



## THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

### MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

**From:** The Registrar, Supreme Court of Appeal

**Date:** 18 July 2025

**Status:** Immediate

***The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal***

*Jomane Eiendomme (Pty) Ltd v Magistrate Van Zyl and Another (067/2024) [2025] ZASCA 109 (18 July 2025)*

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Today, the Supreme Court of Appeal (SCA) handed down judgment wherein it dismissed the appeal by Jomane Eiendomme (Pty) Ltd, the appellant (the first defendant in the magistrates' court), against the judgment and order of the North West Division of the High Court, Mahikeng (the high court) which refused the appellant's application to review and set aside the decision by the first respondent, an acting magistrate of the Magistrates' Court for the district of Rustenburg (the magistrate).

Section 58(1) of the Magistrates' Courts Act 32 of 1944 (the MCA) creates an alternate process for a plaintiff to obtain a default judgment in the magistrates' courts. First, upon receipt of a written demand, the defendant consents in writing to judgment in favour of the plaintiff for the amount of the debt and costs specified in the demand. Alternatively, upon service of a summons, the defendant consents in writing to a judgment in favour of the plaintiff. Depending on the procedure that finds application, the request for judgment would either be accompanied by summons or a letter of demand.

The second respondent (the plaintiff in the magistrates' court) sought and obtained judgment against the appellant and Mr Botha (the second defendant in the magistrates' court) in terms of s 58(1) of the MCA based on a letter of demand. Upon being made aware of the judgment, the appellant brought an application for its rescission in terms of s 36 of the MCA read with rule 49(1) of the magistrates' courts rules. The magistrate found no default on the part of the appellant and that it had a bona fide defence. She therefore rescinded the judgment. In addition, she ordered the second respondent to file a declaration within 10 days. It is against the latter portion of the order that the review in the high court and the present appeal was directed.

Two issues were central to the appeal. First, whether the magistrate was empowered in terms of s 36 of the MCA read with rule 49(1) of the magistrates' courts rules to direct the second respondent to file a declaration pursuant to the rescission of the judgment entered in terms of s 58(1) of the MCA against the defendants. Second, whether this part of the order was reviewable.

The SCA held that s 58(1) is a *sui generis* statutory mechanism specifically tailored to provide effective, expeditious and inexpensive relief to creditors and debtors by permitting judgment to be entered in favour of a creditor where a debtor has consented thereto upon receipt of a letter of demand or summons.

The SCA further held that regard being had to s 59 of the MCA, which provides that '(i)f no summons is issued in an action the written request referred to in sections 57(2) and 58(1) shall constitute the first document to be filed in the action' and the *sui generis* nature of the proceedings under s 58 of the MCA, for all practical purposes, the request for judgment in s 58(1), in the absence of summons, constituted the first document in the action and therefore akin to a summons in the sense that it was through that request that the action was initiated.

Magistrates' courts rule 49(1) provides, in the relevant part, that the magistrates' court may, upon good cause shown, or if it is satisfied that there is good reason to do so, rescind or vary the default judgment *on such terms as it deems fit*. The words 'on such terms as it deems fit', reasoned the SCA, were deliberately inserted in the rule in order not to abridge the wide powers conferred on the magistrates when making orders following variation or rescission of judgments. Implied in that phrase was simply that when exercising its discretion to rescind or vary a judgment the magistrates' court may craft an order on such terms as it considers appropriate in order to afford the parties just relief.

The SCA further held that an order that the plaintiff file the declaration, was in consonance with the purpose of the magistrates' courts rules which aim to promote access to the courts and to give effect to the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court. The magistrates' courts rules are to be applied in order to facilitate the expeditious handling of disputes and the minimisation of legal costs. Consequently, the magistrate, when she ordered that the declaration be filed, acted within the purview of s 36 of the MCA read with magistrates' courts rule 49(1) and not ultra vires her powers.

The high court correctly concluded that the magistrate's order was not susceptible to review. Accordingly, the SCA dismissed the appeal with costs.