



IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL LOCAL DIVISION, PIETERMARITZBURG

CASE NUMBER: 805/2024P

In the matter between:

NEDBANK LIMITED

APPLICANT/PLAINTIFF

And

RHIDAN INVESTMENTS 95 (PTY) LTD

FIRST RESPONDENT/ DEFENDANT

YOUNGANDREN GOVENDER

SECOND RESPONDENT/ DEFENDANT

JUDGMENT

P C BEZUIDENHOUT J:

[1] Applicant/Plaintiff brought an application on 8 July 2024 for summary judgment against Respondent/Defendant. (The parties are hereinafter referred to as Plaintiff and Defendants)

[2] Defendants filed their opposing affidavit to the summary judgment application late which caused the matter to be adjourned for Plaintiff to consider the affidavit and decide what steps to take thereafter.

[3] After the matter was adjourned, on 9 September 2024, Plaintiff filed a notice in terms of Rule 28(1) to amend its notice of motion in respect of the application for summary judgment. The amendments entailed the following:

- (a) By deletion of the words "Respondent/Defendant" in paragraph 1 and to replace it with the words "for summary judgment in its favour as against the".
- (b) By insertion of the words "Respondents/Defendants" where they appear in the first paragraph after the words "for summary judgment in its favour as against the".
- (c) By deletion of the word "is" where it appears in the first paragraph before the word "jointly and severally liable".
- (d) By the insertion of the word "are" where it appears in the first paragraph before the words "jointly and severally liable".

[4] The notice to amend was objected to by Defendants who filed a notice of objection to the notice of intention to amend. This was filed during September 2024 wherein they raised four objections. Firstly that the person who attested to the affidavit must be competent to do so. Secondly that Plaintiff would seek judgment in terms of the prayer in the affidavit deposed to in support of the application for summary judgment in terms of a notice of motion which did not exist at the time. The third objection that there had to be appearance on 8 July 2024 and the fourth objection that Defendants had already prepared their answering affidavit and the issue of costs and the prejudice which resulted therefrom.

[5] This then necessitated a formal application by Plaintiff to amend its notice of motion which was brought in December 2024 and which was opposed by Defendants. In its founding affidavit Plaintiff contends that the errors which they seek to amend are typographical in nature and considering the language in the notice of motion as well as in the affidavit it is clear that the affidavit seeks judgment against both Defendants jointly and severally. It was overlooked that the notice of motion only referred to Defendant/Respondent and thus in the singular. The affidavit opposing summary judgment is deposed to by Second Defendant who states that it was also done on behalf of First Defendant. The issues raised therein in respect of summary judgment are not relevant at this stage as the only issue which has to be decided at this stage is whether the amendment to the notice of motion is to be granted or not.

[6] It is contended by Plaintiff that Defendants were not misled by any of the typographical errors as appears from the answering affidavit. It was further contended that the amendment could be made in terms of Rule 28 and could be done at anytime before judgment was granted. The costs of the appearance on 8 July 2024 were not wasted and the matter had to be adjourned because Defendants delivered their affidavit out of time.

[7] At the commencement of the argument in respect of the opposition to the amendment condonation was sought by Defendants for the late filing of their heads of argument. This was not opposed by Plaintiff and accordingly condonation was granted.

[8] It was submitted on behalf of Plaintiff that it was typographical errors which had to be corrected and that allowing amendments to pleadings should be to do justice between the parties by deciding the real issues between them. It was contended that Defendants basically objected on four grounds:

- (a) That the deponent to the Plaintiff's affidavit did not have personal knowledge;
- (b) If the amendments were allowed the affidavit in support of summary judgment would not make chronological sense as Plaintiff would be seeking judgment in terms of the notice of motion which did not exist at the time.
- (c) The amendment if allowed Defendants would be permitted to make consequential amendments to the answering affidavit which makes a mockery of the Rule and
- (d) Defendants have incurred costs securing counsel to appear in a matter on the unopposed roll which costs are wasted.

[9] It was submitted that there was no prejudice to Defendants, that Defendants have failed to state what adjustments they need to make to their defence should the amendments be granted and that the costs should be paid by Defendants although the party normally seeking an amendment is to bear the costs. The reason therefore is that the opposition is not reasonable and is frivolous and an attempt to retain an unjust advantage.

[10] It was submitted on behalf of Defendants that the amendment is opposed in terms of the points raised in the heads of argument as it creates confusion and there are procedural flaws. In their heads of argument Defendants set out the issues to be determined as follows:

- (a) Even with a Rule 28 compliance the amendment should be refused due to prejudice, inconsistency and advance stage of proceedings?
- (b) Does the misnomer in the Plaintiff's documents (Heads of Argument) render the amendment fundamentally flawed, thereby requiring formal correction with notice and leave?

- (c) Does omitting the Second defendant amount to an abandonment or a procedural defect?

[11] It is further contended that the timing of the amendment is prejudicial and renders the founding affidavit incoherent necessitating its amendment which is not permissible. The amendment would require consequential adjustments to the answering affidavit and Defendants would suffer prejudice having incurred costs in preparing answering papers and attending court.

[12] When considering the notice of application for summary judgment set down for 8 July 2024 it states:

“As against the Respondent/Defendant who is jointly and severally liable to the Applicant/Plaintiff as follows”

It is accordingly clear therefrom that it is meant to refer to more than one person or entity otherwise the words “jointly and severally” would not have appeared in the notice of motion. It is therefore clear that it is an error in that the “s” after Respondent and Defendant was left out and that it has to be corrected or amended and that it would then read correctly to give effect to the averment that they are jointly and severally liable for payment of the amount due.

[13] A reading of the founding affidavit by one Nayeed Fakir on behalf of Plaintiff, indicates that it refers to more than one person as in paragraph 7 it states:

“I hereby verify the Applicant’s cause of action against the Respondents as set out in the Applicant’s particulars of claim.”

In paragraph 8 it once again refers to “Respondents”. In paragraph 9.3 it refers to “Second Respondent” concluding a deed of suretyship”. In paragraph 9.4 it once again refers to “Second Respondent binding himself as surety. In paragraph 9.5 it refers to

“First Respondent caused a covering mortgage bond to be registered”. In paragraph 12 it refers to “Respondents plea” and a further reading of the paragraphs of the affidavit refers to Respondents which makes it clear that the deponent to the affidavit was well aware when attesting to the affidavit that it referred to more than one Respondent.

[14] The heading of Defendants plea states “First and Second Defendants plea to Plaintiff’s particulars of claim.” It is accordingly clear therefrom that they were well aware that it referred to both First and Second Defendants.

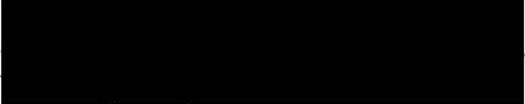
[15] As set out above it is in my view clear from a reading of the notice of motion and the affidavit that the notice of motion contains typographical errors where it refers to Defendant/Respondent and should have read Respondents/Defendants and that the affidavit filed in support thereof makes it very clear that it refers to more than one individual or entity by referring to First or Second Defendant or to Defendants. There can accordingly be no prejudice to Defendants if the amendments are granted. The amendments do not affect the affidavit of Plaintiff as it deals with and refers to two Defendants. Therefore there would be no prejudice if the amendment is granted and there would also not be any necessity for Defendants to effect changes to their answering affidavit. However as this is an application for an amendment if Defendants are of the view that they need to supplement their affidavit they can indeed do so.

[16] In my view the objections which have been raised against the amendments are without substance and must accordingly be rejected. It was unnecessary to oppose the application and Defendants should pay the costs of the application.

Accordingly the following order is made:

1. Plaintiff is granted leave to amend its notice of application for summary judgment in accordance with its notice of intention to amend dated 7 September 2024.

2. Plaintiff is directed to deliver its amended pages within ten (10) days of the granting of this order.
3. First and Second Defendants jointly and severally the one paying the other to be absolved shall pay the costs of this application including the costs of counsel on a party and party scale (B).



P C BEZUIDENHOUT J.

JUDGMENT RESERVED ON: 9 SEPTEMBER 2025

JUDGMENT HANDED DOWN ON: 12 SEPTEMBER 2025

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