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

Case Number: 033978/24

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

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

(3) REVISED

SIGNATURE:

DATE: 3/6/25

In the matter between:

THE STANDARD BANK OF SA LIMITED
(REG. NO.: 1962/000738/06)

Applicant

and

AMOS JOHNNY DLADLA

Respondent

JUDGMENT

INTRODUCTION

[1] This is an opposed application for summary judgment brought by the Applicant, Standard Bank of South Africa Limited, against the Respondent, Amos Johnny Dladla. The Applicant seeks confirmation of the cancellation of an instalment sale agreement concluded between the parties, the return of a motor vehicle which forms the subject of the agreement, the postponement *sine die* of the claim for damages (if any), and an order for costs on the attorney and client scale.

[2] The core issue in dispute is whether the Applicant has complied with the provisions of sections 129 and 130 of the National Credit Act 34 of 2005 ("the NCA"), particularly regarding the delivery and subsequent re-service of the pre-enforcement notice, and whether the Respondent has disclosed any triable issue which would justify the refusal of summary judgment.

COMMON CAUSE FACTS:

[3] The following facts are not in dispute between the parties:

[3.1] The identity of the parties and the jurisdiction of this Court;

[3.2] The conclusion of a written instalment sale agreement on 31 July 2019 in respect of a 2018 Ford Ranger 3.2 TDCI Wildtrak motor vehicle;

[3.3] The Applicant's compliance with its obligations under the agreement, including disbursement of the loan amount and delivery of the vehicle to the Respondent;

[3.4] The applicability of the NCA to the instalment sale agreement;

[3.5] That a pre-agreement credit assessment was conducted and the Respondent was found to qualify;

[3.6] That the Respondent breached the agreement by failing to pay the instalments, with arrears amounting to R62,448.94 at the time of the issue of summons; and

[3.7] That the Respondent admits both the breach and the arrears, but disputes compliance with section 129 of the NCA.

ISSUES FOR DETERMINATION:

[4] The issues for determination are whether the Applicant has complied with section 129(1)(a) of the NCA; whether the re-service of the section 129 notice pursuant to a court order effectively cured any procedural defect arising from the initial dispatch of the notice; and whether the Respondent has disclosed a *bona fide* defence or triable issue warranting refusal of summary judgment.

BACKGROUND:

[5] Pursuant to the conclusion of the instalment sale agreement, the Respondent took possession of the vehicle. Thereafter, he defaulted on his payment obligations, which led the Applicant to issue a section 129 notice to the Respondent's chosen *domicilium* address via registered mail.

[6] The Applicant, relying on a track and trace report from the South African Post Office, was initially under the impression that the notice had been properly delivered. Upon receipt of the Respondent's plea disputing receipt and submitting documentary proof to that effect, the Applicant discovered that the initial delivery information was inaccurate.

[7] The Applicant then launched an interlocutory application in terms of section 130(4)(b) of the NCA for leave to re-serve the section 129 notice. On 30 July 2024, this Court granted an order authorising service of the notice via email to the Respondent's legal representative. The notice was duly re-served on 1 August 2024. No response was forthcoming from the Respondent.

APPLICANT'S CASE:

[8] The Applicant contends that it has now complied with the statutory requirements of the NCA, including taking appropriate steps to remedy any prior procedural defects. Relying on the decision in *Investec Bank Ltd v Ramurunzi* [2014] ZASCA 67, the Applicant submits that non-compliance with section 129 does not nullify proceedings but merely postpones the right to judgment until compliance is effected.

[9] The Applicant further contends that the agreement has been validly cancelled, the breach and arrears are admitted, and no defence to the claim exists. It is accordingly submitted that summary judgment should be granted.

RESPONDENT'S CASE:

[10] The Respondent's opposition is based exclusively on the alleged non-compliance with section 129 of the NCA, and by extension, section 130. He avers that the initial section 129 notice was delivered to the incorrect post office and therefore never reached him; that the subsequent re-service was procedurally flawed and did not comply with applicable practice directives; that the Applicant was required to withdraw the action before attempting to cure the non-compliance; and that the failure to comply with section 130 renders the proceedings fatally defective. The Respondent further denies receipt of the re-served notice and asserts that the court order authorising such re-service was irregularly obtained.

LEGAL FRAMEWORK AND DISCUSSION:

[11] Sections 129 and 130 of the NCA require that, before legal proceedings may be instituted, a credit provider must draw the consumer's attention to the default and advise on potential remedies, typically by means of a section 129 notice. Such notice must be delivered in a manner reasonably likely to come to the attention of the consumer.

[12] The Constitutional Court in *Sebola v Standard Bank of South Africa Ltd* 2012 (5) SA 142 (CC) and *Kubyana v Standard Bank of South Africa Ltd* 2014 (3) SA 56 (CC) clarified that while proof of actual receipt of the notice is not required, the credit provider must show that the notice was sent by registered mail to the correct address and reached the correct post office. Thereafter, the onus shifts to the consumer to explain non-receipt.

[13] In the present matter, it is accepted that the initial notice was not delivered to the correct post office. However, the Applicant took remedial action by approaching this Court in terms of section 130(4)(b) of the NCA and obtained leave to re-serve

the notice. The re-service was effected in accordance with the terms of the court order.

[14] The Respondent did not launch any application to challenge the validity of that court order. Allegations raised at the hearing regarding fraudulent procurement of the order were not supported by evidence on the papers and are not competent in these proceedings.

[15] The re-service of the section 129 notice, in accordance with the court order dated 30 July 2024, constitutes full compliance with the NCA. Any procedural objections to that process should have been pursued in the proper forum by way of a rescission or review, which was not done. These objections do not amount to a substantive defence.

[16] Given the Respondent's admission of breach, arrears, and the absence of any alternative remedy or proposal, the Court is satisfied that no triable issue has been disclosed. The Respondent's defence is dilatory and does not meet the standard of a *bona fide* defence required to resist summary judgment, as set out in *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A).

COSTS:

[17] The Applicant seeks an order for costs on the attorney and client scale. As the instalment sale agreement does not expressly provide for such a costs scale, and there is no evidence of conduct justifying a punitive award, the Court is not satisfied that such a costs order is warranted. Costs will follow the result on a party and party scale.

ORDER:

In the result, the following order is granted:

1. Summary judgment is granted in favour of the Applicant.

2. The cancellation of the instalment sale agreement concluded between the parties is confirmed.
3. The Respondent is directed to return to the Applicant the 2018 Ford Ranger 3.2 TDCI Wildtrak P/U motor vehicle bearing engine number S[...] and chassis number A[...], within ten (10) days of service of this order.
4. The Applicant is entitled to retain all payments made by the Respondent under the agreement.
5. The Applicant is granted leave to apply for:
 - 5.1 Damages, if any, to be calculated by deducting the market value of the goods (if returned) or a nil value (if not returned), together with a rebate on unearned finance charges, if applicable, from the outstanding balance;
 - 5.2 Interest on such damages at the rate of 13.210% per annum from 28 December 2023 to the date of payment.
6. The Respondent is ordered to pay the costs of suit.

L COETZEE
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Delivered: This judgment 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 the 3 June 2025.

Appearances:

On behalf of the Applicant: Adv. L.A. Pretorius

Instructed by: Vezi & De Beer Inc.

On behalf of the Respondent: Adv. C.N. Mosala

Date heard: 10 March 2025

Date of judgment: 3 June 2025