

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 060597/2022

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
25/03/2025	

In the matters between: -

STANDARD BANK OF SOUTH AFRICA LIMITED
(Registration Number: 1962/000738/06)

APPLICANT

And

MAHANJI HENDRICK MABUNDA N.O
(In his capacity as trustee for the time being
of the Ace Family Trust)

RESPONDENT

JUDGMENT

KEKANA, AJ

INTRODUCTION

[1] The applicant in this matter seeks (a) an order confirming the cancellation of two instalment sale agreements between the applicant and the respondent; (b) an order in terms of which the respondent is ordered to return a 2020 Porsche 911 Carrera 4S PDK and 2020 Mercedes Benz G63 AMG; (c) an order postponing the payment of damages sine die (d) leave to supplement its founding affidavit to the extent necessary to prove any damages, interest and costs. The respondent is cited herein in his capacity as the trustee of the Ace Family Trust (the Trust).

BACKGROUND

[2] It is not in dispute that the applicant and the trust entered into two instalment sale agreements for the purchase of two motor vehicles, a 2020 Porsche 911 Carrera 4S PDK and a 2020 Mercedes-Benz G63 AMG in 2021 (first and second agreement). According to the sale agreements, the Trust was required to pay R39 121.03 per month for the Porsche and R54 744.73 per month for the Mercedes-Benz. The outstanding balances, as indicated by the certificates of balance, were R2 125 162.03 for the Porsche and R3 204 937.70 for the Mercedes-Benz. The trust fell into arrears in 2022.

[3] The applicant entered into an informal agreement with the respondent to enable the respondent to bring the accounts up to date. When the respondent failed to comply with his obligations under the informal agreement, the applicant sent section 129 notices to the trust and subsequently notices of cancellation for each agreement.

RESPONDENT'S SUBMISSIONS

[4] In resisting the applicant's claim, the respondent raised two issues, the first one is that Mr Mabunda fell ill and was hospitalized in November 2022 and the second one is that the applicant withheld money that was deposited in Mr Mabunda's account held with the applicant that was supposed to pay the arrears.

[5] The respondent submitted that Mr Mabunda received an insurance payout of R795 994.14 from Discovery in his bank account held with the applicant. The applicant released an amount of R570 994.14 to the respondent in his personal capacity and retained the balance which the applicant directed to Mr Mabunda's credit card account. The respondent submitted that the amount retained by the applicant was intended to go towards the arrears of the two motor vehicles.

THE APPLICANT'S SUBMISSIONS

[6] The applicant submitted that Mr Mabunda's alleged illness and the consequent inability to pay the Trust's monthly instalments do not constitute a defence. It is the applicant's contention that the Trust was in any case, already in breach of its contractual obligations prior to Mr Mabunda's alleged illness. Specifically, the applicant submitted that as at 1st October 2022, the arrears owed by the respondent were as follows: (a) the amount of R81 865.47 in respect of the Porsche and (b) the amount of R111 548.46 in respect of the Mercedes Benz.

[7] The applicant further submitted that in view of the arrears, the applicant entered into an informal agreement with the respondent in terms of which the respondent was to pay (a) an amount of R50 000.00 by no later than 14 October 2022 and the balance of the arrears to be paid by no later than 25th October 2022 in respect of the first instalment sale agreement, and (b) an amount of R60 000 by no later than 14th October 2022 and the balance of the arrears to be paid by no later than 25th October 2022.

[8] According to the applicant, the respondent paid an amount of R100 000.00 on the 12th November 2022 which is less than the agreed-upon amount and failed to pay the balance of the arrears under the informal agreement.

[9] Regarding the submission that the insurance payout retained by the applicant was intended to go towards the arrears of the instalment sale agreements, the applicant submitted that the respondent admitted that the balance of the insurance payout, less the amount owing on Mr Mabunda's credit card facility, was to be refunded to the respondent. The applicant submitted that the portion of the insurance payout was retained to pay what Mr Mabunda owed in his personal capacity to the applicant in terms of the overdue and terminated credit card facility. This was not controverted by the respondent.

SECTION 129 (1) NOTICE

[10] The respondent claimed that the applicant did not comply with section 129 of the National Credit Act 23 of 2005. In the answering affidavit, the respondent denied that the notices were sent by registered mail to the Trust's registered address or by email. This is so even though the applicant attached proof that the section 129 notices were sent. On the other hand, the respondent admitted the applicant's allegation that a notice in terms of section 129(1)(a) was sent to the Trust in his answering affidavit.

[11] The applicant submitted that the section 129 notice was sent to the Trust's registered address by registered mail on the 7th October 2022 and provided a track and trace report. The section 129 notice was also emailed to the respondent on the 6th October 2022. In response to the email, the respondent made an informal arrangement to bring the account up to date, which the respondent failed to honour. The respondent's bare denial in the face of evidence attached to the founding affidavit cannot assist the respondent. I therefore find that there was sufficient notice.

ANALYSIS

[12] I now turn to the defence raised by the respondent that the applicant kept a portion of the money received by Mr Mabunda from Discovery which was meant to cover the arrears on the accounts. The respondent did not deny that the money was put towards the balance outstanding on the credit card account of Mr Mabunda. In any event even

if there was a dispute concerning the amount retained by the applicant, this would not constitute a defence to the applicant's claim against the Trust.

[13] The respondent also sought to rely on Mr Mabunda's illness for the Trust's default. Although the trustee's illness is not a defence against the applicant's claim, the applicant granted the respondent indulgences to allow the respondent to bring the accounts up to date. The respondent failed to bring the accounts up to date despite the indulgence granted to the Trust. The respondent does not have a valid defence against the applicant's claim.

CONCLUSION

[14] During the hearing of this matter, the respondent's counsel requested additional time for the respondent to regularize the two accounts. However, two years have passed since the Trust was given the chance to rectify its breach, and as at the hearing date, the accounts remained in arrears.

[15] The trust breached the two agreements and did not take action to remedy the breach, despite being afforded ample opportunity to do so. Consequently, I conclude that the applicant had the right to cancel the agreements.

I therefore make the following order:

1. Draft order marked X is made an order of court.


P D KEKANA
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of hearing: 17 February 2025

Date of judgment: 25 March 2025

Appearances

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