Reportable:	YES / **NO**
Circulate to Judges:	YES / **NO**
Circulate to Magistrates:	YES / **NO**
Circulate to Regional Magistrates:	YES / **NO**

IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)

Case Number: 2115/2021

In the matter between:

CHRISTO BRIEDENHANN **APPELLANT**

and

YUMNAH NORDIEN N.O. **RESPONDENT**

Heard on : 14 April 2025
Delivered on : 6 June 2025
Coram : Nxumalo J, Stanton J *et* Olivier AJ
Summary : *Appeal - rescission of default judgment - legal principle confirmed – court a quo applying too strict a test when deciding whether or not to grant an application for rescission of default judgment granted by registrar - appeal succeeds.*

ORDER

In the result, the following order is made:

1. The appeal succeeds with costs which costs include only the costs of the appeal and exclude the costs of the application for rescission and the application for leave to appeal;

2. The default judgment granted under case number 2115/2021 on 10 May 2022 is rescinded and set aside and is substituted with the following order:

    2.1 That leave is granted to the appellant (the defendant in the action) to defend the action instituted by the respondent (as plaintiff in the action) under the above case number;

    2.2 That the appellant is to deliver his plea, with or without counterclaim, within 20 (twenty) court days from date of this order;

    2.3 That, in as far as the application for rescission as well as the application for leave to appeal are concerned, each party is to pay his/her own costs; and

    2.4 That all of the above costs (the costs in the appeal as well as the costs in the applications for rescission and leave to appeal) are to be paid on a scale as between party and party and in terms of scale "B" as referred to in Rule 69(7) read with Rule 67A(3) of the Uniform Rules of Court.

JUDGMENT ON APPEAL

Olivier AJ

INTRODUCTION:

1. This is an appeal against the judgment and order of Tyuthuza AJ of 4 August 2023, the appellant having been granted leave to appeal the afore-said judgment and order on 26 April 2024.

2. The appellant is CHRISTO BRIEDENHANN a businessman from Postmasburg, Northern Cape Province.

3. The respondent is YUMNAH NORDIEN a major female, acting herein in her capacity as the duly appointed executrix in the estate of the late Hans Petrus Hansen who has passed away on 20 January 2019 (herein after referred to as "*the Deceased*").

BACKGROUND:

4. The respondent (as plaintiff at the time) issued summons against the appellant out of the Northern Cape High Court on 13 October 2021.

5. It was not in dispute that the combined summons was served on the appellant personally on 20 October 2021 and that the appellant failed to enter an appearance to defend the action, which eventually lead to default judgment being granted against the appellant on 10 May 2022 by the registrar of the Northern Cape High Court.

6. The appellant lodged an application for the rescission of the afore-said default judgment on 4 October 2022 ("*the Rescission Application*") which became opposed and which was, subsequent to the filing of all of the relevant papers, heard by the learned Ms. Tyuthuza AJ on 28 April 2023.

7. Tyuthuza AJ dismissed the Rescission Application with costs on 4 August 2023 which prompted the appellant to lodge an application for leave to appeal the judgment to dismiss the Rescission Application.

8. Leave to appeal the afore-said judgment to dismiss the Rescission Application was granted on 26 April 2024, the required notice to appeal was filed on 27 May 2024 and the appeal was eventually set down before us on 14 April 2025 for argument and determination.

9. The initial claim by the respondent against the appellant was premised on:

   9.1 A written document termed "***ADDENDUM TOT SAMEWERKING EN ONTBINDINGSOOREENKOMS***" which was concluded between the Deceased and *inter alia* the appellant on 15 July 2015 (herein after referred to as "*the Addendum*") in terms whereof the appellant was obliged to repay an amount of R 861 555,72 (Eight Hundred and Sixty-One Thousand, Five Hundred and Fifty-Five Rand, Seventy-Two Cent) to the Deceased; and

   9.2 The appellant's failure to effect payment in terms of the Addendum.

10. The afore-said amount of R 861 555,72 (Eight Hundred and Sixty-One Thousand, Five Hundred and Fifty-Five Rand, Seventy-Two Cent) (herein after "*the Claim Amount*") plus interest thereon and costs were claimed by the

respondent and judgment by default was granted in these terms by the registrar of this court on 10 May 2022.

THE RESCISSION APPLICATION:

11. I do not intend to deal with the respective parties' contentions in the Rescission Application in any sort of detail and will confine myself to those matters and arguments that I deem relevant for purposes hereof, as is set out below.

12. The appellant, after giving a rather lengthy explanation for his default in defending the action brought by the respondent, contended that he had several *bona fide* defences to the respondent's claim, which may be summarised as follows[1]:

    12.1 That the Addendum did not constitute the entire true agreement between the parties as it was incorporated to a main agreement and that he (the appellant) would only be able to consider all of his rights of defence once he has been provided with a copy of the main agreement and further that he would only be able to obtain such main agreement if he was afforded the opportunity to defend the action;

    12.2 That the Addendum constituted a credit agreement in terms of the provisions of the National Credit Act[2] (herein after "*the NCA*") and that the Addendum was an unlawful agreement by virtue of the fact that the Deceased was not registered as a credit provider at the time of the conclusion of the Addendum as is required by the NCA; and

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1 This is a summary of only those defences that were raised that are deemed relevant for purposes hereof and does not constitute a summary of all of the defences that were in fact raised by the Appellant in the Rescission Application.

2 *The National Credit* Act, Act 34 of 2005.

12.3 That he (the appellant) entered into a verbal agreement with the Deceased during or about October 2018 (in other words subsequent to the conclusion of the Addendum) in terms whereof it was agreed that payment of the claim amount may be paid to the Deceased partly in cash and partly in kind and that he (the appellant) did in fact make payment in kind to the Deceased in the total amount of R 632 000,00 (Six Hundred and Thirty-Two Thousand Rand) by way of delivering livestock to the Deceased (herein after referred to as "*the Partial Payment Defence*").

13. During argument in the Rescission Application, a point *in limine* was raised on behalf of the appellant to the effect that the summons had become stale at the time that the application for default judgment was made and that, in terms of the practice directives of this Division, the respondent essentially had to serve a notice of set down on the appellant. I will henceforth refer to the above argument simply as "*the Stale Summons Argument*".

14. It was argued that, if the notice of set down was in fact served on the appellant, the appellant would most likely have entered an appearance to defend the action.

15. After hearing argument from counsel for both parties, the court *a quo* dismissed the Rescission Application and in summary held as follows:

15.1 That the Stale Summons Argument did not hold any water;

15.2 That the appellant failed to give a reasonable and satisfactory explanation for his default in defending the action; and

15.3 That none of the defences raised by the appellant, constituted a *bona fide* defence to the claim by the respondent.

16. The Rescission Application was consequently dismissed with costs.

THE APPLICATION FOR LEAVE TO APPEAL:

17. In his application for leave to appeal, the appellant essentially averred that the court *a quo* erred and/or misdirected itself in the following respects:

    17.1 By failing to find that the default judgment was erroneously sought and granted in the absence of the appellant by virtue of the fact that the summons had become stale and by virtue of the failure by the respondent to serve a notice of set down on the appellant in accordance with the rule of practice in the Northern Cape Division;

    17.2 By failing to find that the appellant's defence of partial payment of the amount claimed by the respondent constituted a *bona fide* defence to the claim; and

    17.3 By failing to find that the appellant had provided a reasonable and satisfactory explanation for his default.

18. Argument during the application for leave to appeal was therefore confined only to the Stale Summons Argument, the Partial Payment Defence and to the question as to whether the appellant had provided a reasonable and satisfactory explanation for his default in defending the action.[3]

19. In her judgment on the application for leave to appeal, Tyuthuza AJ found that the Stale Summons Argument had no merit and that she was still not

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3 The reason why the application for leave to appeal proceeded only on these three grounds does not appear from the judgment and is unknown to us. It however has no bearing on the appeal itself.

persuaded that the appellant had given a reasonable and satisfactory explanation for his default in defending the action.

20. However, on the issue of the Partial Payment Defence, it was held as follows:

"*Despite not being satisfied that the applicant has proffered a reasonable and acceptable explanation for the default, having considered the application as a whole and the applicant's defence, I am of the considered view that the applicant's case may constitute a defence insofar as the applicant disputes the amount owed to the deceased. It is sufficient that in his evidence he shows a prima facie case which raised triable issues.*"

21. The following order was consequently made:

"*1. Leave to appeal is granted to the full court of this Division against the judgment and order of 4 August 2023.*

2. Costs of the application for leave to appeal are costs in the appeal."

THE ISSUES FOR DETERMINATION ON APPEAL:

22. The appellant, based on the alleged open-endedness of the above order made by Tyuthuza AJ in the application for leave to appeal, deemed it prudent to approach this court on appeal on, what appear to be, exactly the same three grounds that served before the learned Tyuthuza AJ in the application for leave to appeal namely that:

22.1 Default judgment against the appellant was erroneously granted in the absence of the appellant by virtue of the non-compliance with the rules of practice in this division;

22.2 The appellant has in fact provided a reasonable and acceptable explanation for his default in entering an appearance to defend the action by the respondent; and

22.3 The appellant has in fact set forth a *bona fide* defence to the claim of the respondent.

23. Mr. Olivier who appeared for the respondent, took umbrage with the above and argued that it was clear from the judgment in the application for leave to appeal that the court deemed the Stale Summons Argument and the appellant's explanation for his default to have no merit and that leave to appeal was granted on only the question as to whether the appellant did in fact set forth a *bona fide* defence to the claim by the respondent.

24. Mr. Olivier relied primarily on the decision in *Harlech-Jones Treasure Architects CC and Others v University of Fort Hare*[4] where Kroon J *inter alia* held that a full court of a provincial division is not empowered to entertain grounds of appeal of which leave to appeal was refused[5] and the learned Judge specifically held as follows:

"*... where leave to appeal is granted on specified grounds, it means no more and no less than that those are the only grounds that can be invoked on appeal ... but that no other grounds may be raised; leave to appeal on any further grounds must be taken to have been impliedly refused.*"[6] (My omissions).

25. Mr. Olivier, with reference to *Minister of Safety and Security and Others v Mohamed and Another*[7] further argued that, if the appellant wished to argue all

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4 *Harlech-Jones Treasure Architects CC and Others v University of Fort* Hare 2002 (5) SA 32 (ECD).
5 *Harlech-Jones, supra* at 52A.
6 *Harlech-Jones, supra* at 53I-J.
7 *Minister of Safety and Security and Others v Mohamed and Another* [2012] 1 All SA 35 (SCA), para 17.

of the above-mentioned grounds on appeal again, leave from the Supreme Court of Appeal would have been necessary in order to do so.

26. Mr. Eillert who appeared for the appellant, to his credit, did not argue this issue too vigorously and in fact merely emphasized the fact that the order of Tyuthuza AJ in the application for leave to appeal was not very specific.

27. Although I agree with Mr. Eillert's above contention, I hold the view that if the whole of the judgment in the application for leave to appeal is properly considered, it is clear that leave to appeal was in fact only granted on the question as to whether the Partial Payment Defence raised a *bona fide* defence.

28. Based on the above and specifically based on the authorities cited on behalf of the respondent, argument in the appeal was therefore allowed only on the question whether the Partial Payment Defence constituted a *bona fide* defence in order to stave off summary judgment and whether the court *a quo* erred in not finding as such and this court is therefore tasked with deciding whether the Rescission Application should have in fact have succeeded on this ground alone.

THE PARTIAL PAYMENT DEFENCE:

29. The Partial Payment defence, as set out in the appellant's founding affidavit in the Rescission Application, may be summarized as follows:

    29.1 Subsequent to the conclusion of the Addendum and specifically during or about October 2018, the appellant entered into a verbal agreement with the Deceased to the effect that the repayment of the Claim Amount may be made partly in cash and partly in kind;

29.2 The appellant made payment in kind to the Deceased in the total amount of R 632 000,00 (Six Hundred and Thirty-Two Thousand Rand) by way of delivering livestock to this value to the Deceased on 26 and 29 October 2018;

29.3 The Deceased accepted the delivery of the livestock as part repayment of the claim amount owed to him by the appellant and also accepted that such indebtedness would in fact be reduced by these payments made in kind;

29.4 In light of the fact that the appellant and the Deceased were good friends at the time, the appellant never requested any proof of receipt of payments (whether in cash or in kind) from the Deceased, but that he recorded such payments in writing for his own purposes which confirmation of payments were kept in his safe; and

29.5 In light of the fact that payment in kind was made to the Deceased in an amount equal to R 632 000,00 (Six Hundred and Thirty-Two Thousand Rand), the appellant does not owe the Deceased, and for that matter the respondent, the total of the Claim Amount, but rather an amount of only R 229 555,75 (Two Hundred and Twenty-Nine Thousand, Five Hundred and Fifty-Five Rand, Seventy-Five Cent), which amount the appellant will pay to the respondent as soon as possible.

30. In support of the Partial Payment Defence and more specifically in support of the appellant's averments pertaining to the payments that were made to the Deceased in kind, the appellant relied on copies of what he called his delivery book which copies were attached to the appellant's founding affidavit as annexure "C1" to "C3".

31. It is common cause that these annexures comprise of entries made by the appellant of the purported delivery of livestock to the Deceased for the appellant's own purposes and that these entries/extracts do not contain any form of proof of receipt of the livestock by the Deceased.

32. Counsel for the respective parties presented long arguments on the question whether these annexures bore any evidentiary value and whether it was worth the paper it was written on or not but, for the reasons set out below, these arguments are not relevant for purposes hereof.

33. It now stands to be decided whether the above sets out a *bona fide* defence to the respondent's claim and whether the court *a quo* erred in finding differently.

DISCUSSION:

34. In his notice of appeal, the appellant alleges as follows:

> *"[6] ... Furthermore, it ought to have been found that the Applicant's (sic) defence, particularly that of partial payment, carries reasonable or good prospects of success and that therefore, even though the Appellant's explanation for default might be lacking in some respects, the rescission of the default judgment ought to have been granted.*
>
> *[7] That the honourable Ms Acting Justice Tyuthuza ought to have applied the test set forth in Grant v Plumbers 1949 (2) SA 470 (O) at p 476 in assessing whether the Appellant had shown a bona fide defence, namely that '(I)t is sufficient if he makes out a prima facie defence in the sense of setting out averments which, if established that (sic) the trial, would entitle him to the relief asked for. He need not deal fully with the merits of the case and produce evidence that the probabilities are actually in his favour.'*
>
> *[8] Had the honourable Ms Acting Justice Tyuthuza applied the correct test set forth in Grant v Plumbers, and had the honourable Acting Justice considered the Appellant's*

explanation for his default in the light of the Appellant's defence of partial payment, and all the facts and circumstances of the case as a whole, the honourable Acting Justice would have found that the Appellant had indeed shown good or sufficient cause for rescission of the default judgment."

35. It is prudent to start off by stating that in the present matter, default judgment was granted against the appellant by the registrar of the Northern Cape High Court in terms of, presumably, the provisions of *Rule 31(5)(a)* read with *Rule 31(5)(b)* of the Uniform Rules of Court (herein after referred to as "*the Rules*") which means that the provisions of *Rule 31(5)(d)* would find application.

36. *Rule 31(5)(d)* of the Rules provides that any party who is dissatisfied with default judgment being granted against such party by the registrar, may set the matter down for reconsideration by the court.

37. It seems to be generally accepted that where a defendant in an action sets a default judgment down for reconsideration by the court in terms of the provisions of *Rule 31(5)(d)* of the Rules, the court may set aside such default judgment in terms of the common law[8] or in terms of its inherent jurisdiction.[9]

38. It is however trite that, even in instances where a defendant relies on the common law or on the court's inherent jurisdiction to set aside a default judgment granted by the registrar, such defendant is still required to show good cause for the setting aside of the default judgment.[10]

39. It is common cause that, in order to show the existence of "*good cause*" a defendant needs to comply with the following three requirements:

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8 See *De Wet and Others v Western Bank Ltd* 1979 (2) SA 1031 (A) at 1042F-H. Also see *Chetty v Law Society, Transvaal* 1985 (2) SA 756 (A) at 764I-765B.

9 See for example *Naidoo v Cavendish Transport Co (Pty) Ltd* 1956 (3) SA 244 (D) at 247F-H.

10 See *Chetty*, *supra* as well as *Naidoo*, *supra*.

39.1 He must give a reasonable explanation for his default;

39.2 His application for reconsideration must be made *bona fide* and not with the intention of merely delaying the claim by the plaintiff; and

39.3 He must show that he has a *bona fide* defence to the claim by the plaintiff.[11]

40. In *Pansolutions Holdings Ltd v P&G General Dealers & Repairers CC*[12] it was held as follows:

"When a rescission of a default judgment granted by the registrar is to be reconsidered in terms of rule 31(5)(d), the underlying need for the grant of such a power is equally the absence of the aggrieved party, at the time the judgment was granted. The object is equally to obtain redress against an injustice, or an imbalance created by the judgment."[13]

41. The same court then held that any court tasked with deciding whether or not to rescind default judgment granted by the registrar, has the power to substitute its discretion for that of the registrar and stated as follows:

"I am fortified in this view by the self-evident fact that at the stage when the court is asked to reconsider a default judgment granted by the registrar, it will have before it the contentions of the aggrieved party, which in the nature of things, the registrar would have been ignorant of. The registrar may not have erred in granting judgment, on the information available to him at the time, but in the light of the further information

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11 See *inter alia Grant v Plumbers (Pty) Ltd* 1949 (2) SA 470 (O) at 476, *HDS Construction (Pty) Ltd v Wait* 1979 (2) SA 298 (E) at 300G, *Wahl v Prinswil Beleggings (Edms) Bpk* 1984 (1) SA 457 (TPA) at 461F-G and more recently *Minister of Police v Lulwane* [2023] JOL 59222 (ECM), par 46.

12 *Pansolutions Holdings Ltd v P&G General Dealers & Repairers CC* 2011 (5) SA 608 (KZD).

13 *Pansolutions Holdings Ltd, supra* at 610F-G.

available to the court at the time of reconsideration of the judgment, it may be apparent that the judgment cannot stand."[14]

42. The court *a quo*, after having considered all of the papers filed in the action as well as in the Rescission Application and after having had insight into facts that the registrar would not have been privy to[15], decided to exercise its discretion in favour of the respondent when it held that the Partial Payment Defence cannot succeed.

43. It is apposite at this point to refer to the reasoning of the court *a quo* in making the above finding as set out in the judgment in the Rescission Application. The court *a quo* held as follows:

"*55. I find it difficult to reconcile that partial or any payment was made by the applicant as alleged, for one surely this aspect should have been disclosed as far back as October 2021 when the applicant and the respondent's attorneys started having discussion, instead the applicant waited until the rescission application to bring this aspect to the attention of the respondent, whilst he had been in possession of the extracts from his delivery book wherein he alleges to have recorded each payment.*

56. Furthermore, annexures C1 to C3 do not assist the applicant's case, these are by no means evidence that payment was accepted or received by the deceased.

57. What makes it harder to believe is the fact that in his founding affidavit the applicant alleges that him and the deceased were good friends and as a result, he never requested any proof of receipt of payments made to the deceased, whilst in his replying affidavit, the applicant avers that the termination/unbundling of the business was done as a result of the fact that the deceased had become the subject of an internal fraud investigation at SOIC, and the applicant no longer wanted to be associated with the deceased and only wanted to be doing business with honourable people.

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14 *Pansolutions Holdings Ltd, supra* at 610H-J.

15 Reference is made to the facts contained in the appellant's founding and replying papers.

58. Despite the applicant's version regarding why the business was terminated, the applicant allegedly entered into an oral agreement with the deceased in October 2018, and allegedly made certain payments to the deceased but failed to request any proof of receipt of payments. In find this highly unlikely in light of the fact that the applicant himself stated that he no longer wanted to be associated with the deceased and did not see/view the deceased as an honourable person, surely then he would have requested proof of payment when dealing with such a person.

59. I find the applicant's version in regard to the partial payment untenable and farfetched. I am of the view that if the applicant made partial payment as alleged, the applicant would have disclosed same to the respondent's attorneys during their first discussions in October 2020 and not have waited until the filing of this application to disclose same.

60. On this basis, I find that the applicant's defence cannot succeed as I am not persuaded that this is a bona fide defence to the claim."

44. Mr. Eillert primarily relied on *Grant v Plumbers (Pty) Ltd*[16] where the court, with reference to *Brown v Chapman*[17] held that, in as far as a *bona fide* defence is concerned, it would suffice if a defendant "*... makes out a prima facie defence in the sense of setting out averments which, if established at the trial, would entitle him to the relief asked for. He need not deal fully with the merits of the case and produce evidence that the probabilities are actually in his favour.*"[18]

45. Mr. Eillert argued that the court *a quo* erred in weighing up the merits of the matter and also erred in making findings on credibility and that the court *a quo*, in doing so, applied too strict a test in deciding whether good cause was shown

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16 *Grant v* Plumbers, 1949 (2) SA 470 (O).
17 *Brown v* Chapman, 1938 TPD 320.
18 *Grant v Plumbers*, *supra* at 477. Also see *Van Aswegen v Kruger* 1974 (3) SA 204 (O) at 206E-F, *Federated Timbers Ltd v Bosman NO and Others* 1990 (3) SA 149 (W) at 155G-156A; 158B and *Lulwane*, *supra*.

by the appellant and that this court should find that the court *a quo* erred in applying such a strict test.

46. Mr. Olivier on the other hand argued that the discretion that was exercised by the court *a quo* was a discretion in the true sense and that this court may only interfere with this discretion under certain circumstances. I agree with these contentions made by Mr. Olivier.[19]

47. In *Mathale v Linda and Another*[20], a matter that we were referred to by Mr. Olivier, the Constitutional Court held that the circumstances in which an Appellate Court may interfere with a discretion exercised by a lower court include instances where such lower court has "... *exercised its discretion in a non-judicial manner; applied the wrong principles of law; misdirected itself on the facts; or reached a decision that could not have reasonably been reached by a court that has properly appraised itself with the relevant facts and legal principles.*"[21]

48. Mr. Olivier further argued that the above principles do not find application in the present matter and that the appellant did not manage to convince this court that the court *a quo* reached a decision that could not reasonably have been reached by a court that has properly appraised itself of the relevant facts and legal principles. In light of the trite and current legal position, I do not agree with this submission made by Mr. Olivier.

49. I hold the view that if the test as enunciated in the matter of *Grant v Plumbers*, as confirmed and applied in various matters since, is to be applied to the present matter, it is evident that the court *a quo*, in coming to the eventual decision to dismiss the Rescission Application, did in fact consider the merits of the Partial Payment Defence and also made findings as to the credibility of the

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19 See *Satin Rock (Pty) Ltd and Another v Teichman* [2024] ZAGPJHC 541 (5 June 2024), par 4.

20 *Mathale v Linda and Another*, [2015] ZACC 38 (2 December 2015); also reported at 2016 (2) BCLR 226 (CC).

21 *Mathale*, *supra*, par 40. Also see *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others* [1999] ZACC 17 (2 December 1999), par 11.

said Partial Payment Defence and whether the probabilities are or would be in favour of the appellant.

50. In view of the above I therefore have to agree with Mr. Eillert in this regard namely that the court a quo did in fact apply too strict a test in the matter and that the court *a quo* did not appraise itself with the applicable legal principles.

51. I hold the view that the Partial Payment Defence, if established at trial, would constitute a good defence.

52. Having said all of the above, I deem it necessary to mention that when considering matters such as the present and in view of the fact that court rolls nowadays are extremely clogged and that available resources are being stretched extremely thin, it might be prudent for courts in future to reconsider adopting an attitude as set out in *Maia v Total Namibia (Pty) Ltd*[22] where the court refused to rescind default judgment on part of a claim by virtue thereof that the defence that was put up was needlessly bald, vague and sketchy[23], thereby effectively applying the test as laid down in *Breitenbach v Fiat SA (Edms) Bpk.*[24]

COSTS:

53. Mr. Eillert implored us to order the respondent to pay the costs of the appeal, the said costs to include the costs occasioned by the application for rescission as well as the application for leave to appeal.

54. Although I could find no reason why the costs of the appeal should not follow the result in as far as the appeal proceedings are concerned, I similarly find no

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22 *Maia v Total Namibia (Pty)* Ltd, 1991 (2) SA 188 (Nm).

23 *Maia, supra* at 190D.

24 *Breitenbach v Fiat SA (Edms)* Bpk, 1976 (2) SA 226 (T) at 228E-F. Also see *SOS-Kinderdorf International v Effie Lentin Architects* 1991 (3) SA 574 (Nm) at 576A-579C.

reason why the respondent should be mulct with the costs of the application for rescission as well as the costs of the application for leave to appeal simply because he, in the circumstances, chose to oppose both.

55. I could also not find any reason, nor were we referred to any reason why costs should not be awarded on Scale "B" as referred to in *Rule 69(7)* read with *Rule 67A(3)* of the Rules.

ORDER:

56. In view of all of the above, the following order is made:

1. The appeal succeeds with costs which costs include only the costs of the appeal and exclude the costs of the application for rescission and the application for leave to appeal;

2. The default judgment granted under case number 2115/2021 on 10 May 2022 is rescinded and set aside and is substituted with the following order:

2.1 That leave is granted to the appellant (the defendant in the action) to defend the action instituted by the respondent (as plaintiff in the action) under the above case number;

2.2 That the appellant is to deliver his plea, with or without counterclaim, within 20 (twenty) court days from date of this order;

2.3 That, in as far as the application for rescission as well as the application for leave to appeal are concerned, each party is to pay his/her own costs; and

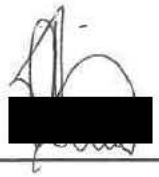
2.4 ***That all of the above costs (the costs in the appeal as well as the costs in the applications for rescission and leave to appeal) are to be paid on a scale as between party and party and in terms of scale "B" as referred to in Rule 69(7) read with Rule 67A(3) of the Uniform Rules of Court.***

A.D. OLIVIER
Acting Judge

I concur.

A.P.S. NXUMALO
Judge

I concur.



A. STANTON
Judge

For Appellant	:	Adv. A. Eillert o.i.o Louw & Da Silva Attorneys Inc. **KATHU** c/o Duncan & Rothman Inc. **KIMBERLEY**
For Respondent	:	Adv. J.L. Olivier o.i.o Oosthuizen, Sweetnam, Reitz & Fourie **KATHU** c/o Elliott Maris Attorneys **KIMBERLEY**