



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

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

SIGNATURE

DATE: 26 November 2024

Case No. 4470/2020

In the matter between:

STANDARD BANK OF SOUTH AFRICA LIMITED

Applicant

and

MARTIN CHRIS KOORBANALLY

First Respondent

LEEANN REINOLDA KOORBANALLY

Second Respondent

JUDGMENT

WILSON J:

- 1 Section 129 (3) of the National Credit Act 34 of 2005 enables a consumer to reinstate a credit agreement on which they have fallen into arrears “by paying to the credit provider all amounts that are overdue, together with the credit provider's prescribed default administration charges and [the] reasonable costs of enforcing the agreement up to the time the default was remedied”.

- 2 The respondents, the Koorbanallys, took out a loan from the applicant, Standard Bank, which was secured by way of a mortgage bond against their home in Meyersdaal, to the south of Johannesburg. The Koorbanallys fell into arrears on their repayments. On 7 February 2020, Standard Bank issued summons claiming payment of the full amount outstanding on the loan agreement, together with an order declaring the Koorbanallys' home specially executable.
- 3 The Koorbanallys defended the proceedings. Their main object in doing so appears to have been to buy the time necessary to bring their loan account up-to-date. The action meandered through the trial process, but an application to declare the Koorbanallys' home specially executable was eventually set down for hearing before me on 25 November 2024.
- 4 At some point in July or early August 2024 (it is not clear exactly when), the Koorbanallys paid their arrears in full. They did not, however, settle the costs to which Standard Bank had been put in seeking to enforce the loan agreement. This is because it was up to Standard Bank to quantify the reasonable costs of enforcing the loan agreement up to the time the default was remedied, and to demand them from the Koorbanallys (see *Nkata v First Rand Bank Ltd* 2016 (4) SA 257 (CC) ("*Nkata*"), paragraph 122).
- 5 For reasons I cannot fathom, Standard Bank refused to do this. It insisted that the matter should be brought to a hearing, purely for the purposes of obtaining a costs order on the scale as between attorney and client against the Koorbanallys. Ms. Swandle, who appeared for Standard Bank, submitted that

that Standard Bank's taxed bill would constitute its reasonable enforcement costs.

6 This is the wrong approach. Standard Bank is only entitled to the "reasonable costs of enforcing the agreement *up to the time the default was remedied*" (section 129 (3) of the NCA, my emphasis). Those costs obviously do not include the attorney and client costs associated with a hearing before me, which was held well after the Koorbanallys remedied their default by paying their arrears.

7 When the matter was argued, Ms. Swandle was still unable to tell me what Standard Bank believed its reasonable costs of enforcement were. Nor had any effort been made to communicate that amount (whatever it is) to the Koorbanallys. For their part, on 2 October 2024, almost two months before the matter was called, the Koorbanallys offered to pay just under R57 000 towards Standard Bank's enforcement costs in three equal monthly instalments. That offer was ignored for weeks on end, before finally being rejected on 20 November 2024. Having rejected the Koorbanallys' offer, Standard Bank still refused to quantify its enforcement costs, or to make a counteroffer to the Koorbanallys in settlement of them.

8 As the Constitutional Court's decision in *Nkata* makes clear, it is for the credit provider to quantify and demand its enforcement costs at the point a consumer cures their default by paying their arrears. If the credit provider fails to do so, the fact that the credit provider's enforcement costs have not been paid constitutes no bar to the reinstatement of the agreement (see *Nkata*, paragraphs 121 to 123). What a credit provider may not do is avoid engaging

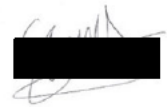
with a consumer by keeping the litigation hobbling along in the hope of obtaining a costs order. Yet that was the course Standard Bank chose.

9 That conduct was high-handed, inconsistent with the applicable law and a waste of the court's time. Mr. Patel, who appeared for the Koorbanallys, submitted that Standard Bank should pay the wasted costs of the hearing before me. That is the least that should happen.

10 For all these reasons –

10.1 The application is removed from the roll.

10.2 The applicant will pay the wasted costs of the hearing of 25 November 2024.



S D J WILSON
Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 26 November 2024.

HEARD ON: 25 November 2024

DECIDED ON: 26 November 2024

For the Applicant: L Swandle
Instructed by Van Hulsteyns Attorneys

For the Respondents: M Patel
Instructed by Fran Hackett Attorneys Inc