

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NO: 4304/2019

(1)	REPORTABLE: YES/ NO
(2)	OF INTEREST TO THE JUDGES: YES/ NO
(3)	REVISED.
DATE: <u>31 January 2022</u> <u>MANGENA AJ</u>	
SIGNATURE:	 

In the matter between:

NNDVHELESENI KENNETH RAMAKUELA : APPLICANT

and

FIRSTRAND AUTO RECEIVABLES 9RF) LTD : RESPONDENT

In re: the matter between: -

FIRSTRAND AUTO RECEIVABLES (RF) LTD PLAINTIFF

And

NNDVHELESENI KENNTH RAMAKUELA DEFENDANT

JUDGMENT

MANGENA AJ:

- [1] On the 20th January 2020 the registrar of this court granted default judgment against the applicant and ordered for the cancellation of the agreement between the applicant and the respondent. The applicant was further ordered to return the motor vehicle 2015 Jeep Grand Cherokee 3:6 summit to the respondent.
- [2] On the 22nd January 2020, the registrar issued a warrant authorising the sheriff to attach and remove the vehicle from the applicant.
- [3] The respondent acting on the authority of the warrant dispossessed the applicant of the vehicle on 26 November 2020.
- [4] Unhappy with the dispossession, applicant instituted proceedings for the rescission of judgment in terms of Rule 42 (1) (a) of the Uniform Rules of Court, alternatively common law and further alternatively Rule 31 (2) (b) of the Uniform Rules of Court.

- [5] The basis of the application as I understand it on both the papers and the oral submissions was that the judgment was granted in error because the registrar is not empowered by the provisions of the National Credit Act to grant a judgment relating to the National Credit Act. There were other submissions made, which given the conclusions I reach, I do not consider it necessary to deal with them, save to state that I did not find them compelling.
- [6] To understand the issue in context, it is necessary that I set out briefly the facts giving rise to this application. They are as follows:- Applicant concluded an installment sale agreement for the purchase of a motor vehicle with Wesbank, a division of FirstRand Bank Limited. In terms of the agreement he was required to make monthly payments towards the motor vehicle and the bank reserved for itself the right to demand the whole balance outstanding in the event of default. The applicant defaulted and the bank issued summons claiming for the cancellation of the agreement, payment of the total balance outstanding as well as return of the motor vehicle. The summons were preceded by the notice issued in compliance with **Section 129 (1) of the National Credit Act.**

- [7] Summons were served at the applicant's chosen domicilium address and when no appearance to defend was entered, the bank applied for a default judgment. The registrar as opposed to the court granted the default judgment.
- [8] The applicant contends that the registrar was not competent to grant the default judgment because **Section 130 (3) of the National Credit Act** reserved that power to the court. He argues that only the court is clothed with the power to make a determination as to whether there has been compliance with the provisions of **Section 129 of the National Credit Act**. In support of this contention, he finds support in the remarks of Jafta J in the matter of **Nkata v Firststrand Bank Limited, 2016 (4) SA 257 (CC)** where the learned judge authoritatively stated that **Section 130 (3) of the National Credit Act** requires the court to grant default judgment after satisfying itself that there has been compliance with **Section 129**. The registrar is not empowered to grant a default judgment on a matter arising out of an agreement based on the National Credit Act.
- [9] Relying on *Nkata*, the applicant contended that once it is accepted that the registrar was not empowered to grant the default judgment, it follows

axiomatically that the judgment was granted in error and is therefore a nullity.

[10] Counsel for the Bank whilst accepting that the constitutional court has spoken on the matter remained unpersuaded that the remarks of Jafta J in *Nkata* constitutes binding authority for the proposition that the registrar does not have power to grant default judgment on National Credit Act agreements. He came well prepared to counter the argument and in his artillery he had the judgment of Tlhapi J delivered on 2 May 2018 in the Gauteng Division of the High Court where the learned judge discounted the remarks of Jafta J in *Nkata* and found that they do not constitute authority to the effect that registrars do not have the power to grant default judgments in National Credit Act matters.

[11] Tlhapi J was not alone in her finding that the registrar is empowered to grant default judgment in National Credit Act matters. It appears that in early years of the coming into operation of the National Credit Act the full court of the Gauteng Division was called upon to consider this issue in ***Nedbank Limited v Mateman, Nedbank Limited v Stringer and Another, 2008 (4) SA 276 (T)***. In this case, the registrar declined to grant default judgment in matters which could have been brought in the

WLD or the Magistrate's court. He had formulated a view that the provisions of the **National Credit Act, Section 90 (2) (k) (vi) (aa) (bb) and Section 127 (8)** in particular divest him of the power to grant the default judgment and that his court does not have jurisdiction.

[12] The full court considered the provisions of the National Credit Act and found that the registrar is competent to grant default judgment arising out of the agreement related to the National Credit Act even in those cases where the matter was justiciable in the magistrate court or another court with jurisdiction like WLD.

[13] Mr Moolman, counsel for the bank urged me to consider Mateman favorably in relation to his submissions, more especially because it is a decision of the full court.

[14] I decline the invitation with no hesitation for the simple reason that Mateman was decided before Nkata. At any rate, the court in that case was not called upon to decide whether the registrar is competent to grant default judgment on National Credit Act related agreements. The issue for consideration was the jurisdiction of the court in respect of

disputes which are justiciable in other courts with particular reference to **Section 90 (2) k, (vi) (aa), and (bb).**

[15] I have given due consideration to the judgment of Tlhapi J in *Du Plessis v FirstRand Bank Limited* and whilst I understand her approach with regard to the importance of the functions performed by the registrar, I am regrettably unable to agree with her conclusion that the reasons by Jafta J in *Nkata* are insignificant in so far as the provisions of **Section 130 (3) of the National Credit Act** are concerned.

[16] Guided by the doctrine of the stare decisis which is fundamental to the rule of law, I consider myself bound by the decision of the Constitutional Court. The Supreme Court of Appeal explains the importance of the doctrine in ***Patmer Explorations (Pty) Ltd and Others v The Limpopo Development Tribunal and Others* 2018 (4) SA 107 (SCA)** as follows:

"[4] The doctrine of stare decisis is one that is fundamental to the rule of law. The object of the doctrine is to avoid uncertainty and confusion, to protect wasted rights and legitimate expectations as well as to uphold the dignity of the court. It serves to lend certainty to the law."

- [17] In the circumstances, I find that the applicant succeeds and consequently the default judgment granted on 20 January 2020 is rescindable.
- [18] What remains is the issue of costs. The parties asked that costs follow suit. The applicant is admittedly in default of his contractual obligations and has failed to honor the undertaking he made with bank. The bank was within its rights to institute the proceedings and on the applicant's own version the bank complied with the provisions of Section 129 (1) of the National Credit Act.
- [19] Had the matter been considered by the court as required by Section 130 (3) the balance would have considerably shifted.
- [20] At the commencement of the hearing during oral submissions, counsel for the applicant advanced spurious arguments on locus standi and failure to serve the summons. There was no merit in these submissions as the necessary averments were made in the particulars of claim and the summons were served at the applicant's chosen address.

[21] The opposition by the respondent to the application was therefore not frivolous or vexatious. There are conflicting judgments on this aspect and the respondent's counsel made valuable submissions for which I am grateful. It will be unfair to order the bank to pay the costs. In my view, a fair order will be that each party pays its own costs. In any case, applicant is asking for an indulgence for failing to comply with the court rules.

[22] Consequently it is ordered that.

1. The default judgment granted by the registrar of this court on 20 January 2020 is hereby rescinded.
2. Each party to pay its own costs.



MANGENA AJ

**ACTING JUDGE OF THE HIGH COURT
LIMPOPO DIVISION; POLOKWANE**

APPEARANCE:

Counsel for the Plaintiff : Mr Phasha

Counsel for the Defendant : Mr Mooman

Date Heard on : 24 January 2022

Judgment Delivered : 31 January 2022