



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

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

SIGNATURE

DATE: 12 January 2024

Case No. 2023-000396

In the matter between:

NEDBANK LIMITED

Plaintiff

and

ELSABIE JACOBS

Defendant

JUDGMENT

WILSON J:

1 The Plaintiff, Nedbank, employed the defendant, Ms. Jacobs, as a “service specialist” at its Krugersdorp branch. Nedbank alleges that, on 29 December 2021, Ms. Jacobs issued a bank card to an individual impersonating one of its account holders. Nedbank also alleges that, on 30 December 2021, at the request of the imposter, Ms. Jacobs changed the cell number registered against the account, and increased the withdrawal limit on the account.

- 2 As a result of this, the imposter was able to withdraw R2191901.75 from the account. R866062.21 of that was later recovered, leaving Nedbank liable to the account holder for the remaining R1325839.54. In this action, Nedbank seeks to recover that amount from Ms. Jacobs, because, Nedbank says, Ms. Jacobs was either a party to the imposter's fraud, or she negligently allowed it to take place. The essence of the negligence is said to be Ms. Jacobs' failure to adhere to the strictures of Nedbank's employee code of conduct which set out the procedures to be followed when making the various changes to a customer account that Ms. Jacobs carried out.
- 3 Ms. Jacobs did not defend the action, and Nedbank applied to the registrar for default judgment. For reasons that are not clear from the record, the registrar took no action on the application for several months. In the end, the application for default judgment was enrolled before me in my unopposed court on 9 November 2023. After hearing from Ms. Carvalheira, who appeared for Nedbank, I refused default judgment and indicated that I would give my reasons if they were requested. Nedbank's attorney appears to have applied for reasons from the registrar on 21 November 2023, but the registrar only brought the application for reasons to my attention on 11 January 2024. Again, the cause of that delay remains obscure. In any event, these are my reasons for refusing default judgment.
- 4 Rule 31 (5) makes clear that default judgment can only be granted without the presentation of evidence where the claim is one for a "debt or liquidated demand". There is a disagreement in the cases about the meaning of the term "debt or liquidated demand" for the purposes of the Rule. In the context of

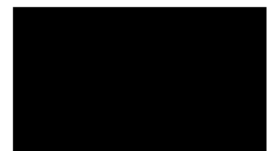
judgments for the return of stolen money, it has been held that the plaintiff need only establish that the claim is for a definite or easily ascertainable sum. There is no need to show “sufficient proof” that the defendant is actually liable to the plaintiff to return the stolen amount (see *Colrod Motors (Pty) Ltd v Bhula* 1976 (3) SA 836 (W) at 837C-D). However, it has also been held that such a claim is only liquid if there is “some further element showing at any rate *prima facie* that the sum of money is due to plaintiff from defendant” (see *Du Toit v Grobler* 1947 (3) SA 213 (SWA) at 214).

5 I incline towards the view that a debt or demand is only liquid if there is an unambiguous foundation laid for the proposition that it is actually due. Otherwise, any amount that has been calculated with sufficient particularity on the face of a combined summons would count as a liquidated amount capable of being awarded by default without the presentation of evidence. Where a default judgment is sought without the presentation of evidence, I do not think that there is an uncomplicated line to be drawn between the nature of the claim and the liquidity of the amount for which judgment is sought. Default judgment is especially suited to claims on documents that evidence a well-defined commercial relationship between the parties, such as a loan. The more unusual or factually complex a claim is, the less inclined a court will be to grant it by default, without the presentation of evidence, even if the amount claimed is technically liquid on its own terms.

6 In this case, Nedbank pleads two claims in the alternative. The first is that Ms. Jacobs was party to the fraud. The second is that she was negligent in failing to prevent it, and that she breached her duty of care to Nedbank in failing to

follow the required procedures in issuing the bank card and making changes to the account holder's cell phone number and withdrawal limit. There are no facts in evidence that would allow me to determine which of these two cases Nedbank wishes to advance. If Nedbank cannot say what its case really is, it seems to me that it has not established that the debt it claims is due.

7 It was for these reasons that I refused the application for default judgment. The effect of my decision is not to bring Nedbank's action to an end. It is merely that Nedbank must lead evidence of the debt and the fact that it is due. If the facts alleged in its particulars are even remotely true, Nedbank should have little difficulty in doing so.



S D J WILSON
Judge of the High Court

This judgment was prepared by Judge Wilson. It is handed down electronically by circulation to the parties or their legal representatives by email, by uploading to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 12 January 2024.

HEARD ON: 9 November 2023

REASONS REQUESTED: 21 November 2023

REQUEST COMMUNICATED
TO THE PRESIDING JUDGE: 11 January 2024

DECIDED ON: 12 January 2024

For the Plaintiff: R Carvalheira
Instructed by Hamond Pole Attorneys

For the Defendant: No appearance