IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2024-019497

DATE: 29.07.2026

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES : NO
(3) REVISED

[redacted]

SIGNATURE Date: 29 July 2026

In the matter between

NM IMUVA TRADING (PTY) LTD Applicant

and

TRUCK AND FINANCE CORP. (PTY) LTD Respondent

J U D G M E N T *EX TEMPORE*

WILSON J: The applicant, whom I shall refer as “Imuva”, purchased a vehicle from the respondent, Truck and Finance, in terms of an instalment sale agreement. The vehicle was used for commercial purposes in the course and scope of Imuva's business. It is common cause before me that instalments due under the instalment sale agreement were not paid, and as a result, Truck and Finance approached the registrar of this court on 8 September 2024 and obtained an order cancelling the instalment sale agreement and directing the return of the vehicle and another item to Truck and Finance.

Certain ancillary prayers were also granted, some of which I regard as inappropriate, but in view of the position I take on this matter, it is not necessary for me to deal with them. Imuva complains, in its founding affidavit, that the vehicle supplied under the instalment sale agreement was defective. Mr Kooverjie, who appeared for Imuva, accepted that would not have been a *bona fide* defence to a claim for payment. Nor would it have rendered the registrar's order erroneously sought or granted. There may have been other remedies arising from the allegedly defective condition of the vehicle that could then have been pursued, but the defective condition of the vehicle does not in itself render the judgment rescindable.

That leaves only Imuva's case that it did not receive the notice under Section 129 of the National Credit Act 34 of 2005, to which Imuva says it was entitled. Ordinarily, a juristic entity taking out a loan for commercial purposes is not entitled to such notice, but there is an exception under the Act for entities with turnovers of less than a million rand. In the founding affidavit, Imuva pleads that its turnover is just under R350 000. On the face of the founding affidavit, therefore, there is a *prima facie* case, which is all Imuva needs to make out, that Imuva was entitled to the benefit of the notice.

As counsel for Truck and Finance accepted, there is no evidence before me that the Section 129 notice was sent in the manner required by the Act, read with the various decisions of the Constitutional Court on this issue. Ordinarily, what is required, where a lender seeks to give notice under Section 129 of the Act by registered mail, is a record that the notice has been given to the Post Office for onward transmission, and in addition, evidence that the Post Office gave notice to the consumer, in this case Imuva, that a registered letter was awaiting its collection at the Post Office with responsibility for the area in which the consumer's address is situated. What Truck and Finance puts before me in the papers is evidence that the notice was sent to the Post Office, but not that the Post Office sent the second notice notifying Imuva that a 129 notice was waiting for it.

On the face of things, therefore, Section 129 of the Act was not complied with. Although Section 129 only gives rise to a dilatory defence, non-compliance with Section 129 is still a statutory defect that would lead to the rescission of a judgment granted in breach of it. This is because Section 130 of the National Credit Act debars a court from considering a claim for the enforcement of a credit agreement in circumstances where there has been no compliance with Section 129.

On the face of things, therefore, the registrar that granted the judgment granted it erroneously and did so in Imuva's absence. Counsel for Truck and Finance parried that conclusion with the proposition that Imuva's default was so reckless as to bring it within the strictures laid down by the Constitutional Court in *Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture* 2021 (11) BCLR 1263 (CC) ("*Zuma*"). In the *Zuma* case, the Constitutional Court decided that even though Rule 42 of the Uniform Rules of Court entitles an applicant to rescind an order granted erroneously in their absence, not just any absence is sufficient to avail an applicant of the protection of the rule.

If an applicant is absent in circumstances which suggest that they were reckless to the possibility that judgment might be granted against them, then that is not absence for the purposes of the rule (see *Zuma* paragraph 60). The Constitutional Court decided that absence for the purposes of the rule entailed a minimal innocency of attitude to the proceedings and excluded those who simply did not care that proceedings were being pursued against them. I was asked to accept that Imuva falls into the category of reckless defendants carved out by the Constitutional Court in *Zuma*.

As evidence for that proposition, I was taken to a letter apparently written by Imuva's directors, which confirmed that they had received the summons commencing the action on 22 March 2024. The default judgment was granted on 8 September 2024. From this, I was asked to infer that the applicants were clearly reckless to the possibility of judgment being granted against them.

Tempting as it was to reach that conclusion, I do not think that on a conspectus of all the facts I can fairly characterise Imuva as recklessly disinterested in the consequences of Truck and Finance's claim against it. I simply do not know enough about the attitude that Imuva took once the summons was received. On the other hand, I have a fairly clear indication on the papers that a peremptory statutory requirement with which Truck and Finance had to comply before it was entitled to judgment was in fact not complied with.

In these circumstances, I am driven to accept that the judgment was erroneously granted in breach of Section 129 of the National Credit Act in circumstances where it has not been established that Imuva was reckless to that result.

In those circumstances, I think rescission has to follow. I do not think it matters that the applicants have not made out a particularly convincing case on condonation. Condonation would only be relevant in a case based squarely on Rule 32. This case, and the case I have sustained, is based on Rule 42. Fundamentally, if an order was granted in breach of statute, then condonation for any delay in making out that case need not be sought or granted.

On the question of costs, ordinarily, Imuva, in seeking an indulgence from the court, would have to pay the costs of the application. On the underlying facts, however, I am concerned that what appears to have happened in this case is that a small business and a relatively impecunious one at that, run by individuals who are not conversant in the law, was sold a defective machine on which the directors of the business relied for their livelihood. They were then not informed of the non-litigious steps they could take to resolve their difficulty.

In those circumstances, the question of where the burden of costs in relation to this application should fall is so bound up with what will now happen that I think costs ought to be costs in the cause. It seems to me that what will now happen is that a notice in terms of Section 129 will have to be brought to Imuva's attention, or it will have to be demonstrated that the National Credit Act does not apply.

On the case before me, the National Credit Act does apply and the remedies available to Imuva under Section 129 of the National Credit Act would clearly encompass any complaint they had about the state of the vehicle supplied to them. For all those reasons, I will make the following order.

1. The default judgment granted by the Registrar of this Court in this matter on 8 July 2024 is rescinded and set aside as erroneously sought and erroneously granted in the defendant's absence.
2. The costs of this application will be costs in the cause.

[redacted]

WILSON, J
JUDGE OF THE HIGH COURT
29 July 2026