

THE REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NUMBER:2024-089175

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/ NO
(3)	REVISED.
.....	
SIGNATURE	DATE

31/8/2026

In the matter between:

TECHNOLOGIES ACCEPTANCES

Plaintiff / Applicant / Appellant

RECEIVABLES (PTY) LIMITED

and

KHUNJULWA MANAGED SERVICES

Defendant / Respondent

(PTY) LTD, GUGLETHU SHEROL NDLOVU

This Judgment was handed down electronically and by circulation to the parties' legal representatives by way of email and shall be uploaded on caselines. The date for hand down is deemed to be on **31 August 2026**

JUDGMENT

MALI J

Introduction

- [1] This is an application by the defendants (hereinafter "the applicants") for leave to appeal to the Full Court of this Division, or alternatively to the Supreme Court of Appeal, against the whole of the judgment and order delivered by this Court on 1 April 2026. In that judgment, the Court dismissed the applicants' application to rescind a summary judgment granted in favour of the plaintiff (hereinafter "the respondent")

Applicable legal principles

- [2] Section 17 of the Superior Courts Act 10 of 2013 ("the Act") governs the application. Section 17(1)(a) provides that leave to appeal may only be granted where the Court is of the opinion that:
- (i) the appeal would have a reasonable prospect of success; or
 - (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.
- [3] It is now trite that the test under section 17 is materially more stringent than its predecessor. In *Mont Chevaux Trust (IT2012/28) v Tina Goosen and Others* (unreported), the Court observed that the use of the word "would" signals a measure of certainty that another court will reach a different conclusion. This contrasts with the earlier test, which required only a reasonable possibility of a different outcome. This elevated standard has been consistently affirmed in *Van*

*Heerden v Cronwright and Others*¹, *Magashule v Ramaphosa and Others*², and *Nedbank Ltd v Steyn NO*³.

- [4] The applicants bear the onus of demonstrating that the appeal would, not might, enjoy reasonable prospects of success. Furthermore, Rule 49(1)(b) of the Uniform Rules requires that the grounds of appeal be set out clearly and succinctly. A bare averment of dissatisfaction will not suffice (*Songono v Minister of Law and Order*).

The grounds of appeal

- [5] The applicants advance four principal grounds of appeal. I address each in turn.

Ground 1: Rule 42(1)(a) Erroneous-Grant Ground

- [6] The applicants contend that the summary judgment was erroneously granted in their absence, despite their having delivered a plea and counterclaim before the hearing.
- [7] It is imperative to distinguish between the statutory rescission remedy under Rule 42(1)(a) and the common-law rescission remedy. Rule 42(1)(a) permits a Court to rescind a judgment that was granted "erroneously" in the absence of a party. However, the jurisprudence establishes that an "error" under this Rule is one that is patent on the record and does not require the re-litigation of the merits. Crucially, the remedy is not available to a party who deliberately elected to be absent, as such a party is the author of their own misfortune.
- [8] In *Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State* (2021) ZACC 23, the Constitutional Court held:

"[60] ... I do not accept that litigants can be allowed to butcher, of their own will, judicial process which in all other respects has been carried out with the utmost degree of

¹ 1985 (2) SA 342 (T) at 343H

² (2021/23795) [2021] ZAGPJHC 405 (13 September 2021)

³ 2020 JDR 0754 (GJ)

regularity, only then, ipso facto, plead the 'absent victim'. If everything turned on actual presence, it would be entirely too easy for litigants to render void every judgment and order ever to be granted by merely electing absentia."

- [9] In the present matter, the applicants were fully aware of the summary judgment hearing. They chose not to attend. Furthermore, counsel for the applicants correctly conceded, at paragraph 7 of the judgment *a quo*, that the applicants were in wilful default.
- [10] The *sine qua non* for rescission, whether under Rule 42 or the common law, is a reasonable explanation for the default. Wilful default is the antithesis of a reasonable explanation. Once wilful default is established, the enquiry ends. The existence of a plea or a counterclaim does not "rescue" the applicants, because the procedural irregularity (the default) is entirely self-created. The summary judgment court was entitled to rely on the applicants' failure to oppose the application in person or through counsel.
- [11] Accordingly, this ground fails to disclose any reasonable prospect that another court would find that the judgment was "erroneously" granted in a manner amenable to rescission.

Ground 2: The Financier-as-Vendor and the Consumer Protection Act ("CPA")

- [12] The applicants argue that the respondent, as the financier who acquired title to the goods, stepped into the shoes of the vendor and assumed reciprocal obligations to service or maintain the goods under the CPA and the common law.
- [13] This contention is legally untenable. The parties' relationship is governed by the express terms of the Master Rental Agreement. That agreement explicitly stipulates that:
- (a) the goods were accepted by the first defendant "as is";
 - (b) the plaintiff bore no obligation to service or maintain the goods; and

(c) any service or maintenance agreement was to be concluded separately with the vendor.

- [14] The CPA imposes obligations on a "supplier" in respect of the supply of goods. However, the respondent is not a "supplier" in the chain of supply in the ordinary course of business. The respondent is a financial institution that advanced funds and took title as security for the rental stream. It does not market, distribute, manufacture, or service the equipment. To impose the CPA's strict liability on a passive financier would stretch the legislative purpose beyond its intended ambit and, more importantly, would contradict the explicit contractual allocation of risk agreed to by the applicants.
- [15] The applicants' formal admissions in their plea admitting the terms of the agreement irreconcilably undermine their attempt to rely on an implied warranty or a deemed reciprocal obligation. This ground discloses no arguable error of law or fact.

Ground 3: The Inter-Connected Counterclaim

- [16] The applicants submit that their counterclaim for defective goods is inter-connected with the respondent's claim and ought to have been adjudicated at trial, thereby defeating summary judgment.
- [17] It is well established that a counterclaim will only defeat a summary judgment application if the counterclaim is liquidated, or if it is so closely connected to the plaintiff's claim that it operates as a set-off or extinguishes the plaintiff's right to payment. The applicants' counterclaim is for unliquidated damages for alleged defects. It is entirely contingent on the success of their CPA argument, which I have already rejected.
- [18] An unliquidated, speculative counterclaim cannot serve as a bona fide defence to a liquidated claim for rental instalments that are indisputably due under a written agreement. The mere fact that the counterclaim arises from the same transaction

does not elevate it to a defence of the principal claim. Accordingly, this ground has no merit.

Ground 4: Wilful Default "Cancelled Out" by the Defence

- [19] The applicants argue that the asserted bona fide defence "outweighs" or "cancels out" their explanation for non-attendance.
- [20] This argument is fundamentally misconceived. The test for rescission is cumulative, not a balancing exercise. The applicants must pass both legs: (a) a reasonable explanation for the default; and (b) a bona fide defence on the merits. The first leg is a jurisdictional prerequisite. Where the default is wilful, the first leg is failed, and the Court cannot proceed to weigh the merits of the defence.
- [21] The concession regarding wilful default is fatal to the entire application. No amount of legal ingenuity regarding the CPA can resuscitate an application that fails at the threshold. This ground is accordingly dismissed.

Prospects of success and compelling reasons

- [22] Having carefully considered all four grounds, I am satisfied that the applicants have failed to discharge the onus imposed by section 17. They have not shown that another court would arrive at a different conclusion. At best, they have raised the mere possibility of a different interpretation of the contract, which is insufficient under the elevated standard of the Act.
- [23] I also find no "other compelling reason" to grant leave to appeal. There is no conflict of judgments on the issues raised. The matter does not raise a question of public importance, nor does it involve a manifest injustice. The legal principles governing rescission, summary judgment, and the interpretation of the CPA are well-settled.

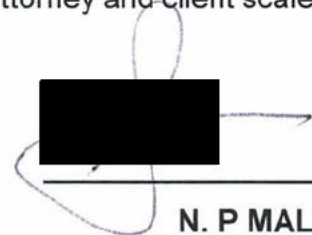
Conclusion

- [24] The applicants have failed to establish any reasonable prospect of success on appeal. The application is devoid of merit and stands to be dismissed with costs.

Order

In the premises, the following order is made:

1. The application for leave to appeal is dismissed.
2. The applicants are ordered to pay the costs of this application jointly and severally, the one paying the other to be absolved, on the attorney and client scale.



N. P MALI

JUDGE OF THE HIGH COURT

Representatives

For the applicants	: S Ndobe
Attorneys for the applicants	: S Ndobe Attorneys
For the respondents	: J.G. Botha
Attorney for the respondent	: ODBB Inc.
Hearing date	: 14 August 2026
Delivery date	: 31 August 2026