REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 145679/2024

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

[redacted]

SIGNATURE

In the matter between:

ANETTE PARANE MONAMA **First Applicant**

DAVID MOETJI **Second Applicant**

and

FIRSTRAND BANK LIMITED T/A WESBANK **Respondent**

***EX-TEMPORE* JUDGMENT**

Mahosi J

Introduction

[1] The first applicant, Anette Parane Monama ("Ms. Monama"), brought an application for an order to rescind the default judgment granted by this Court on 05

March 2025 in favour of the respondent, FirstRand Bank Limited t/a WesBank ("WesBank"), in terms of which the agreement between the parties was terminated. Ms. Monama was ordered to return a motor vehicle, and the determination of the quantum of WesBank's claim for damages was postponed.

[2] WesBank opposed this application and raised the point *in limine* regarding the misjoinder of the second applicant, Mr. David Moetji ("Mr. Moetji"), arguing that he has no interest in the matter. Ms. Monama conceded this point in the heads of argument and during the hearing. To the extent that Mr. Moetji has no contractual, statutory, or judicial relationship with any of the parties in the original action, nor does he allege a right or obligation that the outcome of these proceedings could impact, he has no interest in the matter. Thus, WesBank's point ought to be upheld.

Background

[3] Ms. Monama and WesBank entered into an instalment sale agreement ("the agreement") on 01 March 2022 for the sale of a Volkswagen Polo GP 1.2 TSI Comfortline (66kW) ("the motor vehicle"). WesBank performed all its obligations under the agreement by delivering the motor vehicle to Monama. Ms Monama breached the agreement in that, on 26 September 2024, she was in arrears of R39 670.70.

[4] On 08 February 2024, Ms Monama applied for debt review, which did not result in any resolution. On 07 October 2024, WesBank terminated the review in terms of section 86 (10) of the NCA, having provided the requisite notice to the applicant, the debt counsellor, and the National Credit Regulator. Ms. Monama remained in arrears and failed to surrender the vehicle.

[5] On 23 January 2025, WesBank instituted action for the return of the motor vehicle by serving the combined summons at Ms Monama's chosen *domicilium* address and on Ms Monama's sister. The summons granted Ms Monama 10 days to file the notice of intention to defend, expiring on 06 February 2025, and a further 20 days thereafter to file a plea, expiring on 05 March 2025. Ms Monama failed to file the notice of intention to defend by 06 February 2025. WesBank applied for default judgment, which was granted on 05 March 2025. On 25 March 2025, Ms. Monama filed a notice of intention to defend and a plea. Thereafter, she launched the present rescission application on 31 March 2025.

Ms. Monama's case

[6] Ms. Monama's main contention is that, firstly, WesBank applied for default judgment before the deadline for filing the plea had expired, that is, before 05 March 2025, and obtained a judgment on the very day. Secondly, Ms. Monama claims that she was not served with the application for default judgment. Thirdly, she alleges that her failure to file the notice of intention to defend timeously was not wilful. Instead, she attributes the delay to a medical condition, which caused her to be absent from work and resulted in her sister delivering the summons to her late.

[7] Fourthly, Ms. Monama alleges that she has a *bona fide* defence. In this regard, she claims that the breach was not entirely her fault, as the debt counsellor's action and the respondent's subsequent failure to resume deductions after the debt review was cancelled, contributed to the arrears. In her plea, Ms. Monama proposes a repayment plan of R3 000,00 per month and an extension of the contract. Fifthly, she contends that the repossession of the vehicle would cause her severe prejudice as she uses it to transport her children to school and to attend hospital appointments.

WesBank's defence

[8] WesBank opposes the application on the ground that Ms. Monama is in clear and admitted breach of the agreement, with significant arrears that continued to escalate. It contends that the service of the summons was properly effected at the chosen *domicilium* address, and Ms Monama's failure to file the notice of intention to defend by 06 February 2025 entitled the respondent to seek default judgment. On the issue of the notice of set down for default judgment, WesBank avers that it has no legal obligation to notify Ms. Monama of the application for default judgment because she was already in default in failing to file a notice of intention to defend. WesBank argues that it was perfectly entitled to issue the application for a default judgment on 04 March 2025, as the deadline for the notice of intention to defend had expired. WesBank further contends that Ms. Monama has failed to show good cause for rescission, as her explanation for the default is unsatisfactory. While WesBank noted Ms. Monama's medical condition, it argued that it was not sufficiently linked to the specific failure to act within the required time.

[9] WesBank contends that Ms. Monama has not demonstrated a *bona fide* defence in that her defence as pleaded appears to be a mere denial of breach of and a proposal for debt restructuring, which does not constitute a triable issue on the merits of the respondent's claim for return of the vehicle based on breach. In addition, WesBank submitted that Ms. Monama previously brought an urgent application for a stay of execution, which was struck from the roll for lack of urgency, with costs awarded against her. WesBank had already provided an undertaking not to sell the vehicle pending this rescission application.

Legal principle and analysis

[10] An application for rescission of a default judgment in terms of rule 31 (2)(b) requires the applicant to show good cause. This entails a reasonable and acceptable explanation for the default, the application must be *bona fide* and not made with the intention to delay, and the applicant must show a *bona fide* defence to the applicant's claim, which has some prospect of success.

[11] A judgment is erroneously granted for purposes of rule 42 (1)(a) where there existed at the time of its issue, a fact of which the Court was unaware, which would have precluded the granting of the judgment. It is not sufficient that the defence is later disclosed.

[12] In the current matter, Ms. Monama's explanation hinges on the late receipt of the summons due to her medical condition, and her sister's delay in passing it on. However, the law is clear that service at the chosen *domicilium* address is effective service. The applicant's difficulty in personally receiving the documents does not negate the legal efficacy of the service. Her explanation for failing to file a notice of intention to defend within 10 days is therefore not compelling. The default was, therefore, wilful.

[13] Even if Ms Monama's default was not wilful, to resist a claim for the return of goods under an instalment sale agreement following breach, she must raise a defence that goes to the validity of the claim. For instance, that the agreement is invalid, there was no breach, or that the breach has been remedied. Ms. Monama does not deny entering into the agreement, receiving the vehicle, or falling into arrears. Her defence as pleaded is essentially an appeal for indulgence. A proposal to pay reduced

instalments does not constitute a legally acceptable defence to WesBank's accrued right, following breach and termination of the debt review, to claim return of the motor vehicle. Thus, Ms. Monama discloses no triable issues.

[14] Ms. Monama further contends that the judgment was erroneously granted because the application was made before the *deadline* for filing the plea expired. This contention is factually and legally unsustainable. WesBank's right to apply for default judgment arose the moment Ms. Monama failed to file her notice of intention to defend by 06 February 2025. The application for default judgment was issued on 04 March 2025, well after the right accrued. In terms of Rule 31(2)(a) read with Rule 31(4), WesBank had no obligation to serve Ms. Monama with a notice of set down because the claim was for the return of specific property, with damages to be determined later. She was further in default of the delivery of notice of intention to defend. Rule 31 (5)(a) requires notice only where the claim is for a debt or liquidated claim, which is not the case in this matter. No fact precluding judgment existed at that time. Thus, the Court was not labouring under any error when it granted the judgment on 05 March 2025.

Conclusion

[15] Ms. Monama has failed to establish good cause for the rescission of the default judgment. She has provided an inadequate explanation for her default, and more importantly, has failed to demonstrate that she has a *bona fide* defence to WesBank's claim, with any prospect of success. Consequently, the application for rescission must fail.

Costs

[16] WesBank has sought punitive costs. However, this Court is not persuaded that Ms. Monama's application is so frivolous or vexatious as to warrant a punitive costs order. To the extent that WesBank has been put to the expense of opposing an unmeritorious application, there is no reason to depart from the general principle that costs should follow the results.

Order

[17] Accordingly, the following order is made:

1. The point *in limine* regarding the misjoinder of the second applicant is upheld, and the second applicant is removed as a party to these proceedings.

2. The application for the rescission of the default judgment granted on 05 March 2025 is dismissed.

3. The first applicant is ordered to pay the respondent's costs of this application on a party and party scale B.

[redacted]

D. Mahosi
Judge of the High Court
Gauteng Division, Johannesburg

Heard: 09 February 2026
Delivered: 09 February 2026

<u>Appearances</u>

For the first applicant: In person

For the respondent: Adv. M Arroyo
Instructed by: Strauss Daly Incorporated c/o Trevor Swart Attorneys