



**IN THE HIGH COURT OF SOUTH AFRICA**

**(GAUTENG DIVISION, PRETORIA)**

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES / NO.

(2) OF INTEREST TO OTHER JUDGES: YES / NO.

(3) REVISED.

DATE

SIGNATURE

Case Number: 37455/23

In the matter between:

**Mercedes Benz Financial Services SA (Pty) Ltd**

**Plaintiff**

and

**Maile Benjamin Mojela**

**Defendant**

Case Number: 37469/23

In the matter between:

**Mercedes Benz Financial Services SA (Pty) Ltd**

**Plaintiff**

and

**Sibusiso Ngema**

**Defendant**

Case Number: 5059/2023

In the matter between:

**First Rand Bank Ltd t/a WesBank**

**Plaintiff**

and

**Dereck Muwawa Phiri**

**Defendant**

Case Number: 17344/23

In the matter between:

**First Rand Bank Ltd t/a WesBank**

**Plaintiff**

and

**Sipho Robert Dlamini**

**Defendant**

Case Number: 38400/23

In the matter between:

**First Rand Bank Ltd t/a WesBank**

**Plaintiff**

and

**Musala Kenneth Nemutudi**

**Defendant**

Case Number: 355224/23

In the matter between:

**Toyota Financial Services SA (Pty) Ltd**

**Plaintiff**

and

**Bongani Stephesen Matsheni**

**Defendant**

Case Number: 49733/23

In the matter between:

**Toyota Financial Services SA (Pty) Ltd**

**Plaintiff**

and

**Raphalani Joshua Ramasunzi**

**Defendant**

Case Number: 009154/23

In the matter between:

**CVI Shackleton (Pty)Ltd**

**Plaintiff**

and

**Dalene Fay Mynhardt**

**Defendant**

Case Number: 037146/23

In the matter between:

**BMW Financial Services**

**Plaintiff**

and

**C Jozana**

**Defendant**

Case Number: 63147/23

In the matter between:

**Standard Bank of South Africa Ltd**

**Plaintiff**

and

**Jean Pierre Botha**

**Defendant**

Case Number: 18082/2022

In the matter between:

**Standard Bank of South Africa Ltd**

**Plaintiff**

and

**AE Mkhathswa**

**Defendant**

Case Number: 35837/23

In the matter between:

**Standard Bank of South Africa Ltd**

**Plaintiff**

and

**Phumudza Mufamadi**

**Defendant**

Case Number: 13725/23

In the matter between:

**Nedbank Limited t/a MFC**

**Plaintiff**

and

**Joshua George Juwel Xaba**

**Defendant**

Case Number: 2278/2022

In the matter between:

**Velocity Finance (RF) Ltd**

**Plaintiff**

and

**Mauritius Monde Qulu**

**Defendant**

Case Number: 1689/22

In the matter between:

**Nedbank Ltd**

**Plaintiff**

and

**CK Magabane**

**Defendant**

Case Number: 55621/21

In the matter between:

**BMW Financial Services**

**Plaintiff**

and

**SB Seremane**

**Defendant**

Case Number: 30772/21

In the matter between:

**BMW Financial Services**

**Plaintiff**

and

**P Binneman**

**Defendant**

Case Number: 47042/21

In the matter between:

**BMW Financial Services**

**Plaintiff**

and

**P M Tlabela**

**Defendant**

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## JUDGMENT

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**MTSWENI AJ**

**INTRODUCTION:**

1. Before me, are seven matters referred for consideration of applications default judgment in chambers<sup>1</sup>. These matters arise out of credit agreements in terms of the National Credit Act<sup>2</sup>.
2. The referral is made pursuant to the provisions of the directive issued by the then, Acting Judge President Ledwaba AJP ( as he then was), dated 22<sup>nd</sup> February 2022<sup>3</sup>.
3. In terms of the directive, all applications for default judgment brought in terms of Rule 31(5) of the Uniform Rules of Court, arising out of credit agreement where the NCA applies, shall be referred to the Registrar. The Registrar shall consider whether the matter is ripe for an order. If he/she is satisfied that the matter is ripe for an order, refer the matter to a Judge in Chambers, for

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<sup>1</sup> **Mercedes Benz Financial Services SA(Pty) Ltd v Maile Benjamin Mojela**, case no: 37455/2023; **Mercedes Benz Financial Services SA (Pty) Ltd v Sibusiso Ngema**, case no:37469/2023; **First Rand Bank Ltd t/a Wesbank v Dereck Muwawa Phiri**, case no: 5059/2023; **First Rand Bank Ltd t/a Wesbank v Sipho Robert Dlamini**, case no:17344/2023; **First Rand Bank Ltd t/a Wesbank v Masala Kenneth Nemutudi**, case no: 38400/2023; **Toyota Financial Services SA Ltd v Bongani Stephesen Matsheni**, case no:55224/2023; **Toyota Financial Services SA Ltd v Raphalani Joshua Ramasunzi**, case no:49733/2023

<sup>2</sup> No 34 of 2005

<sup>3</sup> Directive titled: **Judgments relating to Default Judgment in terms of Rule 31(5) in matters within ambit of the National Credit Act**, dated 14<sup>th</sup> February 2022

consideration<sup>4</sup>. If the Judge is of the view that the matter is in order, he/she may make an order, either granting or refusing default judgment<sup>5</sup>.

3. The then Acting Judge President's directive was an attempt, in my view, to resolve the conundrum created by two judgments, one by the Constitutional Court and another by this Court. These judgments are **Nkata v First Rand Bank Ltd**<sup>6</sup>, handed down on the 16<sup>th</sup> April 2016, wherein the Constitutional Court, held that the granting of default judgments by the Registrar was incompatible with section 130(3) of the National Credit Act, which required the Court to determine such empowered to grant default judgment<sup>7</sup> and **Theu v First Rand Auto**<sup>8</sup> wherein this court per Matebese AJ, confirmed that on proper interpretation of section 130(3) of the NCA, the Registrar had no jurisdiction to grant default judgments flowing from the National Credit Act<sup>9</sup>. The issues raised by these judgments, has been a subject of a debate in a number of cases before our Courts<sup>10</sup>.
4. The procedure outlined in paragraphs 3 and 4 of the Directive has since been a practice in this Division.

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<sup>4</sup> Para 3 of the Directive

<sup>5</sup> Para 4 of the Directive

<sup>6</sup> 2016 (4) SA 257 (CC)

<sup>7</sup> At para 173

<sup>8</sup> (8937/19) (2020) ZAGPPHC 319 (12 June 2020)

<sup>9</sup> At para 47

<sup>10</sup> **Xulu v Standard Bank of South Africa Limited** (1570/21; 2909/14) {2021} ZAKZPHC (23 August 2023); Nedbank **Ltd v Mollentze; First Rand Auto Receivables (RF) Ltd v Radebe and Another** 2022(4) SA 597 (ML); **Seleka v Fast Issuer SPV(RF) Ltd and Another** (46620/20) {2021} ZAGPPHC 12 (10 March 2021); **Ngandela v Absa Bank Ltd and Another** (1637/2021) {2023} ZAELLC 6( 31 January 2023; **Gcasambe v Mercedes-Benz Financial services SA (Pty) Ltd** 2023 (1) SA 141 (FB)

5. In terms of the practice directive and the practice, I am required to consider the requests for default judgment and if satisfied, grant same and if not satisfied, refuse same.
  6. However, before I proceed to consider these applications, there are two issues, which require my attention. These are;
    - 6.1. whether a “Judge in chambers”, has the jurisdiction to consideration of these default judgment applications, as required by s 130(3) of the National Credit Act<sup>11</sup>.
    - 6.2. if not, whether the Acting Judge President’s directive of the 22<sup>nd</sup> February 2022, confers upon “a Judge in chambers”, jurisdiction to consider matters arising out of the NCA.
  7. Given the manner in which these matters were brought before me, I could not despite my best endeavours to constitute an open Court for the purposes of hearing submissions, I was unable to do so. However to ensure that I have the benefit of divergent view point, a notice was issued, calling upon interested parties, to submit written arguments on the two questions posed above.
  8. A number of parties responded to the invitation, including the Banking Association of South Africa. I am grateful to all the parties, who responded to the invitation. Their submissions were of great assistance in me, arriving at the conclusions I have reached in this judgment.
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**WHETHER “A JUDGE IN CHAMBERS” HAS JURISDICTION TO DETERMINE  
DEFAULT JUDGMENT APPLICATIONS ARISING OUT OF NCA?**

9. A determination of the question posed above, is premised in the determination of whether, a “Judge in chambers” is “a Court” as contemplated in s 130(3) of the National Credit Act. The section provides that;

*“130(3). Despite any provision of law or contract to the contrary, in any proceedings 45 commenced in a 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-...**”*

10. In making this determination, I am required to interpret s130(3) of the NCA. The starting point in the interpretation of statutes is trite. It is attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract having regard to the context provided by reading the particular provision or provisions in light of the document as a whole and the circumstances attended upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in light of the general rules of grammar and sentence, the context in which the provision appears, the apparent purpose to which it is directed, and the material known to those responsible for its production. Where more than one meaning is possible, each possibility must be weighed in light of all these factors. The process is objective and not subjective. A sensible meaning is to be preferred to one that leads to insensible

or unbusinesslike results and undermines the apparent purpose of the document<sup>12</sup>.

10. These principles were amplified by Matjied AJ (as he then was) in **Cool Ideas 1186 CC v Hubbard and Another**<sup>13</sup> as follows:

*“[28] A fundamental tenet of statutory interpretation is that the words in a statute must be given their ordinary grammatical meaning, unless to do so would result in an absurdity. There are three important interrelated riders to this general principle, namely:*

- (a) that statutory provisions should always be interpreted purposively;*
- (b) the relevant statutory provision must be properly contextualised; and*
- (c) all statutes must be construed consistently with the Constitution, that is, where reasonably possible, legislative provisions ought to be interpreted to preserve their constitutional validity.<sup>14</sup> “*

11. On plain reading of section 130(3) and the Act as a whole<sup>15</sup> in light of the aforementioned principles, it is palpably clear that the legislature reserved the determination of matters arising out of the NCA, to “a Court”<sup>16</sup>.

<sup>12</sup> **Natal Joint Municipal Pension Fund v Edumeni Municipality** 2012 (4) SA 583 (SCA) at par 18; **Airports Company SA v Big Five Duty Free (Pty) Ltd and Others** 2019 (5) SA 1 (CC) at par 29; **Waenhuiskraans Rate Payers Association and Another v Vereweide Ontwikkelings (Edms.) Bpk.** 2011 (3) SA 434 (WCC) at par 146

<sup>13</sup> 2014 (4) SA 47 (CC) at par 28

<sup>14</sup> **Chisuse v Director General, Department of Home Affairs** 2020 (6) SA 14 (CC) at para 47  
<sup>15</sup> Section 130(4)

<sup>16</sup> **Nkata** supra at para 169 -173; **Kubyana v Standard Bank of SA Ltd** 2014 (4) BCLR 400 (CC); **Sebola and Another v Standard Bank of South Africa and Another** 2012 (5) SA

12. In determination of whether “a Court” as envisaged in section 130(3), includes a “Judge in chambers”, the starting point is Rule 1 of the Uniform Rules of Court.
13. Rule 1 of the Uniform Rules defines “Court” as “*in relation to civil matters, the High Court as referred to in section 6 of the Act<sup>17</sup>*”. It also defines a “Judge” as follows “*a Judge sitting otherwise than in open Court*”.
14. In **Menzies, Birse & Chiddy v Hall<sup>18</sup>** the Court found, although within the context of whether an appeal lies against a judgment or order from a Judge in chambers, held that a Judge sitting in chambers, is not a Court. In doing so, it held that:

**“as an appeal only lies in general from a Divisional Court, and as a Judge sitting in chambers is not such a Court, it follows that, when specifically provided by a statute , there is no appeal from the judgment or order given by a Judge sitting in chambers, and that an appeal consequently will not lie in the present matter.”**

15. It went on to explain the rationale for its finding above, as follows;

**“Under the rule now in question, *the Judge sits purely as a Judge in chambers and does not purport (whether in term or on vacation) to exercise the functions of the court,* and there is in my view, no appeal from**

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142 (CC); **University of Stellenbosch Legal Aid Clinic and Others v Minister of Justice and Correctional Services and Others** 2016 (6) SA 596 (CC) at paras 23 to 27; **Gcasambe v Mercedes Benz** fn 10 supra at paras 45.1 to 45.8

<sup>17</sup> The Superior Court Act 10 of 2013

<sup>18</sup> 1941 CPD 297 at 301

*his decision. That it was competent to take away the right of appeal by the new rule is, I think, clear from the fact that there is no inherent right to a litigant to "review" the taxation of the Taxing Master -which is a nature of a ruling by an administrative official- save for gross irregularity or other resolution makes it per se reviewable. Here is given the right "review" which is indirectly a revision, on the merits of that ruling and there is in no sense proceedings of the court. It was consequently competent by this rule to make such revision the last word on this subject.*"<sup>19</sup>

15. The reasoning expressed in the Menzies cases was endorsed by Litsoane J in the unreported judgment of **Fezile Dabi District Municipality v Maximum Profit Recovery (Pty) Ltd and Another**<sup>20</sup> wherein she declined to hear an appeal against a decision of a single judge sitting in chambers in terms of rule 48(6) of the Uniform Rules, on the basis that a Judge sitting in chambers, does not purport to exercise the functions of a court.
16. In **Brown and Others v Papadakis and Other**<sup>21</sup> the court drew the distinction between a Judge sitting in chambers and "a Court", as follows:

*"[10] It should also be noted that "Judge" is defined in rule 1 of the rules of court as meaning "a judge sitting otherwise than in open court", and "court" in relation to civil matters is defined as meaning "a court constituted in terms of section thirteen of the Act. Section 13 of the*

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<sup>19</sup> At 302  
<sup>20</sup> (2051/2019) (201) ZAFSHC 248  
<sup>21</sup> 13420/2007 (17 February 2011)

*Supreme Court Act 59 of 1959 ("the Act") provides, insofar as it is relevant to the present matter, that a court of first instance shall be "constituted before a single judge of the division concerned".*

17. Snellenburg AJ in **Gcasambe v Mercedes Benz Financial Services SA (Pty) Ltd and Another**<sup>22</sup> in finding that a Judge in chambers has no jurisdiction to consider default judgment application wherein the NCA is applicable, said the following:

*"[59] Section 6 of the Superior Courts Act deals with the constitution of High Courts. In Civil Procedure in the Superior Courts the author observes that in statutes the difference between use of the word "court" and "judge" usually reflects the difference of sitting in 'open court' or 'in chambers. To this end Schutz JA suggested in Pretoria Portland Cement Co Ltd and Another v Competition Commission and Others<sup>23</sup> that where a Judge's services are properly engaged, legislation should refer to a court and not a Judge.*

*[60] When ascertaining the legislative intention with s130(3) purposively in its proper context, s130(3) requires that there must be judicial intervention by the Court before proceedings that have been commenced by a credit provider may be determined. Following that, the proceedings must be determined by the Court. The section therefore requires judicial oversight before the proceedings initiated by*

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<sup>22</sup> 2023 (1) SA 141 (FB)

<sup>23</sup> 2003 (2) SA 385 (SCA) at par 14

*a credit provider may be determined. The section is expressly formulated in a way that shows that the Court may or may not determine the matter, depending on whether the Court is satisfied that there has been due compliance with the matters mentioned in the section. There cannot be judicial intervention or judicial oversight if the Court is not involved.”*

[61] *The section clearly provides a mandatory judicial intervention to ‘ensure that, upon termination of a credit agreement, a consumer is protected’. The Court’s role is clearly and expressly spelt out, just as it is spelt out in other sections of the NCA dealing specifically with debt enforcement by repossession and judgment, notably for instance s131.*

[62] *The meaning of ‘court’ in s130(3) cannot be interpreted to impliedly include anybody else performing the functions therein contained.*

[63] *The ‘court’ in s130(3) of the NCA clearly refers to a Judge sitting in open court.”*

18. From these authorities referred to above, which I fully ascribe to, it is palpably clear that there is a significant difference between a Judge sitting in chambers as well as a Judge sitting in open court. From this, it is clear that to constitute or to be referred to as “a Court”, the Judge must be sitting in Court. This is fortified by s 14(1) (a) of the Superior Court Act, which provides that “a court of a Division must be constitute before a single Judge when sitting as a Court of

*first instance for the hearing of any civil matter, but the Judge President or in the absence of both the Judge President or Deputy Judge President, the senior Judge, may at anytime direct that any matter be heard by a court consisting of not more than three judges as or she may determine”.*

19. A Judge sitting in chambers may only be referred to as “a Court”, when the law empowers him/her to consider such matter in chambers.
20. the Banks and Basa in their submissions, placed reliance on the Judgment by the full Court in Mpumalanga in the matter of **Nedbank v Mollentze**<sup>24</sup>, wherein the Court found that the Registrar had the power to grant default judgment in terms of Rule 31(5)(b)(vii) of the Rules.
21. the judgment in Mollentze, despite being a judgment of the full court, in my view does not answer the question posed above. In that matter, the Court had to grapple with the question of the Registrar’s power to grant default judgments in matters arising out of the NCA.
22. In the present matter, the issue is whether a Judge in chamber, is a Court for the purposes of granting default judgments in matters arising out of the NCA.
23. In the premises, I am not persuaded that the judgment in Mollentze provides an answer to the question posed above.

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<sup>24</sup>

2022 (4) SA 597 (ML)

24. In light of the foregoing, it is my view that a Judge sitting in chambers does not constitute “a court” within the language of section 130(3) of the NCA and thus, has no jurisdiction to adjudicate any matter, including applications for default judgment, to which the NCA applies.

**WHETHER THE ACTING JUDGE PRESIDENT’S DIRECTIVE DATED 14 FEBRUARY 2022, CONFERS JURISDICTION TO A JUDGE IN CHAMBERS, TO CONSIDER MATTERS IN WHICH THE NCA APPLIES**

25. I have pointed out earlier that following the Nkata and Theu judgements, the Acting Judge President issued a directive. The Directive was aimed at resolving the conundrum caused by the key findings in these judgments and to provide for the manner in which these findings can be remedied. It introduced the consideration of these matters by a Judge in chambers.
26. This in turn, raises a question, whether the Directive confers jurisdiction to Judges in chambers, to consider matters in which the NCA applies.
27. The directive was issued in terms of to s 8(6) of the Superior Courts Act. The section gives the Judge President or Acting Judge President (in the absence of the Judge President, to;
- 27.1. determine the sittings of the specific courts;
- 27.2. assignment of judicial officers to sittings;
- 27.3. assign to cases and other judicial duties to judicial officers;

27.4. determine sitting schedules and places of sittings for judicial officers;

27.5. management of procedures to be adhered to in respect of-

27.5.1. case flow management;

27.5.2. finalisation of any matter before a judicial officer , including any outstanding judgment , decision or order; and

27.5.3. recess of superior courts.

28. The question whether the directive confers jurisdiction on Judge's in chambers, must be answered in light of the provisions of the Superior Courts Act, which deals with the High Court's jurisdiction. S 21(1) provides that

*“(1). a division has jurisdiction over all persons residing or being in, and in relation to all causes and all offences triable within, its area of jurisdiction and all other matter of which it may according to law, take cognisance, and has the power;*

*(a). hear and determine appeals from all Magistrates courts within its area of jurisdiction;*

*(b). to review the proceedings of all such courts;*

(c). *in its discretion and at the instance of any interested person , to enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such a person cannot claim any relief consequential upon determination.*

(2). *A Division also has jurisdiction over any person residing or being outside its area of jurisdiction who is joined as a party to any cause in relation to which such court has jurisdiction or who in terms of a third party notice becomes a party to such cause of action, if the person resides or is within its area of jurisdiction of any other division.”*

29. A reading of s 21, reveals that in addition to appellate and review jurisdiction, a Division has jurisdiction over, (i) all persons residing or who are in it's a area of jurisdiction, (ii) all causes of action and causes of action triable within its are of jurisdiction and, (iii) matters it may according to determine or hear.
30. The Judge President's powers in relation to the jurisdiction of a division are limited and set out by s7 of the Superior Courts Act. To this end, it provides that the Judge President may by notice, establish circuit districts for the adjudication of civil or criminal matters and may by notice, alter the boundaries of any such district, within the area of jurisdiction of his division.
31. Thus, save for the powers set out in s 7, the Judge President has no power to determine or alter or add to the jurisdiction bestowed by s 21 to his of his or her

division. This was made clear by Molemela JA in **Mhlongo and Others v Mokoena N.O and Others**<sup>25</sup> as follows;

*“(12). As can be determined from the provisions of s7 of the Superior Courts Act, the powers of a Judge President in relation to establishment of circuit court districts and their boundaries are circumscribed by legislation; the Judge President cannot exercise any more power than that granted to him or her by Legislation. It is clear in terms of s6(3) of the Superior Courts Act, only the Minister has the power to determine the jurisdictional areas of various divisions of the High Court. The fact that the Judge President, may, in terms of s 7(1) alter the boundaries of any circuit courts that have been established under a particular division should not be equated with the power, granted exclusively to the Minister, to determine the area under the jurisdiction of that division”*

32. Makgoka JA, dissenting, said the following;

*“(19). Jurisdiction is a matter of law, and not of discretion or equity, which is what ss 173 and 34 are concerned with. The present case, jurisdiction is governed by s21 of the Superior Courts Act, which regulates the jurisdiction of the various divisions of the high court over persons and in relation to matters. Thus, whether the court has jurisdiction or not, is determined with reference to that section only. If it has jurisdiction, that is the end of the enquiry.*

*The Court does not need either s 173 or s 34 to justify exercising it. Similarly, if a court does not have jurisdiction to justify exercising it. Similarly, if a court does not have jurisdiction, the enquiry ends there.*

(20). *As explained by the Constitutional Court in S v Mulaudzi, a court cannot use s 173 power to assume jurisdiction that it does not otherwise have. Axiomatically, it cannot use s173 power to oust jurisdiction which it ordinarily has. The same applies with equal force to the right of access to courts guaranteed in s34 . the section has no place to the enquiry whether or not has a jurisdiction. No reason of equity could ever clothe a court with jurisdiction it does not have.*

(21). *It follows that ss 173 and 34 considerations are totally irrelevant to the enquiry whether a court has jurisdiction or not. Equally irrelevant to the jurisdiction enquiry, are the objectives sought to be achieved through the practice directive”.*

33. I fully ascribe to the ratio of the SCA above. To that I may add that the Judge President's powers in terms of s 8(6), to assign cases and judicial duties to judicial officers or to issue directives to manage the case flow management or finalisation of matters before judicial officers, does not include or cannot be equated to the power to alter or amend the jurisdiction bestowed upon his division by legislation.

34. In **The National Director of Public Prosecutions (ex parte application)**<sup>26</sup>, the SCA, clarified the legal status of practice directives as follows;

*“(19). Practice directives provide essential guidance for the daily functioning of the Courts. Practice directives may not derogate from legislation, the common law or rules of court that have obligatory force. A statute that permits the use of procedure so as to make its enforcement effective must be adhered to. The competence of the courts to give practice directive is an important means by which the work of the courts may be carried out. However, practice directives must facilitate what a statute requires. Practice directives should not place obstacles in the way of achieving the objects of a statute.*

35. From the above, it is clear that that s 21 clearly defines the area or persons or persons over which a division has jurisdiction. In addition, thereto, it confers upon a Division jurisdiction to hear matters, which the law confers upon, the jurisdiction to hear.
36. S 130(3) expressly confers upon “a Court” the jurisdiction to hear matters to which the NCA, applies. I have already found earlier herein that a “Court” does not include a Judge in chambers.

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<sup>26</sup> 2022(1) SACR 1 (SCA) at para 19

37. Therefore, the Acting Judge President cannot by way of a practice directive, confer jurisdiction upon a Judge in chambers, to hear matter, which the Act has expressly and exclusively reserved for a Court.
38. Furthermore, to the extent that the Acting Judge President's directive is or may be interpreted or intended to confer jurisdiction to hear matter to which the NCA applies, such interpretation or intention is at odds with the law, in particular, the principle of legality. This is because the Acting Judge President, cannot exercise powers which he/she in law does not have<sup>27</sup>.
39. Therefore, I find that, the Acting Judge President's directive does not confer jurisdiction on a Judge in chamber to determine matters in which the NCA applies and to the extent that the Directive is intended to confer jurisdiction to a Judge in chambers to determine matter to which the NCA applies, it is null and *void ab initio*.
40. Even if I am wrong on findings on the Acting Judge President's directive conferring jurisdiction on a Judge in chambers to hear matter to which the NCA applies, it my view that s 130(3) constitutes an exception to the practice directive. This is because the s 130(3), expressly exempts, matters to which the NCA applies, from the application of such law or contract.
41. I am alive to the fact that since the inception of the directive and the practice to refer the default judgment applications to which the NCA applies, there have

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<sup>27</sup>

Mhlongo at para 12

been many default judgments granted in terms of the practice and the directive and this judgment might result in this Division and other Courts, in which similar directives or practices have been in place, being inundated with rescission applications on the basis that the Judge in chambers did not have the jurisdiction to grant them.

42. Therefore, to mitigate against such and without making any pronouncement on the validity of those default judgments, I intend limiting the consequences of this judgment, to those matters in which default judgments had not been granted as at the time of this judgment. However, such limitation, cannot and should not be construed to take away any person's rights to approach a Court to have a default judgment granted by a Judge in chambers, rescinded and/or declared invalid and/or unlawful.

43. In the premises, the following order is made;

43.1. The Registrar is hereby directed and authorised to forthwith enrol all applications for default judgment, arising from credit agreements, to which the NCA, applies, on the default judgment roll for hearing in an open Court, subject to the Applicants complying with the provisions of 3 of the Acting Judge President's practice directive dated 14<sup>th</sup> February 2022.



**V.D. MTSWENI**

**ACTING JUDGE OF THE HIGH COURT**