IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Not reportable

Case no: 1868/2023

In the matter between

TEBOHO JAPTHA MOHAPI **APPLICANT**

And

NEDBANK LIMITED **FIRST RESPONDENT**

LIBUSENG MARY MOHAPI **SECOND RESPONDENT**

Neutral citation: *Mohapi v Nedbank LTD and Another* (1868/2023) [2026] ZAFSHC 259 (17 April 2026)

Coram: NTSHULANA AJ

Heard: 21 August 2025

Delivered: 17 April 2026.

Summary: Rescission of default judgment – *iustus error* – principles restated.

ORDER

1 Application for rescission of judgment is dismissed

2 Applicant to pay the costs

JUDGMENT

Ntshulana AJ

[1] This is an application for rescission of a default judgment granted by this honorable court in favor of the first respondent against the applicant on the 6 February 2025 by the honorable acting judge S. Grobler, declaring the immovable property jointly owned by the applicant and the second respondent to be especially executable.

[2] The following order was made by Grobler AJ and reads as follows:

'It is ordered that:

1. The immovable property known and described as: **ERF 9[…] H[…] (extension 20), district Bloemfontein, Province Free State in extent: 291 (two hundred and ninety one) square meters held by deed of transfer T16202/2008**, subject to the conditions therein contained, is declared especially executable.

2. The registrar is authorized and instructed to issue a writ against the immovable property namely 9[…] H[…]l (extension 20), situate house no. 9[…] G[…], H[…].

3. A reserved price is set at **R340 000.00** (three hundred and forty thousand rand).

4. Should the reserved price in prayer 3 not be reached at the auction where the abovementioned property is to be sold, the matter must be dealt with in terms of Rule 46 A.

5. Respondents shall pay the costs of the application.'

[3] It appears that the applicant is seeking the rescission of the order granted on 6 February 2025 with costs being borne by the first respondent. It is difficult to follow or understand whether there is other relief sought by the applicant or whether the applicant is merely complaining about the treatment he received at court as he has been representing himself and appeared on his own.

[4] The applicant contends that, as a lay person without legal representation, the court is unwilling to consider arguments presented by him personally and without an 'authority presence'. He contends that no court is willing to hear any submissions made by him during proceedings preceding the granting of the order by the court.

[5] The applicant further asserts that the order granted against him was prejudicial, as it does not acknowledge his right to legal representation as guaranteed under s 35,

or his right to be heard in terms of s 34, of the Constitution. He also contends that there was no urgency justifying the granting of default judgment on 6 February 2025.

[6] The court file clearly shows that the court was very patient with the applicant and it considered his arguments regardless of his status as a lay person without legal representation. On 12 December 2024, when the applicant appeared in person before this honorable court and made submissions that the matter should be removed from the roll in order to allow him time to obtain legal representation, the court listened to him. The court was not minded to remove the matter from the roll and consequently, granted a postponement to 6 February 2025.

[7] The court order of 12 December 2024, reads as follows:

'It is ordered that:

1 The matter is postponed to 06 February 2025 to the unopposed roll for first respondent to obtain legal representation, final postponement for this purpose.

2 Wasted costs for the day to stand over for later adjudication.'

[8] On 12 December 2024, the court clearly informed the applicant that this could be the final postponement granted to enable him to secure legal representation. On 06 February 2025, the applicant once again appeared in person, without legal representation, and requested another postponement in order to obtain legal representation.

[9] The applicant was unable to provide cogent or sufficient reasons as to why he had not secured legal representation since 12 December 2024. The applicant further made submissions to the court as to why judgment or an order should not be granted against him, despite the applicant's failure to file the necessary opposing affidavit. After hearing submissions and considering the applicant's request, the court dismissed his application for postponement and proceeded to grant the order.

[10] The applicant's case is likely arguing that the judgment was granted erroneously and on this ground the court should consider rescission of the judgment. He argues that 'it is the most embarrassing default judgment granted on behalf of Nedbank legal representative.' From this point the applicant takes the off-ramp and indulges in attacking the legal representative of the first respondent.

[11] In opposition of this application, the first respondent raises one point in *limine* aimed at dismissing the application in its entirety. It submitted that this application was fatally flawed as the applicant could only seek rescission of an order under rule 42 of the Uniform Rules of Court, the common law, or rule 31(2)*(b)* of the Uniform Rules of Court. It argues that, with respect, the applicant has failed to establish a valid case for rescission under any of these grounds.

[12] It is trite that an application for rescission of judgment can be brought in terms of rule 31(2)*(b)* or under rule 42 (1) of the Uniform Rules of court or common law. In terms of Rule 31 92) (b) the applicant must show a good course and set out a bona fide defense. In terms of Rule 42 (1) a good course exists where an order or judgment was wrongly sought in the absence of any party, where there is ambiguity, a patent error or omission to the extent of such ambiguity or an order was granted as a result of a mistake common to the parties.

[13] It is convenient at this juncture to first deal with issue of compliance with the provisions of the National Credit Act, namely s 129 read with s 130. It is either common cause, or had not been sufficiently challenged or refuted so as to create a preponderance of probabilities in favour of the applicant, that:

a) The agreement between the parties is a credit agreement as defined, contemplated and envisaged in the National Credit Act 34 of 2005.

b) The first respondent has complied with ss 129 (1)*(a)* and 130 of the National Credit Act. On the 23 March 2023, a notice in terms of s 129 (1)*(a)* was delivered by the first respondent to the applicant by registered post, as well as ordinary mail to the applicant/ defendant's *domicilium* address being 1[…] S[…], Botshabelo, 9781, and to applicant and second respondents/defendants, by registered post, as well as ordinary mail to the defendants' bonded property, being House no. 9[…] G[…], H[…], 9306. A copy of the notice, proof of postage and the 'track and trace' report from the website of the post office is attached on papers as Annexure 'D1' – 'D16', respectively.

c) The applicant and second respondent failed to respond to the s 129 notice prior to the institution of the these proceedings and they were in default as the account was in arrears for at least over twenty (20) business days. The first respondent then issued summons in this matter.

[14] In the case of *Blue Chip 2 (Pty) Ltd v Ryneveldt*,[1] the Supreme Court of Appeal pointed out that delivery to a debtor of the notice referred to in s 129(1)*(a)* of the National Credit Act is a material element of the cause of action. Section 129(1)*(a)* of the National Credit Act requires that the notice which it prescribes must be given in writing to the debtor and must be brought to his or her attention. It can be made available to him or her in a manner prescribed for delivery of notices. In terms of s 96(1) , whenever a party to a credit agreement is required or wishes to give legal notices to the other party for any purposes contemplated in the agreement, the NCA or any other law, the party giving notice is to deliver that notice to the party at (a) the address of the other party as set out in the agreement (unless paragraph (b) applies), or (b) at the address most recently provided by the recipient in accordance with subsection (2) . The notice can be delivered in person, by registered post or ordinary mail, fax or email.

[15] In the Constitutional Court matter of *Sebola and Another v Standard Bank of South Africa LTD and Another*,[2] the Court held that where the credit provider seeking to

[1] *Blue Chip 2 (Pty) Ltd v Ryneveldt and Others* [2016] ZASCA 98; 2016 (6) SA 102 (SCA).
[2] *Sebola and Another v Standard Bank of South Africa LTD and Another (Socio-Economic Rights Institute of South Africa, National Credit Regulator and Banking Association South Africa as Amici Curiae)*

enforce a credit agreement, avers and proves that the notice was delivered to the consumer, proof of registered dispatch of the notice and that it reached the appropriate post office for delivery to the consumer, will in the absence of contrary indication, constitute sufficient proof of delivery thereof to the debtor. In this case, I am satisfied that the first respondent had sufficiently complied with the requirements of s 129, as read with s 130 of the NCA and that delivery of the notice to the applicant and second respondent had taken place.

[16] Generally speaking, once a court has pronounced upon a matter finally it has no authority to alter its own order. There are, however, three grounds on which an order of the High Court can be rescinded. These are set out in rule 31(2)*(b)* and 42 of the Uniform Rules of Court and also the common law.

[17] Briefly, rule 31(2)*(b)* makes provisions for the setting aside of a default judgment in cases where the claim is not for a debt or liquidated demand. The application for rescission must be delivered within 20 days after the applicant became aware of the judgment and he or she must show good cause as to why the judgment should be rescinded, namely (a) he or she must give a reasonable explanation of his or her default; (b) the application must be a bona fide; and (c) he or she must have a prima facie bona fide defense to the claim against him or her.

[18] Rule 42(1)*(a)* provides for three distinct rescission or variation procedures, including instances such as in the present matter in which the judgment is said or alleged to have been erroneously sought or erroneously granted in the absence of a party affected thereby; where there is ambiguity, a patent error or omission to the extent of such ambiguity or where an order was granted as a result of a mistake common to the parties. In general terms, a judgment will have been erroneously granted if there existed at the time of its issue a fact of which the court was unaware, and which fact would have induced the court not to grant the judgment.

[2012] ZACC 11; 2012 (5) SA 142 (CC).

[19] On the other hand, at common law, a judgment can be set aside on grounds of fraud, *iustus error*, if new documents come to light and in the case of default judgments, where good cause for rescission is shown. In *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills (Cape)*[3] the following was said in regard to the requirement of good cause:

> 'In order to succeed an applicant for rescission of a judgment against him by default must show good cause . . . The authorities emphasize that it is unwise to give a precise meaning to the term "good cause". As Smalberger J put it in *HDS Construction (Pty) Ltd v Wait*:
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> "When dealing with words such as "good cause" and "sufficient cause" in the other Rules and enactments the Appellate Division has refrained from attempting an exhaustive definition of their meaning in order to abridge or fetter in any way the wide discretion implied by these words . . . The meaning in order to abridge or fetter in any way the wide discretion implied by these words. The Court's discretion must be exercised after a proper consideration of all the relevant circumstances."'[4]

[20] Quite clearly the court has a wide discretion in evaluating 'good cause' in order to ensure that justice is done between the parties. Of considerable importance is the fact that a good defense can compensate for a poor explanation for the default and vice versa.[5]

[21] I am satisfied that on the day the judgment or order was granted it was not erroneously granted. It appears that the applicant placed undue reliance on incorrect information or correspondences between himself and some employees of the first respondent and his ex-wife. These correspondences are disputed (and/or were later withdrawn after the second respondent raised concerns) by the respondents. Further,

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[3] *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills (Cape)* 2003 (6) SA 1 (SCA).
[4] Ibid para 11.
[5] See in this regard *Zealand v Milborough* 1991 (4) SA 836 (E) and *Smith v Saambou Bank Ltd* 2002 (6) SA 346 (SE).

all the letters and correspondence relied upon by the applicant fails to address or dispose of the onus put squarely on the applicant in terms of the rules and common law. This Court encourages the possible discussions of settlement between the parties in order to resolve the issues amicable. This, however does not mean that the onus in terms of rule 31(2)*(b)*, rule 42, and/or common law has been satisfied by the applicant.

[23] In my view, his defenses are raised in an attempt to muddy the waters or mislead this court. Consequently, the applicant's application for rescission falls to be dismissed. I therefore make the following order:

1 The application for rescission of judgment is refused.

2 The applicant to pay the costs.

X NTSHULANA
ACTING JUDGE OF THE HIGH COURT

Appearances

For the Appellant:	TJ Mohapi
	In person
For the First Respondent:	D Naude
Instructed by:	Hill, McHardy & Herbst Bloemfontein
For the Second Respondent:	No appearance