REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

(NORTH GAUTENG, PRETORIA)

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

CASE NO: 8294/2012

14/3/2013

In the matter between:

MNGUNI JOHANNES SELLO — **FIRST APPLICANT**

MNGUNI LYDIA MALUSI — **SECOND APPLICANT**

and

ABSA BANK LIMITED — **FIRST RESPONDENT**

SHERIFF OF WONDERBOOM — **SECOND RESPONDENT**

NKOMO K M — **THIRD RESPONDENT**

REGISTRAR OF DEEDS — **FOURTH RESPONDENT**

J U D G M E N T

KUBUSHI, J

[1] The applicants and the first respondent entered into a mortgage loan agreement whereby the first respondent lent and advanced to the applicants an amount of R339 051 subject to interest thereon at the rate of 9% *per annum*. As security for the said loan the applicants mortgaged their residential property which is the subject matter in these proceedings.

[2] In terms of the said agreement the applicants were to pay off the amount lent in monthly instalments of R4 560-37. The applicants fell in arrears with their payments and the first respondent sued them for the balance due and payable in terms of a mortgage loan agreement.

[3] At one time or another, but before the first respondent issued summons against the applicants, the applicants were placed under debt review in terms of section 86 of the National Credit Act (NCA). The first respondent alleges that due to the applicants' default under the credit agreement that was being reviewed it terminated the debt review. This is denied by the applicants.

[4] The first respondent issued summons which was served on the applicants on 6 February 2012. According to the applicants when they were served with the summons, they were still under debt review. They did not enter appearance to defend and judgment was granted against them in default on the 3 May 2012. In terms of the default judgment the applicant's residential property was declared specially executable. The property was attached by the sheriff on 24 May 2012 and sold in execution to the third respondent on 27 July 2012. The applicants only became aware of the judgment and the attachment on 25 May 2012 when they consulted with their debt counsellor.

[5] On 9 July 2012 the applicants launched an urgent application seeking to interdict the sale in execution of their residential property scheduled for 27 July 2012. The urgent application was dismissed with costs on 24 July 2012. The applicants have now approached this court for an order in terms of rules 31 (2) (b) and 42 (1) (a) of the Uniform Rules of Court (the Rules) to rescind the judgment granted on 3 May 2012.

[6] I am of the view that the applicants make out a strong case for the rescission of judgment by virtue of rule 42 (1) (a). Their application is based on the ground that the first respondent was not procedurally entitled to obtain judgment against them. It has been held that where the Rules prescribe a particular procedure, and that procedure is not followed, then such procedural error renders the judgment sought and granted *"erroneous"* within the meaning of rule 42 (1) (a). Effectively, what is being rescinded is the procedure in terms of which the judgment was granted, and therefore, by necessary implication also the judgment. I rule therefore that rule 42 (1) (a) is the applicable rule in this instance. See **FRAIND v NOTHMANN** 1991 (3) SA 837 (W) at 839H and **LODHI 2 PROPERTIES INVESTMENTS CC AND ANOTHER V BONDEV DEVELOPMENTS** 2007 (6) SA 87 (SCA) at para [24].

[7] The first respondent contended in its papers that the application was not launched within the 20 days period prescribed by the rules and that the applicants ought to have applied for condonation for such late filing. However, the first respondent's counsel did not canvass the issue at the hearing of the application. He was correct not to have done so. There is no stipulated time period within which to bring an application in terms of rule 42 (1) (a) of the

Rules, as long as it has been brought within a reasonable time. My view is that the application in this instance was brought within a reasonable time and there was no need for the applicants to apply for condonation.

[8] The jurisdictional facts upon which the applicants rely in their application are the following:

a. that the first respondent failed to properly terminate the debt review proceedings against them before issuing summons against them;

b. that the first respondent did not comply with the requirements of rule 17 (2) (b) and rule 18 (6) of the Rules;

c. that the applicants' constitutional right to housing will be infringed if the judgment is not rescinded. This defence was not canvassed by the applicants' counsel at the hearing of the application nor did the first respondent's counsel refer to it. I shall therefore not deal with it in my judgment; and

d. At the hearing of the application, the applicants' counsel raised another jurisdictional fact that the summons issued by the first respondent is premature.

[9] The first respondent is resisting the application on the basis that the applicants did not make out a case for relief in terms of rule 42 (1) (a).

[10] I shall deal in my judgment *in seriatim* with the defences as they were argued before me at the hearing of the application.

NON-COMPLIANCE WITH SECTIONS 86 (10) OF THE NATIONAL CREDIT ACT (NCA)

[11] It is common cause, as *per* the track and trace report from the post office, that the section 86 (10) notice was sent to erf 4864, The Orchards Extension 30, Pretoria, 0200 which is the address chosen by the applicants as their *domicilium citandi et executandi.* The applicants however, aver that they did not receive the notice. Their explanation is that the *domicilium* was chosen by them as an address for the service of notices, communications or legal processes. According to them the correct address for delivery of

letters, statements and notices is 4864 Golden Pond Complex, Ignatius Street, The Orchards Extension 30, 0200 which is the physical street address of the property which describes the erf number. Their counsel referred me in this regard to the judgments in **HILL v INNESDALE MUNICIPALITY** 1927 TPD 975; **POCCOCK v DE OLIVIERA AND OTHERS** 2007 (2) SA 90 (W) at 92F – G; **PHILANI-MA-AFRIKA AND OTHERS v MAILULA AND OTHERS** 2010 (2) SA 573 (SCA) at 574I –J; **FIRSTRAND BANK LIMITED v GAZU** 2011 (1) SA 45 (KZP) 47G – I

[12] The applicants aver that the first respondent did have due knowledge of this street address because they have complied with the requirements in terms of the Financial Intelligence Centre Act 38 of 2001; and the address is also evident from the writ of attachment of immovable property, which was issued by the first respondent's attorneys, attached as "MT10" in the papers. In this respect, their counsel referred me to the judgment in **SEBOLA AND ANOTHER v STANDARD BANK OF SOUTH AFRICA LTD** 2012 (5) SA 142 (CC) at para [69], [87] p166E – F, p186G - H.

[13] The applicants submit that it is clear that the notice would not have reached them as it was forwarded to the wrong address and that is why, as reflected in the track and trace report, it was returned to the first respondent. As a result of non-delivery of this notice the debt review was not properly terminated, they say. The applicants also allege that since the delivery of the notice is an essential part of the first respondent's cause of action, the effect of failure to deliver the aforesaid notice is that the first respondent's cause of action is lacking. Their counsel referred me to the judgments in **ROSSOUW AND ANOTHER v FIRSTRAND BANK LTD** 2010 (6) SA 439 (SCA); **AFRICAN BANK LTD v MYAMBO NO AND OTHERS** 2010 (6) SA 298 (GNP) at 310G – H and 311A – C; **SEBOLA AND ANOTHER v STANDARD BANK OF SOUTH AFRICA LTD** above at paras [75], [76] and [153] p189F – H

[14] The first respondent on the other hand allege that the section 86 (10) notice was properly served on the applicants. According to the first respondent the notice was sent to the address chosen by the applicants for service of notices, communications and legal processes and that the distinction which the applicants seek to draw in this respect is artificial and of no assistance to them. In this regard, the respondent's counsel referred me to the judgments

in **LENCH AND ANOTHER v COHEN AND ANOTHER** 2006 (2) SA 99 (W) and **LORYAN (PTY) LTD v SOLARSH TEA AND COFFEE (PTY)LTD** 1984 (3) SA 834 (W) at 847G – H.

[15] The first respondent avers also that since the **SEBOLA** - judgment it is settled that the mere production of a track and trace report from the post office which proves that the notice reached the correct post office suffices as proof of delivery. The first respondent's counsel referred me to the judgment in **SEBOLA AND ANOTHER v STANDARD BANK OF SOUTH AFRICA LTD AND ANOTHER** above at paras [74], [75], [76] and [79].

[16] According to the first respondent's counsel it is apparent from the track and trace report attached to the papers that the notice reached the correct post office, a notification for collection was sent to the applicants and that the notice was kept at the post office from 20 January 2012 until 27 February 2012 when the return process was commenced. He further submitted that the applicants do not allege that they did not receive the notification nor do they assert that the notice went astray or was not collected or not attended to once collected; it cannot therefore, according to

him, be found that the notice did not come to their attention. The notice was available for collection and the applicants purposely neglected to collect the item. Therefore it is submitted that the section 86 (10) notice was properly served. He also submitted that the applicants became aware of this defence only after the default judgment was granted and can therefore not rely on it. He referred me to the judgment in **MORKEL v ABSA BANK BPK EN 'n ANDER** 1996 (1) SA 899 (C).

[17] The issue which this court must determine is whether the first respondent complied with the provisions of section 86 (10) read with section 129 (1) and 130 (1) of the National Credit Act. The applicants' assertion is that they did not receive the notice because it was returned unclaimed to the first respondent. The first respondent on the other hand, contents that, even though the notice was returned to the sender, it was however delivered to the applicants because it was forwarded to the *domicilium* address chosen by them.

[18] I was referred to two judgments wherein the issue of whether a track and trace report which indicate that the postal item sent *per*

registered mail was despatched to and did in fact reach the correct post office, but was subsequently returned unclaimed to the sender, suffices as adequate proof of delivery. **ABSA BANK LTD v MKIZE AND ANOTHER AND TWO SIMILAR CASES** 2012 (5) SA 574 (KZD) and **NEDBANK LIMITED v BINNEMAN AND THIRTEEN SIMILAR CASES** 2012 (5) SA 569 (WCC).

[19] At the time of granting judgment the court in those two cases accepted the track and trace report as proof of adequate delivery even though the notice was returned to the sender. This was also the case in this instance. However what distinguishes those two cases from the current case is the fact that the applicants are now contesting the matter and are asserting that they did not receive the notice. It is clear from the **SEBOLA** – judgment that contested and uncontested matters are not dealt with in the same manner. See **SEBOLA & ANOTHER v STANDARD BANK OF SOUTH AFRICA LTD & ANOTHER** above at paras [78] and [79].

[20] The issue of the delivery of notices in terms of the National Credit Act, in my view, was finally laid to rest by the Constitutional Court in the now famous **SEBOLA** – judgment, from which both counsel

copiously quoted and to which I have also been referred. In that case it was held that although the NCA, does not give a clear meaning of 'deliver', it is however, required that the credit provider seeking to enforce a credit agreement aver and prove that the notice was delivered to the consumer. Where the credit provider posts a notice, *per* registered mail, proof of a registered despatch to the address of the consumer together with proof that the notice reached the appropriate post office for delivery to the consumer will in the absence of contrary indications constitute sufficient proof of delivery. In practical terms this means that the credit provider must obtain a post-despatch 'track and trace' print-out from the website of the South African Post Office as proof that the notice reached the correct post office. Coupled with proof that the notice was delivered at the correct post office, it may reasonably be assumed in the absence of contrary indication, and the credit provider may credibly aver, that the notification of its arrival at the post office reached the consumer and that a reasonable consumer would have ensured retrieval of the item from the post office. However, if, in contested proceedings, as is the case in this instance, the consumer avers that the notice did not reach him or her, the court must establish the truth of the claim. If, the consumer asserts that the notice went astray after reaching the post office, or was not collected, or not attended to once collected, the court must make a finding whether, despite the credit provider's proven efforts, the consumer's allegations are true. See **SEBOLA AND ANOTHER v STANDARD BANK OF SOUTH AFRICA LTD AND ANOTHER** above at paras [54], [76], [77], [79] and [87].

[21] Except for the fact that the rule 86 (10) notice was returned unclaimed to the first respondent, the evidence provided by the first respondent ordinarily constitutes adequate proof of delivery of the notice: the registered despatch slip attached to the papers proves that the notice was sent to the applicants *per* registered post; the track and trace report attached to the papers is sufficient proof that the notice reached the appropriate post office for delivery to the applicants; the notice was forwarded to the *domicilium* address chosen by the applicants in the loan agreement, which fact is not denied by the applicants; and the track and trace report attached to the papers confirms that the notification of the notice's arrival at the post office was sent to the applicants for collection.

[22] However, the applicants assert that they did not receive the notice. The court in the **SEBOLA** – judgment held that if, in contested proceedings the consumer avers that the notice did not reach him or her, the court must establish the truth of the claim. It is common cause that the notice was not collected from the post office and was as a result returned to the first respondent. In order to satisfy the requirements of section 86 (10) a consumer must not only receive the notice but must also take notice of it. Even though the first respondent is of the view that the notice was sent and delivered to the applicants' chosen address, there is however no proof that they received it. To me the track and trace report, attached to the papers before me, which indicates that the notice was returned to the respondent, is the evidence that proves that the notice did not come to the attention of the applicants. I am not persuaded by the submission by the first respondent's counsel that the applicants neglected to fetch the notice from the post office. This to me is mere speculation as there is no evidence before me to substantiate the claim. To my mind, the track and trace report is conclusive proof that the applicants did not receive the notice. I rule therefore that the first respondent did not properly terminate the debt review process.

[23] However this is not the end of the matter. Section 130 (4) (b) makes it clear that where a credit provider has not complied with the relevant provisions of this Act by for example, failing to first provide notice to the consumer, as contemplated in section 86 (10) the action is not void.

Section 130 (4) (b) provides as follows:

> *"In any proceedings contemplated in this section, if the court determines that –*
>
> *(b) the credit provider has not complied with the relevant provisions of this Act, as contemplated in subsection 3(a), . . . the court must –*
>
> *(i) adjourn the matter before it; and*
>
> *(ii) make an appropriate order setting out the steps the credit provider must complete before the matter may be resumed."*

Section 130 (3) (a) provides as follows:

> *"Despite any provisions of law or contract to the contrary, in any proceedings commenced in court in respect of a credit agreement to which this Act applies, the court may determine the matter only if the court is satisfied that –*

> (a) *In the case of proceedings to which sections 127, 129 or 131 apply, the procedures required by those sections have been complied with."*

Section 129 (1) (b) (i) provides that –

> *"If the consumer is in default under a credit agreement, the credit provider –*
>
> (b) *Subject to section 130 (2), may not commence any legal proceedings to enforce the agreement before –*
>
> (i) *first providing notice to the consumer, as contemplated in paragraph (a) or in section 86 (10), as the case may be."*

Non-compliance with the provisions of section 86 (10) leads to a pause not to a nullity. I must, therefore, adjourn the matter, and make an appropriate order requiring the first respondent to complete specific steps before resuming the matter. The bar on proceedings is thus not absolute, but only dilatory. See **SEBOLA AND ANOTHER v STANDARD BANK OF SOUTH AFRICA LTD AND ANOTHER** above at para [53].

ISSUING OF SUMMONS PREMATURE

[24] At the hearing of the application the applicants' counsel argued that should I find that the debt review process had been properly

terminated, the applicant had in any way not complied with the provisions of section 86 (10) in that the action by the first respondent was premature. His contention being that the summons was issued before the ten day period prescribed in section 86 (10) had lapsed. According to the counsel, the section 86 (10) notice was posted on 8 February 2012 and the summons was served on the applicants on 16 February 2012. The ten day period had not expired by then. Even if, for argument's sake, if the notice was received that same day, the first respondent should have issued and served summons on 23 February 2012, so the argument went. I do not agree with him.

[25] I have since ruled that the first respondent did not comply with the provisions of section 86 (10) in that the debt review process was not properly terminated. However, in terms of section 130 (4) (b) and on the grounds already stated in paragraph [23] of this judgment, this point has become academic and requires no further deliberation.

[26] The submission by the applicant's counsel that the issue was wrongly decided by the Constitutional Court in the **SEBOLA** –

judgment, is in my view not correct. He contends that the issue was correctly decided in **ROSSOUW AND ANOTHER v FIRSTRAND BANK LTD** above.

[27] This issue was not an issue for determination in the **ROSSOUW** – judgment. The court in that case, in respect of section 129 (1), grabbled with the issue of 'delivery'. On a thorough reading of the judgment I do not understand the court in that case to have come to a decision that a summons issued before the expiration of the ten day period required in section 129 becomes a nullity. In that case, the court having referred to section 129 in paragraph [21] of its judgment stated thereafter in paragraph [22] as follows:

> *'Evidently, a credit provider may not commence legal proceedings to enforce its claim without complying with the injunction contained in s 129 (1) (a).'*

[28] The learned judge was, with respect, correct to have said so. When the section is read alone like that, it does convey a meaning which the judge attached to that section. However, to come to a proper meaning and or interpretation of the section the section must be read together with section 130, in particular section 130 (4) (b). Section 129 (1) (b) (ii), itself, enjoins a court to *'meet any*

further requirements set out in section 130'. It would therefore be incorrect for a court to read section 129 in isolation without taking the provisions of section 130 into consideration. In terms of section 130 (4) (b) (the section is quoted in paragraph [23] of this judgment), where a credit provider has not complied with the relevant provisions of this Act as contemplated in, amongst others, section 129, the court **must** adjourn the matter before it and make an appropriate order setting the steps which the credit provider must follow before the matter may be resumed. My understanding is that even though section 129 (1) (b) prescribes that proceedings may not be commenced with before compliance with paragraph (a) of that section or section 86 (10), however, where it is found that proceedings have been proceeded with and there was no compliance with the provisions of the Act, section 130 (4) (b) kicks in. The provisions of section 130 (4) (b) are peremptory, as against those of section 129 which are merely directory, and must be complied with. To my mind the judgment of the Constitutional Court in this regard is correct and must be followed.

NON-COMPLIANCE WITH RULE 17 (2) (b) AND RULE 18 (6) OF THE UNIFORM RULES OF COURT

[29] A further submission by the applicants is that since the first respondent's claim, as *per* the particulars of claim, is based upon a written credit agreement which is secured by a mortgage bond, the first respondent was obliged in terms of rules 17 (2) (b) and 18 (6) to attach a copy of the written credit agreement to the summons. According to the applicants the mortgage bond attached to the summons does not contain the *essentialia* which are normally encountered in a credit agreement and that in order to ascertain a possible indebtedness the mortgage bond must be construed together with the relevant credit agreement. Their counsel referred me to the judgments in **MOOSA AND OTHERS NNO v HASSAM AND OTHERS NNO** 2010 (2) SA 410 (KZP) at paras [16] and [17] and **ABSA BANK LTD v STUDDARD & ANOTHER** [2012] JOL 28604 (GSJ) at paras [24] and [25].

[30] The first respondent resisted the applicants' submission by arguing that it was not obliged to issue a combined summons and that as a result rules 17 (2) (b) and 18 (6) were not applicable. The first respondent's counsel contended at the hearing of this matter that

the first respondent was entitled to utilise a simple summons and therefore the provisions of rule 18 (6) are not applicable. The provisions of rule 17 (2) (b), according to him, do not require compliance with rule 18 and thus the rule is not applicable. He referred me to a judgment in **STANDARD BANK OF SOUTH AFRICA LIMITED v ONEANATE INVESTMENTS (PTY) LTD (in liquidation)** 1998 (1) SA 811 (SCA) at 825D

[31] Rule 17 (2) (b) provides that –

> *"In every case where the claim is for a debt or liquidated demand the summons shall be as near as may be in accordance with Form 9 of the First Schedule."*

Rule 18 (6) provides that –

> *"A party who in his pleading relies on a contract shall state whether the contract is written or oral and when, where and by whom it was concluded, and if the contract is written a true copy thereof or the part relied on in the pleading shall be annexed to the pleading."*

[32] Form 9 is intended for use as a simple summons. It is correct that rule 17 (2) (b) does not specifically stipulate compliance with rule 18. It has, however, been held that where the cause of action is founded on some document, reference thereto should be made in

the simple summons and a copy should be attached to the summons and the original thereof handed in at the time when application for default judgment is made. See **<u>VOLSKAS BANK LTD v WILKINSON</u>** 1992 (2) SA 388 (C) at 398A and **<u>ABSA BANK LTD v STUDDARD & ANOTHER</u>** at paras [6], [10] and [15]

[33] I am in respectful agreement with the above decisions. Even though rule 17 (2) (b) does not specifically stipulate compliance with rule 18, this rule must however be complied with. A simple summons is intended for use in claims for a debt or liquidated demand. Form 9, thus, requires that the claim be set out with sufficient clarity for the court to decide whether judgment should be granted or not. The defendant must also *ex facie* the summons, be aware of what is being claimed from him or her. It is therefore, necessary, in my view, for a copy of a document on which the cause of action is based to be attached to such a summons.

[34] The judgment in **<u>STANDARD BANK OF SOUTH AFRICA LIMITED v ONEANATE INVESTMENTS (PTY) LTD (in liquidation)</u>**, to which the first respondent's counsel referred me

to, is distinguishable from the two judgments. In that case the court was dealing with a cause of action based upon a claim for an amount due and payable by the defendant to the plaintiff by way of overdraft at the former's special instance and request. The issue of a document and/or written agreement did not arise.

[35] It is common cause that in this instance the first respondent did not attach the loan agreement to the summons. Only the mortgage bond was attached. It is also evident from paragraph 1 of the particulars of claim that the first respondent is relying on the terms of a mortgage loan agreement entered into between the first respondent and the applicants which is secured by a mortgage bond. I am in agreement with the applicants' counsel that a mortgage bond does not always contain all the *essentialia* that would ordinarily be found in a loan agreement and that in order to establish the indebtedness the mortgage bond must be read together with the loan agreement. The submission by the first respondent's counsel that a mortgage bond can stand on its own like a suretyship agreement has in my view no merit. A mortgage bond is always accessory to a principal obligation: its existence and continued existence is dependent upon the existence of the principal obligation which it secures. This agreement is obligatory

in nature and necessary for the constitution of a mortgage bond. See Francois du Bois: **WILLE'S PRINCIPLES OF SOUTH AFRICAN LAW** 9th ed p631 -632 and p634 and **NEDBANK LTD v FRASERS AND ANOTHER AND FOUR OTHER CASES** 2011 (4) SA 363 (GSJ) at paras [57] –[58] p383 – 384.

[36] For a mortgage bond to stand on its own it must contain all the *essentialia* contained in the underlying agreement. This is not the case in this instance. For example, paragraph 1 (b) of the particulars of claim, sets out the repayment clause and states that the current monthly instalment amounts to R4 560-37. This clause does not appear on the mortgage bond. The repayment clause in the mortgage bond refers to *'such written agreement or agreement as have been concluded, or which may be concluded from time to time'.* None of these agreements are attached to the summons and it cannot therefore be readily determined whether the applicants have defaulted in their undertaking or not. The default clause in the mortgage bond refers as well to the *'terms or conditions of any written agreement or agreements between the mortgagor and the bank'.* These agreements referred to are not attached to the summons. To my mind the applicants' counsel is

correct the loan agreement must have been attached to the summons.

[37] The applicants' counsel contended further in argument that the effect of non-compliance with rules 17 (2) (b) and 18 (6) is that the first respondent's cause of action will not be properly pleaded and is therefore incomplete. He is correct.

[38] It has been held that if a pleader relies on a written contract a true copy thereof must be annexed. If the copy of the required document is not attached to the simple summons, the summons would not disclose a cause of action. See **ABSA BANK LTD v STUDDARD & ANOTHER** above at paras [15] and [18].

[39] In this instance a copy of the loan agreement was not attached. In the absence of the written loan agreement the basis of the first respondent's cause of action does not appear *ex facie* the pleadings and is therefore excipiable. Judgment cannot be granted on a summons in which the cause of action is excepiable and on that ground alone the first respondent was not entitled to judgment. The judgment granted against the applicants must

therefore be rescinded and the applicants be given leave to defend the matter.

[40] The applicants prayed for a cost order on an attorney and client scale against the party opposing the application. Only the first respondent opposed the application.

[41] The respondent's counsel contended that if the court finds in favour of the first respondent, it should award costs on an attorney and client scale against the applicants as agreed between the parties in the mortgage bond. However, if the judgment is rescinded, costs should not be awarded against the first respondent as the applicants did not have a defence to the claim and only raised technical issues and also because the applicants have dragged their feet in bringing this application to court. He prayed that the court should grant costs against the first respondent only if it can be found that the first respondent's opposition to the application was frivolous. He contended that the first respondent's opposition was not frivolous.

[42] It is trite that the successful party is entitled to the costs of suit. However, in this instance the applicants are seeking an indulgence. I also did not find the first respondent's opposition to the application frivolous. As a result I see no reason why the first respondent should be burdened with costs. A fair and just order should, in the circumstances of this case, be that each party pay own cost.

[43] I therefore make the following order –

a. Prayers 1, 3, and 4 of the Notice of Motion are granted.

b. The applicants are granted leave to defend the matter.

c. Each party to pay own costs.

E. M. KUBUSHI

JUDGE OF THE HIGH COURT

HEARD ON THE	**: 21 FEBRUARY 2013**
DATE OF JUDGMENT	**: 14 MARCH 2013**
APPLICANT'S ATTORNEY	**: MR F GREEF**
APPLICANT'S ATTORNEY	**: GREEF & VAN WYK ATTORNEYS**
RESPONDENT'S COUNSEL	**: ADV E P VAN RENSBURG**
RESPONDENT'S ATTORNEY	**: VAN ZYL LE ROUX INC**