

SOUTH AFRICA / JUDGMENT

Mafuyeka and Another v Standard Bank of South Africa (3835/18)

[2025] ZAMPMHC 35 (17 July 2025)

[2025] ZAMPMHC 35

COURT

Middelburg High Court, Mpumalanga

BEFORE

Leso

CASE / FILE NUMBER

3835/18

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THE

HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION,

MIDDELBURG

CASE NO:3835/18

(1)

Reportable: No

(2)

Of interest to other Judges: No

(3)

Revised: Yes

DATE

17 July 2025

SIGNATURE

In

the matter between:

XIKHOKHONA
SAMSON MAFUYEKA
FIRST APPLICANT
DLAYANI
CHRISTINAH MAFUYEKA
SECOND APPLICANT
and
THE
STANDARD BANK OF SOUTH AFRICA
RESPONDENT
In

re:

THE
STANDARD BANK OF SOUTH AFRICA
PLAINTIFF
XIKHOKHONA
SAMSON MAFUYEKA
FIRST DEFENDANT
DLAYANI
CHRISTINAH MAFUYEKA
SECOND DEFENDANT
This judgment was
handed down electronically by circulation to the parties and/or
parties' representatives by email. The date
and time for
hand-down is deemed to be 17 July 2025 at 10:00.

JUDGMENT

Leso AJ

Introduction

- [1] The applicants seek an order rescinding the default judgment granted in favour of the respondent on 22 June 2018. The said judgment included both monetary relief and a foreclosure order in terms of Rule 31(2)(a) and Rule 46A of the Uniform Rules of Court.
- [2] The default judgment included the following relief:
- 2.1 Payment of R156,805.14 with interest at 9.35% per annum from 18 August 2017 until the date of final payment, including monthly insurance premiums.
- 2.2 Declaring the immovable property, Erf 1[...] T[...], to be specially executable.
- 2.3 Authorisation for the Registrar to issue a warrant of execution with a reserve price of R285 446.35.
- 2.4 Provisions regulating the sale in the event of a failed auction.

- [3] The respondent opposed the application on the grounds that the applicants were in wilful default and failed to disclose the legal basis for their rescission application.

Background

- [4] On 7 February 2008, the applicants concluded a loan agreement with the respondent in the amount of R180,000.00, secured by a mortgage bond over Erf 1[...], T[...].
- [5] Following the default by the applicants, a summons was served on 5 January 2018. The applicants were further served with the notice of set down on 26 May 2018. The matter proceeded unopposed, and a default judgment was granted on 22 June 2018.
- [6] The applicants launched the rescission application on 9 October 2018, approximately three and a half months after the judgment, contending that they only became aware of the judgment in late September 2018. The respondent opposed the application and filed its answering affidavit, albeit late on 17 May 2023.

Legal Framework

- [7] The rescission of a default judgment may be sought in terms of Rule 31(2)(b), Rule 42(1), or under the common law.

- [8] Rule 31(2)(b) provides:

“A defendant may within 20 days after acquiring knowledge of such judgment apply to court upon notice to the plaintiff to set aside

such judgment and the court may, upon good cause shown, set aside the default judgment on such terms as it deems fit.”

- [9] Rule 42(1) empowers a court to rescind or vary:

“(a) an order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby.

- (b) an order or judgment in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission;
- (c) an order or judgment granted as the result of a mistake common to the parties.”

- [10] It is incumbent upon the applicants to identify the specific rule under which the rescission is sought, as the requirements differ materially. Rule 31(2)(b) requires the applicant to demonstrate good cause, including: (a) a reasonable explanation for the default, and (b) a bona fide defence with prospects of success. Rule 42(1), by

contrast, requires a showing that the order was erroneously granted.

ANALYSIS

Failure to Identify Applicable Rule

- [11] The founding affidavit is silent on the legal basis for the application. During the argument, the applicants' counsel who had been recently briefed was unable to assist the court in clarifying whether the application was based on Rule 31, Rule 42 or common law. While unfortunate, this omission is fatal given the divergent legal thresholds applicable.

Inference Drawn from Pleadings

- [12] Notwithstanding this failure to identify the applicable rule, both parties made submissions consistent with the application being brought under Rule 31(2)(b). The applicants sought condonation for the late filing of the rescission application, which is only relevant under Rule 31(2)(b). The respondent also framed its opposition in terms of whether the applicants had shown good cause. Accordingly, I assess the application under Rule 31(2)(b).

Explanation for Default

- [13] The applicants allege that their attorney mistakenly filed the notice of intention to defend in the incorrect court. However, no proof of such filing has been furnished, nor has a confirmatory affidavit from the said attorney been provided. More importantly, the applicants were personally served with the notice of set down but failed to attend court or file any notice of opposition. This conduct cannot be described as reasonable or excusable.
- [14] The explanation, unsupported by documentary or confirmatory evidence, lacks credibility and falls short of the standard of good cause. The applicants were aware of the proceedings and chose not to participate. Such conduct constitutes wilful default.

Bona Fide Defence and Good Cause

- [15] The applicants assert that they had agreed to make monthly payments of R1,800.00 and had been complying with this arrangement. They simultaneously acknowledge their indebtedness to the respondent. The alleged payment agreement is not substantiated by documentary proof or any correspondence. No payment records were attached. On the other hand, the respondent denies the existence of any such arrangement and asserts that no payments have been made since 2018. In *Satin Rock (Pty) Ltd and Another v Teichman* [1] the court held that:

“[Good cause] requirement encompasses two discreet enquiries, namely a reasonable explanation for the applicant's default and a bona fide defence to the claim on the merits. Granting a rescission when the applicant has no defence to the plaintiff's claim would be an exercise in futility and would merely delay the claim of the plaintiff and the application would not be bona fide.”

[16] While the court in *Grant v Plumbers*[2] held that a prima facie defence need not be proven in full; it must be made out in such terms that, if established at trial, it would entitle the applicant to relief. The applicants' version is vague, contradictory, and lacks evidentiary support. No prima facie defence has been made out.

CONCLUSION

[17] The applicants have failed to demonstrate good cause for their default, nor have they established a bona fide defence with prospects of success. The jurisdictional requirements for rescission under Rule 31(2)(b) have not been met.

ORDER

[18] The following order is made:

1. The application for rescission is dismissed.
2. The applicants are ordered to pay the costs on the attorney-and-client scale.

J T LESO

ACTING JUDGE OF THE HIGH COURT

Appearances

For the applicants: Adv Nxumalo Instructed By: Unknown Email: vuyiid@gmail.com For the respondent: Mulamuleli Ramabulana-Mathiba mramabulana@rsabar.com Instructed By: Ramsay Webber Email: msramweb.co.za Hearing Date: 17 April 2025

Judgment

delivered on: 17 July 2025

[1] *Satin Rock (Pty) Ltd and Another v Teichman*

[2024] ZAGPJHC 224 para 4.

[2] *Grant v Plumbers (Pty) Ltd* 1949 (2) SA 470 (O) at 476-477.

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