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**IN THE HIGH COURT OF SOUTH AFRICA
NORTHERN CAPE DIVISION, KIMBERLEY**

Case No: 973/2022

Heard: 22/07/2022

Available: 06/09/2022

Reportable: YES / NO

Circulate to Judges: YES / NO

Circulate to Magistrates: YES / NO

Circulate to Regional Magistrates: YES / NO

In the matter between:

BRIDGE TAXI FINANCE NO 5 (PTY) LTD

Plaintiff

and

KEITUMETSE SYLVIA MONGALA

Defendant

JUDGMENT: REASONS

Mamosebo J

[1] This matter concerns an application for default judgment in terms of Rule 31(5) of the Uniform Rules of Court that I refused to grant when the matter served before me in the unopposed motion court on 22 July 2022. The plaintiff now requests for reasons in terms of Rule 49 of the Uniform Rules of Court. The file was only returned to me on 31 August 2022.

[2] A consumer, Ms Keitumetse Sylvia Mongala, entered into a credit agreement with the plaintiff, Bridge Taxi Finance No 05 (Pty) Ltd on 18 December 2019 in terms of which a 2019 Auto Brilliance JINBEI H1 minibus vehicle with engine number [...] and chassis number [...] was sold and delivered to her. She is in default of the credit agreement in that she has failed to pay the rentals and fell in arrears with her payments in the sum of R253,499.26.

[3] The plaintiff maintains that it has complied with the requirements of s 129 and 130 of the National Credit Act in that the letter, marked annexure “D” was served on the defendant by the sheriff on 29 April 2022 at the chosen *domicilium* address of the defendant.

[4] The sheriff’s return marked annexure “E” records the following:

“SERVICE BY AFFIXING AT CHOSEN DOMICILIUM CITANDI ET EXECUTANDI

By service of a copy of the SECTION 129 LETTER on DEFENDANT by affixing a copy to the principal door at the above-mentioned address, being the chosen domicilium citandi et executandi of the DEFENDANT.

No other service was possible after performing a diligent search.

According to the security, due to the long weekend, everybody went away.”

[5] On 17 May 2022 the plaintiff issued summons out of this Court claiming, *inter alia*, cancellation of the agreement, return of the minibus and other ancillary relief.

[6] The aim of section 129(1)(a) "*is to facilitate consensual resolution of credit agreement disputes.*" Section 129(1) places a duty on the credit provider to inform the consumer of the possible assistance that is available before legal action will be instituted.¹

[7] The National Credit Amendment Act, 19 of 2014, (NCAA) came into effect on 13 March 2015 and amended section 129 of the National Credit Act, 34 of 2005 (NCA) *inter alia* by adding three subsections to the following effect:

“(5) The notice contemplated in subsection (1)(a) must be delivered to the consumer–

(a) by registered mail; or

(b) to an adult person at the location designated by the consumer.

(6) The consumer must in writing indicate the preferred manner of delivery contemplated in subsection (5).

(7) Proof of delivery contemplated in subsection (5) is satisfied by–

(a) written confirmation by the postal service or its authorised agent, of delivery to the relevant post office or postal agency; or

(b) the signature or identifying mark of the recipient contemplated in subsection (5)(b).”

[8] The amended sections of the Act support what the Constitutional Court has already pronounced in *Sebola v Standard Bank of South Africa Ltd 2012 (5) SA 142 (CC) paras 40 and 46* where the following instructive remarks by the ConCourt in the majority judgment are worth repeating:

¹ See Govender S and Kelly-Louw M “Delivery of the Compulsory Section 129(1) Notice as required by the National Credit Act of 2005” PER/PELJ 2018 (21) – DOI <http://dx.doi.org/10.17159/1727-3781/2018/v21:Oa3466> published 27 November 2018

“[40] The statute sets out the means by which these purposes must be achieved, and it must be interpreted so as to give effect to them. . The main objective is to protect consumers. But in doing so, the Act aims to secure a credit market that is ‘competitive, sustainable, responsible [and] efficient’. And the means by which it seeks to do this embrace ‘balancing the respective rights and responsibilities of credit providers and consumers’. These provisions signal strongly that the legislation must be interpreted without disregarding or minimising the interests of credit providers. So I agree with the Supreme Court of Appeal that –

‘(t)he interpretation of the NCA calls for a careful balancing of the competing interests sought to be protected, and not for a consideration of only the interests of either the consumer or the credit provider’.

I also agree that whilst the main object of the Act is to protect consumers, the interests of creditors must also be safeguarded and should not be overlooked.

[46] One of the means by which the legislation expressly provides for its purposes to be pursued is through ‘consensual resolution of disputes arising from credit agreements’. Section 129(1) is pivotal to this. It precludes legal enforcement of a debt before the credit provider has suggested to the consumer that he or she explore non-litigious ways to purge the default. Specifically, the notice must ‘propose’ that the defaulting consumer refer the credit agreement to a debt counsellor, alternative dispute resolution agent, consumer court or ombud, with the intent that the parties resolve their dispute, or agree on a plan to remedy the default.”

[9] The issue is not with the contents of the s 129 notice in this case but rather with the service thereof. Notwithstanding that in the credit agreement, the defendant has agreed to accept all legal notices at her *domicilium citandi et executandi*, which was served by affixing to the main door it is, in my view, not the service contemplated in the NCAA. It is for the aforementioned reasons, more particularly,

the failure to serve the s 129 notice as required that the default judgment was refused.

M.C.MAMOSEBO
JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

For the plaintiff:

MV Galane

On instructions of:

ODBB Inc (local correspondent Roux,
Welgemoed & Du Plooy)