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REPUBLIC OF SOUTH AFRICA



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

CASE NO: 2023/100165

(1) REPORTABLE: YES / **NO**

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

(3) REVISED. YES

DATE 23 May 2025

SIGNATURE

In the application between:

THE STANDARD BANK OF SOUTH AFRICA LIMITED

(Registration number: 1962/000738/06)

APPLICANT

and

REYENCK BUTHANI MAGUDU KHOZA

(Identity number: 6[...])

RESPONDENT

JUDGMENT

Introduction:

1. The applicant has instituted an application in which it seeks the following relief against the respondent:
 - 1.1. Confirmation of cancellation of the agreement entered into between the applicant and respondent;
 - 1.2. Payment in the amount of R341,333.02¹ together with interest at the rate of 12.75% per annum, calculated daily and compounded monthly in arrears from 16 May 2025, to date of payment, both days inclusive;
 - 1.3. Cost of suit on an attorney and client scale.
2. The applicant is Standard Bank of South Africa Limited, a public company registered and incorporated in accordance with the laws of the Republic of South Africa that trades as a registered deposit-taking institution in terms of the Banks Act, 94 of 1990 and a credit provider duly registered as such in terms of the National Credit Act, 34 of 2005 (“the National Credit Act”).

The Credit Agreement and its terms:

3. The applicant alleges that during or about 21 August 2018, and in Rosebank, the applicant and the respondent entered into a written agreement in respect of a World Elite Credit Card and other banking facilities (“the Credit Agreement”), in terms of which the applicant would from time to time provide the respondent with credit. The applicant alleges that it is not in possession of a signed copy of the Credit Agreement, but it has annexed as annexure “FA3” a true copy of the terms and conditions which apply to the Credit Agreement.
4. The relevant terms of the Credit Agreement pleaded by the applicant are the following:
 - 4.1. The applicant granted the respondent a credit card facility of R1,000,000.00.
 - 4.2. Interest would be charged at the rate equal to the applicant’s prime

¹ This is in terms of an updated Certificate of Balance dated 16 May 2025.

interest rate.

- 4.3. The applicant may charge the respondent a separate transaction fee for certain transactions. The transaction fees are not part of the principal debt.
- 4.4. The account has a credit limit, and the respondent may not exceed it. Any transactions honoured by the applicant, or any interest, costs, fees, and charges that are due and payable by the respondent and that caused the credit limit to be exceeded, will be treated as a temporary increase in the credit limit.
- 4.5. The applicant will provide the respondent with monthly statements on the account.
- 4.6. The respondent may dispute all or part of the statement by sending the applicant written notice of the dispute within 30 days of the statement date.
- 4.7. The respondent must contact any of the applicant's branches or contact centres if the respondent did not receive a statement. If the respondent fails to receive a statement, this will not entitle the respondent to refuse or fail to pay any amount due to the applicant.
- 4.8. The respondent must pay all repayments on or before the repayment due date, without deduction or demand, for the duration of the agreement and while any amounts are owed to the applicant.
- 4.9. Each repayment will be credited to the account on the date of receipt, firstly to satisfy any due or unpaid interest, secondly to satisfy any due or unpaid costs, fees and charges, and thirdly to reduce the principal debt amount.
- 4.10. The respondent must pay the applicant at least a minimum repayment amount as indicated on the statement.
- 4.11. The interest rate applicable to the agreement may change if the prime interest rate fluctuates.
- 4.12. Interest will be payable:
 - 4.12.1. If, with reference to the minimum repayments, the respondent does not pay the full amount due on or before the repayment due dates.
 - 4.12.2. On the amount of each cash advance, if the cash

advance results in a debit balance on the account.

- 4.13. If the respondent is in default under the agreement, the applicant may draw such default to the respondent's attention in writing and suggest that the respondent refer the agreement to a debt counsellor or a dispute resolution agent or the Consumer Court, or the Ombud with jurisdiction.
- 4.14. The applicant will charge collection costs that the applicant incurred in collecting any amount due and/or payable in terms of the agreement.
- 4.15. A default in terms of the agreement will occur:
 - 4.15.1. If the respondent fails to pay any amount payable to the applicant under the agreement on a due date;
 - 4.15.2. If the respondent breaches any of the terms and conditions of the agreement or any agreement in terms of which the respondent provided collateral, and the respondent fails to remedy the breach within the timeframe provided for in the written notice to do so; or
 - 4.15.3. The respondent defaults in the due and punctual performance under any other agreement, including but not limited to any other agreement concluded between the respondent and a third party or any loan/credit facility between the respondent and the applicant and same is not remedied to the satisfaction of the applicant within 14 days from the date of any written notice given by the applicant to the respondent to remedy the default.
- 4.16. The applicant may commence legal proceedings if the applicant has given the respondent notice and the respondent has been in default under the agreement for at least 20 business days and at least 10 business days have elapsed after delivery of the notice.
- 4.17. A certificate signed by any of the applicant's managers, whose appointment need not be proved, specifying the amount which the respondent owes and stating that such amount is due, owing and payable by the respondent will, on its mere production, be sufficient proof of any amount due and/or owing by the respondent to the applicant, unless the contrary is proved.

The respondent's failure to settle his arrears:

5. The applicant alleges that the respondent breached the terms of the Credit Agreement by failing to make timely payment of the amounts due in terms thereof.
6. The applicant alleges that as of 10 August 2023, the account was in arrears for R50,771.89. In compliance with its obligations in terms of the National Credit Act, the applicant alleges that it dispatched the necessary section 129 notices to the respondent by registered mail and email on 10 August 2023.
7. The respondent does not deny that the physical address and the e-mail address used by the applicant when sending the section 129 notices are the respondent's addresses.
8. The respondent failed to remedy his breach within 10 (ten) business days after the delivery of the section 129 notice, with the result that the applicant dispatched a written notice of cancellation to the respondent via email and registered post on 14 September 2023.
9. Again, the respondent does not deny that the Credit Agreement was cancelled on 14 September 2023.
10. As at 14 September 2023, the total amount outstanding to the applicant was an amount of R780,157.28, together with interest at the rate of 12.75% per annum, which interest is calculated daily and compounded monthly in arrears from 4 September 2023 to date of payment, both days inclusive.
11. Copies of the applicant's certificate of balance and statement of account are annexed to the founding affidavit.

The issues:

12. The respondent raises the following disputes in opposition to the present application:

12.1. Firstly, as a point *in limine*, the applicant failed to annexe a true copy of the Credit Agreement as required by Uniform Rule 18(6). In this regard, the respondent admits that a Credit Agreement was concluded in terms of which the respondent would have a credit limit of R1,000,000.00 (one million rand).²

12.2. Secondly, the respondent denies that the applicant was entitled to cancel the agreement as the respondent had settled the arrears by the 16th of September 2023.³

12.3. Thirdly, the respondent contends that there are foreseeable factual disputes.

Brief analysis of the affidavits:

13. In paragraph 13 of the founding affidavit, the applicant comprehensively sets out what the terms are of the Credit Agreement relied on by it. The majority of these terms have been set out *supra*.

14. In response, the respondent indicated the following:⁴

“The terms are admitted insofar as they are consistent with the annexure attached to the founding affidavit.”

15. Significantly, the respondent does not deny that these were the terms of the agreement. Moreover, the respondent does not put up his own version of the agreement and its terms.

16. It is trite that if a respondent’s affidavit in answer to the applicant’s founding affidavit fails to admit or deny, or confess and avoid, allegations in the

² The respondent contends that the Credit Agreement had a different name.

³ Page 0008 – 7, para 4.2.4.

⁴ Page 008 – 9.

applicant's affidavit, the court will, for the purposes of the application, accept the applicant's allegations as correct.⁵

17. Accordingly, the terms of the Credit Agreement between the applicant and the respondent are not disputed and as such, are common cause.
18. Even if the Credit Agreement terms were not common cause, the respondent has not introduced a *bona fide* dispute of fact. As set out by the Supreme Court of Appeal in **Wightman**⁶:

"[13] A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied..."

19. The respondent furthermore does not deny that the applicant complied with all of its obligations in terms of the agreement and that the facility was made available for the respondent's use.⁷
20. The respondent does not deny that his account fell into arrears. The respondent alleges that he made several payments towards the arrears pursuant to the delivery of the section 129 notice and after discussions with

⁵ *Moosa v Knox* [1949 \(3\) SA 327 \(N\)](#) at 331. See, for example, *United Methodist Church of South Africa v Sokufundumala* [1989 \(4\) SA 1055 \(O\)](#) at 1059A; *Ebrahim v Georgoulas* [1992 \(2\) SA 151 \(B\)](#) at 153D.

⁶ *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* E [2008 \(3\) SA 371 \(SCA\)](#)

⁷ Page 002 – 15, para 15 read with page 008 – 9, para 8.1.

the applicant.⁸

21. The proof of payment relied on by the respondent does not show that any payments were made before the 16th of September 2023.
22. This is significant as the applicant elected to cancel the Credit Agreement several days earlier on 14 September 2023, i.e., before the respondent made any payment towards the arrears.
23. The cancellation of the credit agreement necessarily meant that the full outstanding amount became due and payable, and not just the arrears. Significantly, the respondent does not deny receiving the notice of cancellation that was sent on the 14th of September 2023.⁹
24. Accordingly, based on the allegations in the founding and the answering affidavit, the Credit Agreement was validly cancelled.

The failure to annexe a true copy of the Credit Agreement to the founding affidavit:

25. The respondent contends that the applicant has failed to:
 - 25.1. Annexe a true copy of the Credit Agreement and as such has failed to comply with Uniform Rule 18(6);
 - 25.2. Provide an adequate explanation for its failure to do so.
26. Uniform Rule 18(6) provides as follows:

(6) A party who in his or her pleading relies upon a contract shall state whether the contract is written or oral and when, where and by whom it was concluded, and if the contract is written a true copy thereof or of the part relied on in the pleading shall be annexed to the pleading.

⁸ Page 008 – 9, para 9.2.

⁹ Pages 002 – 17 to 002 – 18, para 24, read with page 008 – 10, para 12.1.

27. In **Moosa and Others NNO v Hassam**¹⁰ the court indicated *inter alia* the following in the context of which factors the court would consider in overlooking and/or condoning non-compliance with Uniform Rule 18(6):

However, this is not to say that a failure to annex a written agreement relied upon may never be condoned in terms of rule 27(3).

Good cause would have to be shown why the party concerned is unable, at that stage, to annex a copy of the written agreement relied upon. Relevant considerations would be the steps taken to obtain a copy of the written agreement and the prospects of the written agreement being obtained in the future. That a true copy will be available before the issues arising therefrom have to be determined will be of particular importance in this regard. In addition any prejudice to the opposing party caused by the failure to annex the agreement to the pleading would have to be considered. Of significance in this regard would be whether the pleading concisely and clearly sets out the terms relied upon in the written agreement upon which the cause of action is based, and is not excipiable. The above factors are not exhaustive and each case will have to be decided upon its individual merits.'

28. Aside from the fact that the applicant has pleaded the terms of the Credit Agreement quite extensively, none of these terms have been disputed. In the absence of the terms being disputed, there can be no prejudice for the respondent under the circumstances.
29. Significantly, the respondent does not allege that he also does not have a copy of the Credit Agreement.
30. In **Dass and Others NNO v Lowewest Trading (Pty) Ltd**,¹¹ Tshabalala JP held that non-compliance with rule 18(6) can be condoned in the absence of prejudice to the other party.
31. As the applicant pleaded a complete cause of action, and there is very little, if any, prejudice that the respondent can rely on, the applicant cannot be

¹⁰ [2010 \(2\) SA 410 \(KZP\)](#) at 413B–414B

¹¹ [2011 \(1\) SA 48 \(KZD\)](#) at 53B–H.

deprived of a cause of action simply because it failed to annexe a true copy of the Credit Agreement.¹²

32. I agree with the respondent that the applicant should have provided a better explanation of what happened to the signed Credit Agreement and why it was not attached to the founding affidavit.

33. But, given the fact that:

33.1. The applicant has comprehensively pleaded the terms of the Credit Agreement;

33.2. the respondent has not disputed the terms pleaded by the applicant;

33.3. the respondent suffers very little (if any) prejudice as a result; and

33.4. the respondents failure to provide any explanation as to what he did with his copy of the Credit Agreement,

the applicant's failure to annexe a signed copy of the Credit Agreement is not fatal to its case and will be condoned.

The letters of demand and the subsequent cancellation of the Credit Agreement:

34. The respondent further contends he did not receive the section 129 notices.

35. The respondent does not deny that the section 129 notice was sent to the correct physical and e-mail address.

36. The applicant has provided the necessary track and trace reports to demonstrate that the section 129 notice was delivered to the relevant Post Office. In addition, the applicant also sent the section 129 notice to the respondent by way of e-mail.

37. In terms of section 129(7) of the National Credit Act:

¹² *Nedbank Ltd v Yacoob* [2022 \(2\) SA 230 \(GJ\)](#).

(7) *Proof of delivery contemplated in subsection (5) is satisfied by-*

(a) written confirmation by the postal service or its authorised agent, of delivery to the relevant post office or postal agency...

38. There is accordingly sufficient evidence that the section 129 notices were properly delivered.

The attempted reinstatement of the Credit Agreement:

39. The respondent seeks an order for the reinstatement of the credit agreement because he brought his arrears up to date.

40. In terms of section 129(4)(c) of the National Credit Act:

*“A credit provider may not reinstate or revive a credit agreement after
(c) the termination thereof in accordance with section 123.”*

41. In terms of section 123:

“(2) If a consumer is in default under a credit agreement, the credit provider may take the steps set out in Part C of Chapter 6 to enforce and terminate that agreement.”

42. Given the fact that the credit agreement was lawfully cancelled, the respondent cannot insist on reinstating the credit agreement because he brought his arrears up to date after the Credit Agreement had already been validly cancelled.

43. In the premises, a proper case has been made for the relief sought by the applicant.

44. I accordingly grant an order in the following terms:

- 44.1. An order confirming the cancellation of the agreement entered into between the applicant and the respondent.
- 44.2. The respondent is ordered to pay the applicant an amount of R341,333,02 together with interest at the rate of 12.75% per annum, calculated daily and compounded monthly in arrears from 16 May 2025, to date of payment, both days inclusive.
- 44.3. Costs on a party and party High Court Scale, which costs include the costs of the applicant's counsel on scale "C".

SG MARITZ AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

On behalf of the applicant: Adv JC Viljoen
Attorneys for the applicant: Stupel & Berman Inc

On behalf of the respondent: Mr Pather
Attorneys for Respondent: Tyron I Pather Inc

Date of Hearing: 20 May 2025
Date of Judgment: 23 May 2025