

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1)	REPORTABLE: No
(2)	OF INTEREST TO OTHER JUDGES: No
_____	
DATE	SIGNATURE

Case No: 2023-003529

In the matter between:

NEDBANK LIMITED

Applicant

and

ABRAHAMS, CELESTE FELICIA

Respondent

AND

Case No: 2023-031890

In the matter between:

NEDBANK LIMITED

Applicant

and

MALINGA, ZIBUSENI

Respondent

AND

Case No: 2023-039182

In the matter between:

NEDBANK LIMITED

Applicant

and

NKUNA, KGOMOTSO

Respondent

AND

Case No: 2023-039212

In the matter between:

NEDBANK LIMITED

Applicant

and

MOSHANE, PULE ELIAS

Respondent

AND

Case No: 2023-051021

In the matter between:

NEDBANK LIMITED

Applicant

and

NDZONDA, NOBUNTU ROSE

Respondent

AND

Case No: 2023-053164

In the matter between:

NEDBANK LIMITED

Applicant

and

CHOUNYANE, ANDREW

Respondent

JUDGMENT IN APPLICATION FOR LEAVE TO APPEAL

This judgment is deemed to be handed down upon uploading by the Registrar to the electronic court files.

Gilbert AJ:

1. Both the applicant and the Banking Association of South Africa ("BASA") as *amicus curiae* seek leave to appeal my judgment delivered on 12 January 2024 in which I found that the magistrates' courts have exclusive jurisdiction in relation to claims in terms of section 127(8)(a) of the National Credit Act, 2005 ("the NCA").
2. Both the applicant and BASA advanced essentially the same grounds of appeal.

3. Both submitted that an appeal would have a reasonable prospect of success and that there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.
4. Insofar as to whether an appeal would have a reasonable prospect of success, both the applicant and BASA submitted that:
 - 4.1. I had erred in finding that the full court decision of this division in *Nedbank Ltd v Mateman & Others; Nedbank Ltd v Stringer & Another* 2008 (4) SA 276 (T) was not binding upon me;
 - 4.2. I had erred in my interpretation of section 127(8) in finding that the jurisdiction of the High Court was ousted by necessary implication.
5. With regard to the latter, given that there is a strong presumption against the ouster or curtailment of the High Court's jurisdiction, there is a reasonable prospect of success that the Appeal Court would come to a different decision.
6. As to whether I erred in my analysis of *Mateman* in order to arrive at my finding that the judgment was not binding upon me, I found in paragraph 18 of my judgment that it was unnecessary for the full court in *Mateman* to have made any findings in relation to section 127(a) in order to reach the decision that the High Court had concurrent jurisdiction in relation to the two matters before it because the matters before it did not relate to section 127(8). As explained in my judgment, the matters before the court were for judgment in terms of credit agreements where orders were sought declaring immovable properties executable and were not matters relating to shortfalls under credit agreements

falling within the ambit of section 127(8) where goods had been voluntarily surrendered. The submission as to why I had erred is that as the registrar of the court who had placed these matters before the full court for determination had sought a determination in relation to section 127(8), it followed that that issue was properly before the full court and therefore its findings in relation thereto are binding. Whether the registrar could seek that binding findings be made in relation to a particular section of a statute because it had so requested in a letter in circumstances where the matters before the court that did not involve the relevant section is questionable. Nonetheless, there is a reasonable prospect that another court will come to a different decision as to the binding effect of *Mateman* as that decision is generally cited by legal practitioners appearing in the unopposed court, I am told, for the proposition that the High Court does have jurisdiction in relation to claims made under section 127(8)(a) of the NCA>

7. Whether the appeal court will bring clarity to what may be an important principle relating to what constitutes the *rationes decidendi* of a decision remains to be seen because the appeal court in any event would not be bound by *Mateman*.
8. I also agree with the submissions that there are compelling reasons why the appeal should in any event be heard. The issue of whether the magistrates' court has exclusive jurisdiction in respect of matters falling within the ambit of section 127(8)(a) is a matter of importance in relation to the NCA generally, both as it affects consumers and the banking industry. As appears from the header of the judgment, this issue arose in six of the unopposed matters

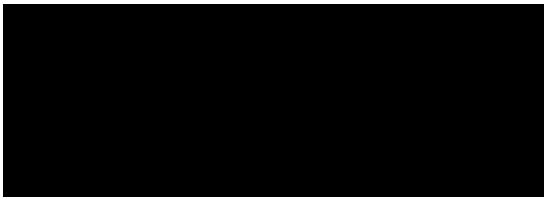
before me on my unopposed roll on the particular day. There is no reason to doubt that this was unusual. Section 127(8)(a) claims feature on a regular basis.

9. I agree with the parties that leave to appeal should be granted to the Supreme Court of Appeal because the decision appealed involves a question of law of importance, namely whether section 127(8)(a) ousts the jurisdiction of the High Court. Further, given that my judgment does not follow *Mateman*, it is appropriate that the Supreme Court of Appeal consider this issue.

10. I raised with counsel for the parties whether it would be appropriate to furnish a copy of these reasons together with my judgment of 12 January 2024 to possible *amici curiae* who may wish to seek leave to participate in the appeal. Both the applicant and BASA effectively make common cause on the issues, both in the proceedings in the court *a quo* and in their grounds for leave to appeal. It may be useful to the appeal court for an *amicus curiae* to participate who advances grounds different to those advanced by the applicant and BASA and potentially in support of the proposition that that section 127(8)(a) confers exclusive jurisdiction on the magistrates' courts. Counsel kindly suggested potential *amici curiae* and also the relevant Ministers responsible for the NCA and the Magistrates' Court Act, 1944. The appropriate direction will be given in my order.

11. The following order is granted:

- 11.1. the applicant and BASA are granted leave to appeal to the Supreme Court of Appeal against the whole of the judgment and order *a quo* of 12 January 2024;
- 11.2. the costs of the application for leave to appeal are costs in the appeal;
- 11.3. the applicant's attorneys are directed to furnish a copy of the judgment *a quo* dated 12 January 2024 and a copy of this judgment granting leave to appeal to the South African Human Rights Commission,¹ Black Sash, the Socio-Economic Rights Institute of South Africa, the Minister of Trade, Industry and Competition and the Minister of Justice and Constitutional Development.



B M GILBERT

Acting Judge of the High Court

Gauteng Division, Johannesburg

Date of hearing:

15 March 2024

Date of judgment:

18 March 2024

¹ The SAHRC participated in the court proceedings culminating in *South African Human Rights Commission v Standard Bank of South Africa Ltd and Others* 2023 (3) SA 36 (CC).

Counsel for the applicants in each matter:	M A Chohan SC with M Reineke
Instructed by:	Hainsworth Koopman Inc, Pietermaritzburg c/o Nkotzoe Attorneys, Midrand
Counsel for the respondents:	No appearance for any of the respondents
Counsel for Banking Association of South Africa:	I Green SC P Ngcongo I Hayath
Instructed by:	Edward Nathan Sonnenbergs Inc