REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 220500/2025

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

10 June 2026 _____

DATE SIGNATURE

In the matter between:

EBD TRADING AND PROJECTS (PTY) LTD **Applicant**

and

MERCEDES-BENZ FINANCIAL SERVICES SA (PTY) LTD **Respondent**

JUDGMENT

Mahosi J

[1] The applicant seeks an order, in terms of Rule 45A of the Uniform Rules, suspending and staying the operation and execution of a default judgment granted against it on 21 April 2026, pending the determination of its rescission application.

[2] The respondent opposes the application on two preliminary grounds. The first is that the application lacks urgency and should be struck from the roll. The second is that

the applicant has failed to establish a *prima facie* right to the vehicle. The Respondent further contends that, on the merits, the applicant failed to illustrate a *bona fide* defence to the claim.

[3] The factual matrix, as distilled in the pleadings, is as follows. The applicant, a private company operating a restaurant business, entered into an instalment sale agreement with the respondent on 29 April 2022 to purchase a Mercedes-Benz C200 motor vehicle. At that time, the applicant was represented by a director, Mr Ebhonu, who provided his personal residential address (2[…] W[…] Street, C[…], Vanderbijlpark) as the company's chosen *domicilium citandi et executandi*. On 06 August 2024, there was a change in directorship. Mr Ebhonu resigned, and Ms Merriam Mirrah DumaKude became the sole director of the applicant.

[4] On 23 October 2025, the applicant defaulted on the payment of instalments and fell into arrears. As a result, the respondent issued a summons against the applicant on 18 November 2025. The applicant did not file a notice of intention to defend. On 21 April 2026, a default judgment ordering cancellation of the agreement and authorizing the repossession of the vehicle was granted. It is the execution of this judgment that the applicant seeks to stay pending the determination of the rescission application.

[5] Rule 6(12)(b) of the Uniform Rules requires an applicant to set out explicitly the circumstances that render the matter urgent and why substantial redress cannot be obtained in the ordinary course. As aforesaid, the respondent contends that this application is not urgent. The applicant's founding affidavit is silent on the precise date it acquired knowledge of the judgment. In the replying affidavit, it merely states that it only became aware of the judgment "on or about 19 May 2026" when its director contacted the respondent to enquire about the arrears on the account with the intention of settling it.

[6] The applicant launched this application on 2 June 2026 and set down the hearing on 9 June 2026. It provided no explanation why it took from 19 May to 02 June 2026, some fourteen days, to launch this application, especially given that it had already launched the rescission application on 26 May 2026. If the threat of imminent execution

was as grave as alleged, the applicant should have sought a stay immediately upon discovering the judgment, or at the very latest when it filed the rescission application.

[7] Moreover, the applicant did not comply with this Court's practice directive requiring that papers be filed and completed before noon on the Thursday preceding the Tuesday hearing, and that proper consideration be given to the appropriate note period for the respondent. The applicant failed to show that a sale in execution is imminent, as it provides no evidence that the Sheriff had been instructed to attach the vehicle or that any attachment was pending. Therefore, its apprehension of execution was not so immediate as to justify the extreme abridgment of time periods it imposed on the respondent, requiring a notice of intention to oppose within one court day and an answering affidavit within two court days, in a matter involving a substantial judgment debt and complex factual disputes. In light of the above, it is apparent that urgency is self-created. For that reason alone, the application ought to be struck off the roll.

[8] Regarding the second point in limine that the applicant lacks a *prima facie* right to the vehicle, the respondent referred this Court to *Erasmus v Sentraawes Kooperasie Beperk.* In that case, it was held that, in determining the factors to be taken into account in exercising its discretion under rule 45A, the Court could draw on the requirements for granting an interlocutory interdict. These are the requirements that the applicant must show

> "(a) that the right which is the subject-matter of the main action and which he seeks to protect by means of the interim relief is clear or, if not clear, is *prima facie* established though open to some doubt;
>
> (b) that, if the right is only *prima facie* established, there is a well-grounded apprehension of irreparable harm to the applicant if the interim relief is not granted and he ultimately succeeds in the establishing of his right;
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> (c) that the balance of convenience favours the granting of interim relief; and
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> (d) that the applicant has no other satisfactory remedy."[1]

[1] *See* [1997] 4 All SA 303 (O), at 307F-G

[9] The respondent further referred the Court to *Hlapi v Le Grange; Mlambo v Le Grange,* where the Court said:

> "… the applicant for an interim interdict must show that, in the proceedings for final relief to which the proceedings for interim relief relate, there is a serious question to be tried. In assessing whether or not there is a serious question to be tried, the Court will not tie itself to a particular degree of proof. Rather it will ensure that the issue raised in the proceedings for final relief is not frivolous or vexatious or devoid of any merit. It will enquire into the balance of convenience. In coming to its decision regarding the grant or refusal of interim relief, and, if granted, the nature of that relief, the Court exercises a discretion. That process requires it primarily to weigh the apparent strength of the applicants' case in relation to the final relief, on the one hand, against the balance of convenience, on the other. If the balance of convenience strongly favours the second respondent, the applicant will have to show strong prospects of success in relation to the final relief before interim relief will be considered. If the balance of convenience strongly favours the applicants, their burden in relation to the "serious question to be tried" test is diminished." [2]

[10] Rule 45A provides that the Court may, on application, suspend the operation and execution of any order for such period as it may deem fit. The rule confers a wide and equitable discretion on the Court, to be exercised in light of all the circumstances, including the strength of the underlying challenge to the judgment.

[11] In the current matter, it is undisputed that the summons was served at the applicant's chosen *domicilium* address as set out in the agreement. Considering the principle that a party who chooses a *domicilium* bears the risk of non-receipt, the respondent is correct that it was entitled to serve at the address recorded in the

[2] [1999] 3 All SA 125, at para 9

agreement. However, the purpose of service is not a tick-box exercise, but to give actual or reasonably likely notice.[3]

[12] While the merits of the rescission application are not finally determinable now, the existence of a genuine dispute concerning whether the applicant was ever properly notified of the proceedings is directly relevant to the exercise of the discretion under Rule 45A. Where a company's chosen *domicilium* is the personal address of a director who has resigned, and the Sheriff merely affixes the summons to a locked door at that address, there is a real question as to whether that constitutes effective service on the company.

[13] The applicant contends that its new director could not rectify or amend the chosen *domicilium* because its current director had no knowledge of the agreement in question. This is contrary to its averment that its new director only became aware of the judgment when she contacted the respondent to enquire about the arrears on the account "with the intention of settling it". The question is: how does one settle arrears arising from an agreement of which they have no knowledge? This explanation for the default is not only contradictory but also implausible and unsatisfactory.

[14] Moreover, given that the agreement was concluded on 29 April 2022, the transfer of ownership occurred on 06 August 2024, and the applicant defaulted in October 2025, there is no explanation of who paid the installments between 06 August 2024 and October 2025. To this end, the respondent correctly contends that it is inconceivable that a newly appointed director would assume control of a company without conducting even the most basic due diligence into its assets, liabilities, contractual obligations, and pending litigation.

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[3] See *Nedbank Limited v Conco* (4582/2024 ; 8854/2024 ; 17151/2024 ; 2025/02753) [2026] ZAWCHC 38 (6 February 2026)

[15] Turning to the defence, the applicant disputes the arrears but provides no alternative calculation, no specific payments allegedly misallocated, and no documentary proof to support its bare denial. The respondent has annexed a statement of account showing arrears of R37 848.21 as at 23 October 2025, which increased to R89 334.91 by March 2026. The applicant's assertion that the summons lacked a certificate of balance is not a defence to the indebtedness. It is, at most, a procedural complaint that would not prevent the granting of default judgment where the claim, as in this case, is otherwise adequately pleaded. Considering the above, the applicant's defence is insufficient to constitute a *bona fide* defence. In these circumstances, this Court is satisfied that the applicant has no reasonable prospects of success in the rescission application.

[16] The applicant claims that it would suffer substantial and irreparable harm as the vehicle is utilised extensively in its day-to-day operations and is therefore essential to its restaurant business. However, it has produced no financial statements, no delivery records, and no alternative transport assessment to demonstrate that the repossession would irreparably harm its operations. In any event, any prejudice it suffers flows directly from its own breach of the agreement and its failure to meet its contractual obligations. A contracting party cannot create its own hardship and then invoke that hardship to deny the other party its lawful rights.

[17] The applicant cannot simply use an expensive vehicle without paying for it, while the respondent continues to suffer prejudice from being deprived of possession of the vehicle, which constitutes its primary security under the agreement. The prejudice that the respondent is suffering by being a victim of this unlawful conduct far outweighs any prejudice that the applicant might purportedly suffer. In light of the above, the balance of convenience favours the immediate return of the vehicle to its lawful owner.

[18] The applicant's explanation for default is poor, and its defence is at best a bare denial that does not answer the alternative claim for return of the vehicle. In these circumstances, this Court is satisfied that the applicant has no reasonable prospects of success in the rescission application. For this reason, the application stands to be

dismissed. The installment sale agreement provides for costs on an attorney and client scale, and there is no reason to depart from that contractual provision.

Order

[19] Accordingly, the following order is made:

1. The application is dismissed.

2. The applicant is ordered to pay the respondent's costs on an attorney and client scale.

Mercedes-Benz

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

Heard: 09 June 2026
Delivered: 10 June 2026

Appearances:

For the applicant:	Adv L Matoko
Instructed by:	Radebe MB and Associates Attorneys
For the respondent:	Adv CJ Welgemoed
Instructed by:	Strauss Daly Incorporated Attorneys