REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 036612/2023

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

12/3/26 [redacted]
DATE SIGNATURE

In the matter between:

THOBEJANE: TSHEKO JOEL Applicant

And

THE STANDARD BANK OF SOUTH AFRICA LIMITED 1st Respondent

(Registration Number: 1962/000738/06

JUDGMENT

ALLY, AJ

[1] This is an opposed application for rescission of a judgment delivered by my brother Millar J on 29 August 2023.

[2] The applicant was represented by Mr Senoko and the respondent by Adv.M. Rakgoale.

[3] At the outset, both parties submitted that each agreed to the condonation applications and in the interests of justice, condonation on the part of both parties was granted.

[4] It is common cause that the respondent and the applicant entered into an instalment sale agreement in terms whereof the applicant purchased a Mercedez Benz from the applicant.

[5] It is further common cause that the applicant fell into arrears and the respondent launched and was granted default judgment on 29 August 2023.

[6] The applicant aggrieved by the default judgment granted, launched this application in terms of:

3.1. Rule 31(2) (b) of the Uniform Rules of Court;

3.2. Rule 42(1) of the Uniform Rules of Court;

3.3. the common law.

[4] Rule 31(2) (b) provides:

> *"A defendant may within 20 days after he has knowledge of such judgment apply to court upon notice to the plaintiff to set aside such judgment and the court may, upon good cause shown, set aside the default judgment on such terms as to it seems meet."*

[5] With regard to the 20 days within which to launch the rescission application, this court has already pronounced that condonation is granted in the interests of justice. However, the other requirements for reliance on Rule 31(2) (b) of the Uniform Rules of Court must still be shown and proven.

[6] It is now trite that a party relying on Rule 31(2)(b) of the Uniform Rules of Court must 'show good cause' for the setting aside of default judgment against them. 'Good cause' has been held[1] to mean:

"the applicant must give a reasonable explanation for the delay;

the application must be bona fide and not made merely for delaying the plaintiff's claim;

the applicant must show he/she has a bona fide defence to the plaintiff's claim."

[7] The question that arises is whether the applicant has met the requirements set above. For present purposes this court finds that the applicant has given a reasonable explanation for the delay in launching this application. This court also finds that this application is *bona fide* and not made merely for delaying the plaintiffs claim.

[8] The final requirement for 'good cause', however, must be interrogated further. The applicant submits that the requirements of Section 129 of the National Credit Act[2], hereinafter referred to as 'the Act', have not been complied with in that the respondent did not serve the Section 129 notice on his address in terms of the instalment sale agreement.

[9] The applicant submits that the respondent served the section 129 notice by email to an address that was dormant. Furthermore, the instalment agreement was clear as to the *domicilium* to be used and same was not used for purposes of section 129 but in respect of service of the summons.

[10] Section 129 of 'the Act' provides:

> *"(1) If the consumer is in default under a credit agreement, the credit provider –*
>
> > *(a) may draw the default to the notice of the consumer in writing and propose that the consumer refer the credit agreement to a debt counsellor, alternative dispute resolution agent, consumer court or ombud with jurisdiction, with the intent that the parties resolve any*

[1] Grant v Plumbers (Pty) Ltd 1949 (2) SA 470 (O) 476-477
[2] Act 34 of 2005, as amended

dispute under the agreement or develop and agree on a plan to bring the payments under the agreement up to date; and

(b) subject to section 130(2), may not commence any legal proceedings to enforce the agreement before –

(i) first providing notice to the consumer as contemplated in paragraph (a) or in section 86(10), as the case may be; and

(ii) meeting any further requirements set out in section 130."

(c) the termination thereof in accordance with section 123.

(2) Subsection (1) does not apply to a credit agreement that is subject to a debt restructuring order, or to proceedings in a court that could result in such an order.

(3) Subject to subsection (4), a consumer may at any time before the credit provider has cancelled the agreement, remedy a default in such credit agreement by paying to the credit provider all amounts that are overdue, together with the credit provider's prescribed default administration charges and reasonable costs of enforcing the agreement up to the time the default was remedied.

(4) A credit provider may not reinstate or revive a credit agreement after—

(a) the sale of any property pursuant to—

(i) an attachment order; or

(ii) surrender of property in terms of section 127;

(b) the execution of any other court order enforcing that agreement; or

(5) The notice contemplated in subsection (1) (a) must be delivered to the consumer—

(a) by registered mail; or

(b) to an adult person at the location designated by the consumer.

(6) The consumer must in writing indicate the preferred manner of delivery contemplated in subsection (5).

(7) Proof of delivery contemplated in subsection (5) is satisfied by—

(a) written confirmation by the postal service or its authorised agent, of delivery to the relevant post office or postal agency; or

(b) the signature or identifying mark of the recipient contemplated in subsection (5) (b)."

[11] It should be noted that Section 129 was amended to include how a notice must be delivered in terms of the section. Subsection 5 is clear that the notice must be delivered by registered mail or at the location designated by the consumer. The amendment arose after the judgment in **Sebola**[3].

[12] Now it is the applicant's submission that the chosen mode of notification was made in terms of clause 22 of the instalment sale agreement[4] and this clause was not complied with in that the respondent emailed the section 129 notice contrary to the provisions of the said agreement.

[13] The respondent's response to the above submissions by the applicant are to the effect that the email address used for the section 129 notice was an email address that was previously used and that the applicant admits or cannot deny that the said dormant email address was provided by the applicant. Furthermore, the respondent

[3] Sebola v Standard of South Africa Limited & Ano 2012 (5) SA 142 CC

[4] CaseLines: Section A34

submits that in accordance with clause 22.4 of the instalment sale agreement gainsays the applicant's version.

[14] Firstly, 'the Act' has stipulated how a section 129 notice needs to be delivered and the email to the applicant was not such requisite notice. Secondly, clause 22.4 of the instalment agreement specifically makes mention of 'actually received'. This phraseology, in my view, demands more of a credit provider to the effect that it must be shown that the consumer, in this case the applicant, 'actually received' the notice.

[15] Without proof that the section 129 notice was 'actually received' by the applicant and on the papers, that the address of the applicant specifically mentioned in the instalment sale agreement was not used to send 'registered mail' it cannot be stated that the respondent has complied with section 129 read with section 130 of 'the Act'[5].

[16] It must be remembered that a section 129 notice is a precursor for the institution of legal proceedings against a consumer. In the circumstances where it has been shown that there was no valid notification in terms of section 129, a summons could not have been issued and default judgment obtained.

[17] It is worth noting from the papers that the above state of affairs was not brought to the attention of Millar J. It is my view, that had this state of affairs, the non-compliance with section 129, been brought to the attention of Millar J, default judgment would not have been granted.

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[5] Kubyana v Standard Bank of South Africa Limited 2014 (3) SA 56 CC

[18] Having regard to the above, I am of the view that the applicant has satisfied this court that rescission of the judgment by Millar J should be granted in terms of Rule 31(2)(b).

[19] Should I be wrong in coming to the conclusion that the applicant has satisfied the requirements of Rule 31(2)(b) of the Uniform Rules of Court, then the applicant has also relied on Rule 42(1) of the Uniform Rules of Court.

[20] Rule 42(1) of the Uniform Rules of Court provides:

> *"The court may, in addition to any other powers it may have, mero motu or upon the application of any party affected, rescind or vary—*
>
> *(a) an order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby;*
>
> *...."*

[21] In my view, the applicant has shown that the judgment was 'erroneously granted in the absence of the applicant' in that Millar J was not apprised of the fact the respondent had not complied with section 129 as read with section 130 of 'the Act'. For these reasons also, the application of the applicant must succeed. Because of the conclusion I have reached in this matter, I do not deem it necessary to deal with the requirements of the common law in a rescission application.

[22] There is no reason why costs should not follow the result. The applicant has, however, requested costs on a punitive scale. I have taken into consideration the submissions of the applicant as to why a punitive costs order should be granted but I am not satisfied that the threshold for a punitive costs order has been

engaged or proven. Furthermore, it is trite that the award of costs vests in the discretion of the court which discretion must be exercised judicially.

[23] Accordingly, the following Order shall issue:

a). the Order by Millar J dated 29 August 2023 is hereby rescinded;

b). the respondent is to pay the costs of tis application on a party and party scale, subject to paragraph (c);

c). the costs reserved on 17 March 2025 are to be paid by the applicant.

[redacted]

ALLY. G
ACTING JUDGE OF THE HIGH COURT
PRETORIA

Electronically submitted therefore unsigned

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 12 March 2026.

Date of hearing: 2 September 2025

Date of judgment: 12 March 2026

For the Applicant: Mr M F Senoko

fsenoko@gmail.com

For the First Respondent: Adv. M. Rakgoale instructed by

Vezi De Beer Attorneys

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