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**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Case no: 4582/2024

Reportable

In the matter between:

NEDBANK LIMITED

Plaintiff

Registration Number: 1951/000009/06

and

SIPHIWE MFUNDO CONCO

Defendant

(Identity Number: 9[...])

Case no: 8854/2024

In the matter between:

NEDBANK LIMITED

Plaintiff

Registration Number: 1951/000009/06

and

PETE VUSI MHLANGA

(Identity Number: 7[...])

Defendant

Case no: 17151/2024

In the matter between:

NEDBANK LIMITED

Registration Number: 1951/000009/06

Plaintiff

and

NANDE NODADA

(Identity Number: 0[...])

Defendant

Case no: 2025/02753

In the matter between:

NEDBANK LIMITED

Registration Number: 1951/000009/06

Plaintiff

and

ZANDILE SHEREE YEKWA

(Identity Number: 9[...])

Defendant

Coram: MANTAME J

Heard: 05 September 2025 and 17 October 2025

Delivered: 06 February 2026

ORDER

The default judgment in these four matters is refused with no order as to costs.

JUDGMENT

Mantame J

Introduction

[1] The first three matters, *Nedbank Limited v Sipiwe Mfundo Conco*, Case No. 4582/2024 (*Conco*), *Nedbank Limited v Pete Vusi Mhlanga*, Case No. 8854/2024 (*Mhlanga*) and *Nedbank Limited v Nande Nodada*, (*Nodada*) Case No. 17151/2024 served before me in the motion court on 5 September 2025, and the latter matter served before me in the motion Court on 17 October 2025. These matters were referred to open Court by the Registrar of this Court in terms of Rule 31 (5) (vi) after an application for default judgment was refused.

[2] The Registrar of this Court, in denying the default judgment held a view that the amended Uniform Rules of Court (Amended and substituted by GNR 5560 in G51627, effective from 27 December 2024) does not refer to service by affixing, and that the Registrar cannot read such into the Amended Rule 4 (1) (a) (iv) as having complied with “*by delivering*” a copy thereof or “*leaving*” a copy at the designated *domicilium*.

[3] After consideration of the service of process as raised by the Registrar in these matters, the Court requested written submissions on specific headings that would be dealt with below in this judgment.

Background facts

Nedbank Limited v Sphiwe Mfundo Conco, Case No.4582/2024

[4] On 11 January 2024, the plaintiff submitted a Letter of Demand pursuant to Section 129(1) of the National Credit Act 34 of 2005 against the defendant, Sphiwe Mfundo Conco, following the defendant's default on his instalment sale agreement. Conco purchased a 2012 Volkswagen Tiguan 1.4 TSI M/MOT TREN – FUN. At date of demand the outstanding balance was R75 111.81.

[5] On 17 January 2024, a track and trace report reflects that a letter of demand was sent by registered mail to Sphiwe Mfundo Conco, at 2[...] I[...] V[...] B[...] Estate, Blue Downs. On 22 January 2024, Mr Paul Collins representing the plaintiff's attorneys dispatched an email containing the same letter to the defendant.

[6] On 23 January 2024, the Sheriff attempted service of the letter of demand or Notice in terms of Section 129 on the defendant and found the premises locked. On 31 January 2024, the Sheriff returned to serve the notice in terms of Section 129 at the chosen *domicilium citandi et executandi* at 2[...] I[...] V[...], B[...] Estate, Blue Downs by

affixing a copy thereof to the outer or principal door in terms of Rule 4 (1) (a) (iv) as stated in the return of service.

[7] On 6 March 2024, the plaintiff issued summons against the defendant for the payment of R75 111.81, together with interest and costs. In its particulars of claim, the plaintiff alleged that the defendant's most recent traced address is Unit 3[...] C[...] Complex, G[...] Road Table View.

[8] On 9 September 2024, the Sheriff attempted service of the process and found the premises locked and had no access, as stated in the return of service.

[9] Further on the return of service, the Sheriff served a Mediation Notice, Summons, Particulars of Claim and Annexures on 10 September 2024 to the Occupier, Debra, at the chosen *domicilium citandi et executandi*, at Unit 3[...] C[...] Complex, G[...] Road, Tableview. The return of service indicates that the process was served in terms of Rule 4 (1) (a) (iv). The defendant was reported to be unknown to the Occupier.

[10] On 09 January 2025, 11 January 2025 and 17 January 2025, attempts were made to serve Summons, Particulars of Claim, and Annexures at 24 Ivy Village, Belladonna Estate. However, the premises were locked. On 22 January 2025, the Sheriff served the Mediation Notice, Summons, Particulars of Claim and Annexures at Blue Downs by leaving a copy at the chosen *domicilium citandi executandi* (2[...] I[...] V[...], B[...] Estate, Blue Downs) in terms of Rule 4 (1) (a) (iv).

[11] Subsequent thereto, the plaintiff proceeded with an application for default judgment with the Registrar of this Court. On 3 March 2025, the Registrar issued an order to the plaintiff's attorney Mr. Darren Wade Frittelli in terms of Rule 31 (5) (b) (iii) to (vi) wherein the Registrar queried the service of the summons and stated:

'Service cannot be affected (sic) by affixing as per amended rule 4 of the Uniform Rules to which I am bound to. The matter is referred to open court for substituted service.'

[12] On 09 April 2024 and 18 April 2024, the Sheriff attempted service of the process at the *domicilium* address and found the premises locked. Again, on 24 April 2024, the Sheriff served, the Mediation Notice, Summons, Particulars of Claim and Annexures on the defendant at 2[...] I[...] V[...], B[...] D[...] Estate, Blue Downs, the premises were found locked and it was impossible to ascertain whether the debtor was still residing at the given address.

[13] An application for default judgment was therefore filed to this Court on 3 September 2025 and enrolled for hearing on 5 September 2025.

[14] *Nedbank Limited v Pete Vusi Mhlanga* – The plaintiff dispatched a Letter of demand or a Notice in terms of Section 129 of the NCA on 7 February 2024. On 15 February 2024 the track and trace report reflected that the said notice was sent via registered mail to the defendant, Pete Vusi Mhlanga, at 2[...] V[...] R[...] Cnr M[...] Road and F[...] Roads, Sea Point 8005, and to Pete Vusi Mhlanga, A15 -09 Hill of Good Hope 2[...] – 2[...] L[...] Street, Carlswald North, Midrand Johannesburg – Noord 2188.

[15] On 16 February 2024, Mr. Paul Collins of the plaintiff's attorney transmitted the Notice in terms of Section 129 by email to petemhlanga@icloud.com.

[16] The defendant entered into an instalment sale agreement for the purchase of a 2016 BMW X1 S Drive 1.8 L A/T (F48). As of 31 January 2024 the arrears in his monthly instalment were R19 578.01, hence the demand.

[17] The plaintiff issued summons on 30 April 2024, and prayed for the confirmation of termination of the agreement, return of motor vehicle, forfeiture of all amounts paid by the defendant in terms of the agreement, payment of the difference between the outstanding amount at date of termination of the agreement and the amount the vehicle is valued at resale, interest, expense incurred for removal, valuation, storage and sale of vehicle as well as costs.

[18] On 25 September 2024, the Sheriff caused the Mediation Notice, Summons and Particulars of Claim to be served in terms of Rule 4 (1) (a) (iv) to the defendant by affixing a copy thereof to the main door at 2[...] V[...] R[...], Cnr M[...] Road and F[...] Roads, Sea Point, Cape Town, being the chosen *domicilium citandi executandi* of the defendant. As stated in the return of service, a Mrs. Forgabo (tenant) refused to accept the document and the defendant was not answering the phone.

[19] Attempts were made by the Sheriff to serve the process on 28 and 29 May 2024, but the premises were locked. On 31 May 2024, the Sheriff attempted service once

more. However, the premises were always found locked, the intercom service was not working and there was no security to gain access to the premises. The process was therefore returned.

[20] Again, the Sheriff attempted service of process on 2 February 2025 and found the premises locked. On 13 February 2025, the Sheriff served the Mediation Notice, Summons and the Particulars of Claim in terms of Rule 4 (1) (a) (iv) at Unit 2[...] V[...] R[...], 2[...] M[...] Road and F[...] Roads, Sea Point by affixing a copy to the post box as the defendant was absent. The defendant left the given address as per a male caretaker (who withheld his identity).

[21] On 19 February 2025, the plaintiff proceeded with the request for default judgment. On 22 April 2025, the Registrar of this Court issued an order in terms of Rule 31 (5) (b) (iii) –(vi) transferring the matter for hearing in open court as follows:

‘Service cannot be affected by affixing as per amended Rule 4 of the Uniform Rules. Kindly refer to your attachment of the affidavit marked “DF2” which reads that the Sheriff must leave a copy with a person at the chosen domicilium. The return of service cannot reflect affix. Only a judge can grant an order where summons was affixed as it is open for interpretation (sic)’

[22] Due to the defendant's failure to rectify the arrears, it escalated to R82 398.40 by 23 August 2025. Subsequent thereto, the plaintiff proceeded with an application for default judgment in this Court. The defendant was advised by Ms Michaela Martinus of

the plaintiff's attorney by email that the default judgment was set down for hearing on 5 September 2025.

[23] *Nedbank Limited v Nande Nodada* – The plaintiff issued a Letter of Demand and/or Notice in terms of Section 129 of the NCA on 22 May 2024 to make payment of full outstanding balance of R93 427.13. The defendant entered into an instalment sale agreement with the plaintiff for the purchase of a 2009 Kia Rio 1.6 High 4 DR and remained indebted to the plaintiff. The track and trace report reflects that on 28 May 2024, a registered letter was sent to Nande Nodada at 5[...] I[...] Street, Mfuleni, Eerste River 7100 and to Nande Nodada 3[...] I[...] Road, Mfuleni Ext 6 Eerste River 7100. An additional copy was transmitted by email to z[...] by Mr. Paul Collins of the plaintiff's attorneys on 30 May 2024.

[24] On 2 August 2024, the plaintiff issued summons against the defendant. The sheriff attempted to serve the process on the defendant on 17 and 20 January 2025 and found the premises to be locked. On 24 January 2025 the sheriff served the Mediation Notice, Summons, Particulars of Claim and Annexures thereto by affixing a copy to the outer or principal door of 3[...] I[...] Road, Mfuleni Ext 6, Eerste River and 5[...] I[...] Street, Mfuleni, Eerste River.

[25] The plaintiff's attorney proceeded with an application for default judgment. On 26 February 2025, the Registrar of this Court sent a query to the plaintiff's attorney as follows:

‘Non – effective service (affixing) on Defendant due to amendment of Uniform Rules, therefore you may apply for substituted service (sic).’

[26] Upon receipt of this query on 17 March 2025, the plaintiff’s attorney addressed a letter to the Registrar requesting a reconsideration of the decision and pointed out that summons was served on the *domicilium* address and a copy was delivered to a person apparently not less than 16 years. Mention was also made to the 12 April 2024, amendment that was later on substituted by 27 December 2024 amendment of Rule 4 (1) (a) (iv).

[27] On 4 April 2024, the Registrar issued a second order in terms of Rule 31 (5) (b) (iii) – (vi) which referred the matter for hearing in open court and stated:

“Due to service by affixing on domicilium of natural person in relation to amendment of Rule 4 (a) (i) (iv) (sic).”

[28] Upon receipt of this order, the plaintiff’s attorneys on 18 August 2025, proceeded with an application for default judgment in this Court that was set down for hearing on 5 September 2025. An application for default judgment and a Notice of Set down was transmitted by Ms. Micheala Marthinus of plaintiff’s attorneys on 20 August 2025 to z[...].

[29] *Nedbank Limited v Zandile Sheree Yekwa* – The plaintiff issued a Letter of Demand and/or Notice of Withdrawal and Default in terms of Section 86 (10) and

Section 88 (3) of the NCA. It dealt with the withdrawal of the defendant's application for debt review, termination of the debt review process and the demand for payment of the arrear amount and full outstanding balance of R62 713.27. According to the track and trace report, the demand was sent by registered mail on 12 November 2024 to Zandile Sheree Yekwa at 1[...] S[...] G..., Summer Greens, Milnerton 7441, and to Zandile Sheree Yekwa 3[...] F[...] Street, Khayelitsha 7784. On 13 November 2024, Mr. Paul Collins transmitted this letter of demand by email. On 15 November 2024 and 19 November 2024 the sheriff attempted to serve a letter of demand on the defendant and found the premises locked. On 21 November 2024, the sheriff served a letter of demand at 1[...] S[...] Greens, Summer Greens, upon Anele (Occupant). The defendant was unknown at the given address which is the defendant's chosen *domicilium citandi et executandi*.

According to the return of service, the process was said to be served in terms of "Rule 9 (3) (D)".

[30] The defendant concluded an instalment sale agreement for the purchase of 2008 Dodge Nitro 3.7 R/TAT V6. The outstanding balance as of 7 November 2024 was R62 713.27.

[31] On 24 February 2025, the plaintiff issued summons against the defendant. The sheriff served the summons and a notice in terms of Rule 41 (A) on 10 April 2025 upon Zandile Sheree Yekwa at the chosen *domicilium citandi et executandi* being 1[...] S[...] G..., Summer Greens, Milnerton, Cape Town by affixing a copy of the summons and notice in terms of Rule 41 (A) to the gate.

[32] The plaintiff sought confirmation of termination, of the agreement, return of the vehicle, forfeiture of all payments made, compensation for the difference between R62,713 less any rebates, plus applicable charges, and the greater of the vehicle's value or resale value, along with interest, expenses related to removal, valuation, storage, sale of the vehicle, and legal costs.

[33] The plaintiff's attorney proceeded to request a default judgment through the Registrar of this Court. On 9 May 2025, the Registrar issued an order in terms of Rule 31 (5) (ii) – (vi) and refused to grant the default judgment and stated as follows:

'1. In contrast with the terms of the new amendment to Rule 4 of the Uniform Rules of Court, I observed from the sheriff's return of service that the defendant's service was impacted by fixing a true copy of the summons to the principal door of the chosen *domicilium citandi executandi*; and

1. Therefore, it is necessary to effect proper service to the defendant. (sic)'

[34] On 8 October 2025, the plaintiff's attorneys proceeded with an application for default judgment and was set down for hearing on 17 October 2025.

Issues

[35] These applications served before me on an unopposed basis when counsel for the plaintiff, Adv. Garces, submitted that the initial default judgments for the outstanding balances and return of the motor vehicle, were not granted by the Registrar of this Court

due to some Registrar's who have taken a decision that the amended Uniform Rules of Court (Amendment and substituted by GNR 5560 in G.51627 with effect from 27 December 2024) does not make reference to service by affixing, and that they cannot read such into the Rules as having complied with “ by delivering” a copy thereof or “ leaving” a copy at the aforesaid *domicilium*. These matters were therefore removed from the roll and the Court requested Adv Garces to submit heads of argument and address the following: whether: -

35.1 service by affixing is proper service in terms of Rule 4 (as amended)

35.2 service by affixing a copy of the summons comply with Rule 4 (1) (a) (iv) of the Uniform Rules of Court

35.3 is the agreement not terminated on surrendering of the vehicle

35.4 is it permissible for the applicant in its application for default judgment to revert back to the terms of the agreement once the parties are *ad idem* that the agreement has been terminated. Or put differently once an agreement is cancelled/ terminated is it open to the applicant to still hold the defendant to the terms of the cancelled or terminated agreement without that specifically catered for in the agreement – e.g. holding that the defendant chose the last known address as his *domicilium citandi et executandi*.

[36] To the extent that plaintiff's required certainty in all these 4 matters, they were consolidated for purposes of a uniform approach to the interpretation of the amended Rules on service.

Discussion

[37] The plaintiffs required clarity not only in these matters but other matters where service of process has been affected by affixing a copy. For instance, in the *Conco* matter, the premises were found to be locked. Service by the sheriff was first effected on one Debra, the Occupier of the premises who did not know the defendant. Another attempt was made to serve the summons and service was effected by leaving a copy of the summons at the chosen *domicilium citandi* of the defendants. In the matters of *Mhlanga* and *Nodada*, the sheriff having found the premises locked, service was effected by affixing a copy of the summons at the main door (allegedly in compliance with Rule 4 (1) (a) (iv)). When motivating for a request for default judgment with the Registrar in the *Nodada* matter, the plaintiff's attorney stated that the summons was served at the domicilium address and a copy was delivered to a person apparently not less than 16 years. That was incorrect as this allegation was not supported by a return of service. In the *Yekwa* matter, the sheriff found the premises locked and the defendant was unknown at the given address. The sheriff proceeded to serve the summons by affixing a copy to the gate at the *domicilium* address. This was done after a diligent search was conducted and the sheriff could not get hold of the defendants.

[38] In their submissions, the applicant's Counsel stated that the amended rule allows for service by leaving a copy at the *domicilium* and that service by affixing at the *domicilium* address complies with the rule for effective service on the defendant in terms of the substituted amended Rule 4 (a) (i) (iv) of the Uniform Rules of Court. The plaintiff

went on to state that the defendant's letter of demand, application for default judgment, and notice of set down were served in this manner. These are the most recent known addresses of the defendants. Further, some of the process was sent by registered mail and by electronic mail at the address provided by the defendant and the defendants should be regarded as properly served.

[39] In terms of section 23 of the Superior Courts Act 10 of 2013, a Registrar of a Court is entitled to grant default judgment, and such judgment shall be deemed to be an order of court. Rule 31 (5) (b) provides for a default judgment to be issued by a Registrar when defendant has failed to defend the action after proper service of the summons and particulars of claim instituting action. The plaintiff's Counsel correctly pointed out that Rule 31 (5) was promulgated in order to relieve the workload on the judges, by delegating to the Registrar the right and the duty to grant or refuse default judgment. Should the Registrar have any doubt about granting such default judgment, the matter must be referred to the court for hearing in terms of Rule 31 (5) (b) (vi).

[40] It is common cause that the Registrar had some misgivings in the manner in which the service was effected in these matters, hence the application for default judgment was referred to open court for hearing.

Service within the meaning of Rule 4 (1) (a) (iv)

[41] The amended and substituted rule by GNR 5560 in G.51627 with effect from 27 December 2024 states that:

'Rule 4 of the Rules is hereby amended by the substitution for subparagraph (iv) of paragraph (a) of subrule (1) of the following paragraph:

“(iv) if the person [so] to be served has chosen a *domicilium citandi*, by delivering a copy thereof to a person apparently not less than sixteen years of age at the *domicilium* so chosen: Provided that if no person is present at the *domicilium*, the sheriff may leave a copy at the aforesaid *domicilium*.’

[42] Prior to the amendment of the rule on 27 December 2024, Rule 4 (1) (a) (iv) service was permitted to a chosen *domicilium citandi*, by delivering a copy thereof to a person apparently not less than sixteen years of age at the chosen *domicilium*. Following the latter amendment this rule was substituted by adding a *proviso* that: “Provided that if no person is present at the *domicilium*, the sheriff may leave a copy at the aforesaid *domicilium*”. On proper interpretation of this rule, the primary requirement would be to deliver a copy to a person not less than sixteen years of age. If that is not possible, the second requirement which serves as a fallback position suggest that the sheriff may leave a copy at the *domicilium*. The use of the word ‘may’ denotes a possibility or probability. This textual change reflects the drafter of the rule’s evident intention to reduce uncertainty and to place emphasis on personal delivery as the preferred way of effecting service.

[43] For years now, Courts have been required to clarify as to what constitute proper service. It is an established principle that if a defendant has chosen a *domicilium citandi*, service of process at such place will be good, even though it be a vacant piece

of ground, or the defendant is known to be resident abroad, or has abandoned the property, or cannot be found.¹

[44] However, this principle has evolved and has been developed and qualified over the years. The Court in *Sekoati v Standard Bank*² postulated that it is no longer acceptable that a document can be served on a *domicilium* by leaving it on a piece of open land or by attaching it to a door or outer gate. For instance, in *Sandton Square Finance (Pty) Ltd and Others v Biagi Bertola and Vasco and Another*³, it was held that the mere fact that a domiciliary address has been chosen does not preclude effective service through one of the other methods prescribed under the Uniform Rules of Court. This decision recognizes that each case has to be judged on its own merits as not all *domiciliums* are the same. If proper service is not possible at the *domicilium*, another prescribed manner of service should be devised.

[45] For instance, in a recent decision in this Court, it was held that leaving the summons with a security guard at the entrance of the second defendant's residential complex, due to the difficulty in accessing the complex in the absence of the occupant complies with Rule 4 (1) (a) (iv).⁴ The sheriff's return of service alleged that the second defendant authorized telephonically that the documents be left with security and the defendant's evidence was insufficient to rebut the presumption of correctness.⁵

¹ *Amcoal Collieries Ltd v Truter* 1990 (1) SA 1 (A) at 5H - D

² *Sekoati v Standard Bank of South Africa Ltd and Others* (36232/2013) [2025] ZAGPPHC 198 (24 February 2025) para 40.

³ 1997 (1) SA 258 (W)

⁴ *Webram Four (Pty) Ltd v Transformation Capital Group (Pty) Ltd and Others* (7742/2021) [2025] ZAWCHC 390 (27 August 2025) para 18-30.

⁵ *Ibid.*

Furthermore, it was the second defendant's chosen *domicilium citandi et executandi* in terms of the deed of suretyship, thereby bringing it within the ambit of rule 4(1)(a)(iv).⁶ Service that is not rendered personally to the party is not automatically invalid because the party bears the risk of non-receipt where a *domicilium* has been chosen.⁷

[46] In *Hamze*⁸, it was held that, the Court recognised that upon a survey of the cases, a tension appears between two competing objectives. On the one hand, there is the understanding that the notion of service denotes a document being "legally delivered". In other words, as long as service has been effected in compliance with one of the rules 4 (1) (a) (i) to (ix), that should suffice. The drafters of the Uniform Rules considered that each of those would constitute effective service. On the other hand, over and above compliance with one of the above subparagraphs of rule 4 (1) (a), there is an overriding concern that service should be effective. In other words, the defendant or respondent should obtain actual service.

[47] The rule stipulates a probability of leaving a copy, and in the absence of clear authority regarding this subrule, the legal context of leaving a copy of the process requires that the sheriff formally provide a duplicate to someone of required age, ensuring that the defendant receives such process or the exact copy of the original process. Leaving a copy of the process can only be made when a sheriff notes that it was received by a certain individual or it was left at a place where the defendant would

⁶ Ibid.

⁷ *Absa Bank v Mare* (A56/2019) [2020] ZAGPPHC 372 at para 31.

⁸ *Hamze Trading (Pty) Ltd v Alf's Tippers CC* (20955/2022) [2024] ZAGPJHC 451; [2024] 3 All SA 248 (GJ) (6 May 2024) at para 48

be informed about the process. That means, the sheriff may hand over the process to another person, to control, act and or give to the specified defendant. Service at the *domicilium* is effective including when practical barriers necessitate service on an intermediary, the law does not require proof that the documents reached the party's hands.⁹

In essence, if the process is left with a certain individual, it makes it available and/or accessible to the defendant and creates a traceable record of the process.

[48] In *Mare*¹⁰, the Full Court took cognizance of the fact that the manner in which a process may be delivered or left at a *domicilium* in terms of the old Rule 4 (1) (a) (iv) is not prescribed and depends on the prevailing circumstances. The duty upon a sheriff is to serve a notice or process in a manner by which in the ordinary course the notice or process would come to the attention and be received by the intended recipient, and to report to the court how the process was served and why it was served in that manner. The delivery requirement at a *domicilium citandi*, as was suggested by Margo J in *Loryan*¹¹:

'...presupposes deliver in any manner by which in the ordinary course the notice would come to the attention of and be received by the lessor. The obvious method would be by handing the notice to a responsible employee, or by pushing it under the front door, or by placing it in the mailbox.'

⁹ Ibid referring to *Investec Property Fund Limited v Viker X (Pty) Limited and Another* (2016/07492) [2016] ZAGPJHC 108.

¹⁰ *Absa Bank Limited v Mare and Others* (A56/2019) [2020] ZAGPPHC 372; 2021 (2) SA 151 (GP) (20 August 2020) para [26]

¹¹ *Loryan*¹¹ (Pty) Ltd v *Solarsh Tea and Coffee (Pty) Ltd* 1984 (3) SA 834 (W) at 849A-B.

[49] Although these decisions precede the substitution of subparagraph (iv), the principle is not far-fetched from what is logically and reasonable expected on proper service. Although the new subparagraph (iv) makes it discretionary on where the sheriff may leave a copy, it then follows that it may not merely be abandoned. Some level of responsibility is required from the sheriff. Proper service envisages that the sheriff officially delivers the process to the defendant in a clearly prescribed manner that ensures that the defendant is formally notified, understands the claim and has a fair chance to respond to the claim before a default judgment is applied for by the plaintiff.

[50] Following such service, it is trite that a return of service is regarded as *prima facie* evidence of its content. Section 43 of the Superior Courts Act 10 of 2013 expressly provides that '[t]he return of the sheriff or a deputy sheriff of what has been done upon any process of a court, shall be *prima facie* evidence of the matter therein stated. The purpose of a summons is to implicate or engage a defendant into a lawsuit, and that such a party is only implicated or involved in the lawsuit once service of the summons had been effected. In other words, and in general terms, the primary purpose of service is firstly to *notify* the person intended to be served of the nature, contents and exigency of the process of court or other document served upon such person and, secondly, to *return to the court* proof of such service in the manner prescribed by law.¹²

[51] This imposes a duty on the sheriff to return a properly articulated report with regard to service, and not misquote the rule. In many circumstances, a cryptic manner in which a sheriff reports in his or her return of service barely assist the Court in making

¹² Ibid at paras [19],[22] & [23]

a determination of whether there was indeed proper service at the chosen *domicilium*. For instance, leaving a copy in the context of this rule will not at all suggest that a process be abandoned, or left in a place where it would be literally blown by the wind, burned by veld fires, or be placed in an obscure place. In the same vein, leaving a copy of the process would not mean leaving it in a place where members of the public would have sight of it or gain access to it. To do so would be tantamount to undermining or infringing on the defendant's constitutionally guaranteed right to privacy.¹³

[52] Most importantly in these matters, the sheriff served the process by affixing a copy at the principal door or gate. The applicant's Counsel contended that even though the amendment of Rule 4 (i) (a) (iv) of the Uniform Rules of Court refers to 'delivery' or 'leaving' a copy, the sheriff's service by affixing a copy at the defendant's *domicilium citandi* is proper service at it states where the process was actually left.

[53] As it is stated above, the amended sub-paragraph (iv) does not make reference to service by 'affixing'. It is only permissible in subparagraph (v). Affixing a copy cannot be read into subrule (iv). In my view, the Registrar when confronted with this manner of service of process in this regard was justified in refusing to grant a default judgment as the rule require that service shall be effected by 'delivering a copy' to a person not less than sixteen years of age, failing which the sheriff "may leave a copy at the aforesaid *domicilium*"

¹³ Section 14 (d) of The Constitution of the Republic of South Africa No. 108 of 1996

[54] Turning to the third and fourth inquiries, the applicant's Counsel addressed the issue of whether default judgment can be granted for damages arising from cancelled motor vehicle credit agreement to the satisfaction of the Court. Most convincingly, if that is what the parties agreed to when the contract was entered into, surely the plaintiff is bound to hold the defendant accountable.

[55] In conclusion, I am not persuaded that the plaintiffs have made a proper case with regards to service. If the sheriff report in the return of service that service was effected in terms of Rule 4 (1) (a) (iv), it must explicitly detail the location, time, method, and rationale for the service being conducted in that way. In circumstances where the defendant left the given address or the premises are locked, nothing precludes the defendant from effecting alternative manner of service as provided for in Rule 4. The purpose of service is to notify and/or inform the defendant about the claim; it is not a tick box exercise towards an application for default judgment.

[56] For these reasons, the default judgment in these four matters is refused with no order as to costs.

B P MANTAME
JUDGE OF THE HIGH COURT

Plaintiff's Attorneys: Kemp and Associates
Counsel: Adv Garces