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**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable / Not reportable

Case no: 4781/2023

In the matter between

STANDARD BANK OF SOUTH AFRICA LIMITED

APPLICANT

And

MOHAMMED AMRA

RESPONDENT

Neutral citation: *Standard Bank of South Africa Limited v Mohammed Amra*
(4781/2023)

Coram: MPAMA AJ

Heard: 23 January 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be **20 March 2025 at 14H30**.

Summary:

ORDER

The application for summary judgment is granted against the defendant as per the first to third prayers of the notice of motion.

JUDGMENT

Mpama AJ

Introduction

[1] This is an opposed application for summary judgment brought in terms of rule 32 of the Uniform Rules of the Court (the Rules) for the payment of the sum of R288 672.09, interest thereon, insurance premiums of R1219.15 and assurance premiums of R498.55 against the respondent. I will refer to the parties as referred to in the main trial.

[2] The cause of action is based on a written home loan agreement entered into between the plaintiff and the defendant on 12 April 2007. In terms of the agreement, the plaintiff advanced a sum of R258 000.00 to the defendant. The loan was repayable with interest in monthly instalments of R2739.33.

[3] The plaintiff alleged that the defendant breached the terms of the agreement in that he failed to make payments and, consequently, is in arrears. On 12 September 2023 the plaintiff instituted action proceedings against the defendant in order to recover its monies owed by the defendant. The plea spurred the plaintiff into this summary judgment application.

The Application

[4] Ms Else Wall, Manager of Legal, Defended, Personal & Private Banking Credit deposed to an affidavit in support of the application. Ms Wall verified the cause of action, the amount owed by the defendant and the grounds relied upon by the plaintiff as envisaged in rule 32(2) of the Rules. Ms Wall attacked the defence raised by the defendant to its claim. She averred that:

(i) The defendant's first defence that the plaintiff did not comply with the National Credit

Act 34 of 2005 was unfounded.

(a) The defendant's contention that the sheriff's return of service did not indicate the person who received the default notice in terms of s 129 of the NCA (s 129 notice) is 16 years older and has not been signed or marked to identify the recipient is inconsequential in that the return shows that the service of the notice was effected on Mrs Milanze and at the respondent's domicile. She further stated that the title of Mrs Milanze denotes that she is an adult, well above the age of 16 years. It was submitted that this is merely a technical procedural point.

(b) The plaintiff forwarded s 129 notices by registered mail. These notices were forwarded to the following addresses; 1[...] E[...] D[...], eThekweni Metro, Westville and PO BOX 9[...], Newcastle. The defendant admitted that these were his addresses, however they were not addresses designated by him for the purposes of receiving notices and documents relating to the loan agreement. The plaintiff was refuting this.

(ii) The second defence raised by the defendant in his plea that not all the monies paid by him have been credited to his account was untruthful.

The plaintiff submitted that the respondent has no bona fide defence to the claim and the application should succeed.

[5] The defendant deposed to an affidavit resisting summary judgment. His defences as stated in his plea (mentioned *supra*) were repeated and it is not necessary to repeat same. It was argued on his behalf that he has established a bona fide defence and the application should be dismissed.

The Applicable Law

[6] Summary judgment enables a plaintiff to obtain judgment against a defendant without the necessity of going to trial when a defendant has no defence to a claim based on a liquid document, for a liquidated amount of money, for delivery of movable property and for ejectment.

[7] The court must be satisfied that that a plaintiff who seeks summary judgment has established its claim clearly on the papers and the defendant has failed to set up a bona fide defence. Even before a court considers whether the defendant has established a bona fide defence or not, it is necessary for the court to be satisfied that the plaintiff's claim has been clearly established and its pleadings are technically in order. This Court, as per Gihwala AJ in *Gulf Steel (Pty) Ltd v Rack-Rite BOP (Pty) Ltd and Another*¹ expressed as follows:

'In view of the nature of the remedy the Court must be satisfied that a plaintiff who seeks summary judgment has established its claim clearly in the papers and the defendants have failed to set up a *bona fide* defence as required in terms of the Rules of this Court. There are accordingly two basic requirements that the plaintiff must meet, namely a clear claim and pleadings which are technically correct before Court. If either of these requirements is not met, the Court is obliged to refuse summary judgment. In fact, before even considering whether the defendant has established a *bona fide* defence, it is necessary for the court to be satisfied that the plaintiff's claim has been clearly established and its pleadings are technically in order. Even if a defendant fails to put up any defence or puts up a defence which does not meet the standard required of a defendant to resist summary judgment, summary judgment should nevertheless be refused if the plaintiff's claim is not clearly established on its papers and its pleadings are not technically in order and in compliance with the Rules of Court.'

[8] The defendant resisting summary judgment must set out a bona fide defence by disclosing fully the nature and grounds of the defence and the material facts relied upon. The defence must be disclosed with sufficient completeness and particularity to enable the court to decide whether or not the affidavit discloses a bona fide defence. In *Maharaj v Barclays National Bank Ltd*² (Maharaj) Corbett JA said:

'Accordingly, one of the ways in which a defendant may successfully oppose a claim for summary judgment is by satisfying the Court by affidavit that he has a bona fide defence to the claim. Where the defence is based upon facts, in the sense that material facts alleged by the plaintiff in his summons or combined summons are disputed or new facts are alleged constituting a defence, the Court does not attempt to decide these issues or to determine whether or not there is a balance of probabilities in favour of one party or the other. All that the Court enquires into is(a) whether the defendant has "fully" disclosed the nature and grounds of

¹ *Gulf Steel (Pty) Ltd v Rack-Rite BOP (Pty) Ltd* 1998 (1) SA 679 (O).

² *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A) (Maharaj).

his defence and the material facts upon which it is founded, and (b) whether on the facts so disclosed the defendant appears to have, as to either the whole or part of the claim, a defence which is both bona fide and good in law. If satisfied on these matters the Court must refuse summary judgment, either wholly or in part, as the case maybe.’³

[9] *Erasmus: Superior Practice* provides:

‘The nature and grounds of the defence and the material facts relied upon therefore in the affidavit should be in harmony with the allegations in the plea. In this regard the plea should comply with the provisions of R18(4) and 22(2), i.e. it should clearly and concisely state all the material facts relied upon for the defence in order for the plaintiff, in the context of summary judgment proceedings, to consider whether or not the defence as pleaded raises any issue for trial.’⁴

[10] In *Absa Bank Ltd v Meiring*⁵ it was said:

‘It follows that a defendant in a summary judgment application which has failed to plead all its defences will be required to apply to amend its plea if it seeks to add any for the purposes of its opposition to a summary judgment. A defendant’s failure to have pleaded such defences initially will be material and, in addition to all the usual requirements to obtain the indulgence of being granted leave to amend, will require convincing explanation if it is to exclude the possibility that a court might infer delaying tactics and a lack of bona fides. An additional effect will be that such defendant will ordinarily have to bear the wasted costs of the application for leave to amend and those occasioned by the attendant postponement of the summary judgment application.’⁶

[11] A defendant who wishes to resist summary judgment must raise a defence to the application which must be consistent with the plea. Moreover, such defence must be a bona fide defence.

Evaluation

[12] The defendant’s defences gleaned from his plea are consistent with the defences raised in resistance to the summary judgment. Therefore, the defendant has overcome the first hurdle. The defence must not only be consistent with the plea but it must be a

³ Ibid at 426A-B.

⁴ DE Van Loggerenberg *Erasmus: Superior Court Practice* (2) at D1-416B16A.

⁵ *Absa Bank v Meiring* [2022] ZAWCHC 31; 2022 (3) SA 449 (WCC).

⁶ Ibid para 20.

bona fide defence.

[13] The defendant does not deny his indebtedness to the plaintiff. He also does not deny that his account is in arrears. The only issue raised regarding the debt itself is that there are certain payments not credited by the plaintiff to his account. The plaintiff referred the court to annexures 'FA2' and 'FA3' attached to the application, to wit, the certificate of balance and defendant's statement of account. It argued that all payments received from the defendant were duly credited by the plaintiff. When this submission was made nothing, much came from the defendant to controvert this. The difficulty with this defence is that the defendant did not amplify it. In his affidavit, he did not detail these payments, did not tell when and how these payments were made and for how much. It is not surprising that this argument was not pursued by the defendant in his heads of argument. Therefore, this defence is untenable.

[14] Second, the other defences raised relate to allegations of non-compliance with the NCA by the plaintiff. The defendant chastised the plaintiff's manner of service of the s 129 notice. He further averred that he did not receive the notice. The first notice was served by the sheriff at no 4[...] C[...] S[...], Newcastle. The defendant conceded that this is his chosen *domicilium citandi et executandi*. The return of service shows that the notice was served upon Mrs Milanze, a tenant at this address. The defendant bemoaned that the return of service did not reflect that it was served on a person above the age of 16 years. Correctly so, the return of service does not reflect that Mrs Milanze is a person above the age of 16 years. Nevertheless, it can be inferred that by virtue of her title 'Mrs' that she is a person over the age of 16 years as contended by the plaintiff. The defendant did not refute that Mrs Milanze is a tenant at this address. Whilst the defendant need not deal exhaustively with the facts and the evidence relied upon to substantiate them, he must at least disclose his defence and material facts relied upon with sufficient particularity and completeness to enable the court to decide whether the affidavit discloses a bona fide defence or not.⁷ No explanation has been proffered by the defendant as to what might have resulted in a notice served on a tenant at his address not reaching him. What might have caused Mrs Milanze to keep this notice and not furnish it to the defendant. In the absence of an explanation, it is difficult to fathom why he did not receive the s 129 notice.

⁷ See *Maharaj* fn 3 at 426C-D.

[15] The s 129 notices were further sent by registered mail to two other addresses. These two addresses are 1[...] E[...] D[...], eThekweni Metro, Westville and P.O. Box 9[...], Newcastle 2940. The defendant did not deny that these are his addresses. However, he disputed that the two addresses were chosen by him as addresses upon which he may receive notices in terms of the agreement. This denial cannot endure the evidence in the form of a written agreement attached to the application. The defendant further contended that no proof has been furnished by the plaintiff to show that the mail (the notices) was delivered to his post office. Annexures 'P2' and 'P3' are 'trace and track' reports in respect of the notices. They both indicate that a notification was sent to the intended recipient by the post office. One must understand that it is sufficient that the

s 129 notice is sent to the defendant by the plaintiff and notification is dispatched. It is up to the defendant to collect the notice. The plaintiff does not have a duty to ensure that the notices have been collected.⁸ The issue of these two addresses is not a matter that should detain us longer than it is necessary as I am of the opinion that even this defence cannot be sustained.

[16] I am satisfied that the plaintiff's claim has been clearly established and the defendant has failed to raise a bona fide defence to the plaintiff's claim. The general rule is that costs follow suit. There are no reasons to deviate from the rule.

[17] For the above reasons I make the following order:

The application for summary judgment is granted against the defendant as per the first to third prayers of the notice of motion.

L. MPAMA, AJ

Appearances:

For the applicant:

Adv L.B.J Moeng

Instructed by:

Strauss Daly Incorporated

Bloemfontein

⁸ Kubyana v Standard Bank of South Africa [2014] ZACC 1; 2014 (3) SA 56.

For the respondent:

Instructed by:

Adv Z. Nyezi

M.A.K Ameen & Company

Durban

c/o Blair Attorneys

Bloemfontein