclusion*

[129] Having applied the objective test outlined by the Constitutional Court above, I am not persuaded that a reasonable, objective and informed person, knowing all the facts, would reasonably apprehend that I might not be impartial.

[130] This is also not sort of case where a recusal should be granted as the motive behind it is to avoid adverse rulings and amounts to forum shopping.

[131] Indeed, the applicant's conduct in this matter constitutes an abuse of the process of the court. In my view, the applicant's actions in pretending not to

hear me when I put difficult questions to her or made a proposal she did not like, went beyond mere abuse and bordered on contempt of court. When this tactic did not succeed as the Order I made was communicated to her by my registrar telephonically, appeared on the screen and was emailed to the applicant afterwards, she sought my recusal. To allow the applicant to avoid my continuing to hear the matter in circumstances such as these would be to allow litigants to ride rough shod over the courts and make a mockery of the court process that cannot be countenanced.

[132] I thus decline to recuse myself.

[133] That being said, I am entitled to continue to hear the matter and would have done but for the fact that I have decided to adopt a pragmatic approach to the matter. I am acutely aware that should I try to do so the applicant will immediately apply for leave to appeal my judgment refusing to recuse myself, and should I not grant her leave, she will petition the Supreme Court of Appeal to allow her to do so. Should this be granted, this matter will be held in abeyance until after the appeal is heard and until judgment on my failure to recuse myself has been delivered. This will only serve to delay the matter further to the respondent's prejudice and allow the applicant to retain possession of the motor vehicle for a substantially longer period.

[134] I point out that I granted an interim interdict restraining the respondent from executing on the summary judgment granted by D'Oliveira pending the delivery of this judgment. Should she appeal my judgment, the applicant may argue that my judgment is not final in view of her application for leave to appeal it or, if leave is granted until after the hearing and judgment on the appeal. The effect of such an argument may be that until these issues have been decided the interim interdict granted by me needs to remain in place. This would render my continued hearing of the matter by me academic.

[135] In any event, having spent a good deal of time perusing the papers in writing this judgment, I have decided that I need not hear the matter further. I have heard the respondent's counsel's submission on the counter-application but do not need to hear the applicant as I do not believe that it would be legally

competent for me to grant the respondent's counter-application. In my view to do so would be tantamount to allowing attachment of the motor-vehicle while the applicant's application to rescind the summary judgment granted by D'Oliveira is still pending.

[136] In saying this, I am also mindful that should I grant the counter-application or refuse the applicant temporary interdictory relief, the applicant will simply apply to rescind my judgment.

[137] I thus believe that the most sensible and most practical solution is to grant the applicant interim relief and expedite the hearing of the applicant's rescission applications to avoid further delay and prejudice to the respondent. The applicant has remained in possession of the motor vehicle for more than two years and should she retain possession of the vehicle for a few more months, should not make too much more of a difference.

[138] I have decided to adopt this approach knowing that the applicant may not have established a *prima facie* right to the interdictory relief sought as her applications to rescind both D'Oliveira AJ's judgment and that of Reid J are baseless and the respondent has established a clear right to attach the motor vehicle. Again should I have found this, the applicant would have applied for the rescission of my judgment.

[139] It is not necessary that I further hear the applicants arguments on the manipulation of the digital record and other procedural irregularities at this stage as they are not germane to her application for an interim interdict, which I have in any event decided to grant; they may or may not be relevant to her applications for rescission and may be dealt with in that forum.

[140] Thus the order I will make will be to grant the applicant an interim interdict, consolidate the pending rescission applications and direct that the parties approach the Acting Deputy President to allocate a preferential date for the hearing of both matters that I will support. The most fair order that I can make with regard to costs is that costs of the main application before me be costs in the cause of the consolidated applications.

[141] I am unable to grant the remaining relief sought by the applicant condoning the late filing of her replying affidavit in her application for the rescission of D'Oliveira AJ's judgment, or affording her the right to file a supplementary affidavit in that rescission application or in her application to rescind Reid J's judgment, as this is a matter for decision by the court hearing those applications.

*Costs of the application for my recusal*

[142] The applicant has unjustifiably impugned the integrity of a judge of the High Court

[143] More seriously, the applicant's conduct in pretending not to hear me when I raised questions she did not, and could not answer and when I proposed making a ruling adverse to her was not only an abuse of the process of the court but was tantamount to contempt of court. She thereafter further abused the process of court in seeking my recusal to avoid any adverse ruling I might make.

[144] This warrants a punitive order of costs.

Order

1. The application for my recusal is dismissed with attorney and client costs.
2. Directing that the applicant's applications for the rescission of the judgment of D'Oliveira AJ dated 3 September 2025 and the judgment of Reid J dated 19 November 2025 under case number 031959-2023 be consolidated.
3. Directing the parties to approach the Acting Deputy Judge President of this division for a preferential date for the hearing of the aforementioned applications for rescission.
4. Pending the outcome of the applicant's aforementioned applications for rescission, I direct that the interim interdict that I granted on 23 January 2026 remain in place and order that the respondent be interdicted from taking steps to apply for a writ of execution on the basis of the judgment granted by

D'Oliveira AJ on 3 September 2026, and if already applied for or granted, to seek to execute pursuant to such a writ of execution.

5. Directing that the costs of the main application for an interim interdict be costs in the cause in the aforementioned rescission applications.

---

**S WENTZEL – THOMPSON J**  
**JUDGE OF THE HIGH COURT**  
**JOHANNESBURG**

Appearance for the applicant: In person Mercy M Mokgolo

Appearance for the respondent: Adv. Naude

Instructed by: Hammond Pole Attorneys

Date of the hearing: Friday 23 January 2025 (recusal application)

Thursday 14 January 2026 and 15 January 2026 (main application)

