IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 29241/2017

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

[redacted]

03 MARCH 2022

Date **K. La M Manamela**

In the matter between:

KUTALA PENELOPE THONDLANA Applicant

and

ABSA BANK LIMITED Respondent

DATES OF HEARING: 10 & 26 NOVEMBER 2021

DATE OF JUDGMENT: This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time of hand-down is deemed to be 10h00 on **03 MARCH 2022**.

JUDGMENT

KHASHANE MANAMELA, AJ

Introduction

[1] The applicant, Ms Kutala Penelope Thondlana, concluded an agreement with the respondent, Absa Bank Limited (ABSA), in March 2014 in terms of which ABSA lent and advanced the amount of R1 500 000 to the applicant. The applicant utilised the loan towards the purchase of the immovable property situated at Portion 29 of Erf 972 Strubenvale Extension 10 Township (the Property). The purchase price for the Property was in the amount of R1 820 000. Evidently, this amount was more than the loan acquired from ABSA. The applicant acquired the difference through a separate loan facility. She subsequently breached the terms of the loan agreement with ABSA by not paying the monthly instalments.

[2] On 25 April 2017, ABSA issued summons against her to recover the loan debt. The summons was served on the applicant on 8 May 2017 by affixing to the principal door of the Property. This was after a few unsuccessful attempts by the sheriff to serve the summons on the applicant. On 1 June 2017 ABSA obtained default judgment against the applicant for payment of the amount of R1 662 303.14 plus interest and costs. A warrant of execution of the judgment was subsequently issued at the instance of ABSA. This is an application for the rescission of the default judgment and the stay of the warrant of execution. The application is opposed by ABSA.

[3] The opposed application came before me on 10 November 2021. It was postponed at the instance of the applicant to 26 November 2021. The applicant sought an indulgence to supplement her founding affidavit. This was allowed against the applicant being held liable for the wasted costs occasioned by the postponement on the punitive scale of attorney and client. On 26 November 2021, this judgment was reserved after argument by Mr M Sebopa, appearing for the applicant, and Mr J Minnaar, appearing for ABSA.

Applicant's case

Breach of the loan agreement

[4] The applicant says that she complied with the repayment terms of the loan agreement until in 2015 when she lost her job. In order to avoid re-possession of the Property she moved into a smaller residential place and rented out the Property. She utilised the services of an estate or leasing agent to collect rent for the Property. But this was saddled with problems.

[5] The agent did nothing to collect the monthly rentals. At some stage, the uncollected rentals amounted to R247 000. The applicant even referred the agent to his regulatory body. The tenant was also reported to the Housing Tribunal. But both steps did not yield the desired outcome for the applicant.

Default judgment and warrant of execution

[6] The applicant says that she did not receive the summons issued by ABSA which led to the default judgment. As indicated above, the summons was served by the sheriff of this Court at the Property by affixing to the door. The applicant was not staying there at the time of service. In fact, no one was at the Property when the sheriff served the summons.

[7] The warrant of execution was served personally on the applicant on 19 June 2017. This is the moment when she became aware of the default judgment. The application for rescission was only issued on 16 February 2021. No doubt this was late. Therefore, the applicant also seeks condonation by this Court in this regard.

Rule 46A application

[8] In April 2019, ABSA brought an application under Rule 46A[1] of the Uniform Rules of this Court to have the Property declared executable. The applicant appears to be challenging the Rule 46A application in terms of this rescission application. This is obviously not proper. The statements regarding the Rule 46A application are irrelevant to this application. ABSA has objected to this and requested that the impugned material be struck out. I agree that the statements by the applicant exclusively regarding the Rule 46A application shall be ignored for purposes of the determination of this rescission application.

Unemployment insurance

[9] In the supplementary affidavit the applicant was allowed to file, she remembered that she had requested an ABSA's representative to include in the agreement an insurance cover against death, disability and loss of employment (the unemployment insurance or insurance). She cannot recall for how long the insurance was to endure.

[10] As stated above, the applicant was unfairly dismissed in 2015. She advised ABSA to use the proceeds from the insurance to cover her monthly instalments. The ABSA's representative she communicated with in this regard was named "Henny". Henny promised to take up the matter within the structures of ABSA, but did not return with anything tangible. Consequently, the applicant had to utilise the proceeds from her provident fund to service the mortgage bond. She stopped paying in 2016.

[1] Rule 46A of the Uniform Rules provides for the execution of judgment against immovable property which constitutes the residence of the judgment debtor and, among others, requires that an application be made by the judgment creditor to court for authority to execution against such property.

[11] The adverse credit profile that ensued from her default also negatively affected her re-employment opportunities. ABSA refused, upon her request, to withdraw the negative credit reporting to facilitate her re-employment with another organisation.

Leasing out of the Property

[12] Henny also recommended to the applicant to approach a particular leasing or estate agent for the leasing of the Property. She vacated the Property to allow the tenants to move in against the hope of receiving rental monies she could utilise towards the repayment of the loan with ABSA. She moved in with relatives but ended up moving from one relative to another. She entrusted the collection of the rentals for the Property not only on the estate agent, but also on ABSA. But Henny subsequently disavowed the existence of this arrangement with ABSA.

Other grounds and issues

[13] Throughout the applicant remained hopeful on receiving monies to settle the loan from the proceeds of the unemployment insurance. This was the case until on 5 June 2018 when she received a call from a certain "Sally" who advised her that ABSA is foreclosing on the Property. The applicant was shockingly surprised by this. Further interactions with "Sally" did not yield any tangible result. There was also a housing benefit from the Department of Military Veterans which the applicant intended to pay into her bond, but did not as she did not receive the details of the bond and the outstanding amount from ABSA.

[14] The applicant further makes other assertions such as that ABSA neglected to serve notice on her in terms of section 129[2] of the National Credit Act 34 of 2005, and that ABSA

[2] Section 129 of the National Credit Act 34 of 2005 deals with the required procedures before the debt enforcement and reads in subsection 1: "If the consumer is in default under a credit agreement, the credit provider- *(a)* may draw the default to the notice of the consumer in writing and propose that the consumer refer the credit agreement to a debt counsellor, alternative dispute resolution agent, consumer court or ombud with jurisdiction, with the

served the summons by affixing when it was all along aware of her email address and cellphone number. Overall the applicant asserts that, had she had knowledge of the summons or judgment she would have defended the matter and raised objections, including that the lawsuit is premature.

Condonation, prospects of success and prejudice

[15] As stated above, the rescission application includes a prayer for condonation. This application was launched late. But the applicant still appears equivocal about this issue.[3] This is so despite the presence of a prayer for condonation in the application. I deal with the reasons advanced by the applicant in support condonation.

[16] The applicant partly blames an individual named "Thando" from the homeowners' association for the delay. Thando did not get the relevant documents or notices to her timeously. She also requested ABSA's attorneys to furnish her with the documents. The documents were only served on her attorneys on 3 September 2020. This is the moment when she "gained full knowledge of the default order". This, according to the applicant, means this application was brought timeously.

[17] She also had to look everywhere for *pro bono* legal assistance. She is a pensioner and could not afford legal services. She ultimately concluded an arrangement with her attorneys of record for legal assistance.

intent that the parties resolve any dispute under the agreement or develop and agree on a plan to bring the payments under the agreement up to date; and *(b)* subject to section 130 (2), may not commence any legal proceedings to enforce the agreement before- (i) first providing notice to the consumer, as contemplated in paragraph *(a)*, or in section 86 (10), as the case may be; and (ii) meeting any further requirements set out in section 130."

[3] See par [16] below.

[18] This application has prospects of success. The applicant is likely to suffer more prejudice than ABSA in the event the relief sought by the applicant is granted. She would lose the Property, which is her primary shelter, should the relief be refused.

Respondent's (i.e. ABSA's) case

Condonation and prospects of success

[19] Regarding the timing of this application ABSA denies that a case for condonation has been made by the applicant. There is no valid and sufficient explanation for the long delay.

[20] Also, ABSA points out that the applicant did not specify whether this application is brought under the provisions of Rule 31(2)(b);[4] Rule 42(1)(a)[5] or the common law. Overall, ABSA's view is that the applicant has dismally failed to make out a case for the rescission of the default judgment on any grounds.

Unemployment insurance

[21] The so-called "unemployment insurance" is denied by ABSA. The only insurance cover that was included as part of the transaction with ABSA was for damage or destruction of the Property (the home loan insurance). The premium for the home loan insurance formed part of the costs for the loan. The applicant ought to have applied through her own broker for any unemployment insurance. The unemployment insurance does not form part of the home loan insurance. But ABSA points out that there is actually no record of a premium being demanded or paid by the applicant for the unemployment insurance. ABSA finds it curious that the applicant did not mention the insurance in her affidavit for a postponement filed in related

[4] See par [25] below for a reading of Rule 31(2)(b) in the material part.
[5] See par [30] below for a reading of Rule 42(1)(a) in the material part.

proceedings in October 2017. This proves that the "insurance" issue is a "made up" story; a fabrication and therefore devoid of any truth.

Summons, prejudice and other issues

[22] ABSA denies knowledge of the existence of an employee named "Henny". Further, ABSA asserts that there was no obligation to serve a notice in terms of section 129 of the National Credit Act. This was complied with already when the action was instituted. There was also no duty to serve the summons by email, but only on the chosen address.

[23] It is also argued that the applicant is wrong in assuming that there will be no prejudice to ABSA should the relief sought by the applicant be granted. The applicant has been in arrears for more than 5 years and yet the foreclosing procedures are still unfolding. During all this time the applicant has occupied and rented out the Property. There has been no payment since beginning of March 2018. The arrears in the account are now in excess of R1,2 million. This represents over 64 months of non-payment. The last payment received was on 1 March 2018. All these are the hallmarks of prejudice to ABSA.

Submissions and applicable legal principles (discussed)

[24] It is submitted that the applicant brings this application under Rule 31(2)(b), read with Rule 42(1)(a) of the Uniform Rules of this Court and the common law. It ought to be immediately mentioned that there is nothing wrong with this all-encompassing approach, as long as the applicable requirements under these legal mechanisms are met.[6] In this application there is little, if anything, to sustain this catch-all approach by the applicant's counsel. This is

[6] *De Wet and others v Western Bank Ltd* 1977 (4) SA 770 (T) at 780H–781A; *Mutebwa v Mutebwa and another* 2001 (2) SA 193 (TkH) at 198C–E; *Swart v Absa Bank Ltd* 2009 (5) SA 219 (C).

no criticism to the learned counsel, but there is just not much in his client's affidavits filed in this application to sustain his submissions. This would become clear with the unfolding discussion.

Rule 31(2)(b)

[25] Rule 31(2)(b) of the Uniform Rules provides, that:

> "A defendant may within 20 days after acquiring knowledge of [the default] 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."

[26] Rule 31(2)(b) is meant for the rescission of judgment granted due to a defendant's default in the delivery of a notice of intention to defend or a plea.[7] In this case it is the former. The rule requires that "good cause" be shown for the rescission or setting aside of the default judgment.[8] The court has a wide discretion to evaluate "good cause" to ensure that justice is done.[9] To succeed in applying for rescission of judgment under this rule an applicant ought to give a reasonable explanation of the default; make the application *bona fide* and not just to delay the plaintiff's claim, and show the existence of a *bona fide* defence to the claim even at a *prima facie* level.[10] Although, Rule 31(2)(b) does not require of an applicant to show that she

[7] *Chetty v Law Society, Transvaal* 1985 (2) SA 756 (A); *Nyingwa v Moolman NO* 1993 (2) SA 508 (TK) at 509I–510D; *Terrace Auto Services Centre (Pty) Ltd and others v First National Bank of South Africa Ltd* 1996 (3) SA 209 (W); *Swart v Absa Bank Ltd* 2009 (5) SA 219 (C).

[8] D E van Loggerenberg, DE. 2015. *Erasmus: Superior Court Practice*, Jutastat e-Publications (online version: 2021) (hereafter *Erasmus: Superior Court Practice*) at RS 17, 2021, D1-365-366.

[9] *Wahl v Prinswil Beleggings (Edms) Bpk* 1984 (1) SA 457 (T) at 461; *De Wet and others v Western Bank Ltd* 1979 (2) SA 1031 (A) at 1042F - 1043A.

[10] *Erasmus: Superior Court Practice* at RS 17, 2021, D1-366, relying among others on *Grant v Plumbers (Pty) Ltd* 1949 (2) SA 470 (O) at 476–7, cited with approval in various cases including *Chetty v Law Society, Transvaal* 1985 (2) SA 756 (A) at 765B–D; *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills (Cape)* 2003 (6) SA 1 (SCA) at 9F (par [11]); *Vosal Investments (Pty) Ltd v City of Johannesburg and others* 2010 (1) SA 595 (GSJ) at 599A–B; *Nale Trading CC and another v Freyssinet Posten (Pty) Ltd In re: Freyssinet Posten (Pty) Ltd v Nale Trading (Pty) Ltd and another* (26992/2019) [2021] ZAGPJHC 445 (22 September 2021) (unreported) **(**hereafter *Nale Trading v Freyssinet***)** at par [12] and also the Constitutional decision in *Gundwana v Steko Development And Others* 2011 (3) SA 608 (CC at par [58].

was not in wilful default, such applicant needs to establish that there was no wilful default on her part as an ingredient or part of "good cause".[11]

[27] The reasons for the absence or the default of the applicant ought to be fully set out for the determination of whether the default or absence was wilful.[12] The explanation for the default ought to be sufficiently set out to the degree that the Court is put in a position to understand how the default came about and for the Court to assess the conduct and motives of the applicant.[13] Failure in an application to set out the reasons for the default renders the application improper.[14]

[28] However, a good defence may compensate for the lack of a reasonable explanation for the default.[15] Where reliance is placed upon the existence of a good defence sufficient facts ought to be placed before the Court to satisfy it of the strength or merits of the defence.[16]

[29] I respectfully reiterate that the requirement is that there ought to be a *bona fide* defence.[17] This means that there must be evidence of current *bona fide* desire on the part of the applicant to actually raise the particular defence. Evidence of the existence of a substantial defence is not enough. There ought to be evidence of both substantial defence and *bona fide* desire to actually raise such defence. This would amount to showing "good cause" under Rule

[11] *Maujean t/a Audio Video Agencies v Standard Bank of SA Ltd* 1994 (3) SA 801 (C) at 803-804; *Nale Trading v Freyssinet* at par [13].
[12] *Erasmus: Superior Court Practice* at RS 17, 2021, D1-367 and the authorities cited there.
[13] *Silber v Ozen Wholesalers (Pty) Ltd* 1954 (2) SA 345 (A) at 353A.
[14] *Erasmus: Superior Court Practice* at RS 17, 2021, D1-367.
[15] *Carolus and another v Saambou Bank Ltd; Smith v Saambou Bank Ltd* 2002 (6) SA 346 (SE) at 349B–C and *Valor IT v Premier, North West Province and others* 2021 (1) SA 42 (SCA) at par [38] albeit in a different context, although subsequently applied in the context of a rescission of judgment under rule 31(2)(b) in *Leopard Line Haul (Pty) Ltd t/a Elite Line v New Clicks South Africa (Pty) Ltd; In re: New Clicks South Africa (Pty) Ltd v Leopard Line Haul (Pty) Ltd t/a Elite Line* (39276/2019 [2021] ZAGPJHC 89 (16 July 2021) (unreported) at par [26].
[16] *Carolus v Saambou Bank* at 349B–E.
[17] See par [26] and the authorities in footnote 10 above.

31(2)(b).[18] For the concept of "good cause" comprises the existence of a substantial defence, but is not limited thereto.[19]

Rule 42(1)(a), the common law and post-judgment discovery of new documents

[30] Rule 42(1)(a) of the Uniform Rules provides, that:

> "(1) 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:
> *(a)* An order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby …"

[31] Rule 42 is intended to "to correct expeditiously an obviously wrong judgment or order".[20]

[32] Under the common law a judgment may be rescinded under the following grounds: fraud; *justus error* (on rare occasions); in certain exceptional circumstances when new documents have been discovered; where judgment had been granted by default; and in the absence between the parties of a valid agreement to support the judgment, on the grounds of *justa causa*.[21]

[33] Regarding the timing of the application it was held recently by the Full Court of this Division in the unreported decision in *Money Box Investments 268 (Pty) Ltd v Easy Greens*

[18] See par [25] above for the reading of Rule 31(2)(b).
[19] *Silber v Ozen Wholesalers* at 352.
[20] *Bakoven Ltd v G J Howes (Pty) Ltd* 1992 (2) SA 466 (E) at 471E–F, endorsed in *Promedia Drukkers & Uitgewers (Edms) Bpk v Kaimowitz and others* 1996 (4) SA 411 (C) at 417B–I; *Kili and others v Msindwana In Re: Msindwana v Kili and others* [2001] 1 All SA 339 (Tk) at 345.
[21] *Mukhinindi and Another v Cedar Creek Estate Home Owners Association and Another* (81830/2018) [2021] ZAGPPHC 314 (10 May 2021) at par [23]. See generally *Erasmus: Superior Court Practice* RS 17, 2021, D1-562C.

Farming and Farm Produce[22] held that a rescission application based on Rule 42(1) and the common law ought to be brought within a reasonable time.[23]

[34] Having in mind the so-called "unemployment insurance" and other "new evidence" by the applicant, it ought to be mentioned that it is possible to set aside a judgment on the basis of the post-judgment discovery of new documents only in certain exceptional circumstances.[24] In *Kgomo and another v Standard Bank of South Africa and others*[25] this Division *per* Dodson J (as he then was) dealt with the rescission of a judgment under Rule 42(1). This decision concerned the claim that the bank failed to comply with sections 129 and 130 of the National Credit Act. The Court in dealing with the ambit of Rule 42(1) and upon reliance on the decisions in *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills (Cape)*[26] and *Lodhi 2 Properties Investments CC v Bondev Developments (Pty) Ltd* [27] confirmed the principles governing rescission under Rule 42(1)(a), including that the rule caters for the setting aside of a mistake in the proceedings, which may appear on the record of the proceedings or became apparent from the information subsequently made available in terms of a rescission application, but not a subsequently disclosed defence unknown at the time of default judgment.[28] I will revert to the issue of the "unemployment insurance".

[35] In *Chetty v Law Society, Transvaal* it was held that an applicant seeking to rescind a default judgment under the common law ought to show "sufficient cause",[29] which concept as

[22] *Money Box Investments 268 (Pty) Ltd v Easy Greens Farming and Farm Produce CC* (A221/2019) [2021] ZAGPPHC 599 (16 September 2021), *coram:* Raulinga J, Basson J *et* Strijdom AJ.
[23] *Money Box Investments v Easy Greens Farming* at par 7.
[24] *Freedom Stationery (Pty) Ltd and others v Hassam and others* 2019 (4) SA 459 (SCA) at par [17].
[25] *Kgomo and another v Standard Bank of South Africa and others* 2016 (2) SA 184 (GP).
[26] *Colyn v Tiger Food Industries* at p 9F, par [11].
[27] *Lodhi 2 Properties Investments Cc and another V Bondev Developments (Pty) Ltd* 2007 (6) SA 87 (SCA).
[28] *Kgomo v Standard Bank of South Africa* at 187F–188C.
[29] *De Wet and others v Western Bank Ltd* 1979 (2) SA 1031 (A) at 1042.

with "good cause" discussed above,[30] is incapable of being defined with precision or of a comprehensive definition.[31] The Court adopted the two essential elements of "sufficient cause" for the rescission of a default judgment derived from the long-standing practice of our Courts: first, that the applicant for rescission ought to present a reasonable and acceptable explanation for the default, and, second, that the applicant has a *bona fide* defence on the merits which merits carries a *prima facie* prospect of success.[32] Both elements need to be established, lest the application for rescission will fail.

Submissions on the applicable legal principles against the facts

[36] In the current application counsel for the applicant went on to state the requirements for the rescission of judgment by the courts in terms of the Uniform Rules and the common law. Within these submissions there is a concession that the applicant became aware of the default judgment on 19 June 2017 when the writ of execution was served personally on her by the sheriff of this Court. This is against the background of what appears in the applicant's papers. But despite this admission there appears to be some tentative argument about when the applicant became aware of the judgment. This is located in the applicant's statement that upon receipt of the documents from ABSA's attorneys by the applicant's attorneys on 3 September 2020 she "gained full knowledge of the default order". This needs merely be mentioned to be rejected. There is no place for the acquisition of "full knowledge" of the judgment. This much appears in Rule 31(2)(b) which provides simply for "acquiring knowledge of [the default] judgment". There is no place for the degrees of such knowledge for one to take reasonable

[30] See par [29] above.
[31] *Colyn v Tiger Food Industries* at p 9F, par [11].
[32] *De Wet v Western Bank* 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 (O) at 357-358.

steps towards the rescission of the impugned judgment, if so minded. I agree with counsel the current applicant was not brought timeously.

[37] The other reason for the delay is the applicant's earlier lack of access to legal representation. She did not succeed in accessing legal services on a *pro bono* basis. She was only able to later launch these rescission proceedings after some arrangement with her attorneys in February 2021. The hardship of non-payment of rental monies by the tenant and the process for collecting same contributed to the delay in the launch of this application. But the delay was inordinate and not accompanied by a sufficient, reasonable or acceptable explanation. I will conclude on this in a moment.

[38] It is also submitted that the applicant would have opposed the granting of the default judgment should she have been aware of the enrolment of same. Therefore, the default judgment was erroneously granted in the absence of the applicant, as she was not notified of the date of hearing. It is irrelevant whether the judgment is correct or not, the submission concludes.[33] But the applicant did become aware of the judgment and did not act reasonably towards the launch of this application for rescission. This is not the same as referring to the correctness of the judgment, but its timing.

[39] ABSA further pointed out that the applicant has not filed a replying affidavit to both ABSA's answering and supplementary answering affidavits. This means that ABSA's version in these affidavits remains unchallenged,[34] counsel for ABSA submits. I should point out immediately that even exclusively on its own grounds and without consideration of the version

[33] *Silber v Ozen Wholesalers* at 352-353.
[34] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634-635.

urged upon by ABSA, the merit of the grounds for rescission is doubtful. Also, that there is no case made out for the granting of condonation. Consequently, ABSA prays that this application be dismissed with costs on the scale of attorney and client.

Conclusion

[40] Considering what appears above, I need to say that this application is riddled with instances of non-compliance with the rules and practice of this Court. This is with regard to both matters of substance and form. For example, the founding papers were severely inadequate and contained bulky material in response to ABSA's Rule 46A application which, as I have already found, is irrelevant to these proceedings. The applicant sought and was granted an opportunity to supplement her founding affidavit. The product of this effort has also proven insufficient. Also, the applicant has twice forgone the opportunity to file a replying affidavit, in both cases leaving unrefuted specific averments in ABSA's answering and supplementary answering affidavit. But this Court may condone formal defects in proceedings where there are reasons for non-compliance or a reasonable explanation for same. Be that as it may, I will overlook the defects to do with issues of form for purposes of the outcome of this application.

[41] The outcome of this application will be solely decided on its merits. It is common cause in this matter that the applicant breached the agreement with ABSA due to non-payment. ABSA obtained default judgment on 1 June 2017 and the warrant of execution was served personally on the applicant on 19 June 2017. The applicant only issued this application to rescind the default judgment on 16 February 2021. This was almost four years after she became aware of the default judgment. I find the explanation why the applicant took that long to bring this application insufficient, unacceptable and unreasonable, given the circumstances of this matter. The lack of funds to access legal services is also not fully explained. The applicant's

bald allegation regarding her futile approach of organisations offering free or *pro bono* legal services is insufficient. There is no shred of evidence of the applicant's efforts in this regard apart from the applicant's say-so. It is also not explained what prevented the earlier conclusion of the arrangement she now has with her current attorneys of record.

[42] I must also mention – with respect – that I find some of the attempts at an explanation by the applicant to have quite the opposite effect. I do not expect of the applicant to have waited for "Thando" from the homeowners' association for the legal documents. The applicant creates an impression of someone lying supine whilst her house is on fire. She did not act with the necessary haste at all. This type of conduct is unwelcome in an application for rescission, as it will no doubt be the case with all of the processes of this Court. Besides, there ought to be finality in the judgments of the Court.

[43] I am also surprised, to say the least, at the applicant's averments regarding her acquisition of unemployment insurance. The applicant lost her employment in 2015. She says that she had all along had insurance to pay the mortgage bond whilst she is unemployed. But yet she only mentioned this for the first time in her supplementary affidavit deposed to on 15 November 2021. This was after the matter had served before me and I granted the applicant the opportunity to file the supplementary affidavit. This was almost six years after she had lost her job. One would expect someone who is about to lose her house to have remembered sooner of this possible lifeline: the so-called "unemployment insurance". There is also the story of "Henny" the employee of ABSA without a surname, contact or other details. The overzealous "Henny" is said to have even bound his employer ABSA to serve as rent collecting agency for the applicant. It is natural to sympathise with the plight of the applicant regarding her unsuccessful attempts to rent out the Property in order to save it from foreclosure. But - with

respect - these stories have a ring of a fictional story. I fully agree with counsel for ABSA when he labels the "insurance" issue a "made up" story; a fabrication devoid of any truth.

[44] Overall there is nothing near what resembles a *bona fide* defence to the claim of ABSA based on the loan or mortgage bond agreement. The applicant dismally failed to make out a *bona fide* defence or show good cause as to why the application should be granted. The applicant on her own version defaulted in her repayment of the loan. She breached the agreement. ABSA was entitled to issue summons. It served same on the chosen address in terms of the agreement with the applicant. This was proper service. There is also no evidence to suggest that ABSA did not comply with the provisions of the National Credit Act. ABSA obtained judgment by default. There is also no evidence to defeat ABSA's claim predicating the default judgment. There is also nothing proffered to suggest that the default judgment was erroneously sought or erroneously granted.

[45] Therefore, this application will be dismissed. I will also award ABSA costs of the application at the scale of attorney and client. ABSA is entitled to this in terms of the agreement, but also due to the facts in this matter. Either way, ABSA ought not to be out of pocket due to this application, which was stillborn from the onset. This application was nothing other than an attempt by the applicant to delay the execution of the default judgment and, thus, frustrate ABSA's rights or interests.

Order

[46] In the premises, I make the following order:

a) the application is dismissed with costs on the scale of attorney and client.

Khashane La M. Manamela
Acting Judge of the High Court
03 March 2022

Appearances:

For the Applicant	:	Mr M Sebopa
Instructed by	:	Faku Attorneys, Johannesburg c/o Molebaloa Attorneys, Capital Park, Pretoria
For the Respondent	:	Mr J Minnaar
Instructed by	:	Hammond Pole Attorneys, Johannesburg c/o NVG Attorneys, Menlo Park, Pretoria