IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 16205/2016

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES [redacted]
Date: 14 August 2024

In the matter between:

MAHLANGU: JAN JABULANI	**1st APPLICANT**
MAHLANGU: KHOSI VANGELINE	**2nd APPLICANT**

and

THE STANDARD BANK OF SOUTH AFRICA LTD	**RESPONDENT**

In re:

THE STANDARD BANK OF SOUTH AFRICA LTD	**PLAINTIFF**

and

MAHLANGU: JAN JABULANI	**1st DEFENDANT**
MAHLANGU: KHOSI VANGELINE	**2nd DEFENDANT**

JUDGMENT

ALLY AJ

[1] This is an opposed application for the rescission of a default judgement granted by my brother Du Plessis AJ on 20 May 2016.

[2] This matter was set down for hearing by the Respondent in accordance with directions given by my brother Machaba AJ[1].

[3] At the hearing of this matter the First Applicant represented himself and the Second Respondent was not present.

[4] At the outset, the First Applicant requested a postponement. The Respondent opposed such request.

[5] The First Applicant requested a postponement on the grounds that his attorney was not present to prosecute his application for rescission.

[6] However, it should be noted that the Applicants were aware of the Order of my brother Machaba AJ wherein the issue of legal representation was dealt with.

[7] Counsel for the Respondent submitted that the reasons provided by the First Applicant for the postponement of this application are the same as that submitted to this Court before my brother Machaba AJ and accordingly this request should not

[1] Caselines: Section 039 - 1

be acceded to for this reason alone as well as that there was no substantive application for postponement before me.

[8] The fact that the issue of legal representation was specifically dealt with by my brother Machaba AJ, this Court could not accede to the request for postponement and ruled as such.

[9] In respect of the merits of the application, the Applicants in the founding affidavit raise two defences, namely,

9.1. the summons is excipiable; and

9,2, there was non-compliance with Section 129 of the National Credit Act[2] which was not disclosed to the presiding judge at the hearing of the application.

[10] In respect of the first defence, the Respondent submits that the defence is without merit in that a party cannot except to a simple summons. In this regard, Counsel for the Respondent referred the Court to **Icebreakers No. 83 (Pty) Ltd v Medicross Health Care Group (Pty) Ltd**[3] wherein it was stated that a simple summons is not a pleading and accordingly cannot be attacked by way of an exception. I am in agreement with this view and thus the first defence raised by the Applicants must fail.

[11] In respect of the second defence, the Respondent submits that there was no need to comply with Section 129 of the National Credit Act [NCA] because it

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[2] Act 34 of 2005

[3] 2011 KZDHC at para 12

was not applicable and that section 86(10) of the NCA was applicable in circumstances where a party was under debt review and such debt review had legally been terminated.

[12] Respondent's Counsel submitted that the Applicants were under debt review and such debt review had legally been terminated. Counsel furthermore referred the Court to **First Rand Bank Ltd t/a Honda Finance v Owens**[4] in support of his submission.

[13] The **First Rand Bank**[5] decision makes the distinction clear between Section 129 of the NCA and Section 86(10) of the NCA. In summary, where a party is under debt review and such debt review has been legally terminated, it is not necessary for the credit provider to comply with Section 129 of the NCA and compliance with Section 86(10) of the NCA is sufficient. To find otherwise, the Supreme Court of appeal held is absurd.

[14] The **First Rand Bank**[6] decision referred to above is applicable in this case and as such this Court is bound by same.

[15] Having considered the two defences raised by the Applicants and for the reasons stated above, these defences must fail. Accordingly, this Court has no other option but to hold that the application for rescission must fail for the

[4] 2013 (2) SA 325 SCA

[5] supra

[6] supra

reasons set out above. The Applicants have clearly not met the requirements for rescission in terms of Rule 42 of the Uniform Rules of Court.

[16] Insofar as the application for condonation for the late filing of this application is concerned, on the requirement of a *bona fide* defence alone, the Applicants application in this regard must fail because they have not shown this Court any defence to the claim by the Respondent.

[17] With regards to the costs in this matter there is no reason why costs should not follow the result. Furthermore, the scale of costs is dealt with in the mortgage bond and the Respondent requests that the scale of costs to be awarded should be in accordance with such terms which are on an attorney and client scale.

[18] Accordingly, the following Order will issue:

a). the application for rescission of the default judgment granted on 20 May 2016 is hereby dismissed;

b). the Applicants are to pay the costs of this application on an attorney and client scale the one paying the other to be absolved.

[redacted]

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION OF THE HIGH COURT, PRETORIA

Electronically submitted therefore unsigned

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be **14 August 2024.**

Date of virtual hearing: 7 August 2023

Date of judgment: 14 August 2024

Appearances:

Attorneys for the Applicants:	**In person**
	jabumahlangu707@gmail.com
Attorney for the Respondent:	**RAMSAY WEBBER**
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Counsel for the Respondent:	**Adv. M. Reineke**