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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 091024/2023

DATE: 26.08.2026

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

SIGNATURE

DATE: 26 August 2026

In the matter between

LETHUBUHLE NDAYI

Applicant

and

NEDBANK LIMITED

Respondent

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

WILSON J: The applicant, Ms Ndayi, seeks to rescind a judgment granted by my sister Justice Maier-Frawley on 13 June 2024. That judgement ordered Ms Ndayi to pay the sum of R921 000 in respect of a mortgage loan agreement which enabled the purchase of her home at Erf 3[...] Protea Glen, Extension 44. It also ordered her to pay R231 000 in respect of a personal loan agreement she had concluded

with the respondent, Nedbank.

It is trite that a rescission may only be granted where good cause has been made out. The good cause that Miss Ndayi relies upon in this application is that she was absent without being in wilful default when the order was granted and that she has a *bona fide* defence to the main application.

A superficial perusal of the papers shows that Miss Ndayi was in fact present when the judgment was granted against her. Her complaint is not that she was absent or in default of appearance, but that she was never given an opportunity to address the court and was merely informed, she says, that judgment was granted by default because no opposing papers had been filed. She said that she wanted to get a chance to obtain a legal representative but that she was denied that right.

She also complains that she was not given an interpreter and was lost amid legal jargon that she found hard to understand. As sympathetic as I am to a lay litigant in those circumstances, the complaints advanced in the founding affidavit are complaints that may properly be taken up on appeal. They are not complaints that ground a rescission application.

There are of course other bases of rescission, such as common mistake, fraud or *justus error* which may result

in the rescission of an order granted in the presence of the party seeking to rescind it, but none of those grounds are relied upon here. I also find it difficult to accept, on the papers, that the applicant was not heard by Justice Maier-Frawley, since the operation of the order Justice Maier-Frawley granted was suspended for two months. That seems to me to be an indication that Justice Maier-Frawley heard from the applicant and decided that the appropriate order, in the circumstances, was to grant the order subject to a two-month stay in order to afford the applicant a breathing space to try and make good on her arrears.

Whether Justice Maier-Frawley's approach in the circumstances was correct is not an issue before me. It is an issue that would have to be raised by way of appeal. Even if the applicant was absent, and a rescission application was appropriate, it is plainly the case that the Ms. Ndayi's performance under both the finance agreements she had with Nedbank is incapable of rehabilitation.

There is, in my view, no prospect that the mortgage debt may yet be paid, and nothing on the papers to convince me that Justice Maier-Frawley could not have been satisfied that execution against Ms. Ndayi's home was proportionate. Nor is there anything on the papers that convinces me that execution would be disproportionate now. Of course, there is always the prospect that the applicant

will rehabilitate her performance under the mortgage loan agreement. In that event, the provisions of Section 129 of the National Credit Act 34 of 2005 will result in the reinstatement of the agreement, and Justice Maier-Frawley's order will fall by the wayside in any event.

All of that said, however, there is no basis, for the reasons I have given, on which the order can be rescinded. At the outset of the hearing before me, Mr Nematikula, who appeared for the applicant, asked for a postponement in order to pursue an application for leave to file a further affidavit in this matter, which dealt with whether or not the reserve price Justice Maier-Frawley had set was appropriate. In light of the negligible prospects of success in the rescission application, in light of the affidavit's failure to deal with the core of the case made on rescission, and in light of the fact that it is nonetheless open to Ms. Ndayi to bring an application to vary the reserve price, the postponement application cannot succeed.

In a case like this, I do not think it is appropriate to award costs. The applicant seeks to maintain access to her home. I readily appreciate the difficulties she has had in servicing her loan agreement. I do not think anybody is served by mulcting her in yet more costs, which can only worsen her financial position. She was, in principle, entitled to approach me for relief. The fact is that she is

not entitled to the relief, but in these circumstances, where her access to her home is at stake, there is no reason to order her to pay the costs of the rescission application. For all those reasons, I make the following order –

1. The application for postponement is dismissed.
2. The application to rescind Justice Maier-Frawley's order, dated 13 June 2024, is dismissed.
3. Each party will pay their own costs, both in the postponement application and in the rescission application.

WILSON, J
JUDGE OF THE HIGH COURT
26 August 2026