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REPUBLIC OF SOUTH AFRICA



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

Case Number: **2024-134581**
(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED: YES/NO
DATE **10 June 2026**
SIGNATURE

In the matter between:

THAMANI MOBILE (PTY) LTD FIRST APPLICANT

GEZANI FREDDY MASHELE SECOND APPLICANT

and

DATA WALLET (PTY) LTD FIRST RESPONDENT

SULIWARE (PTY) LTD SECOND RESPONDENT

F CASEY & ASSOCIATES (PTY) LTD THIRD RESPONDENT

In Re:

DATA WALLET (PTY) LTD FIRST PLAINTIFF

SULIWARE (PTY) LTD SECOND PLAINTIFF

and

THAMANI MOBILE (PTY) LTD

FIRST DEFENDANT

GEZANI FREDDY MASHELE

SECOND DEFENDANT

F CASEY & ASSOCIATES (PTY) LTD

THIRD DEFENDANT

Delivered: This judgment was prepared and authored by the Judge whose name is reflected herein and is handed down electronically by circulation to the parties or their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be the _____.

JUDGMENT

SEKWAKWENG AJ:

Introduction:

- [1] Before this Court is an opposed application for the rescission of a default judgment granted by this Court on 19 May 2025.
- [2] The first applicant is Thamani Mobile (Pty) Ltd ("Thamani"), a private company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered address at 6[...] G[...] Road, Midrand, Gauteng. The second applicant is Mr Gezani Freddy Mashele ("Mashele"), an adult male businessman who is the sole beneficial owner and director of Thamani. The first respondent is Data Wallet (Pty) Ltd ("Data Wallet"), a private company duly incorporated in terms of the company laws of the Republic of South Africa, with its registered address at [...] Floor, C[...] V[...] Courtyard, Constantia Main Road, Constantia, Cape Town. The second respondent is Suliware (Pty) Ltd ("Suliware"), a private company duly incorporated in terms of the company laws of the Republic of South Africa, with its registered address at Block [...], Office 1[...], S[...] Office Park, 3[...] Q[...] Crescent, Lynwood, Pretoria. Data Wallet and Suliware trade together

under the name "Numobile". The third respondent is F Casey & Associates (Pty) Ltd ("Casey"), a private company duly incorporated in terms of the company laws of the Republic of South Africa, with its registered address at 5[...] S[...] D[...] Road, Hurleyvale, Edenvale. Casey acts as a payment intermediary between the parties and the relevant employers, receiving payroll deductions and disbursing them as directed. It does not assert any independent entitlement to those funds.

- [3] The default judgment was granted in action proceedings instituted by the first and second respondents against the applicants and the third respondent. In those proceedings, Data Wallet and Suliware were the plaintiffs. Whilst Thamani, Mashele and Casey were the first, second and third defendants respectively. The action is pending before this Court under case number 2024-134581.
- [4] Only Thamani and Mashele defended the action and Casey did not. The default judgment was consequently granted against Casey. Casey's role in the broader arrangement between the parties is that of an administrator or intermediary responsible for receiving, administering or directing payments either to Thamani and Mashele, on the one hand, or to Data Wallet and Suliware, on the other. Depending on the instructions or legal position applicable between the parties. Casey does not assert any independent entitlement to those payments in its own right.
- [5] The judgement of 19 May 2025 ordered Casey to make payment to Data Wallet and Suliware in respect of the funds received and administered by Casey. This is the very payment mechanism which is disputed in the pending action. The effect of the default judgment was therefore to regulate the disputed payment dispensation in favour of Data Wallet and Suliware.
- [6] It is common cause that when Data Wallet and Suliware sought and obtained the order against Casey, the application for default judgment was not served on Thamani and Mashele. They were not given notice of the application, notwithstanding that they had already defended the action and

notwithstanding that the disputed payment dispensation regulated by the default judgment lay at the heart of the dispute between the parties.

- [7] This constitutes the applicants' grievance. Their complaint is that the order granted against Casey had the practical effect of directing where the disputed payments were to be made pending the trial, without notice to them and without affording them an opportunity to place their version before Court.
- [8] The applicants contend that once the payment stream was directed to Data Wallet and Suliware in terms of the default judgment, the subject matter of the pending action was no longer preserved pending trial. They also contend that the order intercepted the interim dispensation previously granted by this Court on 25 October 2024, which had regulated the position pending the determination of the parties' competing claims.
- [9] The application is brought in terms of Rule 42(1)(a) of the Uniform Rules of Court (hereinafter "Uniform Rules"), alternatively under the common law. The question before this Court is whether, having regard to the nature and effect of the order sought and granted against Casey, Thamani and Mashele were "parties affected" by the order within the meaning of Rule 42(1)(a) of the Uniform Rules, and whether the order was accordingly erroneously sought and erroneously granted in their absence.
- [10] Data Wallet and Suliware contend that Thamani and Mashele's interest in the default judgment is merely collateral. They emphasise that no order was granted against Thamani or Mashele and that the disputes between those parties remain to be determined in the pending action. Thamani and Mashele contend to the contrary. They say that the order granted against Casey directly affected the payment stream, which is the subject of the action, and that they were accordingly entitled to be heard before it was granted.

Background

The parties and the business in which they operate

- [11] Thamani operated within the telecommunications industry and specialised in the provision of mobile devices and data contract packages to employees of various public sector entities. Its business model involved supplying smartphones, tablets, laptops, and computers bundled with airtime and data services. These products and services were offered to employees of, inter alia the Ekurhuleni Municipality, Tshwane Municipality, Mogale City Municipality, the City of Johannesburg, Emfuleni Municipality, Rand West Municipality and Sefako Makgatho Health Sciences University (MEDUNSA).
- [12] End users entered into 24-month deduction agreements with their employers, who in turn deducted the monthly instalments directly from the employees' salaries and paid the aggregate deductions to Casey. Casey received these deductions from the respective employers and subsequently remitted the funds to Thamani. Mashele was the sole beneficial owner and director of Thamani, having acquired 100% of its shares in either 2021 or 2022.
- [13] Casey's function in this scheme is administrative. It receives payroll deductions from the respective employers and disburses those funds to the party it is directed to pay. It does not assert any independent entitlement to the monies in question. As the papers consistently reflect, and as the answering affidavit of the respondents effectively confirms, Casey is the conduit through which the disputed payment stream flows.
- [14] Data Wallet and Suliware trade jointly under the name "Numobile" and conduct a business identical in nature to that previously operated by Thamani. In April 2022 the two companies acquired Thamani's business and thereafter conducted it jointly as Numobile.

The respondents' case in the action

- [15] The respondents' case in the action is that, on or about 15 April 2022, Thamani (as seller) and Data Wallet (as purchaser) concluded a written agreement for the sale of the business. In terms of which Data Wallet acquired Thamani's business as a going concern, with effect from 6 April 2022.

- [16] In terms of that agreement, the assets sold included all of Thamani's existing contracts with its public sector clients, and the arrangement between Thamani and Casey in terms of which Casey received payments on Thamani's behalf. Those rights were ceded to Data Wallet with effect from the completion date of sale. The respondents further contend that Data Wallet confirmed in writing on 5 April 2022 that the suspensive conditions of the agreement had been fulfilled or waived. They further state that the effective date of the agreement was confirmed as 6 April 2022 and that all employees of Thamani were transferred to Data Wallet in terms of section 197(2) of the Labour Relations Act.¹
- [17] On the respondents' version, the cession of the Casey arrangement was given effect by a letter from Thamani to Casey dated 8 April 2022, directing Casey to redirect all future payments to Data Wallet's nominated Standard Bank account. Casey duly complied.
- [18] From April 2022 until July 2024, Casey paid all amounts received to Data Wallet's account on a monthly basis. Subsequent to the effective date of the sale, all new cell phone contracts with end users were concluded in the name of Suliware, and all subsisting contracts were beneficially owned by Suliware. By April 2024, all original 24-month contracts previously concluded in Thamani's name had expired. On this version, there was accordingly nothing remaining in Thamani's name, all subsisting contracts and the payment stream arising from them belonged to the Numobile enterprise.
- [19] The respondents say further that, pursuant to the sale of business, Mashele entered into a written executive employment agreement with Data Wallet on or about 26 April 2022 and became an employee of Data Wallet with effect from the completion date of the sale. He was paid a monthly salary by Data Wallet. The employment agreement contained a restraint of trade clause. On this version, Mashele was not a director of Data Wallet and did not acquire shares in it. His status was that of an employee.

¹ Act 66 of 1995.

- [20] The respondents' case is that the working relationship deteriorated during 2024 and that Mashele unilaterally terminated it by email on 2 August 2024. They allege that in anticipation of or as a consequence of that termination, Mashele caused a letter dated 30 April 2024 to be written on behalf of Thamani to Casey, directing Casey to redirect all future payments to Thamani's FNB bank account. On the respondents' version, that letter was only physically delivered to Casey on or about 31 July 2024 after which Casey complied with its instructions.
- [21] According to the respondents' payments with effect from August 2024, that ought to have been made to Data Wallet were redirected to Thamani. As a result, payments totalling in the amount of R 5 022 962.87 for the months of July, August, September and October 2024 were either paid to Thamani's account or withheld from Data Wallet entirely. The respondents contend that the bank account change letter constituted a fraudulent misrepresentation by the Thamani and Mashele to Casey, which was issued without authority and in breach of the sale agreement and the cession.

The applicants' case

- [22] Thamani and Mashele deny that the sale of business agreement was validly concluded. Their case is that the suspensive conditions of the sale agreement were never fulfilled and that, as a consequence, no valid sale of the business took place. On this version, Thamani remains the rightful owner of the business and the payment stream generated by its clients remain payable to it.
- [23] The applicants accordingly deny that the arrangement with Casey was validly ceded to Data Wallet and further deny that Data Wallet or Suliware were entitled to the payments made by Casey. In their counterclaim, the applicants contend that Suliware's option to acquire shares in Thamani was part of the broader commercial arrangement which was never materialised. As a result, the entire purported acquisition never came into legal effect.
- [24] On the applicants' version, the bank account change instruction issued by Mashele to Casey in July 2024 was therefore not a fraudulent

misrepresentation *ab initio*. According to the applicants it was a legitimate instruction by the party lawfully entitled to the payments by its payment intermediary. Thus, redirecting those payments back to where they ought to have been paid all along. Thamani and Mashele maintain that they are entitled to the payment stream and that Data Wallet and Suliware have no such entitlement.

[25] These are the parties' competing versions and they constitute the central dispute in the action. The trial Court will be seized with the obligation to determine which version is correct. For purposes of this application, it is not necessary for this Court to decide between them. What is material is that the dispute is live and that the payment stream administered by Casey is at the core of it.

The litigation history

[26] On 12 August 2024, Data Wallet and Suliware launched an urgent application to this Court, citing Thamani, Mashele and Casey as respondents. The application sought to interdict Thamani and Mashele from interfering with the respondents' business and from issuing payment instructions to Casey, and to interdict Casey from accepting such instructions and from making payments other than to Data Wallet's nominated bank account. The underlying purpose was to secure the payment stream pending judicial determination of the commercial dispute.

[27] On 25 October 2024, this Court granted an interim order. The material terms of that order were that Thamani and Mashele were prohibited from:

27.1 giving any instruction to Casey or to the relevant clients to change Data Wallet's and Suliware's banking details;

27.2 diverting or misappropriating funds payable to Data Wallet and Suliware from the specified municipal and institutional clients;

27.3 representing themselves as Data Wallet and Suliware or as their authorised representatives; and

27.4 inducing payments due to Data Wallet and Suliware to be made instead to themselves.

Casey was prohibited from taking, accepting or implementing any instruction from Thamani or Mashele relating to the receipt and disbursement of funds due to the respondents. The order further directed that action proceedings be instituted within 30 days.

[28] It is common cause that the interim order did not finally determine the rights of the parties to the payment dispensation. It regulated the position on an interim basis pending the institution and determination of action proceedings. The question of who is entitled to the payments was expressly left for trial.

[29] On or about 28 October 2024, Thamani and Mashele filed an application for leave to appeal the order of Teffo J. The filing of that application had the effect of suspending the interim order. Data Wallet and Suliware responded by launching a further urgent application to declare the interim order not suspended. On 25 November 2024 Labuschagne AJ dismissed that application, with the result that the interim order was effectively suspended for the period during which the leave to appeal application remained pending.

[30] During this period, while the interim order was suspended, Thamani and Mashele launched a further urgent application on or about 10 December 2024 against Casey alone, under a separate case number. Data Wallet and Suliware were not joined. They applied for intervention and joinder. On 17 December 2024 Basson J upheld the intervention application. The application was heard by Neukircher J on 19 February 2025 and dismissed with costs on 26 February 2025.

[31] Casey, receiving no judicial direction as to which party was entitled to the funds, ceased paying either side. Casey paid certain service providers directly so as to maintain continuity of service, retaining the balance of the amounts it received pending the outcome of the legal proceedings.

[32] On 20 November 2024 and pursuant to the direction in the Teffo J order, Data Wallet and Suliware issued combined summons within the directed 30-day

period. In the action, Data Wallet and Suliware were the first and second plaintiffs; Thamani, Mashele and Casey were the first, second and third defendants. The combined summons was served on all three defendants.

[33] Thamani and Mashele filed their notice of intention to defend on 9 December 2024. Casey did not file a notice of intention to defend. The period for Casey to do so expired on 5 December 2024. Casey was accordingly in default from that date. On 5 February 2025, Data Wallet and Suliware filed an application for default judgment against Casey in terms of Rule 31(2) of the Uniform Rules. The application was confined to Casey. It was not served on Thamani or Mashele. No notice of the application or of the date on which it would be placed before Court was given to them.

[34] The relief sought against Casey was as follows:

34.1 that Casey be prohibited from making any payments to Thamani or Mashele;

34.2 that Casey pay all future amounts received from the relevant employers to Data Wallet's nominated Standard Bank account without deduction; that Casey pay R 5 022 962.87 in respect of the payments for July to October 2024;

34.3 that Casey pay any further amounts due from November 2024 onwards;

34.4 that Casey pay interest *a tempore mora*;

34.5 that Casey accept no further instructions from Thamani or Mashele in relation to those funds; and

34.6 that Casey pay the costs of the application on the attorney and own client scale, alternatively Scale C.

[35] The matter was set down on the unopposed default judgment roll for 19 May 2025. When the application was called before Nicholson AJ, the attorney for Data Wallet and Suliware informed the Court that there were three defendants

in the action, that Thamani and Mashele had filed notices of intention to defend, and that Casey had not. He further advised the Court that the draft order had been modified to seek relief against Casey only. Nicholson AJ was satisfied with the explanation and, there being no appearance for Casey, granted default judgment against Casey in the terms of the draft order. The order is dated 19 May 2025.

[36] The order thereby directed that Casey:

- 36.1 be prohibited from making any payments to Thamani or Mashele;
- 36.2 pay all future amounts received to Data Wallet's Standard Bank account;
- 36.3 pay R 5 022 962.87 to Data Wallet;
- 36.4 pay any further amounts due from November 2024 onwards;
- 36.5 pay all future amounts without deduction; to accept no instructions from Thamani or Mashele relating to the receipt and disbursement of those funds;
- 36.6 pay interest; and
- 36.7 pay costs.

[37] It is common cause that this order was obtained without notice to Thamani and Mashele. Its effect was to regulate, in Data Wallet and Suliware's favour, the same payment stream that is the subject of the live and unresolved dispute between all the parties in the pending action.

Discovery of the judgment and the steps taken by the applicants

[38] On or about 2 June 2025, Mashele was telephonically informed by a representative of Casey that a judgment had been obtained against Casey. He did not at that stage have a copy of the order.

[39] On 3 June 2025, Bagraim Sachs Inc, the attorneys acting for Data Wallet and Suliware, wrote to Smith, Kruger and Viljoen Attorneys Incorporated ("SKV

Attorneys"), the attorneys acting for the applicants, confirming that the default judgment had been granted and enclosing a copy of the order.

[40] That same letter did not stop at conveying the judgment. Bagraim Sachs Inc simultaneously requested Thamani and Mashele to agree to judgment in the action, on the basis that it would save further costs to do so. The applicants place particular reliance on that request. Their submission is that it demonstrates that Data Wallet and Suliware did not themselves treat the default judgment as an order confined to Casey and without consequence for the pending action between the parties. To the contrary, on the day they confirmed the order to the applicants, Data Wallet and Suliware deployed it as a basis for pressing the applicants to submit to judgment in the action. That use of the order is, on the applicants' case, inconsistent with the proposition now advanced that the default judgment had no bearing on the dispute between them and the applicants.

[41] On 4 June 2025, SKV Attorneys responded. They recorded that neither Thamani nor Mashele had been given any notice of the application for default judgment, that neither had been informed of the date on which the application would be placed before Court, and that the application had accordingly been sought and granted without any opportunity for them to be heard. SKV Attorneys sought clarity on the basis upon which the order had been sought without notice to their clients.

[42] On 11 June 2025, Bagraim Sachs Inc replied. The substance of the response was that the default judgment had been sought against Casey because Casey had not defended the action, and that any application for rescission should properly be brought by Casey, being the party against whom the order had formally been granted.

[43] SKV Attorneys then addressed correspondence to the attorneys acting for Casey, calling upon Casey to bring a rescission application. Casey's attorneys responded on 11 June 2025 that they would obtain instructions and revert. Follow-up correspondence was addressed on 23 June 2025, 8 July 2025 and 15 July 2025. Casey did not bring a rescission application.

[44] The applicants then brought the present application on 22 August 2025. They do so on the basis that, although the default judgment was formally directed at Casey, they were parties affected by the order within the meaning of Rule 42(1)(a) of the Uniform Rules. Reasonbeing is that the order regulated the payment stream administered through Casey, which remains the subject of the pending action between the parties.

[45] The application was initially enrolled for hearing on 5 November 2025 but was not properly placed on the roll and was removed. It was subsequently re-enrolled and was heard by this Court on 1 June 2026. Casey has filed a notice to abide the decision of this Court. Data Wallet and Suliware oppose the application and seek its dismissal with costs.

Analysis

The legal framework

[46] The starting point is that a plaintiff is ordinarily entitled to seek judgment against a defendant who has been properly served and has failed to enter an appearance to defend. Rule 42(1)(a) of the Uniform Rules is not directed at depriving a plaintiff of that procedural entitlement merely because a defence is later disclosed. In *Lodhi 2 Properties Investments CC and Another v Bondev Developments* (hereinafter “*Lodhi*”) the Supreme Court of Appeal held:

"Similarly, in a case where a plaintiff is procedurally entitled to judgment in the absence of the defendant the judgment if granted cannot be said to have been granted erroneously in the light of a subsequently disclosed defence. A Court which grants a judgment by default like the judgments we are presently concerned with, does not grant the judgment on the basis that the defendant does not have a defence: it grants the judgment on the basis that the defendant has been notified of the plaintiff's claim as required by the rules, that the defendant, not having given notice of an intention to defend, is not defending the matter and that the plaintiff is in terms of the rules entitled to the order sought. The existence or non-existence of a defence on the merits is an irrelevant consideration and, if

*subsequently disclosed, cannot transform a validly obtained judgment into an erroneous judgment."*²

[47] Casey had not entered an appearance to defend. Data Wallet and Suliware were therefore, in the ordinary course entitled to approach the Court for default judgment against Casey. The applicants do not seek rescission merely because they say they have a defence to the action. Their complaint is that the order sought against Casey affected the very payment stream which is the subject of their defended dispute with Data Wallet and Suliware, and that default judgement was sought without notice to them.

[48] The issue is therefore whether Thamani and Mashele were "parties affected" by the order within the meaning of Rule 42(1)(a) of the Uniform Rules, notwithstanding that the order was formally granted against Casey only.

[49] Rule 42(1)(a) of the Uniform Rules provide:

"The Court may, in addition to any other powers it may have, mero motu or upon the application of any party affected, rescind or vary -

a) an order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby."

[50] The purpose of Rule 42(1)(a) of the Uniform Rules is well established. It exists to correct, expeditiously, an order or judgment that was granted in circumstances falling within the rule. Its scope is confined 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*, the Constitutional Court stated:

"It is trite that an applicant who invokes this rule must show that the order sought to be rescinded was granted in his or her absence and

² *Lodhi 2 Properties Investments CC and Another v Bondev Developments (Pty) Ltd* 2007 (6) SA 87 (SCA) at para 27.

that it was erroneously granted or sought. Both grounds must be shown to exist."³

[51] At paragraphs 56 and 57 of the above case, the Constitutional Court made clear that absence and error are separate and independent requirements, each of which must be established. The Rule does not exist to provide a litigant with a rehearing merely because that litigant is dissatisfied with an outcome. It exists to correct an order that was sought or granted in circumstances that satisfy both limbs of the Rule.

[52] The Constitutional Court held at paragraphs 71 and 72, that rescission must be approached against the background of the principle of finality in litigation. Litigation must come to an end. Courts should not lightly reopen orders already granted, and the mere fact that an order has become inconvenient to a party is not a sufficient basis for rescission. At paragraphs 79 to 86 the Court further held that the word "may" in Rule 42(1) of the Uniform Rules preserves a judicial discretion. Even where the jurisdictional requirements of the Rule are established, the Court does not automatically grant rescission. It must exercise its discretion judicially, having regard to considerations of fairness and justice on the particular facts.

Were the applicants parties affected by the default judgment?

[53] It is common cause that the application for default judgment was not brought to the attention of Thamani and Mashele before the order was granted. They were not served with the application and were not given notice of the hearing date. The point of departure is therefore that the order was granted in their absence. That, however, does not conclude the enquiry under Rule 42(1)(a) of the Uniform Rules. The further question is whether, notwithstanding that the order was formally granted against Casey only, Thamani and Mashele were parties affected by that order.

[54] The phrase "any party affected" in Rule 42(1)(a) of the Uniform Rules does not mean every person who may suffer some inconvenience or some indirect

³ *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* 2021 (11) BCLR 1263 (CC) at para 54.

commercial consequence from the order. In *De Villiers and Others v Trustees for the Time Being of the GJN Trust and Others*,⁴ the Supreme Court of Appeal dealt directly with the standing under Rule 42(1)(a) of the Uniform Rules and approved of the formulation in *United Watch & Diamond Co (Pty) Ltd and Others v Disa Hotels Ltd and Another* (hereinafter “United Watch”),⁵ namely that the applicant must show a direct and substantial interest in the judgment or order sought to be rescinded. That means a legal interest in the subject matter of the order which may be prejudicially affected by it.

[55] In *United Watch*,⁶ the Court held that the required interest is one which would have entitled the person concerned to intervene in the proceedings in which the order was granted. The interest must be legal, not merely financial or commercial. In *Henri Viljoen (Pty) Ltd v Awerbuch Brothers*,⁷ the Court distinguished between a legal interest in the subject matter of the litigation, which is to be deemed sufficient and a mere financial interest, which is not to be deemed sufficient.

[56] The same approach was restated in *Gordon v Department of Health, KwaZulu-Natal*,⁸ the Supreme Court of Appeal held that the test is whether the party alleged to have an interest has an actual legal interest in the subject matter, which may be affected prejudicially by the judgment. The Court further emphasised that the order sought or granted is relevant to the enquiry if party has a direct and substantial interest. The Court must therefore examine the substance of the order and not only the formal identity of the party against whom it was granted.

[57] That approach is consistent with *Amalgamated Engineering Union v Minister of Labour*,⁹ where the Court held that the enquiry is not concerned with the subject matter in the abstract, but rather with the manner in which, and the extent to which, the order may affect the interests of third parties. The fact that

⁴ *De Villiers and Others v Trustees for the Time Being of the GJN Trust and Others* 2019 (1) SA 120 (SCA) at paras 21 and 22.

⁵ *United Watch & Diamond Co (Pty) Ltd and Others v Disa Hotels Ltd and Another* 1972 (4) SA 409 (C).

⁶ *United Watch & Diamond Co (Pty) Ltd and Others v Disa Hotels Ltd and Another* above n 6 at para 415C–H.

⁷ *Henri Viljoen (Pty) Ltd v Awerbuch Brothers* 1953 (2) SA 151 (O) at para 169H.

⁸ *Gordon v Department of Health, KwaZulu-Natal* 2008 (6) SA 522 (SCA) at paras 9 and 10.

⁹ *Amalgamated Engineering Union v Minister of Labour* 1949 (3) SA 637 (A) at para 656.

the order was granted against Casey only is therefore relevant, but not decisive.

[58] The enquiry is also informed by the audi alteram partem principle. In *Dabner v South African Railways and Harbours*,¹⁰ the Appellate Division recognised the basic principle that a person should not be prejudiced by an order without being afforded an opportunity to be heard. In *Zondi v MEC for Traditional and Local Government Affairs* 2005 (3) SA 589 (CC),¹¹ the Constitutional Court affirmed that procedural fairness requires that a person whose legal interests may be affected, ought to be afforded an adequate opportunity to be heard. The point is not one of form. It is one of fairness.

[59] It follows from these authorities that the form of the order is not conclusive. If the default judgment merely imposed obligations on Casey without affecting any legal interest of Thamani and Mashele, their interest would be collateral. If, however, the order regulated the very payment stream which is the subject of the pending action and did so before the competing claims to that payment stream were determined, their interest was direct and substantial.

[60] On the papers, Casey does not assert any entitlement to the funds it receives. Its role is administrative. It receives and disburses the payments in accordance with the applicable instruction, arrangement or Court order. The substantive dispute is between Data Wallet and Suliware, on the one hand, and Thamani and Mashele, on the other, regarding who is entitled to those funds. Casey is the mechanism through which that dispute is given practical effect.

[61] Once Casey's role is understood in that way, the nature of the default judgment becomes plain. The order did not merely resolve a procedural default by Casey. It directed Casey to administer the payment stream. It prohibited payment to Thamani and Mashele. It directed payment to Data Wallet. It directed that all future amounts received by Casey was to be paid to Data Wallet's account. It prohibited Casey from accepting further instructions from Thamani and Mashele. In doing all of this, the order regulated the very

¹⁰ *Dabner v South African Railways and Harbours* 1920 AD 583 at para 598.

¹¹ *Zondi v MEC for Traditional and Local Government Affairs* 2005 (3) SA 589 (CC) at para 112.

subject matter of the pending action between the applicants and the first and second respondents, before that matter had been determined.

[62] Data Wallet and Suliware argued that the Court which granted the default judgment was informed that Thamani and Mashele had filed notices of intention to defend. That is so, however it does not answer the present enquiry. Knowledge that Thamani and Mashele had defended the action is not the same as notice to them that an order would be sought against Casey directing payment of the very funds in dispute. The question is not whether the Court knew of their status. The question is whether they were entitled to be heard before an order was granted which affected the subject matter of their defence.

[63] Data Wallet and Suliware also argued that the interim order of Teffo J already prevented payment to Thamani and Mashele, and that rescission would therefore not improve their position. That submission does not meet the applicants' complaint. The order of Teffo J was an interim order. It regulated the position pending action proceedings. It was not a final determination of the parties' entitlement to the payment stream. The default judgment directed Casey to pay Data Wallet and Suliware and to continue doing so, while the action remained unresolved. That is a materially different position from the preservation of the status quo under an interim order.

[64] I am satisfied that Thamani and Mashele were parties affected by the default judgment within the meaning of Rule 42(1)(a) of the Uniform Rules. Their interest was not merely financial or collateral. It was a legal interest in the subject matter of the pending action, namely who is entitled to the payment stream administered through Casey.

Was the order erroneously sought and granted?

[65] It follows that the default judgment was granted in the absence of parties affected by it. The remaining question is whether it was erroneously sought or erroneously granted.

[66] An order is erroneously granted where, at the time that the order was made, the Court was unaware of a fact or circumstance that would have precluded its grant or required a different procedural approach before granting it. As it relates to *Lodhi*, where in principle a plaintiff is procedurally entitled to judgment in the absence of the defendant, such a judgment cannot be said to have been granted erroneously and does not assist Data Wallet and Suliware in this matter. The complaint here is not that Thamani and Mashele have now disclosed a defence. The complaint is that the order was sought without notice to the parties who had a direct and substantial legal interest in the relief being sought against Casey.

[67] Having regard to the full context of the:

67.1. role Casey undertakes as payment intermediary;

67.2. disputed entitlement to the funds it administers;

67.3. interim nature of the order of Teffo J;

67.4. fact that Thamani and Mashele had defended the action;

67.5. effect of the relief sought against Casey on the very subject matter of that action; and

67.6. notice to Thamani and Mashele before the order was granted was required.

The absence of such notice constituted an error within the meaning of Rule 42(1)(a) of the Uniform Rules.

The exercise of the discretion

[68] I am satisfied that the discretion preserved by the word "may" in Rule 42(1)(a) of the Uniform Rules should be exercised in favour of rescission. The considerations of fairness and justice that inform the exercise of that discretion favour the applicants' position. They had a direct and material legal interest in the relief that was being sought against Casey. They were entitled to be heard before the order was made. The order, once granted without

notice to them, regulated the payment stream in dispute in a manner that prejudiced their legal position in the pending action. To allow that order to stand would be to permit the enforcement of a procedural advantage obtained through a process that was incomplete. The rescission of the default judgment does not determine the merits of the action. It restores the position that ought to have been obtained had the applicants been given notice. The position that they would have had an opportunity to be heard before the default judgement was granted against Casey. Nothing in this judgment determines whether Data Wallet and Suliware or Thamani and Mashele are entitled to the payment stream. Those questions remain to be determined at trial.

- [69] During argument, I raised with the parties the practical question whether, if rescission were granted, some workable interim arrangement could be proposed to avoid unnecessary disruption to the commercial operations of the parties while the action remains pending. No agreed proposal was placed before me prior to the preparation of this judgment. In any event, these are rescission proceedings. They are not proceedings for the creation of a new payment regime.
- [70] The effect of rescission is therefore that the order of 19 May 2025 is set aside. Nothing in this judgment varies or suspends the interim order granted by Teffo J on 25 October 2024.

Prayer 2: the further relief sought

- [71] A further aspect of the relief sought requires separate consideration. In prayer 2 of the notice of motion, the applicants seek an order prohibiting Data Wallet and Suliware from applying for default judgment against Casey pending the resolution of the issues between the parties in the action. That relief is refused, but the refusal requires explanation.
- [72] This Court has found that the applicants were parties affected by the order of 19 May 2025 because that order regulated the payment stream administered through Casey, being the very subject matter of the pending action. That finding is not confined to the specific order granted on 19 May 2025. The reasoning is that it applies equally to any future application with a similar

nature, namely any application that seeks to direct or regulate the payment stream while the question of entitlement remains unresolved in the action. Data Wallet and Suliware are not prohibited by this judgment from approaching the Court for competent procedural relief. They remain entitled to do so. What this judgment makes clear is that any such application that affects the legal interests of Thamani and Mashele must be brought on proper notice to them, and that Thamani and Mashele are entitled to be heard before any order is made that affects the subject matter of the pending action.

[73] A general prospective prohibition against any future application for default judgment is neither necessary nor appropriate in rescission proceedings. Such a prohibition would go beyond what these proceedings are designed to achieve and would amount to an advance restriction on the procedural rights of Data Wallet and Suliware before the nature and effect of any future application is known. The proper safeguard lies not in a blanket prohibition but in the principle, affirmed by this judgment, that parties who are directly and materially affected by an order must be given notice before it is sought. Prayer 2 is accordingly refused.

Costs

[74] The applicants have been substantially successful. The central issue in the application was whether the default judgment of 19 May 2025 should be rescinded. That relief has been granted. However, Prayer 2 was ancillary to the rescission relief, and its refusal does not detract from the applicants' substantial success.

[75] I am not persuaded that a punitive costs order is warranted. The matter raised a genuine procedural issue concerning the reach of Rule 42(1)(a) of the Uniform Rules and the position of parties who were not formally bound by an order, but whose legal interests were affected by it. Data Wallet and Suliware were entitled to oppose the application. Their opposition was not frivolous or vexatious. Costs should follow the result on Scale B.

[76] As a result, the following order is made:

1. The default judgment granted by this Court on 19 May 2025 against the third respondent, F Casey & Associates (Pty) Ltd, is rescinded and set aside.
2. Nothing in this order varies or suspends the interim order granted on 25 October 2024, which remains of full force and effect.
3. The relief sought in prayer 2 of the notice of motion is refused.
4. The first and second respondents shall pay the costs of the application jointly and severally, the one paying the other to be absolved, on Scale B.

**M D SEKWAKWENG
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION
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