

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

Case number: **B1133/2023**

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

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

(3) REVISED

DATE 17/7/2025

In the matter of:

GCINA LOUIS HLABISA

First Applicant

LESEGO JANET HLABISA

Second Applicant

and

FIRSTRAND BANK LIMITED

First Respondent

SHERIFF OF THE HIGH COURT:

PRETORIA SOUTHEAST

Second Respondent

In re:

FIRSTRAND BANK LIMITED

Plaintiff

And

GCINA LOUIS HLABISA

First Defendant

LESEGO JANET HLABISA

Second Defendant

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JUDGMENT

Coram Ferreira AJ

1. This is an urgent application for a final interdict to restrain the first respondent from proceeding with the sale in execution of the applicants' immovable property situated at [...] S[...] T[...] Crescent, The Hills Extension 5, Pretoria.
2. The applicants contend that they have complied with the court order of Kooverjie J, dated 9 April 2024,¹ granted by default ("the default judgment"), and that they remedied the default as it existed at the time of the default judgment and as contemplated by section 129(3) of the National Credit Act 34 of 2005 ("NCA").
3. The urgent relief is sought against the background of the aforesaid default judgment and the subsequent execution process initiated against the applicants' property. The first respondent has publicized a notice to sell the applicants' property on 17 July 2025.
4. The default judgment provides for payment of R2,198,564.55, clearly including an accelerated payment beyond the then existing arrears. In addition, it records that the immovable property, declared executable, shall be sold subject to a reserve price of R3,000,000.00. Furthermore, the operation of the entire default judgment was suspended for a period of 6 months, affording the respondent an opportunity to settle the arrears owing or to enter into a suitable arrangement with the first respondent.
5. The applicant contends that the first respondent unlawfully and fraudulently debited legal costs into the applicants' bank account. Annexure "M2" to the first respondent's application for summary judgment indicates that a legal fee of R9,723.00 was debited into the applicants' account (p.001-35 to 001-36, CaseLines). Annexure "A" to the first respondent's Rule 46A application indicates that the legal fee debited into the applicants' account is R14,231.00

¹ CaseLines 015-34

(p.010-18/20, CaseLines).

6. The first respondent opposes the application on the basis that:
 - 6.1 applying the Constitutional Court judgment of **Nkata**,² the applicants will receive substantial relief in due course, resulting in the application not being urgent;
 - 6.2 the order did not absolve them of their obligation to pay their monthly instalments pending the sale, resulting in the payments made by the applicants being insufficient to reinstate the agreements as alleged.
7. Of relevance in the present application is the consideration of section 129(3) & (4) and as to who bears the responsibility to ensure that the arrears are paid in full in order to reinstate a credit agreement. In this regard, the applicants contend that they need to be notified of the arrears by the Bank rather than establishing the precise arrears themselves.³
8. The main thrust of the applicants' case is that at the time of judgment they were R245,405.67 in arrears and that they've paid R254,000.00 in the 6 months following the default judgment, thus reinstating the agreement.
9. Unless the agreement is cancelled, the arrears on the credit agreement do not remain static after the delivery of a section 129 notice or after judgment is granted.³ For this reason, consumers are obliged and advised to obtain the arrears from the credit provider for the purposes of seeking to reinstate the agreement.
10. The applicants seek a final interdict despite the existence of a genuine dispute of fact. Thus, the relief can only be granted if the facts averred in the applicant's founding affidavit which have been admitted by the respondent

² 2016 (4) SA 257 (CC)

³ **Le Feuvre v Standard Bank of South Africa Limited and Others** – 2024 JDR 4261 (GJ) at [10] – [11]; **Pule v Nedbank Limited and Others** – 2022 JDR 0844 (GP) at [32]

and those facts alleged by the respondent justify such an order.⁴

11. The arrear amount as at the time of the default judgment was R245,405.67. In addition, in the months following the default judgment, the applicants were required to pay monthly instalments, varying between R26,335.67 and R25,374.16,⁵ as a result of the variable interest rate and amounting to a total amount of instalments due, after the default judgment of no less than R389,082.82.
12. On the applicant's version they paid a total amount of R474,000.00 between 20 April 2024 and 7 June 2025. It is clear from what is stated in paragraph 11 hereinabove that total payments were due in an amount of no less than R634,488.49.
13. On the respondents' version, the closest that the applicants came to extinguish the arrears in full was on 23 May 2024 following a payment of R27,000.00 whereafter the arrear balance was R17,741.34⁶.
14. When seeking to reinstate an agreement, consumers are obligated and advised to obtain the arrear amount from the credit provider. This is included in all execution draft orders for the purpose of informing consumers of their rights before the sale in execution.⁷
15. The first respondent furthermore contends that neither the agreement, the Act, the default judgment or any other obligation rests upon the credit provider to inform a consumer, such as the applicants, of the precise amount of the arrears.
16. Mindful thereof that the applicants are seeking a final interdict and have to establish, with the application of the principles **Plascon-Evans**,⁸ its clear right, at least insofar as demonstrating that all arrears have been paid

⁴ **Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd** – 1984 (3) SA 623 (A) at 634E-G

⁵ AA para 30 at 026-14

⁶ CaseLines 026-15

⁷ **Practice Manual of Gauteng Local Division of the High Court of South Africa** May 2017, chapter 10.17 paragraph 8

⁸ **Plascon-Evans Paints Ltd v Van Riebeeck Pants (Pty) Ltd** – 1984 (3) SA 623 (A) at 634E-G

timeously in order to re-instate the agreement and thereby rendering the default judgment inoperative. This is disputed on *bona fide* grounds by the first respondent and must be decided in favor of the first respondent. On the applicants' own version in their replying affidavit,⁹ it is averred that the account will have to be audited, despite the common cause payments by the applicants to the first respondent. Such an audit can only be to establish what is really due, if anything, by the applicants to the first respondents. I am bound, in terms of **Plascon-Evans** in the light of the final interdict sought to find against the applicant in favor of the respondent. It is remarked, *obiter* only, that had the relief sought to be of an interim nature, the applicants may have found themselves in a different position as a result thereof that the test is different and that only a *prima facie* right, though open to some doubt, would have been required.

17. Furthermore, a reserve price of some R3,000,000.00 has been set by the default judgment. The current total outstanding amount, even on the applicant's version and as per the most recent bank statements amount to slightly over R2,000,000.00. This has the effect that if a successful sale occurs, which is by no means certain, the applicants will have a credit available to them in the upper hundreds of thousands of rand. This casts serious doubt as to whether the applicants will suffer an actual injury or an injury reasonably apprehended.
18. In consequence, having heard the matter in urgent court yesterday, 16 July 2025, limited time for a comprehensive judgment, the court can make no other order than dismissing the application.
19. Cost should follow the result. In the exercise of the court's discretion, party and party costs, with counsel's costs on scale B is appropriate.
20. The following order is made:
 - "1. The application is dismissed with costs.
 2. The applicants, jointly and severally, the one paying, the other to be absolved is ordered to pay the first respondents on a party and party

⁹ CaseLines 027-30

scale with the costs of counsel on scale B.

EJ FERREIRA

Acting Judge of the High Court

Gauteng Division

Date of hearing:	16 July 2025
Judgment delivered:	17 July 2025
For the Applicants:	Fenyane & Associates Inc.
Counsel for the Applicants:	Advocate P Mbana
Attorney for the Respondents:	Van Hulystens Attorneys
Counsel for the Respondents:	Advocate KM Boshomane