

**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG**

**CASE NO: 45070/2021**

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

  
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**SIGNATURE**

**DATE** 11 October 2024

In the matter between:

**KHOMBAMADLELO BUILDING MATERIAL CC**

Applicant

and

**SOUTH AFRICAN NATIONAL ROADS AGENCY**

Respondent

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**JUDGMENT**

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*This judgment is handed down electronically by circulation to the parties' legal representatives by email and by being uploaded to CaseLines. The date and time for hand down is deemed to be 11 October 2024.*

MAHON AJ:

- [1] The relief sought by the applicant in this application is difficult to comprehend.
- [2] The applicant seeks a “review” of a default judgment granted by the registrar of this court on 18 January 2022. It professes to do so in terms of Rule 53 of the Uniform Rules of Court.
- [3] In addition, it seeks a stay of execution. The notice of motion states that the application “... *is brought within the ambit of Rule 49(11) of the High Court Rules, where any Application for Leave to Appeal and or review is brought such Application stays any further execution proceedings*”.
- [4] On 26 October 2021, following instructions from the respondent, the Sheriff served a summons on the applicant by delivering a copy to the applicant's receptionist.
- [5] Notwithstanding proper service in accordance with the Uniform Rules of Court, the applicant failed to file a notice of intention to defend.
- [6] Consequently, the respondent initiated an application for default judgment, which was duly granted by the registrar on 22 January 2022 pursuant to Rule 31(2)(a) read together with Rule 31(5).
- [7] On 3 February 2022, the Sheriff served the default judgment order on the applicant by handing a copy to the receptionist, Okahle Khoza.
- [8] Employing the identical mode of delivery and recipient, the applicant was apprised of the judgment.

- [9] However, the applicant launched the present application on 17 May 2023, more than a year after the default judgment was granted.
- [10] Rule 31(2)(a), when read in conjunction with Rule 35(5)(b), permits a plaintiff to obtain a default judgment from the registrar in circumstances where the defendant has neglected to either enter an appearance to defend or submit a plea.
- [11] In terms of section 23 of the Superior Courts Act, the default judgment granted by the Registrar is deemed to be a judgment of this court. A High Court judgment, whilst subject to appeal upon leave being granted, is not subject to review.
- [12] Contrary to the applicant's contentions, ejectment and claims for arrear rentals have been recognised as liquid claims. Thus, the respondent's approach to the registrar, rather than setting the matter down on the Court's roll, was entirely appropriate.
- [13] In instances where a defendant, against whom a default judgment has been entered, is dissatisfied with the outcome, Rule 31(5)(d) provides an avenue for redress by permitting the defendant to seek a reconsideration of the registrar's decision within 20 days of becoming aware of the judgment.
- [14] With respect to the present application, the applicant has engaged in two distinct actions. Firstly, it has instituted a review application under Rule 53 to contest the default judgment that was rendered against it. Secondly, notwithstanding the inappropriateness of this procedural step, the applicant initiated these proceedings nearly 16 months after the default judgment was

granted, without establishing a valid reason for its failure to comply with the requisite legal provisions.

[15] Despite the considerable lapse of time, the applicant has brought this application without making out a case for condonation. Perhaps due to the absence of a valid justification, the applicant resorted to invoking Rule 53, which allows for review applications to be instituted within a reasonable period. Unfortunately, this recourse is misplaced, as a registrar's decision is subject not to review, but to reconsideration.

[16] Rule 53 is designed for a distinct type of process—namely, the review of administrative decisions. Even under the broadest possible interpretation, this application cannot succeed, as it is procedurally defective.

[17] The applicant contends that it was not aware of the summons. This is in spite of the fact that the summons were served upon Ms. Khoza, the same individual who received the default judgment order and acted upon it by initiating the present proceedings. Although the procedural deficiencies in the application are dispositive of the matter, I nonetheless consider it implausible that two separate documents, delivered to the same person at different times, would result in one being received while the other is purportedly not received.

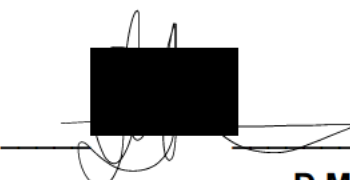
[18] As for the prayer for a stay of execution, it is worth mentioning that a review application does not suspend the operation of the default judgment and a proper case must be made out for such a stay. The applicant has made no meaningful attempt to do so.

[19] The deficiencies in the application and the incompetence of the relief sought, are immediately apparent. It is quite clear that the application should never have been brought.

[20] The manifestly deficient nature of the application warrants a punitive costs order.

[21] In the circumstances, the following order is made:

1. The application is dismissed with costs on an attorney and client scale.



**D MAHON**  
Acting Judge of the High Court  
Johannesburg

Date of hearing: 21 August 2024

Date of judgment: 11 October 2024

**APPEARANCES:**

For the Applicant: Ms L Makoko

For the Respondent: Adv E Chabalala

Instructed by: TF Mathebula attorneys Inc