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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

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

Date: 3 July 2026

Signature:

CASE NO: 129816/2023

DATE: 3 July 2026

In the matter between:

BRETT'S JANITORIAL SERVICE (PTY) LIMITED
(Registration No. 2012/086109/07)

First Applicant

VUKOSI BRETT MHLARHI
(ID No. 9[...])

Second Applicant

And

CEMBLOCKS (PTY) LIMITED
(Registration No. 1981/007595/07)

Respondent

In re

CEMBLOCKS (PTY) LIMITED
(Registration No. 1981/007595/07)

Plaintiff

and

BRETT'S JANITORIAL SERVICE (PTY) LIMITED
VUKOSI BRETT MHLARHI

First Defendant

Second Defendant

Coram: M Van Nieuwenhuizen, AJ

Heard on: 16 February 2026

Delivered: 3 July 2026

Flynote: *Civil procedure – Rescission of judgment – Rule 42(1)(a) – Default judgment – Service of process – Pre-April 2024 Rule 4(1)(a)(iv) and Rule 4(1)(a)(v) - Sheriff effecting service by affixing process to principal gate – Law requiring service at a chosen domicile by delivering or leaving a copy and, in the case of a company, by delivering a copy to a responsible employee at its registered office or principal place of business – Returns of service not disclosing compliance with the prescribed methods of service – Applicants deprived of proper notice of the proceedings – Default judgment erroneously sought and erroneously granted – Rescission granted*

JUDGMENT

M VAN NIEUWENHUIZEN, AJ:

INTRODUCTION

- [1] This is an application for rescission of a default judgment granted on 11 April 2024.
- [2] The applicants contend that the judgment was erroneously sought and granted as contemplated in Rule 42(1)(a) of the Uniform Rules of Court because, the summons was not properly served. It submits that the returns of service did not establish compliance with Rule 4 of the Uniform Rules of Court¹ as it stood at the time service was effected and that, had the Court been appraised of the true position, default judgment would not have been granted.

¹ Act 59 of 1959 (as amended)

- [3] The respondent opposes the application and *inter alia* contends that service was duly effected at the applicants' chosen *domicilium citandi et executandi*.
- [4] The issue for determination is whether the returns of service upon which the default judgment was granted establishes proper service in accordance with the Uniform Rules of Court. If it did not, the judgment is to be rescinded irrespective of the merits of the applicants' defence.

THE RELEVANT FACTS

- [5] The first applicant is a company. Service of the summons was purportedly effected by the Sheriff on 11 December 2023 at 11h46. The return of service records that service was effected as follows:

*"That on the 11th of December 2023 at 11h46 at Unit [...], F[...] P[...], 1[...] M[...] Street, Bronkhorstspuit being the **chosen domicilium citandi et executandi** of Brett's Janitorial Services (Pty) Limited (Registration No. 2012(086109/07). **A copy of the Combined Summons, Particulars of Plaintiff's Claim and Annexures was served by affixing to the principal gate.** After a diligent search at the given address no other manner of service was possible. Rule 4(1)(a)(iv)."*

- [6] The second applicant is a natural person and sole director of the first applicant. The return of service in respect of the second applicant records that service was effected as follows:

*"That on the 11th of December 2023 at 11h46 at Unit [...], F[...] P[...], 1[...] M[...] Street, Bronkhorstspuit being the **chosen domicilium citandi et executandi** of Vukosi Brett Mhlarhi (Identity No: 9[...]). **A copy of the Combined Summons, Particulars of Plaintiff's Claim and Annexures was served by affixing to the principal gate.** After a diligent search at the given address no other manner of service was possible. Rule 4(1)(a)(iv)."*

- [7] The returns of service reflect that the Sheriff served the summons by affixing a copy thereof to the principal gate at the address identified as the applicants' *domicilium citandi et executandi*. The returns further record reliance upon Rule 4(1)(a)(iv) of the Uniform Rules. No responsible employee of the first applicant was served.

THE APPLICABLE LEGAL PRINCIPLES

- [8] Rule 42(1)(a) empowers a Court to rescind or vary an order or judgment erroneously sought or erroneously granted in the absence of a party affected thereby.
- [9] It is well established that where a judgment has been erroneously granted rescission follows as of right and an applicant is not required to establish good cause, furnish a reasonable explanation for the default, or demonstrate a *bona fide* defence on the merits.²
- [10] In *Bakoven Ltd v GJ Howes (Pty) Ltd*³ it was held that:

“Rule 42(1)(a) of the Uniform Rules of Court is a procedural step designed to correct expeditiously an obviously wrong judgment or order. An order or judgment is “erroneously granted”, within the meaning of Rule 42(1)(a), when the Courts commits an “error” in the sense of a “mistake in a matter of law appearing on the proceedings of a Court of record”. It follows that a Court, in deciding whether a judgment was “erroneously granted”, is, like a Court of appeal, confined to the record of proceedings. In contradistinction to relief in terms of Rule 31(2)(b) or under the common law, the applicant need not show “good cause” in the

² *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills (Cape)* 2003 (6) SA 1 (SCA) and *Lodhi 2 Properties Investments CC v Bondev Developments (Pty) Ltd* 2007 (6) SA 87 (SCA)

³ 1992 (2) SA 466 (ECD)

sense of an explanation for his default and a bona fide defence. Once the applicant can point to an error in the proceedings, he is without further ado entitled to rescission. It is only when he cannot rely on an “error” that he has to fall back on Rule 31(2)(b) (where he was in default of delivery of a notice of intention to defend or of a plea) or on the common law (in all other cases). In both latter instances he must show good cause.”

- [11] In the present case the judgment was granted in the absence of the applicants and the applicants are affected by the judgment. The applicants contend that there was an error in the procedure that led to the judgment being granted against them in their absence without summons having been properly served on them, with the result that they had no knowledge that the respondent had instituted legal proceedings against them. The purpose of Rule 42(1)(a) is to correct the error in the procedure in obtaining the default judgment.

- [12] A Court granting default judgment must be satisfied that proper service has been effected. Service is not a mere procedural formality. It is the mechanism by which a litigant is afforded notice of proceedings and the opportunity to be heard.

- [13] While the Sheriff’s return of service constitutes *prima facie* proof of the facts stated therein, it must nevertheless disclose facts demonstrating compliance with the Rule relied upon. Equally where the return itself demonstrates non-compliance with the Rules, a Court is entitled to determine the validity of service from the contents of the return.

- [14] Proper service of initiating process lies at the heart of procedural fairness and the *audi alteram partem* principle. A court should be slow to deprive a litigant of the opportunity to be heard where service has not been effected in accordance with the Rules.

AND THE EFFECT OF *NEDBANK LTD V CONCO*⁴ (“THE CONCO JUDGMENT”)

[15] Prior to the amendment that came into effect on 12 April 2024, Uniform Rule 4(1)(a)(iv) read:

“Service of any process of the Court directed to the Sheriff ... shall be effected ... –

(iv) if the person so to be served has chosen a domicilium citandi, by delivering or leaving a copy thereof at the domicilium so chosen;” (Court’s underlining)

[16] The significance of the pre-amendment wording is that: The rule expressly permitted service **either by “delivering” or by “leaving”** a copy at the chosen *domicilium*; it did not require delivery to a person over the age of 16; and the Courts interpreted “leaving” broadly enough to include affixing the process to the principal door of the *domicilium*, provided the method of service was reasonably likely to bring the process to the defendant’s attention.

[17] By contrast:

[17.1] From 12 April 2024 to 26 December 2024, Rule 4(1)(a)(iv) was amended to require delivery to a person apparently not less than 16 years of age at the *domicilium*, with no provision allowing the Sheriff simply to leave or affix the process. Service at a *domicilium* had to be “*delivered to a person apparently not less than 16 years of age*”. The Sheriff could no longer just

⁴ *Nedbank Ltd v Conco and related matters* (4582/2024; 8854/2024, 17151/2024; 2025/02753) 2026 ZAWCHC 38 (6 February 2026)

leave or affix the process at the *domicilium*;

[17.2] From 27 December 2024, the Rule was amended again to provide that if no such person is present, **the Sheriff may leave a copy at the *domicilium*.**⁵

[18] The aforesaid timeline is important because service by affixing after 12 April 2024, but before 27 December 2024 did not comply with the wording of Rule 4(1)(a)(iv), whereas the same method could, depending on the facts, have been permissible under the pre- 12 April 2024 Rule.

[19] The leading authority under the pre- 12 April Rule 4(1)(a)(iv) is the Full Court decision of *ABSA Ltd v Mare and Others*⁶ (*“the Mare judgment”*). The Court *inter alia* held:

*“The manner in which a process may be delivered or left at a domicilium in terms of r 4(1)(a)(iv) is not prescribed and depends on the prevailing circumstances. ... The duty upon a sheriff is to serve a notice or process of court at a domicilium citandi by delivering or leaving the notice or process in a manner by which in the ordinary course the notice or process would come to the attention and be received by the intended recipient, and to report to the court how the process was served and why it was served in that manner.”*⁷

⁵ Rule 4(1)(a)(iv) currently reads *“if the person so to be served has chosen a domicilium citandi, by delivering a copy thereof to a person apparently not less than sixteen years of age at the domicilium so chosen: Provided that if no person is present at the domicilium, the sheriff may leave a copy at the aforesaid domicilium;”* [Sub-paragraph (iv) substituted by GNR4477 in G. 50272 of 8 March 2024 with effect from 12 April 2024 and by GNR5560 in G.50272 of 22 November 2024 with effect from 27 December 2024]

⁶ *ABSA Ltd v Mare and Others* (A56/2019) [2020] ZAGPPHC 372; 2021 (2) SA 151 (GP) (20 August 2020)

⁷ *Mare ibid* para [26]

- [20] The *Mare* judgment adopted the following statement from *Loryan (Pty) Ltd v Solarsh Tea and Coffee (Pty) Ltd*:⁸

*“... presupposes delivery in any manner by which in the ordinary course the notice would come to the attention of and be received by the lessor. The obvious method would be by handing the notice to a responsible employee, or by pushing it under the front door, or by placing it in the mailbox.”*⁹

- [21] Affixing to the front door¹⁰ is particularly significant because it distinguishes appropriate from inappropriate methods of service. The Full Court held that leaving the summons on the grass where it can be blown away, taken away or be invisible was not appropriate service. The *Mare* judgment explained that, in the circumstances of that case, appropriate methods would have included handing to the defendant personally; handing it to a responsible employee; slipping it under the front door; **affixing it to the front door**; or placing it in a post box if one existed.

- [22] Notably the Court referred to **the front door**, not the **main/principal gate**.

- [23] In the recent *Conco* judgment, Mantame J expressly referred to the *Mare* judgment. The Court recognised that *Mare* interpreted the pre- 12 April 2024 Rule but held that the amendment changed the legal position. The judgment states that, after the 27 December amendment, the Sheriff may not merely abandon the process, and that **affixing cannot**

⁸ *Loryan (Pty) Ltd v Solarsh Tea and Coffee (Pty) Ltd* 1984 (3) SA 834 (W) at 849A-B

⁹ *Mare ibid* para [26]

¹⁰ *Mare ibid* para 27

be read into the amended Rule 4(1)(a)(iv) because the amended Rule no longer authorises it. The principal holdings from the *Conco* judgment are:

[23.1] Service by affixing no longer complies with Rule 4(1)(a)(iv). Before the amendment, service at a *domicilium* could validly be effected by affixing process to the principal door in certain circumstances. Following the amendment, the Rule requires the Sheriff either:

23.1.1 to **deliver** the process to a person apparently over the age of 16 years at the *domicilium*; or

23.1.2 if no such person is available, to **leave** a copy of the process at the *domicilium*.

[23.2] The Court held that **leaving is not synonymous with affixing**. The deliberate omission of the word “*affixing*” from the amended Rule means that affixing is no longer an authorised method of service.

[23.3] Default judgment should not be granted where service was effected merely by affixing. The Court held that because the Sheriff’s returns reflected service by affixing, the Registrar correctly refused to grant default judgment. The Court agreed that the amended Rule had not been complied with.

[23.4] Strict compliance with Rule 4 is required: The judgment emphasises that where a plaintiff seeks default judgment, the Court must be satisfied that service complies strictly with the Uniform Rules. If the prescribed method has not been followed, the application for default judgment cannot succeed.

[24] The Court established that service is not a mere formal or mechanical exercise and that compliance with the Rule must appear from the return

itself. The Court stressed that affixing process to a gate or a door is not synonymous with the methods of service prescribed by Rule 4(1)(a)(iv), and that the Court considering default judgment must be satisfied that the return demonstrates proper service.

ANALYSIS

[25] At the time service was effected in the present matter, Rule 4(1)(a)(iv), the Rule prior to its amendment on the 12th of April 2024, provided for service where a party had chosen a *domicilium citandi et executandi* by delivering or leaving a copy thereof at the *domicilium* so chosen. Rule (4)(1)(a)(iv) read as follows:

“(iv) *that if the person so to be served has chosen a domicilium citandi, by delivering or leaving a copy thereof at the domicilium so chosen;*”

[26] Rule 4(1)(a)(v), on the other hand, specifically regulates service upon a company or corporation and requires delivery of the process to a responsible employee at the registered office or principal place of business of the company. Rule 4(1)(a)(v) reads as follows:

“(v) *in the case of a corporation or company, by delivering a copy to a responsible employee thereof at its registered office or its principal place of business within the court’s jurisdiction, or if there be no such employee willing to accept service, by affixing a copy to the **main door** of such office or place of business or in any manner prescribed by law;*” (Court’s emphasis)

[27] The Sheriff’s return is notable for two reasons. The Sheriff certified that service was effected in terms of Rule 4(1)(a)(iv) and by means of affixing. First, the Sheriff expressly records that service was effected in terms of Rule 4(1)(a)(iv). Secondly, the Sheriff records that service was effected “*by affixing to the principal gate*”.

- [28] The respondent submits that the address in question constituted the applicant's chosen *domicilium citandi et executandi* and that service at that address constituted substantial compliance with the Rules.
- [29] The respondent further submits that the Sheriff's reference to Rule 4(1)(a)(iv) should not invalidate service where the summons was affixed at the principal gate of the chosen *domicilium* of the first applicant.
- [30] Pertaining to the first applicant the respondent argued that the Sheriff's reference to Rule 4(1)(a)(iv) amounted to no more than a technical irregularity and that service should be regarded as valid because there had been substantial service.
- [31] I do not agree with the aforesaid contentions. The return pertaining to the first applicant does not purport to effect service in terms of the Rule governing service upon a corporation or company. It specifically invokes Rule 4(1)(a)(iv) and specifically records affixing to the principal gate as the chosen method of service.
- [32] In the present matter the return discloses only that the summons was affixed to a gate. It does not disclose service upon a responsible employee of the company. Nor does it establish compliance with the requirements governing service upon a corporation or a company in terms of Rule 4(1)(a)(v). The Sheriff's return does not record service on a responsible employee at the registered office or principal place of business or affixing a copy to the **main door** of such office or place of business. The first applicant was not served in the manner contemplated by Rule 4(1)(a)(v).
- [33] The return does not indicate that the Sheriff attempted to locate a responsible employee of the first applicant or whether there would be an employee willing to accept service. It does not record whether the premises were open or closed, whether employees were present, whether enquiries were made, or what steps constituted the alleged

diligent search.

- [34] Instead, the return merely states that a diligent search was conducted and that no other manner of service was possible. Those statements constitute conclusions rather than factual averments. The returns do not disclose the underlying facts from which a Court could determine whether the jurisdictional requirements for resorting to affixing service have been satisfied.
- [35] The deficiency is particularly striking having regard to the time at which service was allegedly effected, namely 11h46 on a weekday during ordinary business hours. One would ordinarily expect some indication as to why no responsible person could be found at the premises of a corporate entity during normal working hours.
- [36] The applicant argued that the returns record service by affixing to the principal gate. It does not indicate whether the gate constituted the entrance to the offices themselves or whether it formed part of a perimeter boundary removed from the business premises. Nor does it explain why affixing to the gate (as opposed to the main door) was considered appropriate in the circumstances. The Sheriff's return merely states: ***"by affixing to the principal gate. After a diligent search at the given address no other manner of service was possible. Rule 4(1)(a)(iv)."***
- [37] Pre-the 12 April 2024 Rule, affixing was not automatically sufficient. The test remained whether the process was left in a manner reasonably calculated to come to the defendant's attention in the ordinary course. The *Mare* judgment treated **affixing to the front door of the residence** as an example of a potentially appropriate method, but it did **not** say that affixing to an **outer gate** will invariably satisfy the Rule. Whether affixing to the gate is sufficient depends on the surrounding circumstances and on whether the Sheriff's return explains why that method was adopted. If the Sheriff simply attached the summons to an exposed gate without

explaining why, this matter is distinguishable from the *Mare* judgment in that the return does not establish service in a manner reasonably likely to bring the process to the defendant's attention.

- [38] The *Mare* judgment did not hold that affixing to a door is always sufficient. Thus, if the Sheriff merely recorded "*affixed to the principal gate*" without explaining whether the property was enclosed, whether the gate was exposed to the public, whether the document was securely attached, whether there was a post box, front door or responsible person available; or affixing to the gate was chosen, there is merit to the defendant's argument that the Sheriff did not comply with the standard articulated in the *Mare* judgment. Indeed, the *Conco* judgment itself emphasises that the Sheriff's return should contain sufficient detail to demonstrate effective service, although that decision is in the context of the amended Rule.
- [39] Thus, although the *Conco* judgment held that service by affixing is not authorised under the amended Rule 4(1)(a)(iv) that decision does not apply retrospectively to service effected before 12 April 2024. Such service falls to be assessed under the former Rule 4(1)(a)(iv) and the principles articulated in the *Mare* judgment. Under that regime affixing was not *per se* invalid, but its sufficiency depended upon whether the Sheriff left the process in a manner reasonably calculated, in the ordinary course, to bring it to the attention of the defendant(s).
- [40] The respondent argued that the address was the applicant's chosen *domicilium* and that service at such address was accordingly sufficient. There can be no quarrel with the proposition that service at the *domicilium* is generally valid. However, the issue in the present matter is not the correctness of the address but whether the method of service employed complied with requirements of Rule 4. Reliance upon a *domicilium* clause does not relieve the Sheriff of the obligation to comply with the applicable Rule regulating service of process. The returns before this Court does not establish that compliance.

CONCLUSION

[41] The Sheriff's return reflected service on both applicants was effected by affixing the process to the principal gate. At the time service was effected, however, Rule 4(1)(a)(iv) required service on a person who had chosen a *domicilium* by "*delivering or leaving*" a copy at the *domicilium* so chosen. Likewise, Rule 4(1)(a)(v) prescribes service on a company by delivering a copy to a responsible employee at its registered office or principal place of business. The return pertaining to the first applicant does not disclose compliance with either provision nor does the return pertaining to the second applicant disclose compliance with Rule 4(1)(a)(iv). In the absence of proper service, the applicants were denied notice of the proceedings, and the default judgment was accordingly erroneously sought and erroneously granted within the meaning of Rule 42(1)(a).

[42] Had the Court hearing the default judgment application appreciated that the returns did not establish service in accordance with the Uniform Rules, default judgment would not have been granted. The absence of proper service constituted a fact which existed at the time the judgment was granted and which would have precluded the granting thereof.

COSTS

[43] I am not inclined to grant costs against the respondent. It appears that the respondent itself was unaware of the defect and merely relied on the Sheriff's return, the respondent does not bear responsibility for the irregularity. The defect arose solely from the manner in which the Sheriff executed service. In my view, the appropriate costs order in these circumstances would be to grant costs in the cause.

ORDER

[44] The default judgment granted on 11 April 2024 is rescinded and set aside.

- [45] The warrant of execution and all consequential processes issued pursuant to the default judgment are rescinded and set aside.
- [46] The Applicants are granted leave to deliver their notice of intention to defend within 10 (ten) days of this order.
- [47] Costs of the application shall be costs in the cause.

M VAN NIEUWENHUIZEN

*Acting Judge of the High Court of South Africa
Gauteng Division, Johannesburg*

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/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 on 3 July 2026.

HEARD ON: 16 February 2026

DATE OF JUDGMENT: 3 July 2026

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