

REPUBLIC OF SOUTH AFRICA



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

Case No: B2372/23

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

DATE 20/08/2026

MNGQIBISA-THUSI NP

In the matter between:

SEBABATSO FLORENCE MOKOENA

Applicant

and

CHANGING TIDES 17 (PROPRIETARY) LIMITED N.O

Respondent

This judgment has been handed down remotely and shall be circulated to the parties by way of email / uploading on Caselines. The date of hand down shall be deemed to be 20 August 2026.

ORDER

The following order is granted:

1. The application is dismissed.
2. The applicant to pay the costs of the application on an attorney and client scale.

JUDGMENT

MNGQIBISA-THUSI J

[1] The applicant, Ms. Sebatatso Florence Mokoena, seeks an order rescinding a default judgment granted on 24 January 2024 in favour of the respondent, Changing Tides 17 (Pty) Ltd N.O.

[2] Although the applicant did not expressly set out in terms of which rule she seeks the rescission of the order for default judgment, in his submission counsel for the applicant submitted that the applicant relies on uniform rule 42 (1) for the relief she seeks.

[3] Uniform rule 42(1)(a) provides that an order or judgment erroneously sought or granted in the absence of a party affected thereby may be rescinded. A judgment is erroneously granted when the court, at the time of granting it, was unaware of facts which would have precluded the granting of the order. Where the Court lacked jurisdiction or where there was no valid service of process, the judgment is a nullity and falls to be rescinded.

[4] During June 2021, the South African Home Loans ("SAHL") and the applicant concluded an agreement whereby the SAHL gave the applicant a home loan. The property is situated at 1[...] G[...] G[...], Sebokeng (the property"), which is also the applicant's domicilium address. The loan was secured by a mortgage bond over the property in favour of SAHL. Following the applicant's failure to make her instalment payments, the respondent, acting on behalf of SAHL, filed an application for default judgement, which was granted on 24 January 2024, which also provided for an order declaring the property specially executable.

[5] The applicant seeks an order setting aside the default judgment on the basis that:

5.1 this court lacked jurisdiction to adjudicate the matter;

5.2 the summons initiating the proceedings was defective and amounted to an irregular step due to non-compliance with Rule 17(3) of the Uniform Rules of Court; and

5.3 the applicant was not properly served with the summons, thus violating uniform rule 4(1).

- [6] The respondent opposes the application, contending that the order was properly sought and granted in that the court had jurisdiction, and that service was duly affected.
- [7] Even though counsel for the applicant submitted that the relief sought was based on uniform rule 42(1)(a), in his submissions no basis was laid for this assertion save to indicate that the applicant was relying on the fact that the applicant was not personally served with the summons. However, after it was pointed out to counsel that attached to the respondent's founding papers in the application for default judgment application, was a return of service which evidences the fact that the summons were actually personally served on the applicant at her domicile address, counsel for the applicant conceded that besides the apparent reliance on the non-service of the summons which has been shown to be incorrect, he had no further submissions to make to advance the applicant's application for the relief sought.
- [8] In view of the concession made by counsel for the applicant, counsel for the respondent sought an order dismissing the application and that applicant should be liable for the costs of the application on an attorney and client scale. Counsel for the respondent argued that a punitive cost order was justified in that the underlying agreement between the parties provided for a punitive cost order,
- [9] Having read the papers filed, heard counsel and considered the matter, I am satisfied that the applicant has failed to make out a case for the relief sought,

particularly in respect of the service of the summons. Taking into account that the agreement provides for a punitive cost order, I am of the view that the respondent is entitled to an order for costs on an attorney and client scale.

[10] In the result, the following order is made:

3. The application is dismissed.
4. The applicant to pay the costs of the application on an attorney and client scale.

NP MNGQIBISA-THUSI
Judge of the High Court

Date of hearing: 13 October 2025

Date of judgment: 20 August 2026

Appearances

For Applicant: Adv J Mr Malapane (instructed by Mokgalabone Attorneys)

For Respondent: Adv W Roos (instructed by Velile Tinto and Associates Inc)