

Summary: Thenjiwe Carrol Tekana v First Rand Bank Limited t/a Wesbank

Contract – Credit agreement — Consumer credit agreement — reinstatement of credit agreement — Judgment by default — Application for rescission — whether the applicant established good cause — rescission application contains no explanation why the applicant was in default of appearance to defend.

This is an application for rescission of a judgment and order, handed down by the High Court, against the applicant on 15 February 2018.

The facts are as follows: The respondent was a plaintiff in an action instituted against the applicant in which the respondent claimed cancellation of the credit agreement entered into between itself and the applicant as well as return of the respondent 2015 Land Rove which was subject of their agreement. Judgment by default was handed down in favour of the respondent on 27 March 2017. As a result, the vehicle was delivered to the respondent.

During May 2017 the applicant paid the arrears outstanding and tendered to pay the costs. The applicant then informed that he is entitled to the delivery of the vehicle as a result of her having paid the arrears owed to the respondent with regard to the vehicle. The respondent refused on the basis that their credit agreement has been cancelled and the applicant is not entitled to the reinstatement of the credit agreement.

As a result of this, the applicant instituted urgent proceedings demanding the return of the vehicle to her by the respondent. However, the urgent matter was struck off the roll on the basis that it was not urgent. The applicant also brought an application for rescission of the default judgment of 27 March 2017 and that too was also struck off the roll. However, the rescission application as well as the application for the return of the vehicle were both heard and dismissed on 15 February 2018.

There was no appearance on behalf of the applicant on that day. The applicant argues that she did not know that both matters were set down to be heard on 15 February 2018, hence this application for rescission. The main question was whether the applicant established good cause in the applications by establishing good cause to rescind the judgment by default of 15 February 2018. After considering all the evidence before it, the court found that the rescission application contains no explanation why the applicant was in default of appearance to defend. Accordingly, the rescission application was dismissed with costs.