THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Not Reportable
Case no: 507/2024

In the matter between:

DEON SMITH	**FIRST APPLICANT**
ELLEN LOUISE SMITH	**SECOND APPLICANT**
NADELEI CC	**THIRD APPLICANT**

and

SASFIN BANK LTD	**FIRST RESPONDENT**
SUNLYN (PTY) LTD	**SECOND RESPONDENT**

Neutral citation: *Deon Smith and Others v Sasfin Bank and Another* (Case no 507/2024) [2025] ZASCA 198 (19 December 2025)

Coram: MEYER, MATOJANE and MOLEFE JJA and CLOETE and NUKU AJJA

Heard: 06 November 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal

website and released to SAFLII. The date and time for hand-down of the judgment is deemed to be 19 December 2025 at 11h00.

Summary: Section 17(2)(f) of the Superior Courts Act 10 of 2013 – reconsideration application – Uniform Rules of Court – refusal of application for rescission of two default judgments granted by the registrar- whether applicants met threshold requirement – whether requirements for rescission met.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Mooki AJ sitting as court of first instance):

The reconsideration application in terms of section 17(2)(f) of the Superior Courts Act 10 of 2013 is struck from the roll with costs.

JUDGMENT

Cloete AJA (Meyer, Matojane and Molefe JJA and Nuku AJA concurring):

Introduction

[1] This is an application in terms of s 17(2)(f) of the Superior Courts Act[1] for reconsideration of an order by two Judges of this Court. They refused a petition in terms of s 17(2)(b) of the Act for leave to appeal against an order of the Gauteng Division of the High Court, Pretoria (the high court), which dismissed an application for rescission of two default judgments granted against the applicants.

[2] The registrar of the high court granted the default judgments in favour of the first respondent (Sasfin) in terms of rule 31(5) of the Uniform Rules of Court

[1] No 10 of 2013.

(the rules), for payment of R515 623.78, interest thereon at 11% per annum calculated from 1 April 2020, and costs on the scale as between attorney and client. The first default judgment was granted on 30 July 2021 jointly against the first and third applicants, Mr Smith and Nadelei CC (the CC), respectively. The second was granted on 5 August 2021 against the second applicant (Mrs Smith) jointly and severally together with Mr Smith and the CC. Unless otherwise indicated, I refer to them collectively as the 'applicants'.

[3] The applicants applied for leave to appeal against the high court's order, which application was dismissed. As already indicated, two Judges of this Court refused their subsequent petition in terms of s 17(2)(b) of the Superior Courts Act. Their application in terms of s 17(2)(f) of the Act was thereafter granted by the President of this Court. The parties were also directed to address the merits at the hearing if so required.

Threshold requirement for reconsideration in terms of s 17(2)(f)

[4] Section 17(2)(f) was amended with effect from 3 April 2024 [2]. It provides *inter alia* that on application to her, the President of the Supreme Court of Appeal may refer a decision on petition back to this Court for reconsideration and, if necessary, variation, in circumstances where she is of the view that a grave failure of justice would otherwise result, or the administration of justice may be brought into disrepute (these are referred to as 'exceptional circumstances'). It bears mention that the President is constrained to reach that view on the limited information and submissions placed before her in chambers.

[5] The applicants are required to demonstrate to the reconsideration Court that at least one of these exceptional circumstances is present. Their existence is a jurisdictional fact. If either is not established, that puts an end to the matter, and

[2] The subsection was amended by s 28 of the Judicial Matters Amendment Act 15 of 2023.

we need not consider whether the refusal to grant leave on petition was correctly decided, much less whether the judgment and order of the [high court] are correct.'[3] Put differently, s 17(2)(f) 'is not a mechanism for a disappointed litigant to secure another opportunity for appeal but rather a safeguard to avoid manifest injustice.'[4] Recently, in *Godloza and Another v S* [5] , the Constitutional Court emphasised that merely because separate judicial officers in one Division or Court arrive at different conclusions on the same, or substantially similar, facts, this does not, without more, meet the exceptional circumstances threshold.

Grounds advanced by applicants to meet the exceptional circumstances threshold requirement

[6] The applicants maintain that the exceptional circumstances present are as follows. First, they assert that there were two conflicting outcomes, one being their rescission application (which was dismissed) and the other 'in a similar and closely related matter' in the same division of the high court, where rescission was granted. However, they failed to place any facts before this Court (or indeed the high court) in relation to that other matter, and thus no more need be said about this

[7] Second, they attack the high court judgment on the following grounds, namely that: (a) the test for rescission was incorrectly applied, resulting in 'undue hardship' to them ; (b) the defence raised by them of a simulated transaction met the established '*bona fide*' test; (c) despite their rescission application not having been 'pinned' to any of the recognised grounds (namely rule 31(2)(b), rule 42 or the common law), the high court should nevertheless 'have considered the facts presented in the affidavits and measured the application' on each of those

[3] *Bidvest Protea Coin Security (Pty) Ltd v Mandla Wellem Mabena* 2025 (3) SA 362 (SCA) paras 9 and 15-17.
[4] *Road Accident Fund v Sarah Wilson Lewis* [2025] ZASCA 174 (18 November 2025) para 25, referring to *Anvit v First Rand Bank Ltd* [2014] ZASCA 132 (23 September 2014).
[5] *Godloza and Another* [2025] ZACC 24 (5 November 2025) paras 46 – 52.

grounds; and (d) contrary to the conclusion of the high court, they had not been in wilful default of entry of appearance to defend.

Background

[8] On 18 November 2019 the CC, duly represented by Mr Smith, concluded a written Master Agreement of Hire (master rental agreement) with Technofin (Pty) Ltd (Technofin). *Ex facie* that agreement, Technofin rented certain equipment to the CC for an initial period of 60 months commencing on 18 November 2019, at a monthly rental of R9 829.05 inclusive of VAT. In terms of clause 2.2 of the master rental agreement, it was acknowledged and agreed that at all times the equipment would remain Technofin's property. Clause 15 provided that Technofin was entitled, without notice, to cede any of its rights in terms of the master rental agreement to a third party. Technofin ceded its rights to the second respondent, Sunlyn (Pty) Ltd (Sunlyn), which in turn ceded them to Sasfin.

[9] Clause 21 of the master rental agreement is the 'sole memorial' clause, namely that no amendments thereto would be binding unless recorded in writing and signed by the parties. It is not suggested by the applicants that any such amendments were effected. At the time of conclusion of the master rental agreement, Mr and Mrs Smith executed written deeds of suretyship (referred to as guarantees) in terms of which they bound themselves as sureties and co-principal debtors, jointly and severally with the CC, in favour of Technofin or any third party as cessionary for all amounts owing under the master rental agreement.

[10] Consequent upon the CC's breach of its payment obligations under the master rental agreement, Sasfin issued summons against the CC, alternatively against the applicants jointly and severally, for payment of the capital sum due,

as well as interest and costs on the scale as between attorney and client, as provided therein. After service of the summons and upon expiry of the *dies induciae* Sasfin applied for, and was granted, default judgment.

[11] At all material times Mr and Mrs Smith were married to each other and were co-members of the CC. Their application for rescission was launched on 21 April 2022, thus about 9 months after the default judgments were granted. Mr Smith deposed to the founding affidavit in both his personal capacity and on behalf of the other applicants, and Mrs Smith deposed to a confirmatory affidavit. According to them they were not in wilful default of entry of appearance to defend, since the first occasion on which they became aware of the default judgments was when Mrs Smith attended at the office of their erstwhile attorney on 22 March 2022 for an unrelated matter and was informed thereof 'in passing'. The unidentified individual who allegedly conveyed this information to her did not depose to a confirmatory affidavit.

[12] It is common cause that service of the summons was effected by the sheriff on 3 June 2021 at the residential address of Mr and Mrs Smith by affixing a copy to the principal gate, and on a consultant of the CC, a Ms Weppelman, at its principal place of business. The applicants accept that this was effective service as contemplated by the rules. Their complaint however is that prior to 22 March 2022, the summons did not come to their attention, and despite the sheriff's return of service reflecting that its contents were explained to Ms Weppelman, she could not recall having received it, although she might have followed their 'standard operating procedures' by opening a file and forwarding the summons to their erstwhile attorney.

[13] In her confirmatory affidavit, Ms Weppelman merely alleged that she had read the founding affidavit of Mr Smith and confirmed its contents insofar as they

related to her. She thus failed to take the court into her confidence about what exactly she had done to refresh her memory, including whether or not she had opened an internal file as required by her employer as 'standard operating procedure', which no doubt would have provided a record of the steps taken by her after service of the summons, as well as when those steps were taken.

[14] The applicants also contended that the two orders granted by the registrar were 'vastly different in both substance and form', because one imposed joint liability (on Mr Smith and the CC) and the other imposed joint and several liability on Mrs Smith together with Mr Smith and the CC. This, according to them, gave rise to an 'untenable' situation because two different orders were granted in the same action with different legal consequences.

[15] As to the merits of the defence they wished to raise, the applicants alleged the following. The CC had needed to raise capital and did so by way of refinancing some of its own equipment. Assisted by an entity, Trend Office Solutions (Pty) Ltd (Trend), the CC 'facilitated' the conclusion of a refinance agreement with Technofin, in the form of a loan which the CC would repay monthly whilst providing that equipment as security for the loan.

[16] The applicants did not dispute that the CC concluded the master rental agreement with Technofin upon which Sasfin relied for its cause of action against the CC, nor did they dispute the existence or terms of the two deeds of suretyship executed by Mr and Mrs Smith respectively. They alleged, however, that the master rental agreement was a simulated transaction, as it did not reflect the true agreement. Absent from Mr Smith's founding affidavit were the essential averments about who represented the parties in concluding that 'refinancing' agreement, when it was concluded, where it was concluded, and indeed whether

or not the monthly loan instalments had been paid. The founding affidavit contained the most skeletal allegations on this score.

[17] Sasfin's answering affidavit was deposed to by Mr Kughen Govender, its litigation manager. He explained it was merely an oversight that Sasfin's attorney had not applied simultaneously for default judgment against all three applicants. After both were granted, warrants of execution against movable property were issued by the registrar on 10 August 2021, but were met with returns of non-service at the Smiths' residential address. On 21 September 2021, Sasfin's attorney telephonically contacted the Smiths at their place of business to discuss the matter with them. The attorney was informed that the Smiths were away travelling, but was provided with their email addresses.

[18] Sasfin's attorney addressed an email to Mr and Mrs Smith at both those addresses on 23 September 2021. That email, which was annexed to Sasfin's answering affidavit, informed them of the default judgments; annexed the two default judgment orders; advised them of the failed attempts to execute against their movable property; and requested engagement on a possible settlement of the judgment debt without the need for further costs to be incurred.

[19] Although no response was received directly from either Mr or Mrs Smith (in the replying affidavit they both claimed to have not received the email), a notice of intention to defend was delivered by the applicants' erstwhile attorney on their behalf on 14 October 2021. This resulted in Sasfin's attorney advising him on 19 October 2021 of the default judgments already granted against his clients.

[20] In the interim it was established that the Smiths were still occupying their residence, and re-issued warrants of execution were accordingly served on them

by the sheriff on 18 October 2021, which yielded *nulla bona* returns. There is a dispute over whether personal service of the reissued warrants occurred. The sheriff's returns of service reflect this, but Mr and Mrs Smith deny it was the case. They sought to make something of it.

[21] However nothing turns on this. The applicants cannot escape the following undisputed facts. First, by 14 October 2021 at the latest, their erstwhile attorney was already in possession of the information necessary to draft and deliver a notice of intention to defend on their behalf. That information was not provided to him by Sasfin's attorney, but the applicants did not reveal how their own attorney came to be in possession thereof. Second, by 19 October 2021, that attorney was aware that default judgments had been granted against his clients. It was these pertinent facts that called for a reasonable and satisfactory explanation by the applicants, enabling the court to properly assess not only wilful default but also undue delay. No explanation was provided.

[22] Returning to the merits of the defence which the applicants sought to raise in the event of rescission being granted, they alleged that Trend had agreed with, or advised, them that the master rental agreement would in truth be a 'refinance agreement'. Apart from the fact that the applicants failed to identify Trend's employee who was allegedly the source of this information, Trend was not a contracting party to the master rental agreement, but merely the supplier of the equipment in question. Sasfin correctly submitted that the applicants were silent on how the CC came to acquire ownership of the equipment for 'refinancing' purposes in the first place, something which would have been known to them and which one would have expected them to disclose.

[23] Ms Chantal Booysen and Ms Mariana Van Heerden of Technofin deposed to affidavits confirming the following. Ms Booysen was the Technofin

representative who hand-delivered the master rental agreement and deeds of suretyship for signature by Mr and Mrs Smith in her presence. She saw the equipment being installed, and confirmed this to be the case with Mr Smith. Thereafter Ms Booysen delivered the master rental agreement to Ms Van Heerden for counter-signature. Both confirmed under oath that neither had agreed with the applicants that the master rental agreement was a 'refinance agreement'.

[24] Sasfin also produced documents and email communications between Trend and Technofin leading up to the conclusion of the master rental agreement, which demonstrate that its purpose was always the rental of new equipment by the CC. Moreover, Mr Lourens Klopper, a director of Trend, deposed to an affidavit in which he confirmed that: (a) he was the individual who dealt with the applicants regarding the supply of the new equipment; (b) at no stage did he represent to, or agree with, the applicants that the master rental agreement was a 'refinance agreement'; (c) Trend was the owner of the equipment prior to its sale to Technofin; and (d) Trend's technicians installed that equipment at the CC's premises pursuant to the conclusion of the master rental agreement.

[25] In the applicants' replying affidavit none of the evidence put up by Sasfin was disputed, either seriously or at all. Instead the applicants retreated to raising baseless technical points and attempting to shift blame onto their erstwhile attorney, who was again deprived of the opportunity to place his version before the court. The ineluctable inference is that they had no persuasive response to the weight of evidence against them.

Discussion

[26] The only real difference between an application for rescission of a default judgment brought in terms of rule 31(2)(b), and one brought under the common law, is the period in which such an application must be brought after knowledge

of the judgment is obtained. Rule 31(2)(b) prescribes 20 days, whereas under the common law, the application must be brought within a reasonable time. Otherwise, in both instances the applicant must: (a) give a reasonable and satisfactory explanation for their default; and (b) show that on the merits there is a *bona fide* defence which *prima facie* carries some prospect of success.[6] From the summary of evidence set out above, there is little doubt that the applicants failed to meet either requirement, and certainly not the threshold of s 17(2)(f).

[27] The applicants' reliance on rule 42 is also misplaced, since the orders granted by the registrar were neither erroneously sought nor granted. Their complaint about the different effects of the two orders is without substance. The orders are capable of being read in harmony with each other. If anything, the first order is to the benefit of Mr Smith and the CC. Their joint liability thereunder is limited to each being liable for 50% of the judgment debt, despite the terms of the master rental agreement and the deed of suretyship executed by Mr Smith.

[28] The applicants did not seek condonation for the late filing of their application for rescission, since they adopted the stance that the period between 22 March 2022 and 21 April 2022 was a reasonable one. However they were required to furnish an explanation for the delay, at least between 19 October 2021 (when their erstwhile attorney was advised that default judgments had already been granted) and 21 April 2022 (when their application for rescission was launched). This is a substantial delay of some 6 months.

[29] In any event, while one of the factors to be taken into account in considering whether to grant condonation is an applicant's prospects of success on the merits, and strong prospects may excuse an inadequate explanation for

[6] *Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State* [2021] ZACC 28; 2021(5) SA 327 (CC); 2021 (11) BCLR 1263 (CC) para 71.

delay (to a point)[7], the merits of the applicants' defence in the present instance are so weak that inevitably they were nonetheless bound to fail.

Order

[28] In the result, the following order is made:

The reconsideration application in terms of section 17(2)(f) of the Superior Courts Act 10 of 2013 is struck from the roll with costs.

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J CLOETE

ACTING JUDGE OF APPEAL

[7] *Valor IT v Premier, North West Province and Others* [2020] ZASCA 62; [2020] 3 All SA 397 (SCA); 2021 (1) SA 42 (SCA) para 38.

Appearances

For applicant:	J Sullivan
Instructed by:	Waldick Inc, Centurion
	Symington & De Kok Inc, Bloemfontein
For respondent:	N Lombard
Instructed by:	Wright Rose-Innes Inc, Johannesburg
	Phatshoane Henney Attorneys, Bloemfontein.