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IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case number: 52390/2019

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED

DATE 26 August 2026

SIGNATURE

In the matter between:

ARMAND DE LANGE

First Applicant

MELANI DE LANGE

Second Applicant

and

THE STANDARD BANK OF SOUTH AFRICA

First Respondent

THE REGISTRAR OF DEEDS

Second Respondent

NATIONAL CREDIT REGULATOR

Third Respondent

SHERIFF: PRETORIA EAST

Fourth Respondent

JUDGMENT

Summary: Application for rescission of judgment and postponement. Whether rescission in terms of Rule 42(1) is competent where the order sought to be rescinded

was not granted in the applicants' absence and where they fully partook in opposing the main application.

Held: Rescission is not competent under the circumstances as applicants ought to have followed the appeal process.

The judgment and order are published and distributed electronically.

MINNAAR AJ.

Introduction:

[1] On 22 January 2025, judgment was granted against the applicants for breach of the home loan agreement and mortgage bond. The subject property, the applicants' principal place of residence, was declared executable, and a reserve price of R700 000.00 was set.

[2] The monetary judgment was granted by default, as the applicants' plea and defence were struck out on 20 May 2022.

[3] The applicants delivered an answering affidavit to the Rule 46A application and the first respondent delivered a replying affidavit. The Rule 46A application was thus entertained as a fully opposed application.

[4] When the Rule 46A application was heard, the first applicant appeared in person and was granted *audi*. From the judgment, it is evident that the Court considered the applicants' opposition to the Rule 46A application.

[5] In August 2025, the applicants brought an application, premised on the provisions of Rule 42, seeking the following relief:

- a. Rescinding and/or varying the default judgment and the order declaring the subject property executable.
- b. Setting aside or varying all related writs of execution issued pursuant to the judgment.
- c. In terms of Rule 45A, pending the execution process until final adjudication of the application.
- d. Directing the Registrar of Deeds to provide a certified record, or affidavit, regarding the status and any cession or transfer and all endorsements, caveats and notes relating to Mortgage Bond No. S[...], in compliance with the applicants' PAIA request.
- e. Granting the applicants leave to file affidavits and supplementary submissions addressing any errors, omissions or irregularities or to review the credit agreement under section 129(3) and (4) of the National Credit Act, 34 of 2005.
- f. Costs in the event of opposition.

[6] The first respondent opposed the application and delivered an answering affidavit. The applicants failed to deliver a replying affidavit.

[7] The applicants took no steps to place the opposed rescission application on the roll. As it is entitled, the first respondent enrolled the application on the opposed roll. On 19 February 2026, the first

respondent served a notice of set down. The opposed application came before me in the opposed motion court and was heard on 11 May 2026. The first applicant appeared in person, and counsel represented the first respondent.

[8] Prior to the hearing of the opposed rescission application, the applicants lodged an application to postpone the matter to enable them to deliver a supplementary affidavit relating to a purported PAIA request and related matters. The first respondent opposed the postponement application.

The postponement:

[9] As already stated, the set down was served on 19 February 2026 following the applicants' inaction in getting their rescission application ripe for hearing.

[10] There is no acceptable explanation in the affidavit in support of the postponement application to justify the last-minute nature of the postponement. In my view, the application was brought as a further delaying tactic to escape the inevitable: execution of the order granted on 22 January 2025.

[11] On the prospects of success in the main application, I found none, and it would therefore serve no purpose to grant the requested

postponement. On the contrary, the rescission application was ill-conceived and should never have seen the light of day.

[12] The first respondent is entitled to finality in the litigation. Summons was served personally on 3 August 2019, and the first respondent is still unable to enforce its rights under the loan agreement and mortgage bond.

[13] A postponement would not advance the interest if justice and the indulgence sought by the applicants cannot be entertained. In the circumstances, the application for postponement must fail.

Rescission:

[14] I am mindful that the applicants are self-represented and that they are attempting to protect their primary residence. The court sympathises with self-represented litigants but must also ensure the Rules and procedures are followed to allow for an orderly process.

[15] Rule 42(1)(a) provides that 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 an order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby.

[16] Rule 42(1)(b) deals with an order or judgment in which there is an ambiguity, or a patent error or omission, but only to the extent of

such ambiguity, error or omission. Rule 42(1)(c) caters for an order or judgment granted as the result of a mistake common to the parties. Rule 42(1)(b) and (c) do not find application herein and need no further comment.

[17] It is trite under Rule 42(1)(a) that defences known at the time judgment was granted cannot subsequently be presented in support of a case that the order was erroneously sought and/or granted.¹ This is to prevent the proverbial second bite at the cherry.

[18] Even if Rule 42(1)(a) could find application herein, the defences raised by the applicants (non-compliance with Rule 46A, jurisdiction, securitisation, non-compliance with the National Credit Act and property valuations) cannot be advanced in support of the applicants' case to have the order rescinded. These were defences known to the applicants when they opposed the Rule 46A application, yet they elected not to rely on same. This rescission application is a veiled attempt by the applicants to seek a second chance to advance additional defences to their Rule 46A opposition, which they are not entitled to do.

[19] The default judgment application cannot be a subject of rescission as the applicants' defence was struck by order of court on 20 May 2022. No steps were taken to set aside this striking out order.

¹ *Kgomo v Standard Bank of South Africa* 2016 (2) SA 184 (GP); *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills (Cape)* 2003 (6) SA 1 (SCA); *Lodhi 2 Properties Investments CC v Bondev Developments (Pty) Ltd* 2007 (6) SA 87 (SCA)

On the contrary, the applicants acquiesced with this order when they opposed the Rule 46A order.

[20] Rule 42(1)(a) is not available to the applicants as the order granted on 22 January 2025 was not sought or granted in their absence. The applicants filed an answering affidavit to the Rule 46A application and made oral submissions at the hearing. They actively participated in the Rule 46A procedure.

[21] The 22 January 2025 order was final. It could not be the subject of a rescission. If the applicants were not satisfied with the outcome of that order, they ought to have applied for leave to appeal. They elected not to utilise the appeal process.

[22] On this basis, this rescission application is futile. Since the rescission application cannot be entertained, it follows that the relief sought to suspend the execution of the 22 January 2025 pending finalisation of the rescission application and setting aside or varying all related writs of execution must also fail.

Lis pendens:

[23] The first respondent raised a point *in limine* of *lis pendens*, alleging that the applicants have instituted two applications before this court that are set down for simultaneous hearing.

[24] In support of this contention, the first respondent relies on Annexure “SB2” to their answering affidavit. This annexure is a document dated 22 August 2025, signed by both applicants.

[25] Annexure “SB2” is not an application as prescribed by the Rules as it is not supported by a founding affidavit. At best, it can be described as a notice setting out the purported relief sought by the applicants. Without being supported by evidence, in the form of a founding affidavit, I am not willing to accept that it is an ‘application’ as contended by the first respondent.

[26] In the premises, I cannot find that the requirements for *lis pendens* (litigation between the same parties, on the same cause of action and where the same relief is sought) have been established.

[27] There is only one proper rescission application before me, and therefore the point *in limine* must fail.

Costs:

[28] There is no basis to deviate from the normal approach that costs should follow the outcome.

[29] In the answering affidavit, the first respondent seeks a dismissal of the application with costs on the attorney and client scale.

[30] Counsel for the first respondent alerted me that the parties did not contractually agree to attorney-and-client-scale costs; as such, it remains for this court to decide what scale of costs would be reasonable.

[31] The discretion in granting costs is trite.² I am not convinced that the applicant should be mulcted with a punitive costs order. It follows that the applicant will be liable to pay costs on a party-and-party scale.

[32] The determination of the applicable scale of costs under the party-and-party scale regime is dictated by Rule 67A of the Uniform Rules of Court. Rule 67A(3) provides that a court “shall”, when making a party and party costs order, “indicate the scale in terms of Rule 69, under which costs have been granted”. The amendment that created Rule 67A inserted those scales into Rule 69(7). They are scales “A”, “B”, and “C”. Rule 67A(4) provides for the right to apply for an order determining which parts of the proceedings, if any, were urgent, and whether the costs of more than one counsel may be recovered. The effect of that subrule is, notionally, that a different scale could be assigned to the services of each counsel whose fees are allowed under the rule.³

² *Ferreira v Levin NO & Others; Vryenhoek & Others v Powell NO and Others* 1996 (2) SA 621 (CC) at paragraph 3

³ *Mashava v Enaex Africa (Pty) Ltd* (2022/1840) [2024] ZAGPJHC 387 (22 April 2024) at par 7 to 9

[33] The complex nature of a matter and how the case was presented to the court are among the factors to consider when setting a scale under the rule.⁴

[34] The application before this Court was not of such a complex nature and, as such, the Court finds that the first respondent is entitled to the costs catered for under Scale B.

Order:

Consequently, I make the following order:

1. The application for rescission of judgment dated 22 August 2025 is dismissed.
2. The applicants, jointly and severally the one paying the other to be absolved, are ordered to pay the costs of the application, on the scale as between party and party, scale B.

Minnaar AJ
Acting Judge of the High Court
Gauteng Division, Pretoria

⁴ *Mashava* at par 14

Heard on	: 11 May 2026
For the Applicants	: First applicant in person
Instructed by	: In person
For the First Respondent	: Adv. C Barreiro
Instructed by	: Strauss Daly Attorneys
Date of Judgment	: 26 August 2026