



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION PRETORIA**

Case Number: 2024-046582

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

3 June 2026

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DATE


SIGNATURE

In the matter between:

RENETTE HIEPNER

Applicant

and

ABSA BANK LIMITED

Respondent

JUDGMENT

VIVIAN AJ

Introduction

- [1] This is an application to rescind an order granted by default by van Aswegen AJ on 13 May 2025. Van Aswegen AJ entered default judgment and granted orders for the execution against the applicant's immovable property in terms of Rule 46A.
- [2] The applicant does not have the benefit of a legal representative. Her application did not clearly identify whether it was brought in terms of the Uniform Rules of Court or at common law.
- [3] However, as I explain below, the essence of her application was that she did not receive effective notice of the hearing date. In my view, the order was erroneously sought and erroneously granted, in the absence of the defendant. This engages the provisions of Rule 42(1)(a). The orders fall to be rescinded, and I exercise my discretion to do so.

Rule 42(1)(a)

- [4] The requirements of Rule 42(1)(a) are well established.
- [5] An applicant for an order in terms of Rule 42(1)(a) must show both that it was made in their absence and that the order was erroneously sought or granted. Even when these requirements are met, the Court has a discretion as to whether to rescind its order, which must be exercised judicially.¹

¹ Kingdom of Lesotho v Frazer Solar GmbH and Others (438/2024) [2026] ZASCA 75 (22 May 2026) at para 52; Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State and Others [2021] ZACC 28 2011 (11) BCLR 1263 CC at para 53

[6] It is common cause that the order was made in the absence of the applicant.

[7] As to the second requirement, in **CMSA** the Constitutional Court recently endorsed the explanation in **Mutebwa** as to when Rule 42(1)(a) applies:

“Decided cases show that relief may be granted under this Rule if: (i) the Court which made the order lacked competence to do so; (ii) at the time the order was made the Court was unaware of facts which, if then known to it, would have precluded the granting of the order; or (iii) there was an irregularity in the proceedings.”²

[8] Streicher JA held in **Lodhi** that:

“Where notice of proceedings to a party is required and judgment is granted against such party in his absence without notice of the proceedings having been given to him such judgment is granted erroneously. That is so not only if the absence of proper notice appears from the record of the proceedings as it exists when judgment is granted but also if, contrary to what appears from such record, proper notice of the proceedings has in fact not been given. That would be the case if the Sheriff's return of service wrongly indicates that the relevant document has been served as required by the Rules whereas there has for some or other reason not been service of the document. In such a case, the party in whose favour the judgment is given is not entitled to judgment because of an error in

² Mutebwa v Mutebwa [2001] 1 All SA 83 (Tk); 2001 (2) SA 193 (TkH) at para [22]; endorsed in Centaur Mining South Africa (Pty) Ltd v Moodliar N.O. and Others [2026] ZACC 20 (“CMSA”) at para 61

the proceedings. If, in these circumstances, judgment is granted in the absence of the party concerned the judgment is granted erroneously.”³

[9] It is common cause that the notice to the applicant was required, particularly in respect of the Rule 46A application.

The procedural history

[10] In her founding affidavit, the applicant avers that on 26 February 2025, a representative of the Sheriff’s office delivered what she describes as a “Court order” to her. She informed this representative, Ms J, that she considered the “Court order” defective for at least two reasons. First, it was not stamped by the Registrar; second, the date of the hearing had been “tippexed out” and replaced with 13 May 2025.

[11] To be “tippexed out” means to have specific words, numbers, or details permanently covered up or removed using correction fluid. The effect of this is to delete what was originally on the document. Accordingly, the document originally had a different date, this was deleted and a new date was inserted. In this case, the insertion was handwritten.

[12] Ms J said she would get back to the applicant. A few hours later, Ms J telephoned the applicant. She said the attorneys would reissue the “Court order” and that the applicant should ignore the document served on her that morning.

³ *Lodhi 2 Properties Investments CC and Another v Bondev Developments (Pty) Ltd 2007 (6) SA 87 (SCA) at para 24*

[13] The document that the sheriff served was not a “Court order”. The applicant annexed a copy of it to her application. It was a notice of application in terms of Rule 46A. It was signed by the respondent’s attorneys and dated 17 May 2024. In terms of Rule 46A(4)(a)(i), it is a peremptory requirement that the notice of application states the date on which the application is to be heard.

[14] As I noted above, the hearing date on the notice had been removed with correction fluid and a fresh date inserted by hand. That practice is to be deprecated. A deletion that is struck through and initialled discloses both what was altered and by whom. The use of correction fluid does neither. It obliterates the original entry, is anonymous, and leaves the reader unable to establish what the document first recorded or on whose authority it was changed, thereby placing the integrity and authenticity of a court document in potential doubt.

[15] The expedient belongs to the age of the typewriter, when a typed page could not readily be corrected save by some physical means. A quarter of the way into the twenty-first century, when a clean, amended page is produced at a keystroke, there can be no warrant for resorting to it. Moreover, in an era of electronic filing, pleadings and notices are frequently scanned and uploaded to CourtOnline, where the worth of the record lies precisely in its being legible, complete and traceable. A layer of correction fluid often reproduces on the scanned image as a blank or a smear, carries no audit trail, and cannot be interrogated after the fact, defeating the very transparency that electronic filing exists to secure.

[16] Despite what I have set out above, Ms J rendered a return of service, recording personal service on the applicant.

[17] On 13 May 2025, relying on the return of service, the respondent's counsel moved for default judgment and orders in terms of Rule 46A. The orders were granted by van Aswegen AJ.

[18] The applicant was contacted on 14 May 2026 by an individual purporting to represent the respondent. He informed her that judgment had been granted the previous day. She contacted the Sheriff's office.

[19] The applicant referred in her founding affidavit to an email she received from the Sheriff's office on the same day. She did not annex the email to her founding affidavit, but annexed it to her replying affidavit. The email records that the applicant had raised concerns about the notice served on her, that Ms J had contacted the respondent's attorneys, that the Sheriff had received a further notice of set down from the respondent's attorneys, and that the attorneys had "stayed the instruction" so that it was never served.

[20] The respondent's counsel submitted that I should not take cognisance of the email because it was not annexed to the founding affidavit. I do not agree. The substance of the email was set out in the founding affidavit. The respondent did not meaningfully dispute that substance in its answering affidavit, and the applicant's version on the issue therefore stands. The annexing of the email to the replying affidavit does no more than place before me the document that the founding affidavit already relied on. It is not objectionable matter in reply.

[21] Had the respondent wished to obtain or test the document at an earlier stage, it was entitled to call for its production under Rule 35(12), and it did not do so. The respondent did not apply to strike out either the allegations concerning the email

or the annexure, and it raised no objection to the admissibility of the email, beyond the submission of its counsel that I should disregard it. In these circumstances the email is evidence before me and I am entitled to have regard to it.

[22] The respondent's answering affidavit was deposed to by one of its employees. There was no affidavit from the respondent's attorneys or from Ms J. The allegation of personal service was repeated on several occasions. But the deponent to the founding affidavit did not have personal knowledge as to what transpired. She was simply repeating and paraphrasing the return of service. Only two people had personal knowledge – the applicant and Ms J.

[23] To make matters worse, the deponent to the founding affidavit insisted that Ms J did not serve the notice of application. She said that it was Ms W who did so. Yet a simple perusal of the return of service showed no mention of Ms W and confirmed that the person who effected service was Ms L.

[24] In argument, counsel for the respondent submitted that the applicant had the onus to show that the return of service was inaccurate. In terms of Section 43(2) of the Superior Courts Act (Act 10 of 2013), the Sheriff's return of service is *prima facie* evidence of the matters stated in the return.

[25] In this instance, on the applicant's version in the founding affidavit, the return of service was inaccurate. Her evidence as to what she said to Ms L and as to Ms L's response, particularly the telephone call in which she was told that she should ignore the document, concerns matters within the applicant's personal

knowledge. Far from alerting the applicant to the need to appear in Court on 13 May 2025, Ms L told her to ignore the notice.

[26] The respondent elected to adduce no evidence to contradict this version. There is no evidence that the respondent's attorneys contacted Ms L to find out if the version in the founding affidavit was true.

[27] A return of service is no more than *prima facie* proof of the matters stated in it, and it is displaced by evidence establishing that proper service did not in fact occur. As Streicher JA explained in **Lodie**, where a return wrongly reflects that a document has been served, whereas in truth there has been no such service, the party in whose favour judgment is granted is not procedurally entitled to that judgment, and a judgment granted in the absence of the defendant in those circumstances is granted erroneously within the meaning of Rule 42(1)(a). Paraphrasing Musi AJ in **CMSA**, the applicant therefore displaced the *prima facie* proof with undisputed evidence and reasons for her absence on 13 May 2025. There was no wilful absence.⁴

[28] In the circumstances, the order was erroneously sought and erroneously granted.

[29] Even where the requirements of rule 42(1)(a) are met, a discretion remains whether to grant rescission, and that discretion must be exercised judicially. I am satisfied that it should be exercised in favour of the applicant. The order sought to be rescinded declared the applicant's primary residence specially executable. Even if the applicant is ultimately unable to resist the claim for payment, she is

⁴ CMSA, *supra*, at para 70

entitled to be heard before her home is declared executable, and to place before the court the evidence relevant to that question. That consideration is, in my view, decisive. It is unnecessary to determine the further defences raised by the applicant. Those defences will be determined in due course, and nothing in this judgment should be understood as expressing a view on their merits.

[30] The respondent's counsel conceded that, if I reached this conclusion, then both the default judgment portion of the order and the Rule 46A portion fall to be rescinded. He also submitted that the order should include provision for the applicant to serve her plea within 20 days of the order.

Conclusion

[31] I accordingly make the following order:

- 31.1. The orders granted on 13 May 2025 are rescinded in terms of Rule 42(1)(a).
- 31.2. The applicant is to deliver her plea within 20 court days.
- 31.3. The matter will thereafter proceed in terms of the Uniform Rules of Court.



Vivian, AJ
Acting Judge of the Gauteng Division
of the High Court of South Africa

Appearances

For the Applicant:	Mr H Marais, instructed by Hammond Pole Majola Inc.
For the Respondent:	In person
Date of hearing:	1 June 2026
Date Delivered:	3 June 2026

MODE OF DELIVERY: *This Judgment was handed down electronically by circulation to the parties' and or parties' representatives by email and by being uploaded to CaseLines. The date and time for the hearing are deemed to be 10h00 on 3 June 2026.*