IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

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

[redacted]

SIGNATURE DATE: 1 October 2026

Case No. 2023-051316

In the matter between:

MODIBEDI, KARABO NOBUHLE	First Applicant
MODIBEDI, CECILIA MAMOABI	Second Applicant
and	
NEDBANK LIMITED	First Respondent
SHERIFF FOR THE DISTRICT OF SOWETO EAST	Second Respondent
REGISTRAR OF DEEDS, JOHANNESBURG	Third Respondent

JUDGMENT

WILSON J:

1 The applicants seek to rescind a money judgment in the sum of just over R310 000, together with an order declaring their home in Mofolo, Soweto, specially executable for that amount. The judgment was granted on 6 October

2021. The judgment is based on a loan agreement concluded in 2008. In terms of that agreement the applicants borrowed just over R270 000 secured against their home. The amount was originally repayable in monthly instalments of just over R2000, but the monthly instalment due has increased as the applicants' arrears have accumulated. Between 2008 and 2018, the applicants made regular payments on the bond, more or less complying with their obligations.

2 In 2018, however, the applicants fell into financial difficulties. Their performance under the bond deteriorated to the extent that the first respondent, Nedbank, commenced the standard prelitigation steps to call up the mortgage bond. Nedbank sent the applicants a notice in terms of section 129 of the National Credit Act 34 of 2005, to which the applicants responded with a letter sent on 5 October 2020 through a local paralegal organisation. The essence of the applicants' response was to ask to restructure their obligations under the bond. There is nothing on the record indicating that Nedbank responded to or engaged with the contents of the applicants' 5 October 2020 letter. Despite being given a postponement of two months to consult with its former attorneys, and to search its records, Nedbank could not produce any evidence that the 5 October 2020 letter was dealt with by anyone on the bank's behalf. What happened instead is that Nedbank issued summons, and obtained judgment by default in October 2021.

3 At the hearing of this matter on 28 July 2026, I drew the parties' attention to section 130 (1) (b) of the National Credit Act, which states that "a credit provider may approach the court for an order to enforce a credit agreement only if, at that time, the consumer is in default and has been in default under

that credit agreement for at least 20 business days" and if the consumer has either "not responded" to the section 129 notice, or has responded "by rejecting the credit provider's proposals" contained in the notice. In this case, the applicants did respond to Nedbank's section 129 notice. They sought to "develop and agree on a plan to bring the payments under the agreement up to date", as envisaged in section 129 (1) (a).

4 I asked the parties to address me on whether Nedbank approached the court for the default judgment in circumstances where it was not entitled to do so. I also asked them to consider whether the premature approach to court rendered the judgment erroneously sought and granted, and accordingly rescindable under rule 42. I afforded the parties a postponement of two months to consider the point.

5 When the matter was called again, on 29 September 2026, Mr. Msomi, who appeared for Nedbank, asked me to accept a call log recording various telephone conversations between the applicants and Nedbank's call centre agents as evidence that Nedbank engaged with the applicants' response to the section 129 notice. He relied upon the decision in *FS Finance t/a Ford Credit v Van Der Merwe* [2025] ZAWCHC 230 (30 May 2025) ("*FS Finance*"), in which Thulare J held that, before it approaches a court to enforce a credit agreement, a credit provider is obliged to "meaningfully engage" with a consumer's proposals in response to a section 129 notice, and to give a consumer's proposals "genuine consideration" (see *FS Finance*, paragraphs 10 and 11).

6 I agree with the approach taken in *FS Finance*, but I cannot conclude on the evidence before me either that Nedbank engaged meaningfully with the applicants' letter of October 2020 or that Nedbank genuinely considered the proposals the letter contained. The call log is a difficult document to read. It contains a great deal of jargon, shorthand and a number of unexplained acronyms. The person who spoke to the applicants on Nedbank's behalf is not identified, and it is at least possible that different people spoke to the applicants at different times. The call log does not disclose a genuine engagement with what the applicants really wanted: a restructured payment plan.

7 Although the call log is far from clear, it indicates to me that Nedbank's position before judgment was granted was that no restructured payment regime would be considered because the applicants were unemployed at the time. The applicants said that they could nevertheless afford reduced payments because they had tenants on the property whose rent could be put towards the bond. Nedbank does not appear to have engaged with that possibility. Its principal aim appears to be have been to induce the applicants to sell the property on the open market. To the extent that Nedbank genuinely considered whether a restructured payment regime was possible, such consideration took place well after the judgment was granted.

8 In any event Nedbank ought to have produced a reasoned engagement with the applicants' proposals, motivated on affidavit, setting out what, if anything, was possible in response to their request to restructure their obligations. The call log plainly does not amount to this.

9 It follows that Nedbank was not entitled to approach the court when it did, and was not entitled to the judgment it obtained. Under rule 42, the judgment was erroneously sought and granted. Even under the common law, the applicants have shown a defence on the merits of the foreclosure application that *prima facie* has some prospects of success.

10 Given that the judgment was granted in breach of statute, I need not consider whether the applicants were in wilful default of appearance. However, I should point out that, contrary to this court's practice directives, the summons commencing the action was not personally served. The applicants also say that they were under the impression that judgment would not be sought until their attempts to secure a restructured payment plan had been exhausted. Nedbank does little to gainsay this. I cannot conclude on the facts that the applicants were in wilful default of appearance.

11 The applicants grounded their rescission application principally in rule 31 (2) (b) of the Uniform Rules of Court. Mr. Msomi argued that the applicants had not sufficiently explained their failure to bring the rescission application within the 20 day period provided for in that rule. Were it necessary for me to engage with rule 31, I would have accepted Mr. Msomi's submissions that the delay was lengthy and that the explanation provided for it was sketchy. However, in light of the applicants' overwhelming prospects of success on the merits, I would have granted condonation.

12 Mr. Msomi asked me, if I were inclined to rescind the default judgment, to issue directions dealing with how the parties should engage with each other going

forward. I decline that invitation. What is required from Nedbank is clear from the applicable authorities.

13 However, I will say this: on the material presently before me, I have grave doubts about whether execution against the applicants' home could be proportionate to Nedbank's interest in collecting the debt secured against it. The applicants are an elderly woman and her daughter. They are obviously impecunious. They live in the heart of Soweto in a presumably modest abode. The amount secured against their home, while not trifling, is comparatively small. They can show substantial payments made towards their mortgage loan over a period of ten years (unfortunately, neither Nedbank nor the applicants told me what those payments added up to). Though they are under no legal obligation to do so, an appropriately empowered functionary at Nedbank may wish to reconsider whether proceeding to execution in this case is either ethically or commercially justified. On the law, there is a decent prospect that it would be disproportionate (on the illegality of disproportionate execution, see *Gundwana v Steko Development* 2011 (3) SA 608 (CC), especially paragraph 54).

14 Nedbank should pay the costs of this application, since its opposition in the face of a clear breach of statute was unreasonable.

15 For all these reasons –

15.1 The default judgment granted on 6 October 2021 (and date stamped 11 October 2021 by the registrar) is rescinded and set aside.

15.2 The first respondent will pay the costs of the rescission application, including the costs of counsel, which may be taxed on scale “B”.



S D J WILSON
Judge of the High Court

This judgment was prepared by Judge Wilson. It is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 1 October 2026.

HEARD ON:	28 July and 29 September 2026
DECIDED ON:	1 October 2026
For the Applicants:	N Morwasehla Instructed by Morwasehla Attorneys
For the First Respondent:	M Msomi Instructed by Fairbridges Wertheim Becker Attorneys