

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case Number: 5301/2021

In the matter between:

MZWANDILE LUMKA

Applicant

and

BMW FINANCIAL SERVICES SA (PTY)

First Respondent

SHERIFF BENONI NO

Second Respondent

Neutral Citation: *Mzwandile Lumka vs BMW Financial Services SA (Pty) Ltd and Another* (Case No. 5301/2021) [2023] ZAGPJHC 641 (5 June 2023)

JUDGMENT

STRYDOM, J

- [1] This is an application in which the first respondent, BMW Financial Services South Africa (Pty) Ltd asks for a rescission application previously brought by the applicant to be dismissed.
- [2] The reason why the first respondent set this application down for hearing in the unopposed court is because previously a court order was granted in terms of

which the applicant, Mr. Lumka, was placed on terms to file a practice note and a list of authorities within a certain time period.

- [3] That time period has long gone. What then transpired when this application was now heard for the dismissal of the rescission application due to failure to comply with a court order some kind of practice note and list of authorities were filed last night.
- [4] That is many days out of time. What the applicant now request from this court is not to deal with the dismissal of the rescission application currently before me but to allow the rescission application to be heard on an opposed basis. The Court considered all the circumstances and the lateness of the practice note and list of authority filed late and concluded that this is just a delaying tactic to delay an order to be granted in terms of the main application which is for the return of a motor vehicle which was financed by BMW Financial Services and in terms of which payment of approximately R20 000.00 was to be made on a monthly basis. Payment was not made in terms of the agreement.
- [5] The Court is not going to let the matter be postponed further by allowing it to be enrolled on the opposed roll for hearing of the opposed rescission application.
- [6] My view is that Mr Lumka, the applicant in the rescission application, had ample opportunity to comply with the previous court order to file his practice note and list of authorities and he failed to do so. The order the Court will make in terms of the draft order will come down to an order that the rescission application is dismissed.
- [7] I make the order in terms of the draft order as amended which I will mark with an X. That is the order of the Court.

R STRYDOM, J
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

For the Applicant:

Adv. L. Pearce

Instructed by:

Thomson Wilks Inc

For the First Respondent:

Adv. E.M. Tshole

Instructed by: Tshepo Mohapi Attorneys

For the Second Respondent: Unknown

Instructed by: Unknown

Date of hearing: 08 May 2023

Date of Judgment: 08 May 202

