REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG
CASE NO: 2023-058154

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES

22/09/2025

DATE SIGNATURE

In the matter between:

MBALATI ALDWORTH DZUNISANI Applicant

and

FIRSTRAND BANK LIMITED T/A WESBANK Respondent

In re:

FIRSTRAND BANK LIMITED T/A WESBANK Plaintiff

and

MBALATI ALDWORTH DZUNISANI Defendant

JUDGMENT

Mahosi, J

[1] This is an application to rescind a default judgment granted by the Registrar in terms of Rule 31(5) of the Uniform Rules of Court on 13 September 2023. The issue is whether, in the circumstances, this Court can rescind the judgment in terms of Rules 42(1)(a), Rule 31(2) and whether the applicant has shown sufficient cause for rescission under common law. Coupled with this is a condonation application for the late filing of this application under Rule 31(2).

[2] It is undisputed that the applicant entered into an online instalment sale agreement with the respondent to purchase a 2021 Land Rover Range Rover Sport ("the vehicle") for a total of R2 854 420.76, payable in monthly instalments of R33 224.85 over 71 months, with interest. After falling into arrears, the respondent obtained a default judgment against the applicant. Subsequently, a writ of execution was issued on 29 September 2023, leading to the Sheriff seizing the vehicle on 11 January 2024. This prompted the applicant to file an urgent application for the return of the vehicle on 24 January 2024. The parties agreed, on 6 February 2024, to remove the matter from the urgent Court roll and from the unopposed roll.

[3] Rule 31(2)(b) makes provision for a defendant to apply to the Court on notice to the plaintiff to set aside a judgment within 20 days after acquiring knowledge of such judgment, and the Court may, upon good cause shown, set aside the default judgment on such terms as it deems fit. The Courts have often stated the requirements for rescission application under Rule 31(2)(b) to be that a defendant should give a reasonable explanation of his default, show that the application is made *bona fide* with no intention of delaying the plaintiff's claim, and there is *a bona fide* defence to the plaintiff's claim, which prima facie has some prospect of success.[1]

[4] Under common law, the applicant still needs to show "sufficient cause". The applicant referred this Court to *Chetty v Law Society Transvaal*[2] in which the Court stated:

> "The term "sufficient cause" (or "good cause") defies precise or comprehensive definition, for many and various factors require to be considered. (See *Cairns' Executors v Gaarn* 1912 AD 181 at 186 *per* Innes JA.). But it is clear that in principle

[1] See *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills (Cape)* 2003 (6) SA 1 (SCA), at para 11
[2] 1985 (2) SA 756 (A).

and in the long-standing practice of our Courts two essential elements of "sufficient cause" for rescission of a judgment by default are:

(i) that the party seeking relief must present a reasonable and acceptable explanation for his default; and

(ii) That on the merits such party has a *bona fide* defence which, *prima facie*, carries some prospects of success. (*De Wet's case supra* at 1042; *PE Bosman Transport Works Committee and Others v Piet Bosman Transport (Pty) Ltd* 1980 (4) SA 794 (A); *Smith NO v Brummer NO and Another; Smith NO v Brummer* 1954 (3) SA 352 (0) at 357- 8.)"

[5] In the current matter, the default judgment was granted on 13 September 2023. The applicant, in explaining his default, states that his first attempt to access the case file on the Court Online portal was on 13 November 2023, two months after the default judgment was granted and a month after being informed by the Sheriff of the judgment against him. Despite being aware that he was late in filing to rescind the judgment, he further delayed effecting service of his application on the respondent until 13 December 2023, and only uploaded it through the Court Online portal on 10 January 2024.

[6] The respondent avers that for the applicant to request access to the case on the Court Online portal, he needed to know the parties involved and/or the case number. Resultantly, it argues that the applicant had sufficient information, on 13 November 2023, to understand that the matter concerned his default on vehicle repayments. It asserted that if he had any interest in resolving the arrears on his account, he should have contacted the bank for further information. This is a fair proposition. The applicant has not explained why he didn't contact the bank after he became aware of the default judgment or why there was a one-month delay in serving the respondent with this application. Considering the above, the applicant's reason for his default is insubstantial.

[7] The applicant has further failed to put up a defence which has reasonable prospects of success. He contests the validity of the alleged agreement between the parties, asserting that it was altered to include new terms, making it to inaccurately reflect the deal he made with the respondent and maintains that it does not represent

the actual agreement as it was. He points out the lack of signatures on the document, which, according to him, raises doubts about its legitimacy. Additionally, he disputes the amount stated in the certificate of balance, claiming the imposition of unnecessary charges on his account and denying any indebtedness to the respondent. However, he lacks evidence to support these claims.

[8] The respondent's explanation of the process by which customers enter into an online instalment sale agreements with it were not disputed and are acceptable. There is, therefore, no indication that the document is not the original agreement. In the circumstances, the applicant fails to provide evidence to support his allegation of any factual dispute and that he has a *bona fide* defence, which *prima facie* has some prospect of success.

[9] The applicant is heavily in debt to the respondent and has made no effort to settle his outstanding payments before or after the main action began. His submissions indicate that if a summons had come to his attention, he would have investigated whether he owed the respondent. If he did, he states that he would have entered into negotiations with the respondent to settle his arrears. This is an indication that his application is not made *bona fide*. Instead, he is using delaying tactics to excuse his failure to meet his contractual obligations. Although the applicant's degree of lateness in bringing this application under Rule 31(2)(b) is negligible, his explanation for the delay is tenuous, and he lacks prospects of success. In light of the above, his condonation application should not be granted. Similarly, his application under the common law cannot succeed.

[10] The next issue is whether, in the circumstances, the default judgment should be rescinded as being the judgment erroneously sought or granted against the applicant in his absence. 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.

[11] The applicant alleges that the reason for his default was that the section 129 notice and a summons were neither served nor brought to his attention prior to the commencement of the main action. Regarding the section 129 notice, the applicant

contends that the postal code to which the registered mail was addressed was incorrect. In opposing, the respondent referred this Court to *Kubyana v Standard Bank of South Africa Ltd*,[3] (*Kubyana*) where the Constitutional Court, in considering "*what a credit provider must prove in order to satisfy a court that it has discharged its obligation to effect delivery of a section 129 notice to a consumer*"[4] stated that:

> "Once a credit provider has produced the track and trace report indicating that the s 129 notice was sent to the correct branch of the Post Office and has shown that a notification was sent to the consumer by the Post Office, that credit provider will generally have shown that it has discharged its obligations under the Act to effect delivery. The credit provider is at that stage entitled to aver that it has done what is necessary to ensure that the notice reached the consumer. It then falls to the consumer to explain why it is not reasonable to expect the notice to have reached her attention if she wishes to escape the consequences of that notice. And it makes sense for the consumer to bear this burden of rebutting the inference of delivery, for the information regarding the reasonableness of her conduct generally lies solely within her knowledge. In the absence of such an explanation the credit provider's averment will stand. Put differently, even if there is evidence indicating that the section 129 notice did not reach the consumer's attention, that will not amount to an indication disproving delivery if the reason for non-receipt is the consumer's unreasonable behaviour."

[12] In this matter, the applicant confirmed, in his founding affidavit, his chosen *domicilium* address to be 39 Killarney Road, Sandhurst, Johannesburg, Province of Gauteng, which is consistent with the address he provided in the agreement. However, he argues that the postal office that dispatched the notification for the collection of the section 129 notice was in Highlands North, as opposed to Benmore, which is nearest to his address. This argument does not assist the applicant as section 96(1) of the Act only requires that the notice be delivered "*at the address provided by the recipient*". It does not require the Post Office to be the nearest to the recipient's address.

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[3] 2014 3 SA 56 (CC) at para 53.
[4] *Id* at para 41.

[13] In *Kubyana*, the Constitutional Court stated that, "*any notion that the Act requires a credit provider to ensure that, as a matter of fact, the section 129 notice definitely reached the consumer is misconceived*".[5] The Constitutional Court further stated that:

> "It is so that section 96(1) requires that notices be delivered 'at the address' provided by the recipient. However, this requirement must be understood with due regard to the practical aspects of dispatching a notice by way of registered mail. When a credit provider dispatches a notice in that manner, the notice is sent to a particular branch of the Post Office. That branch then sends a notification to the consumer, indicating that a registered item is available for collection. It is never the case that an item dispatched by registered mail will physically be delivered to an individual – such delivery only occurs if the item is sent by ordinary mail, which does not suffice for purposes of sections 129 and 130 of the Act. If a consumer elects not to respond to the notification from the Post Office, despite the fact that she is able to do so, it does not lie in her mouth to claim that the credit provider has failed to discharge its statutory obligation to effect delivery."[6]

[14] The respondent served the section 129 notice to the applicant by registered mail. In addition, the parcel tracking results confirmed that the section 129 Notice was registered under RC372321776ZAS and a notification was sent to the applicant at his chosen *domicilium* address on 02 June 2023. To the extent that the notification for collection was sent to the applicant's chosen *domicilium* address and there is no contrary indication before this Court that it did not reach the applicant's address, it is inferred that it was delivered to his address. In the circumstances, a reasonable consumer would have collected the section 129 notice and engaged with its contents.[7] However, the applicant failed to do so. It can, therefore, not be said that the respondent failed to discharge its obligation to effect delivery under the Act.

[15] Regarding the summons, the applicant asserts that his property is consistently occupied and secured, raising doubts about the Sheriff's early morning visit at 07h31, especially since the latter's office operates between 08h00 and 16h30. However, this argument cannot be sustained as Rule 4(1)(b) provides for the service to be as near

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[5] *Id* at para 41.
[6] *Id* at para 48.
[7] *Id* at para 54.

as possible between 7:00 and 19:00. The applicant also claims that there was no attempt to inquire with his employees regarding service of the process. Additionally, he argues that the Sheriff should not have affixed the process to main gate of his *domicilium* address, as his employees, who monitor the premises, were willing to accept service.

[16] In essence, the applicant argues that service of summons by affixing a copy on the main principal gate of his *domicilium* address is irregular. There is no question of irregularity or mistake on the part of the respondent. Service by leaving a copy at the applicant's domicilium address is provided for in terms of Rule 4(1)(a)(iv) and, therefore, proper. Without an answering affidavit, there was no reason not to grant the default judgment under Rule 42(1)(a).

[17] Considering that the applicant is in default in respect of his monthly repayment obligations, in terms of the agreement, with the respondent and failed to enter an appearance to defend the main action after being properly served with the section 129 notice. The respondent rightfully issued a summons for the vehicle's return, which went unchallenged, and subsequently, sought a default judgment. These actions are not only justified but necessary to uphold the integrity of the agreement. The applicant has failed to make out a case for the rescission of judgment, having regard to the requirements in terms of Rule 31, Rule 42(1), and the common law. The application is, accordingly, dismissed with costs on scale A.

D. Mahosi J
Acting Judge of the High Court

Appearances

For the applicant: Mr LA Marks of Larry Marks Attorneys

For the respondent: Advocate J Govender
Instructed by: Smith Van Der Watt Incorporated Attorneys

Date of hearing: 17 April 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives through email. The date for hand-down is deemed to be 22 September 2025.