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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case number: 2019-25860

(1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO
(3) REVISED: ~~YES~~ / NO

2 November 2026
DATE

_____
SIGNATURE

In the matter between

HLEKANI DUDU MUKANSI N.O.	First Applicant
RHULANI YVONNE MUKANSI N.O.	Second Applicant
HLEKANI DUDU MUKANSI	Third Applicant
MAGOVENI PHARMACEUTICAL (PTY) LIMITED	Fourth Applicant
RHULANI YVONNE MUKANSI	Fifth Applicant

and

NEDBANK LIMITED	First Respondent
SHERIFF OF THE HIGH COURT, RANDBURG WEST	Second Respondent
THOMAS NTSOANE	Third Respondent
THONTS PROPERTIES (PTY) LIMITED	Fourth Respondent

Order

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1. The consolidated application (being the rescission application in case number 25860/2019 and the rescission application in case number 11161/2022) is dismissed.

2. The First, Second, Third, and Fifth Applicants, and any person occupying through them, are ordered to vacate the property described as 1[…] H[…]

Drive, D[…] G[…] Estate, Extension 11, Randburg within 30 days of the date of this order.

3. The Applicants are ordered to pay, jointly and severally, the First, Third, and Fourth Respondents' costs on the party and party scale, including the costs of one counsel each on scale B (which includes the costs of the rescission application in case number 25860/2019, the rescission application in case number 11161/2022, and any costs orders previously reserved in either case number).

Judgment

J Mitchell AJ

[1] At last count, ten judges of this Court have, in some way or other, considered what to do about Nedbank's half-decade attempt to recover a loan and execute against a mortgaged house in the D[…] G[…] Estate. Now eleven. This litigation has lived long enough in this Court. It "must, at some point, come to an end", *Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector* 2021 JDR 2069 (CC) at para 1.

[2] Hlekani and Rhulani Mukansi are trustees of the Magoveni Family Trust. The Trust used to own the house. Mr and Mrs Mukansi still live there with their two adult, dependent children.

[3] In 2005, the Trust borrowed R5 million from Nedbank, secured by a mortgage over the house (the Trust later borrowed another R200,000, which the mortgage also covered). Mr and Mrs Mukansi stood surety, and so did Magoveni Pharmaceutical (I refer to Mr and Mrs Mukansi in their trustee and personal capacities, and Magoveni Pharmaceutical, as the Mukansi Parties).

[4] The Trust fell behind with its repayments. Nedbank sued in August 2019. Nedbank also asked for an order declaring the house specially executable.

[5] In its particulars of claim, Nedbank alleged that it complied with its obligations under the National Credit Act, including that it "gave due notice" under section 129 (Nedbank attached section 129 notices addressed to each of the Mukansi Parties to its particulars of claim).

[6] At the time, Simba Kanyoka of Kanyoka Attorneys represented the Mukansi Parties. In their plea, the Mukansi Parties disputed the debt to Nedbank (and disputed the amount of the debt), arguing that the loan was reckless credit and that the Trust had "not been afforded the opportunity to remedy the default in the credit agreement as per section 129". They also opposed execution against the house.

[7] In September 2019, Nedbank applied for summary judgment. Kanyoka Attorneys still represented the Mukansi Parties. They concede that the summary judgment application was properly served. There were two deponents to Nedbank's affidavit in support of summary judgment, both employed as legal recoveries managers at Nedbank. They verified Nedbank's causes of action against the Trust (based on the loan and mortgage) and against the other Mukansi Parties (based on their

suretyships), and verified the outstanding balance on the loan (based on a certificate of balance). They also responded to the Mukansi Parties' opposition to execution against the house.

[8] The summary judgment application was initially set down for the end of October 2019. At that hearing, the summary judgment application was postponed at the request of the Mukansi Parties' attorney so that they could file an answering affidavit. In mid-February 2020, Nedbank filed a supplementary affidavit in support of execution against the house and then, a few weeks later, Nedbank filed a notice of set down for the resumed hearing of the summary judgment application, set down for May 2020. The affidavit and the notice of set down were served on the Mukansi Parties' correspondent attorney, Mncube Attorneys. Nedbank also served a practice note and heads of argument.

[9] The Mukansi Parties didn't file an answering affidavit. No one appeared for them at the hearing in May 2020. This Court granted summary judgment against the Mukansi Parties, declared the house (or the two erfs that the house sits on) executable, and authorised a writ of attachment.[1] The order was emailed to Mncube Attorneys in June 2020.

[10] Mr Mukansi says he thought Kanyoka Attorneys was dealing with the summary judgment application (or "drafting the necessary and relevant papers in order to place the [Mukansi Parties'] defence before [the court]" and "attending to the matter, therefore leaving me with and/or under the

[1] I use "this Court" instead of naming each judge for the reasons explained in *Mutshipisi v Shering* (2024/039537) [2026] ZAGPJHC 1238 (29 October 2026) at fn 1.

impression that Kanyoka Attorneys were looking after all the [Mukansi Parties'] best interests", as Mr Mukansi puts it in one of his affidavits in these proceedings). Mr Mukansi says he never received Nedbank's supplementary affidavit on executability. He also says he didn't know about the resumed hearing of the summary judgment application in May 2020. Mr Mukansi explains that Mr Kanyoka later told him that he was "stuck in Zimbabwe" during the initial Covid lockdown.

[11] It was only in September 2020 that Mr Kanyoka told Mr Mukansi about the hearing in May 2020 and this Court's order granting summary judgment. The Mukansi Parties then hired new attorneys in October 2020, Vorster & Brandt.

[12] Meanwhile, Nedbank went about enforcing the May 2020 order. It scheduled an auction for November 2020 (and Nedbank's attorneys told Mncube Attorneys about the auction in an email in September 2020). The Trust proposed selling the house to Mr Mukansi's brother's company, Muhluri Business Solutions, but Nedbank raised concerns about whether Mr Mukansi's brother or the company would be good for the money. Near the end of October 2020, Muhluri Business Solutions signed an offer to purchase the house for R5.6 million. The Trust paid Nedbank R200,000 as a gesture of good faith and, at the beginning of November 2020, Nedbank cancelled the auction.

[13] It seems no progress was made on the sale to Muhluri Business Solutions. Nedbank followed up at the beginning of December 2020. In February 2021, Vorster & Brandt explained that there had been a delay with Muhluri

Business Solutions' application for a mortgage bond from SA Home Loans. Nedbank agreed to wait until the end of February 2021.

[14] At the beginning of March 2021, Vorster & Brandt emailed Nedbank an offer to buy one of Magoveni Pharmaceutical's properties, but there was no update on the sale of the house. Nedbank then told Vorster & Brandt that the auction would go ahead in mid-May 2021. The Mukansi Parties changed attorneys again, this time instructing Kobus Strydom of Legal Smart. Mr Strydom wrote to Nedbank, arguing that the Trust's payment reinstated the loan under section 129(3) of the National Credit Act.

[15] The timeline goes quiet for the rest of March and April 2021. Mr Mukansi says he couldn't get hold of Mr Strydom for most of March 2021 despite several attempts. At the end of April 2021, the Mukansi Parties switched attorneys again, this time to Gerrie Grové of Grové Attorneys. After consulting with Mr Grové at the beginning of May 2021, the Mukansi Parties sued Nedbank in urgent court.

[16] In part A, the Mukansi Parties asked for an urgent interdict to stop the auction, scheduled about a week later. Part A was struck for self-created urgency. This Court noted that the Mukansi Parties "were aware, on their own version, that summary judgment had been granted since October 2020" and since then "no steps were taken to rescind the judgment." As for the Mukansi Parties' argument that "they did not receive proper legal representation", this Court noted that "there is a point at which a litigant cannot hide behind the remissness of its legal representatives."

[17] In part B, the Mukansi Parties ask for the rescission of the summary judgment order from May 2020. This is the first of two rescission applications against the May 2020 order, which were later consolidated.

[18] The rescheduled auction went ahead in mid-June 2021. According to Mr Ntsoane, someone else bought the house at the auction, but that person (or entity) didn't pay on time. There was then another auction, where Thonts Properties bought the house. The title deed shows that the house was registered to Thonts Properties in mid-December 2021.

[19] In February 2022, Mr Ntsoane and Thonts Properties applied to evict Mr and Mrs Mukansi and their adult children from the house. An eviction order was granted at the end of January 2023, but it was suspended "for a period of [30 days] from the date of this order pending the filing of a rescission application by [the Mukansi Parties]" against the May 2020 order. It isn't clear from this Court's judgment in the eviction proceedings why the suspension was pending "the filing of a rescission application" and not simply pending the extant rescission application (in part B of the application from May 2021).

[20] Taking their lead from this Court's eviction order, the Mukansi Parties applied for a second time to rescind the May 2020 order at the beginning of March 2023. In the second rescission application, the Mukansi Parties ask for the rescission of the May 2020 order and for a declaration that the "subsequent sale" of the house to Mr Ntsoane and Thonts Properties "is declared null and void and set aside".

[21] Some more procedural skirmishes followed, including joinders and consolidations. This is the upshot:

- There are two rescission applications against the May 2020 order: one from May 2021 and one from March 2023.

- There is an extant eviction order, which is suspended pending my decision on the second rescission application (or, at least practically, pending my decision on both rescission applications).

[22] The Mukansi Parties ask for rescission under rule 42(1)(a) and under the common law. Rescission under rule 42(1)(a) applies when a judgment or order is "erroneously sought or erroneously granted in the absence of any party affected thereby". Rescission under rule 42(1)(a) doesn't require a bona fide defence on the merits, *Ferris v Firstrand Bank Ltd* 2014 (3) SA 39 (CC) at para 13 (holding that "an applicant is not required to show good cause (including a bona fide defence) in order to succeed under rule 42(1)(a)").

[23] A judgment or order is "erroneously sought or erroneously granted" if "there existed at the time of its issue a fact which the court was unaware of, which would have precluded the granting of the judgment and which would have induced the court, if aware of it, not to grant the judgment", *Rossitter v Nedbank Ltd* 2015 JDR 2629 (SCA) at para 16. But not "all kinds of mistakes or irregularities" count, *Colyn v Tiger Food Industries* 2003 (6) SA 1 (SCA) at para 8. Rescission is warranted only if the other party "was procedurally not entitled to the order sought when it was granted", *Lodhi 2 Properties Investments CC v Bondev Developments (Pty) Ltd* 2007 (6) SA 87 (SCA) at

para 26. A defence on the merits is “irrelevant” and “cannot transform a validly obtained judgment into an erroneous judgment”, *Lodhi*, above, at para 27.

[24] As for absence, the focus isn’t on “actual, or physical, presence” but whether “proper procedure is followed so that a party can be present”, *Zuma*, above, at para 60. There’s no “absence” under rule 42(1)(a) if a litigant is “given notice of the case against them and given sufficient opportunities to participate” and “elects to be absent”, *Zuma*, above, at para 61.

[25] Taking that second requirement first, the Mukansi Parties argue that the May 2020 order was “granted in [their] absence” because their attorney at the time, Mr Kanyoka, didn’t tell them that Nedbank set down the summary judgment application. There’s no dispute that the Mukansi Parties had notice of the particulars of claim (they filed a plea) and had notice of the summary judgment application (there was an appearance for them at the first hearing, which was postponed at their request so they could file an answering affidavit). Nedbank served a notice of set down for the resumed hearing on the Mukansi Parties’ correspondent attorney, Mncube Attorneys, in February 2020 (Nedbank served the notice of set down for the first hearing the same way, which evidently made its way to Mr Kanyoka and the Mukansi Parties because they appeared at that hearing).

[26] Mr Mukansi says Mr Kanyoka “was stuck in Zimbabwe” around this time because of the Covid lockdown. There’s no confirmatory affidavit from Mr Kanyoka, and Mr Mukansi doesn’t say anything about whether Mncube Attorneys got the notice of set down in February 2020. Even putting aside

those gaps in the evidence, the Covid lockdown isn't a good enough excuse; litigation didn't grind to a halt in March 2020, and there's no explanation why Mr Kanyoka wasn't able to continue his practice remotely from Zimbabwe (in the second rescission application, Mr Mukansi says "[c]ourts were not functioning" during the lockdown, which will come as a surprise to the diligent judges across the country who worked hard through those difficult days).

[27] The Mukansi Parties run into another problem on absence: in my view, an order isn't granted in a party's "absence" for rule 42(1)(a) if that party is represented and there's proper service on their lawyers. To be sure, no one was in court for the Mukansi Parties at the hearing in May 2020, but the Constitutional Court has made clear that "absence" under rule 42(1)(a) isn't about physical presence: *Zuma*, above, at para 60. The Mukansi Parties were represented. They got the particulars of claim and the summary judgment application, and the first hearing of the summary judgment application was postponed at their request. There was proper service of a notice of set down for the second hearing—served in the same way as the notice of set down for the first hearing.

[28] It doesn't matter that, on Mr Mukansi's evidence, Mr Kanyoka dropped the ball. The Appellate Division found no "absence" under rule 42(1)(a) on arguably worse facts in *De Wet v Western Bank Ltd* 1979 (2) SA 1031 (A). Six plaintiffs sued Western Bank in 1971. Brian Lebos was the plaintiffs' attorney of record. The trial was postponed until 1976. Meanwhile, in 1974, the estate of the first plaintiff, George Coligionis, was sequestrated. His trustee settled with Western Bank. The second to sixth plaintiffs, still

represented by Mr Lebos, pushed on with their claims, and the trial was set down to proceed in 1976. A week before the trial, Mr Lebos withdrew. He filed a notice of withdrawal and told Mr Coligionis but, importantly, he did not tell his clients, the second to sixth plaintiffs. No one appeared for the third to sixth plaintiffs on the first day of the trial, and the trial court dismissed their claims. The third to sixth plaintiffs later applied for rescission, which the High Court dismissed. The Appellate Division agreed with the High Court, holding that "[a]t the stage when [Mr] Lebos withdrew as the [plaintiffs'] attorney, the case had already been set down for hearing on 16 August 1976 in accordance with the Rules of Court, and there was no need for [Western Bank] to serve any further notices or documents on the [plaintiffs] in connection with the resumed hearing": *De Wet*, above, at 1038E-F. The third to sixth plaintiffs didn't know that Mr Lebos withdrew and, like the Mukansi Parties, they didn't know that the trial was set down that day—and like the Mukansi Parties, they "took it for granted that their attorney was protecting their interests", *De Wet v Western Bank Ltd* 1977 (4) SA 770 (T) at 775H-776A.

[29] *De Wet* might be better read as turning on whether judgment against the plaintiffs was (or wasn't) erroneous. In my view, however, *De Wet* supports a broader proposition that a represented party isn't absent from a hearing if that party's legal representative was properly notified of the hearing. The Mukansi Parties were represented, and a notice of set down was properly served on Mncube Attorneys. If we take the Constitutional Court's interpretation of "absence" seriously, then this type of 'legal' presence is enough to close the door on rescission under rule 42(1)(a), see *Zuma*,

above, at paras 60 to 61 (and clients let down by their lawyers have other remedies, including regulatory complaints and claims in delict for professional negligence).

[30] Yes, courts should be "slow to penalise a litigant for his attorney's inept conduct of litigation", *Colyn*, above, at para 12. But "there comes a point where there is no alternative but to make the client bear the consequences of the negligence of his attorneys", *Colyn*, above, at para 12. This applies even when an attorney's conduct is "inexcusable", *De Wet*, above, at 1043H. Mr Mukansi doesn't say much about what happened between the postponement of the first hearing of the summary judgment application and the resumed hearing in May 2020: he says he was "under the impression that Kanyoka Attorneys were looking after [the Mukansi Parties'] best interests", and he says Mr Kanyoka "was stuck in Zimbabwe". But Mr Mukansi knew about Nedbank's pending suit and knew Nedbank wanted to sell the house in execution. In my view, the Mukansi Parties weren't diligent enough between September 2019 and May 2020.

[31] The May 2020 order was accordingly not "granted in the absence" of the Mukansi Parties. The rule 42(1)(a) leg of both rescission applications fails for that reason alone.

[32] Even if I'm wrong and the Mukansi Parties tick the "absence" box, the May 2020 order was not "erroneously sought or erroneously granted". The Mukansi Parties raise four arguments on this point. The first is that Nedbank's affidavit in support of summary judgment had two deponents. The immediate problem with this argument is that it's not something "which the

court was unaware of": *Rossitter*, above, at para 16. It's clear from the first page of the affidavit that there are two deponents. That aside, there's little to support the Mukansi Parties' technical argument that a two-deponent affidavit is "improper". The Mukansi Parties point out that the rules for affidavits in the regulations under the Justices of the Peace and Commissioners of Oaths Act refer to a deponent, singular. But the regulations don't prohibit multiple deponents and, under section 6(b) of the Interpretation Act, "words in the singular number include the plural". A two-deponent affidavit is odd, and multiple deponents might, depending on the evidence, affect the probative value of the affidavit, but it's not irregular—or at least not the type of irregularity that translates into an erroneously granted order.

[33] The Mukansi Parties next argue that there were several "[v]alid defences" that this Court did not consider before granting the May 2020 order. Some of these defences go to the rule 46A application to declare the house specially executable (Nedbank foreshadowed that relief in its particulars of claim and asked for it in its application for summary judgment, and Nedbank served a supplementary affidavit in support of executability in February 2020—Mr Mukansi says it wasn't served personally but I reject that argument because the affidavit was served on Mncube Attorneys).

[34] The main "defences" that were, according to the Mukansi Parties, not before this Court when it granted the May 2020 order are that there were other properties that could've been sold—either unbonded or bonded in Nedbank's favour—and that Nedbank should've looked to the sureties before executing against the house.

[35] These are the types of "subsequently disclosed defence[s]" that are "irrelevant" and that don't "transform a validly obtained judgment into an erroneous judgment", *Lodhi*, above, at para 27. Nedbank did what rule 46 and rule 46A require from a creditor, and this Court can't fairly be criticised for failing to consider facts that might've been relevant under rule 46A if the Mukansi Parties never put up those facts. The Mukansi Parties argue that they were "never afforded the chance", but they were—after all, that was why the first hearing of the summary judgment application was postponed.

[36] None of this is to downplay the constitutional importance of rule 46 and, in particular, rule 46A. And it would be different if Nedbank hadn't sought relief under both rules at all. But the Mukansi Parties' argument on this score amounts to an impermissible argument that this Court failed to consider "subsequently disclosed defence[s]" on executability, *Lodhi*, above, at para 27.

[37] Third, the Mukansi Parties allege a complicated conspiracy between their advocate, Isiah Mureriwa, and Thonts Properties.[2] Mr Mukansi explains that, at some point, the Mukansi Parties, through their attorneys, instructed Mr Mureriwa. Mr Mureriwa later "withdr[e]w as counsel but he also instructed the attorney to withdraw as [the Mukansi Parties'] attorney" because, so the alleged conspiracy unfolds, Mr Mureriwa's wife "is employed by [Thonts Properties]". The Mukansi Parties attach what appears to be an email from Mr Mureriwa in September 2020. But the email refers to "the Hartees matter

[2] I intend no disrespect by using "Mr Mureriwa" instead of "Advocate Mureriwa" because, in my view, "Advocate" is not a title. See, for what it'ss worth, https://dsae.co.za/entry/advocate/e00075 (noting that an "S Kentridge" describes "Advocate Jones" as "an undesirable usage").

where a property was sold on auction and bought by Thonts Properties", which cannot be the house—the house is not in "Hartees" and Thonts Properties only bought it in 2021.

[38] None of this is legally relevant to whether the May 2020 order was erroneously sought or granted. Mr Ntsoane and Mr Mureriwa also dispute it: in a confirmatory affidavit attached to Mr Ntsoane's answering affidavit in the second rescission application, Mr Mureriwa denies that he has "a wife who works for or ha[s] ever worked for or had any business with Thonts Properties". *Plascon-Evans* means the argument can't go any further.

[39] The Mukansi Parties' fourth argument is that Nedbank didn't comply with section 129(1)(a) of the National Credit Act before suing. Nedbank says it sent section 129 notices to the Mukansi Parties, and it attaches the notices to its particulars of claim. Nedbank also attaches registered letter slips from the Post Office for each section 129 notice. Nedbank doesn't, however, attach any track and trace reports, which means it didn't comply with section 129, at least not at first, *Kubyana v Standard Bank of South Africa Ltd* 2014 (3) SA 56 (CC) at para 54.

[40] Does it matter that Nedbank attached the section 129 notices to its particulars of claim? Some High Court judgments, including in this Division, say that a credit provider can't cure a failure to deliver a section 129 notice (or a failure to adduce adequate evidence of delivery) by attaching the notice to particulars of claim (and then serving the particulars of claim), see, for example, *Firstrand Bank Ltd v Moonsammy* 2021 (1) SA 225 (GJ) at para 47 (holding that "non-compliance with s 129 is not cured by attaching proof of

purported compliance with s 129 to a summons"), but see *Williams v Shackleton Credit Management* 2024 (3) SA 234 (WCC) at para 63 (suggesting that "[t]he position may … be different" if "the s 129 notice was subsequently provided to the consumer as an attachment to the summons … which the consumer in fact received, and that occurred at least 20 days prior to judgment").

[41] Section 129(1)(b) of the National Credit Act arguably supports the view that a section 129 notice attached to particulars of claim is too little too late. Section 129(1)(b) says a credit provider "may not commence legal proceedings" before sending a section 129 notice. If a section 129 notice must come before litigation starts, then delivering a section 129 notice after litigation starts seems no good. Points for creativity but that kind of bootstrapping compliance is probably contrary to the National Credit Act's important protective purposes.

[42] There is, however, a judgment of a Full Court of this Division that supports Nedbank's argument that it did enough to comply with section 129, *Benson v Standard Bank of South Africa (Pty) Ltd* 2019 (5) SA 152 (GJ). Standard Bank sued a consumer after the consumer defaulted on a loan. Standard Bank sent a section 129 notice to the wrong address: "74 Kent Street, Montclare, Randburg 2092" instead of "74 Kent Street, Montclair 2092". Standard Bank did, however, attach the section 129 notice to its initiating pleadings (it's not clear from the judgment if Standard Bank sued on motion or action). The Full Court held that default judgment was not erroneously sought or granted because Standard Bank's initial non-compliance with section 129 was cured before default judgment, *Benson*, above, at para 19.

[43] A difference is that in *Benson*, a track and trace report showed that the section 129 notice found its way to the right Post Office shortly before the hearing of Standard Bank's application for default judgment (here, Nedbank has no track and trace reports, so no evidence that the section 129 notices reached the right Post Office). But a close reading of *Benson* supports the proposition that attaching a section 129 notice to an initiating pleading cures initial non-compliance with section 129, at least if the initiating pleading is properly served and the consumer is "given the statutory time to consider his or her position", *Benson*, above, at para 19.

[44] To see why, consider the *Benson* timeline:

- Some point before 5 May 2011: Standard Bank sends a section 129 notice using the wrong address, *Benson*, above, at para 7.

- 5 May 2011: Standard Bank serves its initiating pleading on the consumer, which attaches the section 129 notice, *Benson*, above, at paras 8, 19.

- 26 May 2011: the section 129 notice arrives at the Post Office and the Post Office sends a notification to the consumer, *Benson*, above, at para 11.

- 1 June 2011: default judgment hearing and order, *Benson*, above, at para 19.

[45] The Full Court held that by the time default judgment was granted, the consumer "had been in default under their credit agreemen[t] for at least 20 days, and 10 business days had elapsed since delivery of the s 129 notice

on 5 May 2011" and "[t]here was accordingly compliance by [Standard Bank] with the requirements of ss 129 and 130 at the time the Standard Bank application was heard on 1 June 2011", and so "[t]he default judgment was thus not erroneously sought and granted", *Benson*, above, at para 19. That reasoning makes sense only if sending the notice to the consumer as an attachment to the initiating pleading on 5 May 2011 did the work. The reasoning can't turn on delivery of the section 129 through the Post Office on 26 May 2011 because 10 business days would then not have elapsed between the hearing (1 June 2011) and delivery of the section 129 notice (26 May 2011). Plus other courts in this Division interpret *Benson* this way: see, for example, *SB Guarantee Company (RF) (Pty) Ltd v Ngese* 2026 JDR 0686 (GP) at paras 9 to 10 (citing *Benson* and holding that "[n]on-compliance with the provision [sic] of section 129 was … cured" because there was proper service of a "combined summons, which contained the section 129 notice as an annexure").

[46] Make no mistake, *Benson* has its critics in this Division and in other Divisions, see, for example, *Moonsammy*, above, at para 47 ("disagree[ing]" with, but ultimately distinguishing, *Benson*) and *Merchant Commercial Finance 1 (Pty) Ltd v Valecic* 2026 (3) SA 225 (WCC) at para 56 (describing *Benson* as "wrongly decided"). I don't wade into the deep waters of whether *Benson* is right. Right or wrong, a Full Court of this Division binds me. And, on *Benson*, the straightforward conclusion on these facts is that any initial non-compliance with section 129 was cured. Nedbank has no track and trace reports, but the section 129 notices were attached to Nedbank's

particulars of claim, and there was proper service of the particulars of claim on the Mukansi Parties. The Mukansi Parties had ample time—and far more time than the National Credit Act requires—to respond to the section 129 notices and exercise their statutory rights.

[47] So even if Nedbank didn't initially comply with section 129 before it sued the Mukansi Parties, any non-compliance was cured long before the May 2020 order and so the May 2020 order was "not erroneously sought and granted", *Benson*, above, at para 19.

[48] I accordingly reject each of the Mukansi Parties' arguments on whether the May 2020 order was "erroneously sought or erroneously granted". The rule 42(1)(a) leg of both rescission applications fails for that reason alone (and independently of my finding that the May 2020 order wasn't granted in their absence).

[49] Even if I'm wrong on both points—that is, even if the May 2020 order was erroneously granted in the absence of the Mukansi Parties—the rule 42(1)(a) leg of both rescission applications still fails. Even in that world, rescission doesn't follow without more. Instead, the Mukansi Parties meeting the two rule 42(1)(a) requirements just unlocks my discretion, not obligation, to rescind the May 2020 order—after all, rule 42(1)(a) says a court "may" rescind, not "must", *Zuma*, above, at para 53.

[50] I exercise this discretion based on "considerations of justice and fairness, having regard to all the facts and circumstances of the particular case",

De Wet, above, at 1042G-H (cited with approval in *Zuma*, above, at para 53). Relevant considerations include the affected party's conduct and diligence, *Zuma*, above, at para 53 (citing C*hetty v Law Society, Transvaal* 1985 (2) SA 756 (A) at 760H), whether rescission will cause "undesirable consequences", *Storti v Nugent* 2001 (3) SA 783 (W) at 806F-G, and whether rescission "will have no practical effect" but will "merely cause delay", *Nkosi v Absa Bank Ltd* 2023 JDR 2070 (GP) at para 36.

[51] On one side of the ledger, I place some weight on the Mukansi Parties' constitutional right of access to court and the constitutional and statutory protections over their home. On my view of the litigation timeline, however, the Mukansi Parties had a reasonable opportunity to plead their case, resist summary judgment, and resist the sale in execution.

[52] There are two main considerations that weigh against the Mukansi Parties in the exercise of my discretion: the Mukansi Parties' conduct and the effect of rescission.

[53] I have already found that the Mukansi Parties weren't diligent enough between September 2019 and May 2020. But there's then another gap in the timeline between the granting of the order (in May 2020) and when the Mukansi Parties eventually applied to rescind the order (in May 2021). Mr Mukansi says he only found out about the May 2020 order in September 2020, but even on that timeline there's still a largely unexplained delay of about eight months. There were some negotiations with Nedbank and an attempt to sell the house, but a diligent litigant would've taken steps to rescind the order in the meantime.

[54] There's then the effect of rescission. The second rescission application asks for an order declaring the sale of the house to Thonts Properties "null and void" and setting it aside. The premise of this relief seems to be, as Mr Mukansi puts it in his replying affidavit in the second rescission application, that the "sale … is the result of [the May 2020 order]" and so if the May 2020 order is rescinded "all further steps beyond that would have no basis and the status quo would be reverted."

[55] It's by no means clear to me that rescinding the May 2020 order would have any effect on the sale and transfer of the house to Thonts Properties, see generally *Knox NO v Mofokeng* 2013 (4) SA 46 (GSJ) at para 5 (summarising the position under common law and concluding that "where transfer of ownership had been effected pursuant to the sale in execution by the time the judgment has been rescinded, the judgment debtor is not entitled to recover possession of the property in question, unless it can be established that the judgment and/or the sale in execution constituted a nullity").

[56] In his answering affidavit in the second rescission application, Mr Ntsoane alleges that Thonts Properties was a "bona fide purchaser for value at a public auction". The Mukansi Parties don't dispute that allegation, and don't allege that Mr Ntsoane (or anyone else representing Thonts Properties) knew about the first rescission application before Thonts Properties took transfer, *Knox*, above, at para 5 (noting that, as an exception to the proposition stated above, if the purchaser "had knowledge of the proceedings instituted by the judgment debtor for the rescission of the judgment in question prior to … registration of transfer" then the judgment

debtor is “entitled to recovery of the property in question, even where transfer had already been effected”).

[57] On the facts, then, Thonts Properties is a bona fide purchaser for value. English law calls Thonts Properties a more colourful name: equity’s darling, *Byers v Saudi National Bank* [2024] A.C. 1191 at para 26. The rhetorical point is that the law is rightly concerned about protecting the rights and expectations of innocent third parties—which is why rescinding a judgment doesn’t always have the blunderbuss effect on a subsequent transfer pursuant to a sale in execution that the Mukansi Parties assume. In one sense, that’s good (or at least not bad) for the Mukansi Parties because it avoids an “undesirable consequenc[e]”, *Storti*, above, at 806F-G, of interfering with the subsequent transfer of the house to Thonts Properties. But then what’s rescission good for? If the Mukansi Parties can’t get the house back, then rescission has “no practical effect”, *Nkosi*, above, at para 36.

[58] Things get worse for the Mukansi Parties if their premise is right and the “status quo” is “reverted” despite Thonts Properties being equity’s darling. Rescinding the May 2020 order would then adversely affect the rights and settled expectations of an innocent third party. It would also, I fear, systemically undermine public confidence in the execution process. Both are, with some understatement, “undesirable consequences”, *Storti*, above, at 806F-G.

[59] For those reasons, even if the May 2020 order was erroneously granted in the absence of the Mukansi Parties, the rule 42(1)(a) leg of both rescission applications still fails because I exercise my discretion against rescission.

[60] That leaves rescission under common law. The Mukansi Parties seem to rely on this Court's common law power to rescind a default judgment and, at least for the second rescission application, this Court's common law power to rescind a judgment obtained by fraud.

[61] Much of the ground already covered for the rule 42(1)(a) leg of both rescission applications applies just the same to common law rescission of a default judgment. For reasons already addressed, the May 2020 order wasn't granted by default. But even if I'm wrong and the May 2020 order was granted by default, the Mukansi Parties haven't put up a reasonable explanation for their default and they don't have any bona fide defences on the merits that prima facie carry some prospect of success, *Zuma*, above, at para 71 (summarising the common law test for rescission of a default judgment).

[62] I've already dealt with why the Mukansi Parties haven't adequately explained why they didn't appear at the May 2020 hearing. And I've already rejected their attempt to shift blame to Mr Kanyoka.

[63] The Mukansi Parties raise three main defences on the merits in the rescission applications. The first is their argument about section 129 of the National Credit Act, which I've already rejected. It's also by no means clear

to me that non-compliance with section 129 is even a defence on the merits, see *Sebola v Standard Bank of South Africa Ltd* 2012 (5) SA 142 (CC) at para 53 (describing the "bar on proceedings" as "only dilatory").

[64] Next, the Mukansi Parties argue that Nedbank didn't comply with rule 46 and rule 46A. I've already held that this argument (and its sub-grounds) doesn't mean that the May 2020 order was erroneously granted (including the argument that there needed to be personal service). On the merits, there's no basis to conclude, even prima facie, that this Court would've declined to declare the house executable. The Mukansi Parties argue that this Court would've considered alternative means to satisfy the judgment debt, including the availability of other properties to sell. But the Mukansi Parties already tried selling the house to a family member's company and already tried selling a different property to raise money to pay what they owed Nedbank. The Mukansi Parties also criticise this Court's failure to set a reserve price, but that doesn't, in my view, amount to a defence on the merits, *Absa Bank Ltd v Mokebe and Related Cases* 2018 (6) SA 492 (GJ) at para 66 (noting that "it would be an exception rather than a rule where a reserve price is not set by a court").

[65] The Mukansi Parties' third defence on the merits is that Nedbank's certificate of balance is "very old" and "not correct". The certificate is from May 2019. It overstates things to describe it as "very old", at least for a hearing in May 2020. In any event, the Mukansi Parties agreed in their contract with Nedbank (and in their suretyships) that Nedbank can rely on a certificate as prima facie proof of their indebtedness. The Mukansi Parties say the certificate is "not correct", but they don't put up any evidence to rebut it.

[66] For those reasons, the Mukansi Parties fail to show any bona fide defences on the merits. Even if I'm wrong, and even if the Mukansi Parties were in default, even if they adequately explained their default, and even if they had a bona fide defence, the common law leg of both rescission applications still fails because I would exercise my discretion against rescission for the same reasons that apply to the exercise of my discretion on the rule 42(1)(a) leg.

[67] There's then the allegation of fraud, which I understand to be the second basis of the common law leg of the second rescission application. The Mukansi Parties allege that Nedbank knew that Magoveni Pharmaceutical owns a property worth more than the outstanding amount owed to Nedbank, and so there was no need to execute against the house. I doubt the legal relevance of any of this, especially because I don't see any "duty" on Nedbank "under the contract to call on the sureties to account", as Mr Mukansi argues in his affidavit. Be that as it may, fraud is a serious allegation that must be "clearly established" and "not lightly … inferred", *Loomcraft Fabrics CC v Nedbank Ltd* 1996 (1) SA 812 (A) at 817F-H. The Mukansi Parties don't meet that burden, at least not in motion proceedings. So this basis for the common law leg of the second rescission application also fails.

[68] As for the timing of the rescission applications, an application to rescind under rule 42(1)(a) and under common law must be brought without unreasonable delay, see generally *Ellis v Eden* 2023 (1) SA 544 (WCC) paras 55, 63 (collecting cases). I don't think it matters whether an unreasonable delay is a self-standing reason to dismiss a rescission application or is better seen as a basis to exercise discretion against

rescission. Either way, the first rescission application is unreasonably delayed. A whole year went by before the Mukansi Parties applied to rescind the May 2020 order. Mr Mukansi says he only found out about the May 2020 order in September 2020, but even on that timeline there's still a largely unexplained delay of about eight months.

[69] The timing of the second rescission application is seemingly worse still, coming three years after the May 2020 order. But the Mukansi Parties argue for a different timeline. They argue that they brought the second rescission application "in compliance with" this Court's eviction order, which means, so the argument goes, the timeline starts at the end of January 2023 (when this Court granted the eviction order) and ends at the beginning of March 2023 (when they launched the second rescission application). The argument has superficial force because this Court suspended the eviction order "pending the filing of a rescission application". In hindsight, it might've been neater for this Court to suspend the eviction order pending the final determination of the first rescission application (which was already pending).

[70] The problem for the Mukansi Parties' argument is that the first and second rescission applications are against the same order on the same grounds. Nothing in this Court's judgment in the eviction application shows any intention to deal with, let alone condone, the Mukansi Parties' delay in their attempt to rescind the May 2020 order. In those circumstances, it would allow the Mukansi Parties to snatch at an unintended bargain if the timing of the second rescission application is judged against a different timeline that starts from the date of the eviction order. To be sure, the Mukansi Parties cannot be criticised for bringing the second rescission application, even if

only to preserve the suspension of the eviction order. But the eviction order doesn't start a new clock on rescission, and so the unreasonable delay in bringing the first rescission application means that the second rescission application is also unreasonably delayed.

[71] To sum up:

- I dismiss the rule 42(1)(a) leg of both rescission applications for four independent reasons: because the May 2020 order wasn't "granted in the absence" of the Mukansi Parties, because the May 2020 order wasn't "erroneously sought or erroneously granted", because I exercise my discretion against rescission, and because both rescission applications are unreasonably delayed.

- I dismiss the common law leg of both rescission applications for five independent reasons: because the May 2020 order wasn't granted by default, because the Mukansi Parties don't have a reasonable explanation for any default, because the Mukansi Parties don't have any bona fide defences on the merits, because I exercise my discretion against rescission, and because both rescission applications are unreasonably delayed.

[72] The consequence of dismissing the rescission applications is that the suspension of the eviction order comes to an end. There was some debate at the hearing about how many days Mr and Mrs Mukansi and their adult children should have to move out. The eviction order envisages 30 days. I see no reason to depart from that period (but nothing prevents Mr Ntosoane and Thonts Properties agreeing to a longer period, and nothing prevents

another court suspending the operation of this Court's order, if a case for that relief is made out).

[73] Nedbank, Mr Ntosoane, and Thonts Properties ask for punitive costs. There's some force in their argument that the Mukansi Parties have flooded the zone to delay their inevitable eviction. And I have sympathy for Mr Ntosoane and Thonts Properties—caught up in expensive, multi-year litigation that ought to have nothing to do with them. But in the exercise of my broad discretion on costs, I don't think the litigation-related conduct of the Mukansi Parties is bad enough to warrant punitive costs. Costs on the usual party and party scale suffices. Nedbank, Mr Ntosoane, and Thonts Properties are also entitled to the costs of counsel on scale B, because this case, though not short on paper, falls somewhere between "[r]un-of-the-mill" and "unusually complex, important or valuable", *Mashavha v Enaex Africa (Pty) Ltd* 2025 (1) SA 466 (GJ) at para 16. For the same reasons, the same order in favour of Nedbank, Mr Ntosoane, and Thonts Properties applies to any reserved costs orders.

[74] I make this order:

1. The consolidated application (being the rescission application in case number 25860/2019 and the rescission application in case number 11161/2022) is dismissed.

2. The First, Second, Third, and Fifth Applicants, and any person occupying through them, are ordered to vacate the property described as 1[…] H[…] Drive, D[…] G[…] Estate, Extension 11, Randburg within 30 days of the date of this order.

3. The Applicants are ordered to pay, jointly and severally, the First, Third, and Fourth Respondents' costs on the party and party scale, including the costs of one counsel each on scale B (which includes the costs of the rescission application in case number 25860/2019, the rescission application in case number 11161/2022, and any costs orders previously reserved in either case number).

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J Mitchell AJ

Acting Judge of the Gauteng Division, Johannesburg

Date of hearing:	22 October 2026
Date of judgment:	2 November 2026
For the Applicants:	T Paige-Green instructed by Verster & Roos Inc.
For the First Respondent:	J Killian instructed by Baloyi Swart Inc.
For the Third and Fourth Respondents:	B Brammer instructed by Malherbe Roos Attorneys