Annexure A

MINISTRY
JUSTICE AND CONSTITUTIONAL DEVELOPMENT
REPUBLIC OF SOUTH AFRICA

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Mr M Mangaba
Chairperson of SANAPS
P O Box 22
WESTHOVEN
2142

Fax: 086 502 6453

Dear Mr Mangaba

RE: INVITATION AS A KEY NOTE SPEAKER AT 8TH AGM IN TSHWANE

Receipt of your letter regarding the above matter is acknowledged with thanks.

Kindly be advised that the Minister will attend the event.

With kind regards

MS CONFERENCE MONAGENG
ASSISTANT PA
DATE: 03/06/2014

Annexure B

THE LAW SOCIETY OF THE NORTHERN PROVINCES

NEWSFLASH AND MATTERS BEFORE COUNCIL

Issue 4 of 2014 24 June 2014

IMPORTANT NOTICE TO MEMBERS

STANDARD BANK OF SOUTH AFRICA LTD v CASTER TRANSPORT CC

Justice may be thought of in many ways. Ambrose Bierce, an American author and satirist described justice in his "Devil's Dictionary" as: "A commodity which in more or less adulterated condition the State sells to the citizen as a reward for his allegiance, taxes and personal services." Dante Alighieri wrote the so called "Divine Comedy" as long ago as the 14th century. Sir Samuel Griffith translated part of it, as did more recently, one Clive James. It offers us one understanding of what divine justice is supposed to be and what it was at the end of the medieval period. In the first book "The Inferno", Dante gives an account of a visit to the nine circles of Hell where, guided by the poet Virgil, he observes the punishments applied to various classes of sinner.

The divine justice depicted in this book was imaginative and carefully nuanced. All of it involved eternal torment. For example: those who practiced simony, the sin of trafficking for profit in things spiritual, were inserted head first into rock holes while only their feet and calves were protruding. Eternal flame was then applied to the souls of their feet.

This is not a lecture in medieval poetry or even philosophy but a mere analogy to what I deem to be the perception regarding attorneys in our country. Attorneys are blamed for anything and everything. When in doubt: blame the attorney!

Without getting into a debate and or discussion regarding the so many possible examples to substantiate my remark above I attach hereto in compliance to a court order a judgment handed down recently with instruction of the presiding judge, that this judgment must be distributed to all attorneys. One again, I repeat, I do not intent to discuss the merits of the specific judgment since I do agree with a number of the sentiments conveyed in the judgment. Attorneys must at all times uphold rule of law, adhere to constitutional principles, including basic human rights and so on. This is trite and not negotiable. However, I do have a couple of questions, what might be perceived as criticism against the judgment. This list is definitely not all inclusive, but will illustrate my remarks *supra*:

1. How is it possible to blame the attorney where the sheriff of the court is to be blamed?

2. Since when has the attorney's profession jurisdiction over the ethical behaviour of the sheriffs profession?

3. Should this judgment not have been exclusively sent to the Sheriffs Board to consider possible disciplinary sanction against the sheriff's involved?

4. The attorneys profession already struggles to facilitate proper functioning and assistance by sheriff's to do their work and to now also expect the attorneys profession to be their "watch

dog" will not improve the already somewhat difficult relationships. It is not as if the attorney can merely prescribe and the sheriff obeys. It is not as if your documents will not end up at the bottom of the pile the moment the sheriff gets the impression that you as an attorney tries to rule in their sphere.

5. Maybe the correct approach would have been to confront the relevant Minister and/or body which is responsible for the appointment of the sheriffs, because ultimately the issue is whether suitable and ethical officials could actually be appointed.

6. In my personal opinion even the court itself should share the blame, since the formal decision to grant an application or not is exclusively the prerogative of the Presiding Judge.

7. What could be more appropriate than to express our dismay at the court's decision in awaiting a cost order against a person or institution?

I am sure that many members can add to my comments.

Find the Judgment attached

DR. L G CURLEWIS
PRESIDENT OF THE LAW SOCIETY OF THE NORTHERN PROVINCES
20 June 2014

Annexure C

Summary of court case dealing with the registered office of a company – Sibakhulu Construction (Pty) Ltd v Wedgwood Village Golf and Country Estate (Pty) Ltd (16 November 2011)

The Western Cape High Court recently considered the issue of the 'residence' of a company under the new Companies Act (the 'Companies Act, 2008'). The case deals with the winding up request by an applicant and a subsequent application for business rescue by another respondent. The application for business rescue was made in the Port Elizabeth High Court, whilst the application for winding up was made in the Western Cape High Court. The case was then decided by determining the jurisdiction of where the company resides.

The issue then arose whether the winding up needs to be put on hold whilst the business rescue process is continuing. The jurisdiction of the court impacted the decision and the business rescue application.

Under the Companies Act, 1973 an express provisions was made in respect of which court had jurisdiction. Section 12(1) stated:

"*The Court which has jurisdiction under this Act in respect of any company or other body corporate, shall be any provisional or local division of the High Court of South Africa within the area of the jurisdiction whereof the registered office of the company or other body corporation or the main place of business of the company or other body corporate is situate.*"

Section 128(1)(e) of the Companies Act, 2008 defines: ***'court'**, depending on the context, means either:*

(I) *the High Court that has jurisdiction over the matter; or*

(ii) *either—*

(aa) *a designated judge of the High Court that has jurisdiction over the matter, if the Judge President has designated any judges in terms of subsection (3); or*

(bb) *a judge of the High Court that has jurisdiction over the matter, as assigned by the Judge President to hear the particular matter, if the Judge President has not designated any judges in terms of subsection (3);"*

In *Dairy Board v John T Rennie &Co (Pty)Ltd* 1976 (3) SA (W) it was held that a company's registered

office was at the place at which it in law resided. It was considered that a company could reside for jurisdictional purposes at both the registered office and principal place of business. Based on that decision, courts could have concurrent jurisdiction over a company.

Section 23 of the Companies Act, 2008 states:

"(3) Each company or external company must—

(a) continuously maintain at least one office in the Republic; and

(b) register the address of its office, or its principal office if it has more than one office—

(i) initially in the case of—

(aa) a company, by providing the required information on its Notice of Incorporation; or

(bb) an external company, by providing the required information when filing its registration in terms of subsection (1); and

(ii) subsequently, by filing a notice of change of registered office, together with the prescribed fee."

The court found that if the company had more than one office, its 'principal office' must be its registered office in accordance with section 23(3). The term 'principal office' is not defined in the Companies Act, 2008. Looking at the Companies Act, 2008 requirements as to what must be kept at its registered office (sections 24 and 28), the court concluded that the principal office should be the place where "the company's general administration is centred". The judgement acknowledged the fact that under the Companies Act, 1973 there was a possibility of a distinction between a company's registered office and its "main place of business". The judgment also referred to the fact that in practice a company's registered address under the Companies Act, 1973 was *"often an address chosen for convenience rather than an office of the company in itself in the ordinary sense, frequently the registered office of a company was for example that of the company auditors".*

The Companies Act, 2008 requires the registered office and the principal place of business for jurisdictional purposed to be the same. As the transitional provisions do not make reference to the issue of a pre-existing company's registered office the result must therefore be that a pre-existing company is obliged to change its registered office in terms of section 23(3)(b) of the Act if the registered office does not agree with the principal place of business.

The judge considered that a company could only reside at the place of its registered office and therefore

in respect of every company there would only be a single court in South Africa dealing with winding–up and business rescue matters. The judgment concluded that the business rescue proceedings instituted in the Port Elizabeth High Court has not been competently instituted and is not accepted. Based on the above, companies should revisit the decision of having their auditors / company secretaries listed as the registered office. Companies should ensure that the CIPC records reflect the address of the principal office if there is more than one office.

The Companies Act, 2008 does allow for companies to have a different location for their company records than their registered office. Should companies change their registered office in line with this judgment then companies can file a notice of location of company records (CoR22) to state where the company's records are kept. There is no filing fee applicable for this.

The records referred to that should be kept at the registered office or other location included the following:

- copy of its MOI and any amendments or alterations;
- record of directors;
- copies of all reports presented at AGMs;
- annual financial statements;
- accounting records;
- notice and minutes of shareholders meetings, including resolution and supporting documents;
- copies of written communication;
- minutes of meetings and resolutions of directors or directors committees or audit committee;
- securities register;
- records of company secretary and auditor.

the doj&cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

Annexure D

BRANCH:

Private Bag X 81, PRETORIA, 0001 • Momentum Centre, 329 Pretorius Street, PRETORIA / SALU Building, 316 Thabo Sehume Street, PRETORIA

Tel (012) 315 1097/ Fax (012) 315 1410

17 March 2014.

Sub Office File 1/4/1
Circular 030 Of 2014
(Head office file 9/3/4

CIVIL COURT JUDGMENTS/ORDERS: IRREGULAR GRANTING OF SECTION 57 AND 58 CONSENT TO DEFAULT JUDGMENTS AND ISSUING OF EMOLUMENT ATTACHMENT ORDERS (EAO) BY CLERKS OF CIVIL COURTS

1. The recent media reports highlighted the extent to which judgements not complying with the law were granted and garnishee orders (EAO) flowing from these judgments were irregularly issued through our courts by clerks of civil courts. This was confirmed with an assessment conducted at the Ermelo Magistrates Court on 19 February 2014 where it was found that thousands of consent to judgments, in terms of section 58 of the Magistrates Court Act, Act No. 32 of 1944 (MCA), granted by the clerk of the court did not comply with either the MCA or the National Credit Act, Act No. 32 of 2005 (NCA). Criminal investigations regarding these matters are currently pending. This practice calls for immediate action to be taken and steps to address the situation.

2. The purpose of this circular is to emphasize to all Departmental officials the need to strictly follow court process and procedures as prescribed by the relevant legislation when considering requests for judgment in terms of Sections 57 and 58 of the MCA. There are many clerks of civil courts who disregard the provisions of Rule 12(5) of the MCA, which stipulates that all judgments where the claim is founded on a cause of action arising out of or based on an agreement governed by the NCA **shall be referred by the clerks of civil courts to the court for consideration**. Several requests for judgment in terms of Section 57 and 58 are based on micro loans or loans that are governed by the NCA. **Clerks of civil courts are therefore obliged to refer these matters to court for consideration and cannot legally consider the requests for judgments themselves.**

3. Due to competing rules of jurisdiction more than one court may have jurisdiction over one and the same matter. However because the plaintiff is dominis litis s/he is at liberty to choose a forum of his/her convenience. Sections 28 and 29 of the MCA determine the territorial area of jurisdiction applicable to a party and/or cause of action, in respect of specific proceedings. Section 45 MCA allows a party, in certain limited circumstances, to consent to the territorial area of jurisdiction of a specific court.

TO ALL OFFICES IN THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

4. This particular provision is being acutely and severely abused by most micro lenders. Clerks of civil courts are reminded that where a request for judgment in terms of Section 57 and 58 of the MCA is based on a claim founded on any cause of action arising out of or based on an agreement governed by the NCA, **Section 90 (1) and (2) NCA determines which court has territorial or geographical jurisdiction to entertain the matter. Section 45 of the MCA cannot override this provision in the NCA. Section 45 of the MCA can therefore not be used and does not apply where Section 90 (1) and (2) NCA is applicable and all these requests for judgment should be referred to the court for consideration by the clerks of civil courts.**

5. All Provincial Managers, Area Court Managers, Court Managers, Office Managers and Supervisors are required to ensure that urgent steps are taken to prevent the misuse of Section 45 MCA and that the systems are put in place to effectively manage, control and monitor the processing of Section 57 and 58 Consent Judgements of the MCA in line with the relevant Legislative provisions. The attached Kellerman Judgement directly related to the matter is of relevance and you are directed to acquaint yourselves to the requirements.

6. Al lower court magistrates will within this financial year be in possession of security featured date stamps to authenticate all orders referred to the court which have been granted.

7. The contents of this circular should be brought to the attention of all clerks of civil courts and officials performing duties in the civil section.

8. This directive is to be implemented with an immediate effect.

Mr Malema
Acting DDG: Court Services
Date 13 March 2014.

A ...39/13..... / i.e.

IN THE HIGH COURT OF SOUTH AFRICA

IN THE LIMPOPO HIGH COURT, THOHOYANDOU

DATE: ...30/07/2013.....
(Date on which review judgment is handed down)

Magistrate
DZANANI

Case No's: 72/2013; 73/2013; 74/2013; 75/2013; 76/2013; 77/2013; 78/2013; 79/2013; 80/2013; 81/2013; 82/2013; 83/2013; 84/2013, 85/2013 and 86/2013

Limpopo High Court Review Case No: 86/2013

THE STATE

and

T S MUDAU and 14 OTHER ACCUSED **ACCUSED**

REVIEW JUDGMENT

RAULINGA J:

1. I am indebted to Magistrate Kellerman's prompt attendance to the matter.

2 I agree with the magistrate's reason that the judgment in the matters be set aside.

3. The clerk of the court's judgment is set aside. The matters are referred to the magistrate for consideration.

JUDGE T J RAULINGA
LIMPOPO HIGH COURT, THOHOYANDOU

I concur.

ACTING JUDGE L VORSTER
LIMPOPO HIGH COURT, THOHOYANDOU

/pm

 4/11

MAGISTRATES' COURT DZANANI
Private bag X 2427
LOUIS TRICHARDT
0920
3 JUNE 2013

Tel: 015 970 4005 Fax: 015 970 4351
Ref: 1/4/2
Enq: APR Kellerman

The Registrar of the High Court
Limpopo High Court (Thohoyandou)
Private Bag X 5016
THOHOYANDOU
0950

Submission of records for special review in terms of the provisions of *section 19(1) (a) (ii)* read with *section 24(1) (c)* of the *Supreme Court Act, Act 59 of 1959*:Dzanani Magistrate Civil Cases No: 72/2013 to 86/2013.

1. Having noticed that the clerk of the civil court Dzanani had granted judgment in favour of the plaintiff(s) against the defendant(s) in the above-mentioned civil cases (15 cases) on 18 February 2013 and having noticed that the judgments were granted contrary to the provisions of *rule 12(5)* of the *Magistrates' Court Rules of Court* and the *National Credit Act, Act 34 of 2005.*

2. It is respectfully submitted that the decision of the clerk of the court Dzanani to grant the above- mentioned judgments was a gross irregularity in the proceedings and that the judgments granted by the clerk of court are in fact void.

3. The plaintiff(s) and defendants were not notified that the matters will be forwarded to the High Court for special review.

4. It is therefore requested that the honourable review judge reconsiders the above-mentioned judgments and to give guidance in this regard.

APR Kellerman
Magistrate Dzanani

Dzanani Civil Cases: Review serial number: ____/2013

Case number:	Plaintiff:	Defendant:
72/2013	BMS Financial Service CC	Mudau TS
73/2013	BMS Financial Service CC	Makananise TJ
74/2013	BMS Financial Service CC	Kharivhe TJ
75/2013	BMS Financial Service CC	Tshisonga MR
76/2013	BMS Financial Service CC	Khorommbi MJ
77/2013	BMS Financial Service CC	Mushothi TG
78/2013	BMS Financial Service CC	Mueda MS
79/2013	BMS Financial Service CC	Ranwedzi VB
80/2013	BMS Financial Service CC	Makhushu MJ
81/2013	BMS Financial Service CC	Malotsha NB
82/2013	BMS Financial Service CC	Mugwena TS
83/2013	BMS Financial Service CC	Tshikosi TB
84/2013	BMS Financial Service CC	Mudimeli NE
85/2013	BMS Financial Service CC	Ramanenzhe AE
86/2013	BMS Financial Service CC	Manala BP

Reasons for the submission of records for special review in terms of the provisions of *section 19(1) (a) (ii)* read with *section 24(1) (c) of the Supreme Court Act, Act 59 of 1959*

Background

On 18 February 2013 the clerk of the court granted judgments in the above-mentioned cases in favour of the plaintiff(s) against the defendants after the defendants had consented to judgment in terms of *section 58 of the Magistrates' Court Act, Act 32 of 1944*. The clerk of the court was appointed to this position for a short period and was under the impression that she may grant all default judgments which included requests for judgment in terms of *sections 57* and *58 of the Magistrates' Court Act supra*. She was unaware of the provisions of *rule 12(5)* of the *Magistrate' Court Rules of Court* and did not refer the matters to the magistrate for consideration.

The law

In ***African Bank v Additional Magistrate Myambo NO and others*** 2010 (6) SA 298 (GNP) the court expressed its disquiet with the failure of the Rules Board to amend *rule 12(5) supra* to refer to the *National Credit Act* and suggested that the National Credit Regulator discusses the possibility of amending the rule with the relevant legislative authority.

The Rules Board did exactly that after the afore-mentioned judgment was given and amended *rule 12(5) supra* with effect from the 15th of October 2010.

The new *rule 12(5) supra* reads as follows:

"The registrar or clerk of the court ***shall*** *refer to the court any request for judgment on a claim founded on any cause of action arising out of or based on an agreement governed by the National Credit Act, or the Credit Agreements Act, 1980 (Act No. 75 of 1980), and the court shall thereupon make such order or give such judgment as it may deem fit "* ***(My emphasis.)***

All default judgments founded on any action arising out or based on an agreement governed by the *National Credit Act* including judgments in terms of *sections 57* and *58*[1] *of the Magistrates' Court Act supra* must now be referred to a magistrate for consideration[2].

Errors and irregularities in respect of the applications

It is respectfully submitted that the decision of the clerk of the court Dzanani to grant the above- mentioned judgments was a gross irregularity in the proceedings and if the matters were referred to a magistrate for considerations the errors and irregularities in the papers would have been detected and queried. To mention a few of the errors and irregularities in the papers, to wit the following:

Ad Credit agreement[3]:

- No pre-agreement disclosure[4] was made by plaintiff (credit provider) in the prescribed form[5];
- No credit assessment was done to prevent the granting of reckless credit[6];
- There is no indication in the "loan contract form" as to the installment amount, the number of installments to be paid and the dates of the first installment and subsequent installments[7];
- Bank charges are added to the loan amount[8](it is not clear in terms of which provisions bank charges are added - an explanation form the credit provider should have be obtained);
- There is non-compliance with the maximum interest rate. A maximum prescribed interest rate for short term credit transactions currently stands at 5% per month or 60% per year. The interest charged according to the loan agreements is reflected as 20% per month.

Ad Letters of demand:

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[1] *Magistrates Court Act 32 of 1944.*

[2] Before the amendment of *rule 12(5) supra* Du Plessis J in ***African Bank Ltd v Myambo NO*** *supra* stated at 308 D - H that: *"... the clerks of the court have the discretion to do one of three things. They can refuse judgment. They can grant judgment when the papers are formally in order. If the papers are formally in order but the clerk of court has reason to question the plaintiff's entitlement to judgment, the clerk of court must refer the matter to the court in terms of rule 12(7)."*

[3] Loan contract form filed in civil files.

[4] In terms *of section 92(1) of the National Credit Act, Act 34 of 2005: "A credit provider must not enter into a small credit agreement unless the credit provider has given the consumer a pre-agreement statement and quotation in the prescribed form."*

[5] Form 20 to the *National Credit Act supra.*

[6] *Section 81(2) and (3) of the National Credit Act supra*

[7] *Section 92(2) (b) of the National Credit Act supra.*

[8] No provision in *section 102 of the National Credit Act supra* for bank charges.

- The letters of demand appears to be a merger between the letter of demand as prescribed in *section 58(1) of the Magistrates' Court Act, Act 32 of 1944* and the notice in terms of *sections 129 and 130 of the National Credit Act, Act 34 of 2005*, but do not comply with the prescribed wording and relevant provisions of *sections 129(1) (a) and 130 of the National Credit Act supra*[9].
- With reference to *rule 4(1) (b) of* the *Magistrate' Court Rules of Court* the letters of demand do not state that all the provisions of *section 129 and 130 supra* have been complied with.

Ad Written consents to judgment:

- The consents to judgment do not comply with the provisions of *rule 4(3) of the Magistrate' Court Rules of Court* (not signed by two witnesses with addresses and telephone numbers);
- In most of the afore-mentioned cases the amount, as reflected on the consent to judgment is more than the amount in the letter of demand.

Ad Affidavits in terms of *rule 12(6A)* of the *Magistrate' Court Rules of Court*

- The above mentioned affidavits were not filed.

Reason for special review

A judgment may be rescinded in terms of section 36 of the *Magistrates' Court Act, Act 32 of 1944* or *rule 49*[10] of the *Magistrate' Court Rules of Court* of the afore-mentioned act.

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[9] *Rule 4(1)(b)* of the *Magistrates' Court Rules of Court*.

[10] *(1) A party to proceedings in which a default judgment has been given, or any person affected by such judgment, may within 20 days after obtaining knowledge of the judgment serve and file an application to court, on notice to all parties to the proceedings, for a rescission or variation of the judgment and the 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: Provided that the 20 days' period shall not be applicable to a request for rescission or variation of judgment brought in terms of sub rule (5).*

(2) It will be presumed that the applicant had knowledge of the default judgment 10 days after the date on which it was granted, unless the applicant proves otherwise.

(3) Where an application for rescission of a default judgment is made by a defendant against whom the judgment was granted, who wishes to defend the proceedings, the application must be supported by an affidavit setting out the reasons for the defendant's absence or default and the grounds of the defendant's defence to the claim.

(4) Where an application for rescission of a default judgment is made by a defendant against whom the judgment was granted, who does not wish to defend the proceedings, the applicant must satisfy the court that he or she was not in wilful default and that the judgment was satisfied, or arrangements were made to satisfy the judgment, within a reasonable time after it came to his or her knowledge.

(5)(a) Where a plaintiff in whose favour a default judgment was granted has agreed in writing that the judgment be rescinded or varied, either the plaintiff or the defendant against whom the judgment was granted, or any other person affected by such judgment, may, by notice to all parties to the proceedings, apply to the court for the rescission or variation of the default judgment, which application shall be accompanied by written proof of the plaintiff's consent to the rescission or variation.

(b) An application referred to in paragraph (a) may be made at any time after the plaintiff has agreed in writing to the rescission or variation of the judgment.

(6) Where an application for rescission or variation of a default judgment is made by any person other than an applicant referred to in sub rule (3), (4) or (5), the application must be supported by an affidavit setting out the reasons why the applicant seeks rescission or variation of the judgment.

(7) All applications for rescission or variation of judgment other than a default judgment must be brought on notice to all parties, supported by an affidavit setting out the grounds on which the applicant seeks the

Section 36 of the Act supra reads as follows:

"(1) The court may, upon ***application*** *by any person affected thereby, or, in cases falling under paragraph (c),* ***suo motu-***
(a) rescind or vary any judgment granted by it in the absence of the person against whom that judgment was granted;
(b) rescind or vary any judgment granted by it which was void ab origine or was obtained by fraud or by mistake common to the parties;
(c) correct patent errors in any judgment in respect of which no appeal is pending;
(d) rescind or vary any judgment in respect of which no appeal lies.
(2) If a plaintiff in whose favour a default judgment has been granted has agreed in writing that the judgment be rescinded or varied, a court must rescind or vary such judgment on application by any person affected by it." ***(My emphasis.)***

From the afore-mentioned it is clear that the court may rescind or vary a judgment on application and only *suo motu* in the case of *section 36(1)(c)* of the *Act supra* to correct patent errors[11] in a judgment in respect of which no appeal is pending. In ***Hanna v Mynhardt*** 1935 TPD 63[12] Tindall R stated:

"By a patent error is meant, in my opinion, an error which is patent on the face of the record... If on such record it is clear that the magistrate's order does not express his real intention, there is a patent error and sec. 36 authorises him to correct the order"

Since the time that the judgments had been granted on 18 February 2013, none of the parties approached the court with and application to rescind or vary any of the judgments. The result is that the judgments granted by the clerk of the court, albeit that they are void, stand as judgments until there is an application to the court to rescind them[13].

In ***Laduma Financial Services v De La Bat NO and others*** 1999 (4) SA 1283 (O) the court ruled that the magistrate has no jurisdiction to *suo motu* rescind a judgment entered by the clerk of the court under *section 58 of the Magistrates' Court Act supra*. Consequently there is nothing that the magistrate can do to remedy the situation unless there is an application to the magistrate by an affected person to rescind the judgment[14].

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rescission or variation, and the court may rescind or vary such judgment if it is satisfied that there is good reason to do so.

(8) Where the rescission or variation of a judgment is sought on the ground that it is void ab origine or was obtained by fraud or mistake, the application must be served and filed within one year after the applicant first had knowledge of such voidness, fraud or mistake

(9) A magistrate who of his or her own accord corrects errors in a judgment in terms of section 36(1)(c) of the Act shall, in writing, advise the parties of the correction.

[11] For illustration of patent errors, see: Jones and Buckle, *The Civil Practice of the Magistrates' Courts in South Africa*, tenth edition, Volume 1, service 2012, Act 253 note 9.
[12] At page 66 to 67
[13] In ***Ramodike v Mokeetsi Trading Store*** 1955 2 SA 169 (T) at 171H it was stated: *" Until properly attacked and rescinded a judgment of court of record, even if obtained by default, must stand and be presumed binding ..A magistrate has no power mero moru to set aside a judgment of his court except where there are patent errors therein...."*
[14] A magistrate has no power to review judgments granted by the clerk. I learned that the Rules Board is currently considering a rule that gives a magistrate power to review judgments noted by the clerk of court.

It was also stated in the above-mentioned case *supra* that where the clerk of the court entered a judgment which did not reflect his/ her real intention, the clerk would be the appropriate person to correct the patent error to reflect his/ her intention.

In the present cases, in my view, there are indeed patent errors in the judgments that may be corrected by the clerk of court, for example: the judgment debt was not correctly reflected and the amount of cost and first instalment date were not inserted in the judgments. But even if the afore-mentioned errors are corrected to reflect the real judgment amounts, costs and first instalment dates, the judgments obtained still stand and remain void as it were obtained by mistake contrary to *rule 12(5) supra* and the provisions of the *National Credit Act supra*[15]. I humbly submit that the current judgments in favour of the plaintiff(s) cannot be altered *suo motu* by the clerk of the court to read that her judgments are set aside and the matters are referred to the magistrate for consideration, as such a step will bring about that the sense and substance of the judgments are altered[16] [17].

Request

It is my view that the consumers /defendants were prejudice by the decision of the clerk of the court to grant the judgments contrary to legislation and that it constitutes a reviewable irregularity. It is therefore my request to the honourable review judge to reconsider the judgments and if in agreement with my submission, to set aside the judgments granted by the clerk of the court on 18 February 2013 in favour of the

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[15] As discussed above.

[16] The general rule is: Once a court has duly pronounced a final judgment or order, it has itself no authority to correct, alter, or supplement it. The reason is that it thereupon becomes *functus officio*; its jurisdiction in the case having been fully and finally exercised, its authority over the subject-matter has ceased. In ***Firestone SA (Pty) Ltd v Genticuro*** AG 1977 4 SA 298 (A) at 306F to 307F Trollip JA referred to exceptions to the general rule: Thus, provided the court is approached within a reasonable time of its pronouncing the judgment or order, it may correct, alter or supplement it in one or more of the following cases: (1) The principal judgment or order may be supplemented in respect of accessory or consequential matters, for example, costs or interest on the judgment debt, that the court overlooked or inadvertently omitted to grant. (2) The court may clarify its judgment or order, if, on a proper interpretation, the meaning thereof remains obscure, ambiguous or otherwise uncertain, so as to give effect to its true intention, provided it does not thereby alter "the sense and substance" of the judgment or order. (3) The court may correct a clerical, arithmetical, or other error in its judgment or order so as to give effect to its true intention. This exception is confined to the mere correction of an error in expressing the judgment or order: it does not extend to altering its intended sense or substance. (4) Where counsel has argued the merits and not the costs of a case (which nowadays often happens since the question of costs may depend upon the ultimate decision on the merits), but the court, in granting judgment, also makes an order concerning the costs, it may thereafter correct, alter or supplement that order. The above list is not exhaustive: the question whether the court has an inherent general discretionary power to correct any other error in its own judgment or order in appropriate circumstances, especially as to costs, raised but not decided. On the assumption that the court has a discretionary power this should be sparingly exercised, for public policy demands that the principle of finality in litigation should generally be preserved rather than eroded - *interest reipublicae ut sit finis litium.*

[17] Also see ***West Rand Estates Ltd v New Zealand Insurance Co Ltd*** 1926 AD173 Kotze JA at 186 -187 stated: *"The Court can, however, declare and interpret its own order or sentence, and likewise correct the wording of it, by substituting more accurate or intelligent language so long as the sense and substance of the sentence are in no way affected by such correction; for to interpret or correct is held not to be equivalent to altering or amending a definitive sentence once pronounced."*

plaintiff(s) and that the honourable review judge orders that the matters be referred to the magistrate for consideration.

Please find herewith Dzanani civil cases 72/2013 to 86/2013.

APR Kellerman
Magistrate Dzanani

11/11

the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

PROVINCIAL CIRCULAR: CIRCULAR 3 OF 2014
GAUTENG PROVINCE
DRAFT

REGIONAL OFFICE: GAUTENG

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Sub Office File : 1/4/1
Provincial Circular No : 3/2014
(Regional File No : 9/3/4

IRREGULAR GRANTING OF SECTION 57 AND 58, CONSENT TO DEFAULT JUDGEMENTS, AND EMOLUMENT ATTACHMENTS ORDERS BY CLERKS OF CIVIL COURTS : GAUTENG PROVINCE

TO ALL AREA/COURT MANAGERS/ REGISTRARS/ SUPERVISORS / SECTION HEADS/ CLERKS OF THE CIVIL COURTS

1. The contents of Circular Number 30 of 2014 issued by the Department dated 17 March 2014 bears reference.

2. Your attention is once again brought to the provisions of Rule 12(5) of the Magistrate Court Act, No. 32 of 1944, which prescribes that all judgments wherein the claim is founded on a cause of action arising out of or based on an agreement governed by the National Credit Act, Act No. 34 of 2005, shall be referred by clerks of the civil courts to the courts for consideration.

3. Clerks of civil courts together with their respective supervisors / section heads of the civil courts are therefore obliged to refer these matters to court for consideration by a Judicial Officer and cannot legally grant the requests for judgments in their capacity as administrative functionaries.

4. All Area/Court Managers, Section Heads and Supervisors are instructed to ensure that urgent steps are taken to prevent the clerks of civil courts from granting section 58, consent to default judgment, wherein, the nature of claim is based on the National Credit Act, and or a Loan/credit agreement.

5. The efficiency in checking of all processess issued by clerks of civil courts is one of the most important duties of Heads of Offices and under no circumstances may there be a relexation of such a task.

6. One of the reasons for granting of section 58, Consent Judgments irregularly, can mainly be attributed to the neglect on the part of checking officers, whose duty, amongst others, is to regularly and systematically check the work of their subordinates.

7. Routine spot checks and intenslve checking is a fundamental control to deter malpractices on part of staff.

8. Court Managers remain the overall responsible officials for all operations within their courts and will be held liable for any losses that clients might suffer as a result of their negligence.

9. Area/Court Managers are requested to bring the contents of this Provincial circular to the attention of all Court Managers, Registrars, Section Heads, supervisors, clerks and officials in the civil court component, by ensuring that each official takes note of the contents of this circular read together with Circular No. 30 of 2014 and a signed receipted acknowledgment is filed off record on each officials' personnel file.

10. This directive should be implemented with immediate effect.

MS SE DHLAMINI
REGIONAL HEAD: GAUTENG
DATE: 25/06/2014