

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)



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

Case number: 014523/2022

(1) REPORTABLE: **No**

(2) OF INTEREST TO OTHER JUDGES: **No**

(3) REVISED: **Yes**

2 September 2026

SIGNATURE

In the matter between:

FARZAAD DAWOOD

Applicant

and

ABSA BANK LIMITED

Respondent

The judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties' legal representatives by e-mail and uploading it to the electronic file of this matter on Caselines. The date and time of hand-down is deemed to be 17:00 on 2 September 2026.

JUDGMENT

[1] This is the judgment in an opposed motion that was argued before me on 4 August 2026, after which I reserved judgment.

[2] The applicant is Mr Farzaad Dawood (“**Dawood**”) and the respondent is ABSA Bank Limited (“**ABSA**”).

[3] On 27 June 2025 this court granted ABSA default judgment in a suit against Dawood, in the following terms:

- “1. Confirming the cancellation of the instalment sale agreement.
2. Return of Goods:
ASSET : 2018 BMW 320I LUXURY LINE A/T (F30)
ENGINE NUMBER : F[...]
CHASSIS NUMBER : W[...]
3. Costs in the sum of R650.00 plus sheriff’s fee in the sum of R373.98.
4. Prayer 4 and 5 of the Summons postponed *sine die*.”

[4] On 11 September 2025 Dawood lodged the present application, in which he seeks the following relief:

- “1. The Order for default Judgment granted on 27 June 2025 under case number 2022-014523 is hereby rescinded and set aside;
2. The Warrant for the Return of goods is set aside;
3. Ordering the Respondent to pay the cost of this application on the attorney and client scale ...”.

[5] Dawood applies for the rescission of the default judgment in terms Uniform Rule 42(1)(a), which provides that the court may *mero motu* or upon the application of any party affected, rescind or vary an order or judgment that

was erroneously sought or erroneously granted in the absence of any party affected thereby.

[6] According to the commentary on Uniform Rule 42(1)(a) in *Civil Procedure in the Superior Courts*, LexisNexis South Africa, at B42.4, an order is erroneously sought if there was, for example, no proper notice to the absent party, irrespective of whether the order or judgment is otherwise correct; and an order is erroneously granted if it was legally incompetent for the court to have made such an order, or if there was an irregularity in the proceedings, or if the court was unaware of facts, if known to it, would have precluded it from a procedural point of view from making the order.

[7] It is not in dispute that default judgment was granted against Dawood on 27 June 2025 in his absence, nor that he is a party affected by the grant of the default judgment, within the ambit of Uniform Rule 42(1)(a).

[8] Dawood founds his application on two grounds: first, that the combined summons was served at an address of his that was defunct; and second, the provisions of paragraph 13.21 of the *Practice Manual of the North Gauteng High Court* ("**Practice Manual**") was not complied with by ABSA regarding its application for default judgment.

[9] Dawood's first ground is summarised by him as follows:

"The Respondent sought and obtained the Order based on service of a Summons, by affixing, at an address which was not proven to be my chosen *domicilium citandi et executandi*. This is because there was no evidence and no confirmation of any chosen *domicilium citandi et executandi* before the Honourable Court when the Order was sought and granted."

[10] Dawood's first ground is not persuasive. According to the sheriff's return of service dated 22 August 2022, the combined summons was served on Dawood on 19 August 2022 at his chosen *domicilium citandi et executandi* of 1[...], T[...] Road, Forest Town, Johannesburg. Clause 19 of the terms and

conditions to the instalment sale agreement that was concluded between the parties places an obligation on Dawood to keep ABSA informed of his current residential address, and that ABSA is entitled to use any of his contact details provided by Dawood for legal purposes. The physical address given by Dawood in the instalment sale agreement is 1[...], T[...] Road, Forest Town, Johannesburg, which is where the sheriff served the combined summons.

- [11] Dawood's second ground is persuasive. Paragraph 13.21 of the Practice Manual provides as follows:

"13.21 STALE SERVICE

1. Where any unopposed application is made six months or longer after the date on which the application or summons was served, a notice of set down must be served on the defendant or respondent.
2. The notice of set down must set out
 - 2.1 the date and time at which the relief will be sought;
 - 2.2 the nature of the relief that will be sought.
3. The notice of set down must be served at least five days before the date on which the relief will be sought."

- [12] It is common cause that ABSA did not comply with the provisions of paragraph 13.21 of the Practice Manual with regards to its application for default judgment.

- [13] It was argued for ABSA that this was not necessary because on 2 April 2025 ABSA caused the application for default judgment, the summons and ABSA's notice of opposition to mediation to be served at the Dawood's *domicilium citandi et executandi*.

- [14] ABSA's reasoning does not withstand scrutiny. The purpose of paragraph 13.21 of the Practice Manual is evidently to ensure that a defendant such as Dawood who has not opposed an action is given timeous notice by the plaintiff that on a particular day and in a particular matter before this court

the plaintiff would be applying for default judgment of a specified type against the defendant. ABSA's service on 2 April 2025 of the application for default judgment, the summons and ABSA's notice of opposition to mediation did not achieve this purpose. Dawood was thus left in the dark about ABSA's application for default judgment against him.

[15] No other acceptable reason was given by ABSA in explanation of its failure to comply with paragraph 13.21 of the Practice Manual.

[16] To my mind, ABSA's failure to comply with paragraph 13.21 of the Practice Manual as foresaid means that default judgment was erroneously granted against Dawood on 27 June 2025, within the ambit of Uniform rule 42(1)(a).

[17] As a general principle the successful party is entitled to costs.¹ There is no reason why the general principle should be departed from in this matter. I am not persuaded, however, that the cost order should be granted on the scale as between attorney and client as prayed for by Dawood. In accordance with Uniform Rule 67A(3)(a), and taking the factors under 67A(3)(b) into account, the costs shall be on Scale C.

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

1. The order for default judgment that was granted on 27 June 2025 against the applicant under case number 2022-014523 is rescinded and set aside in terms of Uniform Rule 42(1)(a).
2. The warrant for the return of goods as envisaged in paragraph 2 of the order for default judgment is set aside.
3. The respondent is to pay the applicant's costs in the application on a party and party basis, and on Scale C.

¹ *Fripp v Gibbon & Co* 1913 AD 354 at 357.

CP WESLEY, AJ.

Acting Judge of the High Court

Date heard: 4 August 2026.

Judgment date: 2 September 2026.

Appearance:

Applicant:

Counsel: M Shabangu

Instructed by: Unknown

Respondent:

Counsel: CJ Welgemoed

Instructed by: Straus Daly Inc.