

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

Case no: 30501/2020

In the application of:

ROSLYN SUSSMAN

Applicant

and

NEDBANK LTD

Respondent

In re:

NEDBANK LTD

Plaintiff

and

ROSLYN SUSSMAN

Defendant

JUDGMENT

TURNER AJ:

1. In this matter the defendant, Ms Sussman, applied in terms of Rule 30 to strike out the plaintiff's (Nedbank's) application for summary judgment on grounds that the Nedbank application had been delivered late.
2. The lateness was two hours and 45 minutes and Nedbank has now applied for condonation for the late filing.
3. At the hearing of the matter today on 15 March 2023, Ms Sussman was not present and not represented.
4. I have considered the papers in this matter and the heads of argument submitted by both parties, and I am satisfied that Nedbank has discharged its onus to obtain condonation, and so I am prepared to grant condonation for the late delivery of the summary judgment application.
5. Having done so, I it is appropriate for me to dismiss the application to strike out in terms of Rule 30. As a result the Summary Judgment application is confirmed as being competent and Nedbank may proceed to pursue the Summary Judgment procedure.
6. I note, however, and as was conceded by Ms Oschman for Nedbank that the Rule 30 notice itself was not unjustified, and consequently Ms Sussman cannot be criticized for having delivered that notice. However, pursuing the application in the face of the condonation explanation does not appear to me to be reasonable.
7. Nedbank has, in its answering affidavit to the Rule 30 application, counterclaimed for relief under headings Claim A, which is for condonation, and Claim B, which is for an interim interdict pending the finalization of the main matter.
8. I have considered the grounds relied upon by Nedbank, the defences put up by Ms Sussman, and the arguments by both parties. In my view Nedbank has established a *prima facie* right as well as the other grounds for an interdict. It is consequently entitled to the protection sought pending the finalization of the dispute.

9. In the circumstances I grant the following order:

9.1 The late delivery and non-compliance with Rule 6 in the service of the application for summary judgment is condoned;

9.2 Pending the finalization of the dispute under case no: 2020/3051 between the plaintiff and the defendant:

9.2.1 the defendant is directed to forthwith deliver into the possession of the Sheriff the motor vehicle described in the papers, being a 2020 Toyota Hilux 2.8 GD-6, RB Raider P/U D/C, with engine number [...] and chassis number [...] (the motor vehicle);

9.2.2 the Sheriff is hereby forthwith authorized to take possession of the motor vehicle;

9.2.3 Thereafter the Sheriff shall return the motor vehicle to the plaintiff, who shall:

9.2.3.1 store the motor vehicle at a place of its choosing; and

9.2.3.2 not use the motor vehicle or permit that it be used;

9.3 Cost of the opposed application are payable by the defendant on a party and party scale.

TURNER AJ

ACTING JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION OF THE HIGH COURT,

JOHANNESBURG

COUNSEL FOR PLAINTIFF/RESPONDENT:

I OSCHMAN

COUNSEL FOR DEFENDANT/APPLICANT:

NO APPEARANCE

DATE HEARD: 15 MARCH 2023

DATE OF JUDGMENT: 15 MARCH 2023