



**OFFICE OF THE ACTING JUDGE PRESIDENT  
HIGH COURT OF SOUTH AFRICA, GAUTENG PROVINCIAL DIVISION, PRETORIA**

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14 February 2022

**To: The Legal Profession**

**Copy to: The Chief Registrar of the Gauteng Division of the High Court,  
Pretoria and Gauteng Local Division of the High Court,  
Johannesburg**

**All Registrars of the Gauteng Division of the High Court, Pretoria  
and Gauteng Local Division of the High Court, Johannesburg**

**NOTICE**

**RE: JUDGMENTS RELATING TO DEFAULT JUDGMENT IN TERMS OF  
RULE 31(5) IN MATTERS WITHIN THE AMBIT OF THE NATIONAL  
CREDIT ACT**

1. The practice in respect of default judgments in terms of Rule 31(5) has been that, save in those special cases involving residential property, all default judgments have been disposed of by the Registrar as contemplated by the Rules of Court.
2. This practice, and the effect of the Rules have since been challenged. A judgment in the Gauteng Division of the High Court in Pretoria, given on 12 June 2020: *Theu v First Rand Auto*, held that any default judgment that is

founded on a matter regulated by the National Credit Act must be placed before a Judge and the Registrar has no jurisdiction to grant a judgment. Another decision in KZN held so too. These judgments rely on the dictum in a Constitutional Court case, *Nkata v Firstrand Bank 2016 (4) SA 257 (CC)* which held: "[173] Here the legal fees claimed by the bank arose in circumstances where the bank had acted in breach of the Act in a number of respects....Second, it sought and obtained a default judgment from the registrar of the High Court, something that is incompatible with s 130(3) [of the NCA] which requires such matters to be determined by the court"

3. The practice adopted in both High Courts of the Gauteng Division is that the matters may continue to be referred to the Registrar as Rule 31(5) contemplates. The Registrar in turn considers whether a matter is ripe for an Order. If in his or her opinion, it is not, a query is sent to the Plaintiff's Attorney. If in the opinion of the Registrar, a matter is in order, it is referred to a Judge in chambers.
4. The Judge in chambers is of course not bound by that opinion. The Judge thereupon considers the matter *de novo*. If satisfied that an order is appropriate, an Order is then made and uploaded. The name of the Judge making the order is apparent from the Order. If the Judge is not satisfied, a query in a case note on CaseLines is made and an order is refused, at that time.

**A.P. LEDWABA**  
**ACTING JUDGE PRESIDENT**  
**GAUTENG DIVISION OF THE HIGH COURT**  
**OF SOUTH AFRICA**  
*Digitally transmitted therefore unsigned*