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**THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Reportable/**Not Reportable**

Case no: 2096/2021

In the matter between:

JO-ANNE MERCY ETEBARE

Applicant

and

VOLKSWAGEN FINANCIAL SERVICES (SA) LTD

Respondent

Neutral citation: *Etebare v Volkswagen Financial Services SA Ltd* (2096/2021)
19 June 2026.

Coram: NGUBENI AJ.

Heard: 24 April 2026.

Delivered: 19 June 2026.

Summary: *Rescission – Default judgment – The onus lies with the applicant to prove that the requirements for a rescission are met – No case made for rescission.*

ORDER

1. The application is dismissed *in toto*.

2. The Applicant is ordered to pay the costs of the application on the scale as between attorney and client.

JUDGMENT

Ngubeni AJ

Introduction

[1] This Court is seized with an application for rescission of a default judgment granted on 17 March 2023, together with an application for condonation arising from the Applicant's substantial delay in instituting these proceedings.

[2] The application is brought under Rule 31(2)(b) of the Uniform Rules of Court¹ on the basis of "good cause". The applicable principles are trite. An applicant seeking rescission must establish²:

- 2.1. a reasonable and acceptable explanation for the default;
- 2.2. that the application is *bona fide* and not brought merely for purposes of delay; and
- 2.3. the existence of a *bona fide* defence carrying *prima facie* prospects of success.

[3] These requirements were authoritatively articulated in *Silber v Ozen Wholesalers (Pty) Ltd*³, where the Appellate Division held that sufficient cause entails both a reasonable explanation for the default and a *bona fide* defence which *prima facie* carries some prospect of success.

¹ Rule 31(2)(b) of the Uniform Rules of Court provides:

A defendant may within 20 days after acquiring 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 it deems fit.

² *Ferris and Another v FirstRand Bank Ltd* (CCT 52/13) [2013] ZACC 46; 2014 (3) BCLR 321 (CC); 2014 (3) SA 39 (CC) para 24.

³ 1954 (2) SA 345 (A) at 352.

- [4] The Supreme Court of Appeal (SCA) in *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills (Cape)*⁴ confirmed that an applicant for rescission must establish a reasonable explanation for the default, *bona fides*, and a defence carrying prospects of success. Mere carelessness, supine inaction, or unexplained neglect is insufficient.
- [5] In *Ferris and Another v FirstRand Bank Ltd*⁵ the Constitutional Court reiterated that rescission proceedings implicate the important principle of finality in litigation and that courts must guard against abuse of process by litigants seeking merely to delay lawful execution.

Factual Background

- [6] On 7 March 2019, the parties concluded a written instalment sale agreement in Bryanston in terms whereof the Applicant purchased a 2018 Volkswagen Polo Vivo 1.6 Highline (5DR), bearing Engine Number C[...] and Chassis Number A[...].
- [7] The principal debt amounted to R231 488.42, inclusive of the cash price, accessories and initiation fee. Finance charges in the amount of R155 689.42 were levied, resulting in a total repayable amount of R387 177.84. Interest accrued at a variable rate linked to the prime lending rate plus 8.25%.
- [8] The agreement provided for repayment in 72 monthly instalments payable on the 15th day of each month. Ownership of the vehicle remained vested in the Respondent until the Applicant has paid the full amount due in terms of the agreement.
- [9] The agreement further entitled the Respondent, upon breach by the Applicant, to cancel the agreement, repossess the vehicle, realise the asset, retain

⁴ (127/2002) [2003] ZASCA 36; [2003] 2 All SA 113 (SCA); 2003 (6) SA 1 (SCA) para 11.

⁵ (CCT 52/13) [2013] ZACC 46; 2014 (3) BCLR 321 (CC); 2014 (3) SA 39 (CC) para. See also *Chetty v Law Society, Transvaal* 1985 (2) SA 756 (A).

payments already made, and recover any shortfall as damages. The agreement in question falls squarely within the ambit of the National Credit Act 34 of 2005 (“the NCA”).

- [10] The Applicant breached the agreement and fell into arrears. The Respondent thereafter complied with the procedural and substantive requirements of the NCA, including the issuance of statutory notices and summons.
- [11] Despite proper service of summons, the Applicant failed to enter an appearance to defend. Consequently, default judgment was granted on 17 March 2023. The present rescission application was instituted only in October 2024, approximately eighteen months after judgment had been granted.
- [12] Even after launching the application, the Applicant failed diligently to prosecute it. The Respondent was compelled to oppose the application fully, file answering papers, and take steps necessary to ensure finality of the proceedings.
- [13] At the hearing, counsel for the Applicant, Mr Raedani, correctly conceded that the papers failed to establish a proper basis for rescission. Counsel further indicated that the Applicant effectively accepted that the application could not succeed.
- [14] The sole issue persisted with concerned costs. Counsel urged the Court to refrain from awarding costs against the Applicant, alternatively to award only party-and-party costs, contending from the bar that the Applicant was a person of limited means and that her financial difficulties arose from failures by an alleged debt counsellor.
- [15] No evidence whatsoever was placed before Court substantiating the existence of debt review proceedings, misconduct by a debt counsellor, or any inability by the Applicant to satisfy an adverse costs order.

Condonation

- [16] The Applicant's delay of approximately eighteen months in launching the rescission application is manifestly excessive and inordinate.
- [17] The principles governing condonation are well established. In *Melane v Santam Insurance Co Ltd*⁶, the Appellate Division held that the Court exercises a discretion upon consideration of all relevant circumstances, including the degree of lateness, the explanation therefor, prospects of success, and the importance of the matter. These principles were reaffirmed by the Constitutional Court in *Van Wyk v Unitas Hospital and Another (Open Democratic Advice Centre as Amicus Curiae)*⁷, where it was also held that the overarching enquiry is whether granting condonation would serve the interests of justice.⁸
- [18] In *Uitenhage Transitional Local Council v South African Revenue Service*⁹ the SCA stressed that an applicant for condonation is required to furnish a full, detailed and accurate account of the causes of the delay and their effects so as to enable the Court properly to assess responsibility. The SCA warned further that condonation cannot be had merely for the asking, and that a litigant seeking an indulgence bears the obligation of demonstrating respect for the Rules and processes of Court.
- [19] Similarly, in *Grootboom v National Prosecuting Authority and Another*¹⁰, the Constitutional Court confirmed that the interests-of-justice enquiry requires consideration of the length of the delay, the explanation therefor, prejudice, and prospects of success. Where no acceptable explanation exists, condonation should ordinarily be refused.
- [20] The Applicant's explanation for the delay is woefully deficient. There is no comprehensive chronology accounting for the extensive period of inactivity.

⁶ 1962 (4) SA 531 (A) at 532.

⁷ (CCT 12/07) [2007] ZACC 24; 2008 (4) BCLR 442 (CC); 2008 (2) SA 472 (CC) para 20.

⁸ See also *Asla Construction (Pty) Ltd v Buffalo City Metropolitan Municipality* [2017] 2 All SA 677 (SCA); 2017 (6) SA 360 (SCA) para 11.

⁹ (011/2003) [2003] ZASCA 76; [2003] 4 All SA 37 (SCA); 2004 (1) SA 292 (SCA) para 6.

¹⁰ (CCT 08/13) [2013] ZACC 37; 2014 (1) BCLR 65 (CC); 2014 (2) SA 68 (CC) paras 22 and 50.

Courts are not entitled to speculate in favour of litigants who fail to place material facts before them.

[21] Equally concerning is the fact that, after instituting proceedings, the Applicant again adopted a supine attitude and failed actively to prosecute the matter to finality.

[22] Nonetheless, in light of Counsel's concession that rescission could not properly be sustained, the issue of condonation effectively collapses into the broader enquiry regarding the absence of prospects of success.

The Merits of the Rescission Application

[23] The Applicant's explanation for the default is premised largely upon an alleged change of residential address and purported non-receipt of summons. That explanation is untenable both factually and legally.

[24] The Respondent served process at the *domicilium citandi et executandi* expressly chosen by the Applicant in the instalment sale agreement. The Applicant bore a contractual obligation to notify the Respondent of any change of address. She failed to do so.

[25] It is trite that a litigant cannot evade the consequences of proper service by neglecting contractual obligations relating to *domicilium*. The risk of non-receipt accordingly falls squarely upon the Applicant.

[26] In *Maujean t/a Audio Video Agencies v Standard Bank of South Africa Ltd*¹¹, the Court recognised that a litigant who consciously disregards contractual and procedural obligations may properly be found to be in wilful default. The Applicant's conduct *in casu* demonstrates not mere inadvertence, but a sustained and conscious disregard for both contractual obligations and court process.

¹¹ 1994 (3) SA 801 (C).

- [27] In *HDS Construction (Pty) Ltd v Wait*¹², the Court observed that wilful default exists where a litigant, with knowledge of the action and the consequences of non-participation, freely elects not to take the necessary procedural steps to protect his or her interests. The Applicant's prolonged inactivity, coupled with the absence of any credible explanation, falls squarely within that principle.
- [28] The Applicant was aware of her indebtedness, aware of her arrears, and aware that enforcement proceedings were likely. Yet she took no meaningful steps either to regularise her account or to protect her legal position. The Applicant has furthermore failed entirely to disclose a *bona fide* defence.
- [29] It is insufficient merely to deny indebtedness in vague or general terms. A rescission applicant must place before Court material facts which, if established at trial, would constitute a legally cognisable defence.
- [30] The Applicant's papers are bereft of such facts. There is no challenge to the validity of the agreement, the computation of the indebtedness, the Respondent's compliance with the NCA, or the procedural regularity of the default judgment.
- [31] The SCA in *Leo Manufacturing CC v Robor Industrial (Pty) Ltd t/a Robor Stewarts & Lloyds*¹³ made plain that rescission cannot be granted where an applicant fails to disclose the grounds of a substantive defence.
- [32] The inescapable inference is that the present application was instituted not to ventilate a genuine dispute, but merely to delay the consequences of a lawfully obtained judgment.
- [33] In *Swadif (Pty) Ltd v Dyke NO*¹⁴, the Appellate Division underscored the importance of finality in litigation and held that rescission is not available

¹² 1979 (2) SA 298 (E).

¹³ 2007 (2) SA 1 (SCA) para 4.

¹⁴ 1978 (1) SA 928 (A).

merely because a litigant later regrets the consequences of a judgment properly obtained.

[34] Further, courts are enjoined to protect the integrity and finality of judicial proceedings. The Constitutional Court in *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 (Council for the Advancement of the South African Constitution and another as amici curiae)*¹⁵ reaffirmed that courts possess an inherent power to protect their own processes against abuse and deliberate obstruction.

[35] The present proceedings bear all the hallmarks of litigation instituted not to ventilate a genuine dispute, but rather to delay and obstruct the lawful enforcement of a valid judgment debt.

[36] I hasten to point out that the Applicant elected not to file replying papers. Consequently, the factual averments made by the Respondent stand substantially uncontested.

[37] Applying the principles articulated in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*¹⁶, this Court is obliged, in motion proceedings, to accept the Respondent's version where disputes of fact arise and the Respondent's allegations are not so untenable as to be rejected on the papers. There is no basis upon which the Respondent's version can be impugned.

Costs

[38] The ordinary rule is that costs follow the result. However, a court retains a wide judicial discretion to depart from the ordinary scale and to award costs on the punitive scale as between attorney and client where considerations of justice and equity so require.

¹⁵ (CCT 52/21) [2021] ZACC 28; 2021 (11) BCLR 1263 (CC) para 130.

¹⁶ 1984 (3) SA 623 (A) at 634E-635C.

- [39] Punitive costs orders serve multiple purposes. They mark the Court's displeasure at reprehensible conduct, discourage abuse of judicial process, vindicate the authority of the Court, and more fully indemnify an innocent litigant compelled to incur unnecessary legal expenses.
- [40] The principles governing punitive costs are well established. In *Public Protector v South African Reserve Bank*¹⁷, the Constitutional Court confirmed that attorney-and-client costs are warranted where conduct is frivolous, vexatious, manifestly inappropriate, or constitutes an abuse of court process.
- [41] Likewise, the Constitutional Court in *De Lacy and Another v South African Post Office*¹⁸ held that punitive costs orders are justified where litigation is pursued recklessly, opportunistically, or in a manner designed to frustrate lawful processes.
- [42] The SCA similarly held in *Plastic Convertors Association of South Africa on behalf of Members v National Union of Metalworkers of South Africa and Others*¹⁹ that attorney-and-client costs may properly be awarded where a party acts *mala fide*, unreasonably, or in a manner constituting a gross abuse of process.²⁰
- [43] Several considerations compel such an order in the present matter. The Applicant launched rescission proceedings after an egregious delay of approximately eighteen months without furnishing a satisfactory explanation.
- [44] Despite invoking the Court's indulgence, the Applicant failed diligently to prosecute the application thereafter. The Applicant persisted in litigation devoid of any *bona fide* defence and ultimately conceded, through counsel, that no proper case for rescission had been established.

¹⁷ (CCT107/18) [2019] ZACC 29; 2019 (9) BCLR 1113 (CC); 2019 (6) SA 253 (CC) para 223.

¹⁸ (CCT 24/10) [2011] ZACC 17; 2011 (9) BCLR 905 (CC) para 117.

¹⁹ (2016) 37 ILJ 2815 (LAC) para 46.

²⁰ See also *Beinash v Wixley* 1997 (3) SA 721 (SCA) at 739I.

- [45] The Respondent, having complied meticulously with the NCA and all procedural prescripts, was unnecessarily compelled to incur substantial legal costs in opposing meritless proceedings.
- [46] This Court cannot ignore the broader systemic implications of such conduct. The administration of justice depends upon respect for procedural rules, finality of judgments, and the responsible invocation of judicial processes.
- [47] Unmeritorious rescission applications brought solely to delay execution undermine legal certainty, prejudice successful litigants, congest court rolls, and erode confidence in the administration of justice.
- [48] The Applicant's unsupported plea for leniency on account of alleged financial hardship carries little weight. No admissible evidence was tendered in support thereof. Assertions from the bar do not constitute evidence.
- [49] Moreover, financial hardship cannot excuse abuse of court process. To hold otherwise would effectively immunise litigants from the ordinary consequences of reckless litigation conduct.
- [50] In all the circumstances, this Court is satisfied that the Applicant's conduct warrants judicial censure and that a punitive costs order is both just and necessary. Costs on the scale as between attorney and client are accordingly appropriate.

Order

- [51] In the result, the following order is made:
1. The application is dismissed *in toto*.
 2. The Applicant is ordered to pay the costs of the application on the scale as between attorney and client.

T NGUBENI
ACTING JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

Appearances

For the Applicant:	Adv. Raedani
Instructed by:	Manganye-Khazamula Attorneys c/o Mjila & Partners Inc t/a Mhlabeni Inc.
For the Respondent:	Mr Adam
Instructed by:	Symington De Kok Inc. c/o Mervyn Joel Smith Attorneys.