



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

Case number: 2026-005412

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|-----|---------------------------------|
| (1) | Not reportable |
| (2) | Not of interest to other judges |

Date: 30 July 2026



In the matter between

NEDBANK LIMITED

Applicant/Plaintiff

and

MAITE MAGDELINE SEKGOBELA

Respondent/Defendant

Order

1. The order dated 27 July 2026 under case number 2026-005412 is recalled.
2. The application for summary judgment is postponed sine die.
3. The Respondent/Defendant is granted leave to file an affidavit opposing the application for summary judgment by 17h00 on 14 August 2026.

4. There is no order as to costs in respect of the Plaintiff/Applicant's attendances and appearances for the hearing on 29 July 2026, and all other costs are reserved for determination at the subsequent hearing of the application for summary judgment.

Judgment

J Mitchell AJ

- [1] Court orders are final. But finality is not a straitjacket. If a court grants an order in a party's absence but that party later appears, a court can recall the order. That power has a long pedigree as a common law exception to *functus officio*. It now finds constitutional foothold in the inherent power that the Constitution confers on courts to protect and regulate their process.
- [2] Ms Sekgobela bought a car from Nedbank. She agreed to pay in instalments. She fell behind. She went to a debt counsellor. Nedbank terminated debt review under section 86(10) of the National Credit Act. Nedbank sued to get the car back and to recover any shortfall between what Ms Sekgobela owes and what the car gets at auction. Ms Sekgobela filed a plea. Nedbank applied for summary judgment. Ms Sekgobela did not file an answering affidavit. Nedbank set down its application for summary judgment on the unopposed summary judgment roll on 27 July 2026.

- [3] Ms Sekgobela was not in court when Nedbank's application for summary judgment was called on 27 July 2026. I asked counsel appearing for Nedbank about service. Nedbank's attorneys emailed the application to what appeared to be the email address of Ms Sekgobela's debt counsellor. After the tea adjournment, Nedbank's counsel confirmed that Ms Sekgobela gave a power of attorney to her debt counsellor, and I was satisfied that the debt counsellor's authority under it covered receipt of legal process. At about 11h30, I granted an order along the lines of the relief that Nedbank asked for in its application. After hearing a few more unopposed applications, I adjourned.
- [4] At about 12h00, and while I was in chambers, my registrar told me that Ms Sekgobela was in court. Through my registrar, I emailed the parties at about 12h30 and said, amongst other things, "[t]he matter is accordingly recalled and will be heard at 12h00 on 29 July 2026" and "[a]t that hearing, the parties are directed to address the Court on whether the Court has the power to recall the order that was made on 27 July 2026 and, if so, what order should now be made, including in respect of costs."
- [5] My understanding of the practice in this Division is that a court may recall an order granted in a party's absence if the absent party appears before the Court has risen. And my understanding of the mechanics of the opposed and unopposed courts in this Division (including the summary judgment court, which hears both unopposed and opposed applications) is that the Court (and the allocated judge) sits for the whole week. So my preliminary view was that I could recall the order.

- [6] Further research confirmed that view. The Appellate Division gives a clear answer in *De Wet v Western Bank Limited* 1979 (2) SA 1031 (A) at 1045B-H. The Appellate Division was not writing from a clean slate. It cited an impressive archaeology of the power—dating back to Voet and, for good measure, the Emperor Antoninus (the Roman Emperor from, well, a very long time ago). According to the Appellate Division, Voet’s view was that “if one who ought to attend does not appear, and thus is declared at the request of his opponent to have defaulted, but presently arrives while the Judge is still sitting on the Bench, and is ready to plead or otherwise carry out his duties, there is no need for further purgation of his default,” cited in *De Wet*, above, at 1045E-F. Emperor Antoninus put it more colourfully, allowing for “help ... where clear justice calls for it” and so if “a person summonsed has not answered, and thereon the usual declaration has been made, but he has straightway attended while you still sit on the Bench, he may be deemed to have defaulted not of his own carelessness, but because he did not fully catch the voice of the crier,” cited in *De Wet*, above, at 1045F-H.
- [7] More recently, the Supreme Court of Appeal confirmed that there is an “exceptional procedure under the common law in terms of which a court may recall its order immediately after having given it, or within a reasonable time thereof, either meru motu or on the application of a party, which need not be a formal application”: *Colyn v Tiger Food Industries t/a Meadow Feed Mills (Cape)* 2003 (6) SA 1 (SCA) at para 4.

- [8] Nedbank filed heads of argument arguing that it is “evident” that “none of the exceptions to the rule that a court, after the granting of an order and becoming *functus officio*, allows for a court to recall the order, simply because a defendant, belatedly, seeks to oppose the application, especially when it had ample time to do so.” From that premise, Nedbank argued that I was *functus* and was “not in a position to recall the order”.
- [9] Shortly after Nedbank filed its heads of argument, I drew the parties’ attention to *De Wet* and *Colyn* in an email from my registrar.
- [10] Ms Sekgobela was unrepresented at the recalled hearing on 29 July 2026. She explained she was late for the previous hearing because she was caring for her sick son. She asked for ten days to file an affidavit opposing Nedbank’s application for summary judgment.
- [11] Mr McTurk, who appeared for Nedbank, quite properly conceded that, based on *De Wet* and *Colyn*, I can recall the order. And quite properly, he took no issue with Ms Sekgobela’s explanation for why she was late for the previous hearing. Mr McTurk nonetheless argued that I should decline to exercise my discretion to recall the order because Ms Sekgobela’s prospects of opposing summary judgment are, as Nedbank sees it, weak and so recalling the order makes no difference. But the Constitutional Court has rejected just that sort of “anathema” no-difference reasoning when it comes to procedural fairness and hearing the other side: *Psychological Society of South Africa v Qwelane* 2017 JDR 0062 (CC) at paras 32-9.

- [12] The concession that I can recall the order was right. *De Wet* and *Colyn* are clear on the point. *De Wet* shows that the power comes with considerable pedigree in the old authorities. And while we have long done away with the “crier” from Roman times, *De Wet*, above, at 1045F-H, we have not done away with courts’ inherent discretion to regulate and protect their process.
- [13] None of this hands litigants—even unrepresented litigants—a permission slip to wilfully skip court dates. And none of this means that Nedbank was not within its rights to ask for an order in Ms Sekgobela’s absence. Banks have rights too. But it does mean that I can come to Ms Sekgobela’s aid after she made a diligent, if late, effort to appear at the hearing—all the more so when she is unrepresented and all the more so in a type of case where consumer protection looms large.
- [14] There is no clear answer for when the power to recall stops and other, more stringent remedies like rescission or reconsideration start. If the old rule is that a court can recall an order “while the Judge is still sitting”, *De Wet*, above, at 1045E-F, or “while you still sit on the Bench”, *De Wet*, above, at 1045F-H, then the modern equivalent is probably at any time during the motion court week. That also aligns, in my view, with the Supreme Court of Appeal’s relatively open-ended timing of “immediately after having given it, or within a reasonable time thereof”, *Colyn*, above, at para 14. Ms Sekgobela was in court within about an hour of the order, so she falls comfortably on the right side of the line.

[15] As for costs, it seems best to reserve the costs of (and relating to) the hearing on 27 July 2026 for when Nedbank's application for summary judgment next comes on the roll. Nedbank is not entitled to costs of (and relating to) the hearing on 29 July 2026. Its position on the law at that hearing was a climbdown from its heads of argument. A bit of pragmatism could have avoided the need for any debate about recalling the order in the first place. That said, Nedbank undertook, at my request, not to take any steps to enforce the order pending this judgment, which was a redeeming bit of good corporate citizenship.

[16] I make this order:

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2. The application for summary judgment is postponed sine die.
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J Mitchell AJ

Acting Judge of the Gauteng Division, Johannesburg

Date of hearing:	29 July 2026
Date of judgment:	30 July 2026
For the Applicant/Plaintiff:	S McTurk instructed by UMS Attorneys
For the Respondent/Defendant:	Unrepresented