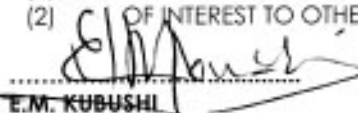




**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Case Number.: 86814/2018

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
	
E.M. KUBUSHI	
DATE: 18-02-2021	

In the matter between:

FIRSTRAND BANK LTD T/A WESBANK

Applicant

and

ARM DEVELOPMENT PROGRAMME

First Respondent

MORODU ANDRIES MOTSE

Second Respondent

JUDGMENT

KUBUSHI J

This judgement is handed down electronically by circulating to the parties' representatives by email and by uploading on Caselines.

[1] This is an opposed application for summary judgment which emanates from an action instituted against the first and the second respondents for the alleged breach of a written loan agreement entered into between the applicant and the first respondent, in respect of which the second respondent has purportedly bound himself as surety thereto.

[2] Uniform Rule 32 was amended with effect from 1 July 2019. Under the amended Rule a plaintiff must wait for the defendant to deliver a plea before a plaintiff may institute summary judgment proceedings. Therefore, in terms of the said rule without a Plea having been filed a Judge cannot entertain a summary judgement application.

[3] However, in this instance I was informed that summons was issued on 30 November 2018, the notice of intention to defend was delivered on 29 January 2019, and the application for summary judgment was delivered on 19 February 2019. Uniform Rule 32 was only amended on 1 July 2019, after the plaintiff's application for summary judgment was delivered on 19 February 2019. The Court in *Raumix*¹ determined that the amended Rule did not apply retrospectively in respect of pending summary judgment applications. Therefore, the application for summary judgment, in this instance, having been initiated prior to 1 July 2019, it should be dealt with in terms of the previous Rule 32.

¹ *Raumix Aggregates (Pty) Ltd v Richter Sand CC & Another and 8 other related matters* (Case Numbers: 2019/8153, 2018/37011, 2017/14846X, 2019/6412, 2019/12142, 2019/10245, 2019/14229, 2019/14870, 2019/7918)

[4] The applicant has applied to court for summary judgment on the basis that the respondents do not have a *bona fide* defence to its claim. The respondents, on the other hand, are opposing the summary judgment application on the ground that they have a *bona fide* defence.

[5] In accordance with uniform rule 32 (3), upon hearing of an application for summary judgment the defendant may satisfy the court by affidavit that she/he has a *bona fide* defence to the action; such affidavit shall disclose fully, the nature and grounds of the defence and the material facts relied upon.

[6] In this instance, the nature and grounds of the respondent's *bona fide* defence to the applicant's claim are based on a counterclaim raised by the first respondent. The second respondent denies being indebted to the applicant on the basis of having been manipulated into signing as surety for the debts of the first respondent.

[7] Uniform Rule 32 (3) requires that the court be satisfied that the respondent's defence as stated in his plea constitutes a *bona fide* defence to the applicant's claim. In deciding whether the defendant has set out a *bona fide* defence, all the court enquires, is whether on the facts so disclosed, the defendant has disclosed the nature and grounds of her/his defence; and whether on the facts so disclosed the defendant appears to have, as to either the whole or part of the claim, a defence which is *bona fide* and good in law.²

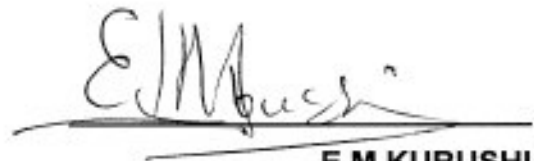
² Erasmus: Superior Court Practice 2ed Volume 2 pD1-411.

[8] The defences raised by the respondent in this regard are, in my view, *bona fide*. The defences are valid and good in law and it is clear that there is a possibility that if advanced, at trial, may succeed.

[9] On the basis of the aforesaid, the summary judgment application cannot succeed.

[10] In the circumstances I make the following order:

1. The application for summary judgment is dismissed;
2. The respondent is granted leave to defend the matter;
3. Costs are costs in the application.


E.M KUBUSHI
JUDGE OF THE HIGH COURT,
GAUTENG DIVISION, PRETORIA

Appearance:

Applicant's Counsel	: Adv. P M W Botha
Applicant's Attorneys	: Brooks & Luyt Incorporated
Respondents Counsel	: Adv. D A De Kock
Respondents' Attorneys	: Van Rensburg Attorneys
Date of hearing	: 30 October 2020
Date of judgment	: 18 February 2021