

SOUTH AFRICA / JUDGMENT

Jomane Eiendomme (Pty) Ltd v Magistrate Van Zyl and Another (067/2024) [2025] ZASCA 109 (18 July 2025)

[2025] ZASCA 109

COURT

Supreme Court of Appeal

BEFORE

Mbatha, Matojane, Keightley, Coppel, Phatshoane

CASE / FILE NUMBER

067/2024

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FLYNOTES:

CIVIL

PROCEDURE – Rescission – Declaration

directive –

Authority to order plaintiff to file a declaration and proceed
with pleadings – Valid procedural foundation
for furtherpleadings – Order for a declaration was a practical and fair
measure to advance dispute to trial –

Consistent with audi

alteram partem principle and efficient administration of justice –

Order did not constitute a

gross irregularity or exceed powers –

Appeal dismissed – Magistrates' Courts Act 32 of 1944,
s 58(1).

THE SUPREME COURT OF

APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case No: 067/2024

In the matter between:

JOMANE EIENDOMME (PTY) LTD

APPELLANT

and

MAGISTRATE EM VAN ZYL

FIRST RESPONDENT

JAN LODEWYK VOSLOO

SECOND RESPONDENT

Neutral citation: Jomane Eiendomme (Pty) Ltd v Magistrate Van Zyl and Another (067/2024)

[2025] ZASCA 109 (18 July 2025)

Coram: MBATHA, MATOJANE, KEIGHTLEY, COPPIN JJA and PHATSHOANE AJA

Heard: 05 May 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and released to SAFLII. The date and time for hand-down of the judgment is deemed to be 11h00 on 18 July 2025.

Summary: Law of Civil Procedure – Magistrate directing a defendant to deliver a declaration pursuant to the rescission of a judgment granted in terms of s 58(1) of the Magistrates' Courts Act 32 of 1944 competent – the magistrate's decision was not ultra vires and consequently not susceptible to review.

ORDER

On appeal from: North West Division of the High Court, Mahikeng (Reid J and Reddy AJ concurring, sitting as court of review):

The appeal is dismissed with costs.

Phatshoane AJA (Mbatha, Matojane, Keightley and Coppin JJA concurring):

[1] This is an appeal, with leave of the North West Division of the High Court, Mahikeng (the high court), against the whole of its

judgment

and order dismissing an application to review and set aside the decision by the first respondent, Ms E M Van Zyl, an acting

magistrate of the Magistrates' Court for the district of Rustenburg (the magistrates' court). The magistrate had ordered

the second respondent, Mr L J Vosloo (the plaintiff in the magistrates' court), to file a declaration in terms of rule 15[1] of the Magistrates' Courts Rules (the magistrates' courts rules) following a successful application for the rescission of the judgment by the appellant, Jomane Eiendomme (Pty) Ltd (Jomane), and Mr C A Botha (the first and second defendants in the magistrates' court).

[2] Two issues are central to the appeal. First, whether the magistrate was empowered in terms of rule 49 of the magistrates' courts rules read with s 36 of the Magistrates' Courts Act 32 of 1944 (the MCA) to direct Mr Vosloo to file a declaration pursuant to the rescission of the judgment entered in terms of s 58(1) of the MCA against Jomane and Mr Botha. Second, whether this part of the order constitutes a gross irregularity reviewable under rule 53 of the Uniform Rules of Court (the uniform rules),[2] read with s 22(1)(c) of the Superior Courts Act 10 of 2013 (the Superior Courts Act).

'If any person (in this section called the defendant), upon receipt of a letter of demand or service upon him of a summons demanding payment of [a] debt, consents in writing to judgment in favour of the creditor (in this section called the

plaintiff) for the amount of the debt and the costs claimed in the letter of demand or summons, or for any other amount, the clerk of the court shall, on the written request of the plaintiff or his attorney accompanied by -

- (a) if no summons has been issued, a copy of the letter of demand and;
- (b) the defendant's written consent to judgment,
- (i) enter judgment in favour of the plaintiff for the amount of the debt and the costs for which the defendant has consented to judgment; and
- (ii) if it appears from the defendant's written consent to judgment that he has also consented to an order of court for payment in specified instalments or otherwise of the amount of the debt and costs in respect of which he has consented to judgment, order the defendant to pay the judgment debt and costs in specified instalments or otherwise in accordance with this consent, and such order shall be deemed to be an order of the court mentioned in section 65A (1).'[3]

[4] In its amended form, s 58 introduced certain procedural requirements with regard to a request for and obtaining of judgment. For example, consent to judgment must now set out full particulars of the defendants' monthly or weekly income and expenditure; court orders they may have with other creditors and indicate the amount offered to be paid in instalments.[4] The request must also be accompanied by a summons or a letter of demand, and a written consent to judgment.[5] Additionally, the court may request any relevant information from the plaintiff or his or her attorney in order for the court to be apprised of the defendant's financial position at the time the judgment is requested. The court is also enjoined to act in terms of the provisions of the National Credit Act 34 of 2005 (the NCA) and the regulations thereunder dealing with over-indebtedness, reckless credit and affordability assessment, when considering the request for judgment based on a credit agreement under the NCA. Where the defendant is employed, and after satisfying itself that it is just and

equitable that an emoluments attachment order be issued and that the amount is appropriate, the magistrates' court may authorise an emoluments attachment order referred to in s 65J of the MCA and may, notwithstanding the defendant's consent to pay any scale of costs, make a costs order as it deems fit.^[6]

[5] Section 58 is a sui generis statutory mechanism specifically tailored to provide effective, expeditious and inexpensive relief to creditors and debtors by permitting judgment to be entered in favour of a creditor where a debtor has consented thereto upon receipt of a letter of demand or summons. The statutory provision creates an alternate process for the plaintiff to obtain a default judgment. First, upon receipt of a written demand, the defendant consents in writing to judgment in favour of the plaintiff for the amount of the debt and costs specified in the demand. Alternatively, upon service of a summons, the defendant consents in writing to a judgment in favour of the plaintiff. Depending on the procedure that finds application, the request for judgment would either be accompanied by summons or a letter of demand.

[6] On 18 July 2017, Mr Vosloo submitted a request for judgment against Jomane and Mr Botha in the sum of approximately R274 000 in the magistrates' court in terms of s 58(1) of the MCA. The request was accompanied by the following documents: a letter of

demand, an acknowledgement of debt with an undertaking to pay the debt in monthly instalments, a consent to judgment in terms of s 58(1) of the MCA signed by Mr Botha, and an affidavit in terms of magistrates' courts rule 4(2) attested to by Mr Vosloo's

attorney in support of the request for judgment.

[7] On the basis of the aforesaid request, the magistrates' court entered judgment against Jomane and Mr Botha on 25 July 2017. It was only during 2019, upon being made aware of the judgment, that Jomane brought an application for its rescission in terms of magistrates' courts rule 49, claiming that the judgment was void ab origine as Jomane did not sign the acknowledgement of debt and consent to judgment. Alternatively, that the judgment had been granted erroneously without any valid cause of action, and further alternatively, that Jomane's alleged liability was disputed and that had it been made aware of the request for judgment it would have defended the matter. Mr Vosloo opposed the rescission application maintaining that Jomane and Mr Botha were liable as recorded in the acknowledgement of debt.

[8] On 25 November 2019, the magistrate issued an order in which she rescinded the judgment with costs because, so reasoned the court, there had been no default on the part of Jomane, and that it had a bona fide defence to the claim. What caused some confusion is that, from the record of the magistrates' court it appeared that, two days later, on 27 November 2019, the magistrate mero motu recorded a note in handwritten form that: '[Mr Vosloo] is ordered to file a declaration within 10 days.' As already alluded to, it is against this portion of the order that the review in the high court and the present appeal is directed.

[9] The time-honoured principle is that:

‘(O)nce a court has duly pronounced a final judgment or order, it has itself no authority to correct, alter, or supplement it. The reason is that it thereupon becomes functus officio: its jurisdiction in the case having been fully and finally exercised, its authority over the subject-matter has ceased’.[7]

Before the high court Jomane argued that the magistrate’s rescission order was final and definitive and that, having pronounced on the issue, the magistrate was functus officio. She had no authority to make the accessory order, of her own accord, on 27 November 2019, when she directed Mr Vosloo to file a declaration. In this Court Jomane conceded that the orders were consecutively made in the same proceedings. This concession effectively ended any debate on the question whether the magistrate, following her rescission order, was functus officio and could thus not correct, alter or supplement her rescission order by means of a directive to the effect that the declaration be filed. In any event, the magistrate held the view that Jomane had a bona fide defence and intended the dispute to be ventilated at a trial in due course following the rescission.

[10] Pursuant to the order of 25 November 2019 Mr Vosloo filed the declaration on 10 December 2019. Jomane did not file a plea. Consequently, Mr Vosloo delivered a notice of bar on 17 January 2020. In response, on 21 January 2020, Jomane served and filed a notice in terms of rule 60A(2)(b) in which it contended that the delivery of the declaration and the notice of bar constituted an irregular step in the proceedings as the rescission of the judgment concluded the s 58(1) proceedings against it. Any action against it, so it argued, would have to be commenced with the issue and service of a summons, and any attempts by Mr Vosloo to file papers after the rescission of the s 58(1) order constituted an abuse of the court process.

[11] Jomane did not pursue the rule 60A(2)(b) interlocutory application. Instead, it brought a review application in the high court in terms of uniform rule 53 to set aside the magistrate’s decision to the extent that she had ordered Mr Vosloo to file the declaration. The high court found that the magistrate’s order was in accordance with the principle of fair and speedy disposal of the litigation and cost-effective.

Insofar as the dispute between the parties remained extant, reasoned the high court, it was only logical for Jomane to file a plea to Mr Vosloo’s declaration as this provided a means through which the dispute would be finally determined at the trial in due course. On the foregoing bases, the high court dismissed the review application and ordered that the declaration would stand as the particulars of claim and that further pleadings be filed in terms of the magistrates’ courts rules.

[12] Before us Jomane argued that nowhere in the MCA and the magistrates’ courts rules are the detailed provisions relating to summons and pleadings made applicable to a written request for judgment following a letter of demand in terms of s 58(1). It contended that the summons is issued by the clerk of the court in accordance with magistrates’ courts rule 3. Where a simple summons is issued and served, magistrates’ courts rule 15(1) provides that if

the defendant 'has delivered a notice of intention to defend, the plaintiff shall within 15 days after receipt of the notice of intention to defend, deliver a declaration'.

Jomane contended that the written request for judgment, based on a letter of demand and consent, was neither a summons nor an equivalent

thereof. Accordingly, there was no scope for a plaintiff in that case to deliver a declaration.

[13] Jomane further contended that the magistrates' court is a creature of statute and has no jurisdiction beyond that conferred by the MCA. It possesses no inherent jurisdiction to regulate its own process, whether at common law or in terms of s 173 of the Constitution. Therefore, the magistrates' court could not assume power which it otherwise did not have. In the absence of

combined or simple summons the magistrate was not empowered, following the rescission of the default judgment of the kind obtained

by Mr Vosloo, to direct that the magistrates' courts rules, relating to pleadings, would apply and be binding on the parties. It argued that the procedural order could only have been made if the proceedings were initiated by means of an action through the issuance of a summons.

[14] The statutory architecture for the rescission of judgments in the magistrates' courts is set out in s 36 of the MCA, read with magistrates' courts rule 49(1). Section 36(1) provides:

'The court may, upon application by any person affected thereby, or, in cases falling under paragraph (c), suo motu-

- (a) rescind or vary any judgment granted by it in the absence of the person against whom that judgment was granted;
- (b) rescind or vary any judgment granted by it which was void ab origine or was obtained by fraud or by mistake common to the parties;
- (c) correct patent errors in any judgment in respect of which no appeal is pending;
- (d) rescind or vary any judgment in respect of which no appeal lies.'

Magistrates' courts rule 49(1) provides:

'A party to proceedings in which a default judgment has been given, or any person affected by such judgment, may within 20 days after

obtaining knowledge of the judgment serve and file an application to court, on notice to all parties to the proceedings, for a rescission or variation of the judgment and the court may, upon good cause shown, or if it is satisfied that there is good reason to do so, rescind or vary the default judgment on such terms as it deems fit: Provided that the 20 days' period shall not be applicable to a request for rescission or variation of judgment brought in terms of sub-rule (5) or (5A).' (My emphasis.)

[15] Jomane's further contention is that s 36, which confers the right to rescind and vary judgment on the magistrates' courts, bears no phrase 'on such terms as it deems fit' as found in magistrates' courts rule 49(1), which is subordinate to the statutory provision. It argued that s 29 of the MCA, which regulates jurisdiction over causes of action, as well as magistrates' courts rule 15, relate to 'action' proceedings. The latter rule sets out the procedure for delivery of a declaration. The request for judgment based on a letter of demand, it was argued, is not an action. According to Jomane, it was incumbent on Mr Vosloo to institute action proceedings afresh, by way of a summons, following the rescission of the order based on the letter of demand and acknowledgement of debt. On the aforesaid bases, Jomane argued, the magistrate's decision was irregular, ultra

vires the court's power, and based on a material error of law. It was thus susceptible to review under s 22(1)(c) of the Superior Courts Act.

'... The magistrate's discretion to rescind the judgments of his court is therefore primarily designed to enable him to do justice between the parties. He should exercise that discretion by balancing the interests of the parties . . . and also any prejudice which might be occasioned by the outcome of the application. He should also do his best to advance the good administration of justice. In the present context this involves weighing the need, on the one hand, to uphold the judgments of the courts which are properly taken in accordance with accepted procedures and, on the other hand, the need to prevent the possible injustice of a judgment being executed where it should never have been taken in the first place, particularly where it is taken in a party's absence without evidence and without his defence having been raised or heard.'

[17] In considering the application for rescission and when striking the appropriate balance between the competing interests, the issue of prejudice that may be occasioned by the outcome of the application must not only be considered from the debtor's perspective but that of the creditor as well. The rescission of a judgment does not finally dispose of the matter but preserves the status quo.

[18] The proposition contended for by Jomane, to the effect that upon rescission of a judgment under s 58(1) the litigation is concluded and that the creditor must institute an action de novo, has impractical implications that could lead to unfair consequences and undermine the very purpose of s 58. For instance, it would mean that on rescission the interruption of prescription under s 15(1) of the Prescription Act 68 of 1969 would lapse. Consequently, the plaintiffs in those circumstances may be unable to pursue their claims or recover their debts. A further manifest injustice that could result, in the event of Jomane's contention being accepted, is that a debtor could simply wait for the claim to prescribe and thereafter seek rescission of a judgment to which it had consented to in the hope of escaping payment of a debt legitimately owed.

[19] Ordinarily, in terms of the magistrates' courts rule 5(1)(a):

‘[e]very person making a claim against any other person may, through the office of the registrar or clerk of the court, sue out a simple summons or a combined summons addressed to the sheriff directing the sheriff to inform the defendant among other things that, if the defendant disputes the claim and wishes to defend, the defendant shall:

(a) within the time stated in the summons, give notice of intention to defend.’

In the event the judgment is rescinded, where the proceedings commenced with a summons under s 58 of the MCA, further pleadings would be exchanged to advance the dispute to trial. In the present case the request for judgment in

terms of s 58(1) was preceded by a letter of demand which would have left the plaintiff without any recourse had the magistrate not directed otherwise.

[20] There is no legal foundation on which Jomane’s argument, that the s 58(1) request for judgment is not a document commencing the action, can be sustained. As support for its argument Jomane sought to rely on an article titled ‘Amended Debt Collecting Procedure’ which was published in the De Rebus of 1978 where the authors said[9]:

‘The formal requirements under this section [s 58] are far less stringent than those under s 57. In both this procedure and that under s 57 the initial documents (ie the demand and offer) where no summons has been issued would be regarded as the first documents in the action when judgment is applied for, for the purposes of stamp duty.’

[21] The article predates several amendments that have been made over the years to the MCA. In any event, in my view, the article does not support Jomane’s stance. On the contrary, it buttresses the point that the request for judgment, absent the summons, is the initial document in the action. It could never have been considered the first document in the action solely for the purposes of stamp duty.[10]

[22] More significantly, for present purposes, is that s 59 of the MCA provides:

‘If no summons is issued in an action the written request referred to in sections 57(2) and 58(1) shall constitute the first document to be filed in the action and shall contain the particulars prescribed in the rules.’

It was never argued that the s 58(1) request for judgment in this case did not substantially comply with Form 5B[11] or that it was defective in certain respects and therefore null and void. Regard being had to s 59 and the sui generis nature of the proceedings under s 58 of the MCA, for all practical purposes, the request for judgment in s 58(1), in the absence of summons, constitutes the first document in the action. It is akin to a summons in the sense that it is through the request for judgment that the action is instituted.

[23] What s 59 seeks to mitigate against is the potential irremediable prejudice that may result following the setting aside of judgment by consent

where a summons was not issued. In *Boshielo v Molewa*,^[12] (Boshielo) the high court had occasion to consider an argument that the appellant in that case was obliged to issue a summons and could not rely on the request for judgment by consent as a document commencing the action. The court dismissed the argument as devoid of any merit. It held:

‘Generally, an action must be commenced by summons (see subrule 5(1)). However, there is an exception. Subrule 5(1) provides that:

"Subject to the provisions of s 59 of the Act, the process of the court for commencing an action shall be by summons calling upon the defendant to enter an appearance to defend the action within 5 days after service to answer the claim of the plaintiff and warning the defendant of the consequences of failure to do so."

...

Previously a creditor litigating in the Magistrates' Courts was obliged to issue a summons to commence an action and only after that had been done could a defendant consent to judgment. Section 59 has changed the law. It is now competent for a litigant to send the debtor a letter of demand (containing particulars about the nature and the amount of the claim) whereupon the debtor may consent in writing to judgment (see section 58(1)). The litigant may accept the offer, and judgment may be entered for the plaintiff. A judgment entered in favour of the plaintiff under section 57(2) has the effect of a judgment by default (see section 57(4)). The judgment may be set aside under section 39 and read with rule 49 (see *Jones & Buckle The Civil Practice of the Magistrates' Courts in South Africa* (9 ed) volume 2, 4B-1).^[13]

It was never contended before us that *Boshielo* was wrongly decided. What was said there is apt.

[24] Words in a statute must be read in their entire context and given their ordinary grammatical meaning consistent with the purpose of the statute. In conducting this interpretative exercise, all statutes must be construed through the prism of and in order to promote the spirit, purport and objects of, the Bill of Rights.^[14] Magistrates' courts rule 49(1) endows a magistrate with authority to rescind or vary a default judgment 'on such terms

as it deems fit'. The words were deliberately inserted in the rule in order not to abridge the wide powers conferred on the

magistrates when making orders following variation or rescission of judgments. The word 'deem' means to regard or consider in a specified way, whereas 'fit' means, inter alia, suitable quality or to consider it correct or acceptable.^[15] Implied in this phrase is simply that when exercising its discretion to rescind or vary the judgment the court may craft an order on such terms as it considers appropriate in order to afford the parties just relief.

[25] It matters not that s 36 of the MCA does not contain a similar phrase: 'on such terms as it deems fit'. D E van Loggerenberg^[16] provides this useful commentary in respect of the slight dissimilarity in s 36 and magistrates' courts rule 49:

‘The words appearing at the end of the subrule do not appear in s 36, where the right to rescind or vary a judgment is conferred upon the magistrate's court. It is, however, submitted that these words are not ultra vires the provisions of s 36 or in conflict with the common law. The words are clearly only procedural in nature and, for example, empower a magistrate's court that sets aside a default judgment to give such directions as may be necessary to ensure the smooth further conduct of the action or application.’

[26] On the foregoing exposition, the magistrate's order that Mr Vosloo file a declaration following the rescission of the judgment was eminently sound and a proper application of magistrates' courts rule 49(1) which enjoins her to rescind the judgment ‘on such terms as she deems fit’. She clearly intended to have the dispute between the parties ventilated through a further exchange of pleadings and advanced to trial, which reinforces the audi alteram partem principle and promotes the interest of justice.

[27] The devised procedural step, that is, an order that the plaintiff file the declaration, is in consonance with the purpose of the

magistrates' courts rules which aim to promote access to the courts and to give effect to the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court. The magistrates' courts rules are to be applied so as to facilitate the expeditious handling of disputes and the minimisation of legal costs.[17] In the premises, the magistrate acted within the purview of s 36 of the MCA read with magistrates' courts rule 49(1) and not ultra vires her powers.

[28] The upshot of this is that the high court correctly concluded that the magistrate's order, to the effect that Mr Vosloo file a declaration, is not susceptible to review under s 22(1)(c) of the Superior Courts Act. Accordingly, the appeal falls to be dismissed.

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

M V PHATSHOANE

ACTING JUDGE OF APPEAL

Appearances

For the appellant:

H P Wessels

Instructed by:

VDT Attorneys Inc, Pretoria

Phatshoane Henny Inc, Bloemfontein

For the second respondent: J A du Plessis

Instructed by:

Van Velden-Duffey Inc, Rustenburg

Symington De Kok Inc, Bloemfontein.

- [1] Rule 15(1) of the Rules regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa published under GN R740 in GG 33487 of 23 August 2010 provides that: 'In all actions in which the plaintiff has issued a simple summons and the defendant has delivered a notice of intention to defend, the plaintiff shall, within 15 days after receipt of the notice of intention to defend, deliver a declaration.'
- [2] Rules regulating the conduct of the proceedings of the several provincial and local divisions of the Supreme Court of South Africa as promulgated in GN R48 of 12 January 1965.
- [3] Section 58 was amended by the Courts of Law Amendment Act 7 of 2017, which was assented to on 31 July 2017 and came into effect on 1 August 2018.
- [4] Section 58(1A) of the MCA.
- [5] Section 58(1B) of the MCA.
- [6] Section 58(1C) of the MCA.
- [7] Firestone South Africa (Pty) Ltd v Genticuro AG 1977
- (4) SA 298 (A) at 306F – G. See also Speaker, National Assembly and Another v Land Access Movement of South Africa and Others 2019
- (6) SA 568 (CC); 2019 (5) BCLR 619 (CC); [2019] ZACC 10 paras 24-25.
- [8] De Witts Auto Body Repairs (Pty) Ltd v Fedgen Insurance Co Ltd 1994
- (4) SA 705 (E) at 711F - I.
- [9] J C du Plessis, A C Hutchison and F G Preller 'Amended debt collecting procedure (1)' (1978) 123 De Rebus at 130.
- [10] The Stamp Duties Act 77 of 1968 was repealed by s 103 of the Revenue Laws Amendment Act 60 of 2008 with effect from 1 April 2009. This effectively eliminated the requirement for revenue stamps on summons and other legal documents.
- [11] A form used in the magistrates' courts to request judgment where the defendant has consented thereto in terms of s 58 of the MCA.
- [12] Boshielo v Molewa [2005] JOL 14823 (B).
- [13] Ibid at 6-7.
- [14] S v Liesching and Others [2018] ZACC 25; (2019)
- (4) SA 219 (CC); 2019
- (1) SACR 178 (CC); 2018

[11] BCLR 1349 (CC) para 130.

[15] Concise Oxford English Dictionary: Tenth edition (Oxford University Press 2002) at 374, 535-536.

[16] D E van Loggerenberg Jones and Buckle: The Civil Practice of the Magistrates' Court in South Africa Vol II The Rules Jutastats e-Publications RS 29, 2022 Rule-49-p9.

[17] Magistrates' courts' rule 1(1)(2).

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