

REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2024-072446

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHER JUDGES: NO
- (3) REVISED: YES

Date: 22 September 2025

In the matter between:

JASVEER MORAR N.O.

(in his capacity as the appointed executor of the estate late
Jyoti Utham Morar, Identity no.: 6[...])

Applicant / Plaintiff

and

BENITA RAMPERSAD (née BHAGA)
(Identity no.: 8[...])

First Respondent / First Defendant

KIRAN SHAH RAMPERSAD
(Identity no.: 8[...])

Second Respondent / Second Defendant

NIKHIL BHAGA
(Identity no.: 9[...])

Third Respondent / Third Defendant

REASONS

DE VOS AJ

- [1] On 15 September 2025 this Court granted an order for summary judgment for payment of the amount of R 2 390 331.50; interest at the rate of 11.75% per annum calculated from 3 February 2023; and costs of suit on scale A. These are the reasons for the order.

Introduction

- [2] The dispute involves a loan between relatives. Mrs Morar lent her sister's children, the respondents, money to buy a new house. Then, Mrs Morar passed away. Mrs Morar's son, the applicant, is the executor of her estate. Mr Morar has cancelled the loan agreement as the respondents breached the agreement.
- [3] The central controversy is whether Mr Morar is entitled to summary judgment based on the cancellation of the loan agreement.

Triable issue?

- [4] The parties agree that there was a loan agreement and that the respondents never performed – not one payment was made over a two year period. In these circumstances, Mr Morar cancelled the loan agreement. The dispute raised by the respondents relates to the period of repayment. Mr Morar contended that the loan was to be paid back over 60 months and the respondents contend they had 342 months.
- [5] Is this dispute a triable issue which requires the matter to be referred to trial? This Court concluded no, as the inescapable, common cause fact is that the respondents never made a single repayment. Whether they were supposed to pay over 60 or 342 months, it doesn't matter, as even on their version, they never performed, which entitled Mr Morar to cancel.
- [6] There is no point in referring a dispute concerning the repayment period of the loan agreement to a trial, if the outcome remains, regardless of which party wins the fight over the terms, there has been a breach which permitted the cancellation of the contract.

- [7] The respondents pressed repeatedly that they disputed the terms and they have a defence. This is not helpful, as their breach (even on their terms) is common cause. Their defence is not that they dispute the terms and on their understanding of the terms they performed. The respondents dispute the period over which they were to make payment, but they do not dispute that they never made payment. The breach is common cause, regardless of what the terms were.
- [8] Imagine the matter went to trial, all the costs incurred and court time dedicated to determining the dispute identified by the respondents: that they had 342 months to repay the loan. Assume, the respondents marshal all evidence to prove this case and categorically the trial court accepts they had 342 months to repay. The outcome? The Court will ask whether the respondents made any of the 342 payments. The answer will be at trial as it is now: no. Mr Morar will then assert he is entitled to cancel the contract.
- [9] The Court will still conclude – even if it all goes the respondents’ way at trial – that the respondents breached the contract, which entitled Mr Morar to cancel the agreement. As no defence has been raised to the actual cancellation of the contract, the outcome at the end of the trial remains the same as it is at present: the respondents breached a contract which entitled Mr Morar to cancel. For this reason, the Court concluded that there was no triable issue.
- [10] Assume this is incorrect and the terms of a common cause breach is a triable issue, the Court must be satisfied that a bona fide defence has been raised. The Court has already rejected that a dispute regarding the terms of the contract, in circumstances where the breach is common cause, is a defence at all. But assuming it was, the Court rejects the notion that the defence was bona fide.
- [11] To illustrate the lack of bona fides in the defence, the Court turns to the pleadings.

The defences have been inconsistent

- [12] In the original plea, the respondents denied there was a loan agreement, asserted the monies had been given as a donation but offered to pay back over a period of 342 months. This is version one.

- [13] In the first answering affidavit resisting summary judgment, the respondents pleaded that it was in fact a loan agreement and they were under an obligation to pay back the monies over a period of 342 months, with no interest. This is version two.
- [14] In a letter written by the respondents they asserted the terms were to pay back R 7000 per month, with a flat rate interest commencing after the sale of their previous property. This is version three.
- [15] In the amended plea the respondents pleaded the terms of the contract were that they were to repay the loan with instalments of R 7 000 per month over 342 months from when Ms Morar transferred the money. But the respondents have been unable to do so as they had not been provided with a bank account. This is version four.
- [16] In the answering affidavit resisting the second summary judgment the respondents' defence was that the terms of the agreement were that the respondents would repay back R 7000 per month, over 342 months, commencing a month after Ms Morar had made payment, or within a reasonable period thereafter. This is version five.
- [17] In the heads of argument before this Court, the defence is that the terms of the verbal loan agreement was that repayment would commence once transfer of the new property had been finalised. This is the sixth version regarding the terms of the contract.
- [18] There are as many versions of the defence before the Court as the respondents have had an opportunity to file pleadings. With every new pleading comes a new version.
- [19] A defence which alters constantly, is not a bona fides defence.

The reasons for the shift in defences

- [20] The Court considers the explanation given for the shift in one of the defences.
- [21] In the original plea the respondents pleaded that Mrs Morar had donated the monies to them and disputed that there ever was a loan agreement. As it was a donation not a loan agreement – there was nothing to repay. The plea even explained that the monies were given as a loan “for the reason that Mrs Morar was the maternal aunt of the first and third defendants”. In the plea, the respondents did tender -

despite their version that it was a donation – to pay back Mr Morar R 7 000 per month over a period of 342 periods months with no interest.

- [22] Mr Morar replicated to the plea and indicated that if it were a loan, then section 59 of the Income Tax Act creates a joint and several liability for the supposed donation tax owing to SARS between Mrs Morar and the respondents. Mr Morar deposed that it “will be interesting and telling to determine firstly, whether the respondents have noted the donation tax liability towards SARS in their respective annual financial statements and, secondly, whether the respondent’s have made payment of the donation tax owing to SARS – on the knowledge that Mrs Morar did not”.
- [23] Mr Morar called on the respondents “to disclose in their affidavit resisting summary judgment their individual annual financial statements for the year ended 2023 ended 2023 as proof that the donation tax was disclosed”. Mr Morar further indicated that he was duty bound “to report the respondents, on their own version, for income tax fraud to SARS (which I will do)”.
- [24] The response from the respondents was swift. They filed an answering affidavit to the summary judgment application saying that the allegation that it was a donation was a figment of their erstwhile attorney’s imagination. They never instructed the attorney to plead that it was a donation. They had taken this up with the attorney – for which they attached a mail to their previous attorney. No response from the attorney or proof of a threatened LPC complaint accompanied this version. Then the respondents admitted that “the terms of the oral agreement were that the respondents repay the monies with a monthly instalment of R 7 000 without interest”. The allegation is that “initially Ms Morar who was our aunt wanted to gift the money to us but we refused the offer.” The respondents blamed their erstwhile attorney for committing gross professional negligence when it was pleaded that it was a donation and had filed the plea without their input.
- [25] It is bizarre that the version in the plea filed ostensibly by their erstwhile attorney whilst on his own tangent and the respondents’ version asserted in their amended plea have so much in common: they both contain a reference to a donation and then an obligation to pay R 7 000 per month. It is bizarre as the respondents allege in the answering affidavit that the first version was not their version – but their lawyer acting on a tangent of his own.

[26] Curiously the lawyer's tangent in the plea and the true version in the answering affidavit have much in common – save for the affidavit permitting the respondents to escape the noose of not complying with the Income Tax Act.

[27] The explanation for the altering defences does not meet the threshold of raising a bona fide defence.

The versions are internally contradictory

[28] The version in the first plea consists of the denial of a loan, the positive assertion of a donation, coupled with a tender to pay back the donated monies. This version appears internally contradictory, if it were a donation – then there should be no need to pay it back.

[29] The version in the amended plea was that there had been a verbal loan agreement but that this verbal loan agreement was a “soft loan” with no “true terms of repayment” (paragraph 2.5). The amended plea then immediately contradicts itself in the following paragraph (paragraph 2.6) where it is pleaded that the loan had to be repaid in R 7 000 instalments over a period of 342 months commencing on the month after Mrs Morar had made the payment”.

[30] The two pleas that are before the Court are both internally contradictory.

The versions contradict each other

[31] Not one of the versions is consistent in terms of when payment was to start. For example, in the letter of 17 January 2025 the respondents assert they had to start paying back the loan on 20 October 2023 (the date of the sale of their previous property). In the plea, which followed shortly on the letter, the respondents indicated their obligation to start repaying commenced when Mrs Morar had transferred the monies, which would be in February 2023. In the heads filed in this Court the duty to commence repayment was on the date the property was transferred into the respondents' names. The versions presented by the respondents contradict each other.

[32] In addition, the versions contradict each other in relation to interest. In a letter of 17 January 2025 the respondents indicated that the agreement was a flat rate of R 500 per year. Whilst in all other previous iterations there would be no interest charged.

[33] This casts doubt on the bona fides of the respondents' defence that there is a dispute regarding the terms of repayment of the loan agreement.

The reason presented for non-payment

[34] The first time the respondents disclose why they have not complied with their obligation to pay is after they withdrew the donation defence: being 17 January 2025. The reason given is that they have no bank account to pay the monies into. There is no previous mention of this difficulty in paying back Mrs Morar.

[35] On the respondent's version (one of them) they were to restart paying in February 2023 and make a payment each month. The first time they raise the issue that they do not have a bank account is in January 2025. Twenty-two times they did not raise this issue. They also did not raise it when they were served with the particulars of claim. It was only in January 2025 when confronted with the Income Tax Issue they raised the concern with the bank details. Not commenting on whether such an issue, raised for the first time two years later, is bona fide, it does not constitute a defence. Payment can be made in several ways: cash having always been an option.

[36] At best for the respondents, this allegation arises after the fact and does not amount to a defence. In any event, it does not assist the respondents, as they did not plead it was a term of the agreement that they be provided with banking details.

Mr Morar does not know the terms of the agreement

[37] At the hearing, the respondents pressed that Mr Morar was not present when the agreement was reached and therefore the facts do not fall within his personal knowledge and he cannot positively attest to the facts.. Mr Morar explained the intimate knowledge he had of his mother's financial affairs. But this is not the issue. Again, the terms of the agreement is not where the action lies. Assume the respondents' version is accepted – they had 342 months to pay. What does fall in Mr Morar's knowledge is that the respondents failed to pay at all and he was entitled to cancel the contract. That, frankly, is the cause of action which Mr Morar asserts and the facts which underpin this cause of action do all fall within his peculiar knowledge.

A defence to the cancellation of the contract?

- [38] At the hearing, the respondent's representative presented a defence to the cancellation of the contract. The defence was, not raised in the plea, but in oral submissions, that the contract which the applicant cancelled was a different contract.
- [39] There is no other contract on the pleadings, only one – albeit with disputed terms. There is on other contract, in any event this defence is not properly raised nor does it raise a triable issue.
- [40] On the respondents' version they have breached the contract: even on their own terms. The respondents would have this Court grant leave to defend so that the matter can be heard by a trial Court. The dispute they assert is inconsequential as on their version of the terms they still breached the contract and have raised no defence to Mr Morar cancelling the contract.
- [41] The core fact of this case is: the respondents made zero payments in terms of the loan agreement. None. It does not matter if at the trial they can prove they should have started to pay on February 2023 or October 2023 or frankly any other date. It does not matter if at the trial they can prove they had to pay back in 342 months or 60 or frankly any other period. Plainly: they never made any payment at all. Even if the respondents prove their version of the contract, factually, on their own pleaded version, they still breached it – which entitled the applicant to cancel the contract.
- [42] On their factual version the respondents breached the contract (on whatever version of the contract they wish to assert) which entitled the applicant to cancel the contract. This is the cause of action: the cancellation of a contract. The respondents have to provide a defence to the cancellation of the contract. They have pleaded none. They have not raised, for example, compliance with the contract, or a procedural requirement to refer the issue to arbitration or a counter-claim.
- [43] There is thus no triable issue. The issue identified by the respondents will not alter the conclusion that they breached the contract which permitted the cancellation of the contract. The trial Court will either accept Mr Morar's version, which results in a cancellation of the contract and a return of the monies. Or the trial Court will accept the respondents versions, which similarly results in a cancellation of the contract

and a return of the monies. Or the Court will say there was no meeting of the minds, consequentially no agreement was reached, also resulting in the return of the monies.

[44] There is no pleaded defence to the cause of action. The cause of action is not specific performance – in which case the respondents can dispute the terms of the contract. The cause of action is cancellation of the contract for breach – which the respondents cannot term a triable issue as on their version they breached the contract – on all and any of their versions of its terms.

[45] No reason has been presented as to why costs should not follow the cause. The scale suggested was scale A as the matter was not out of the ordinary complex.

I de Vos
Acting Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be e-mailed to the parties/their legal representatives.

Counsel for applicant: JDB Themane
Instructed by: Agyei Maseko Attorneys

Counsel for respondent: PP Bindza
Instructed by: Mothowamodimo Inc Attorneys

Date of hearing: 15 September 2025
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Date of request for reasons: 22 September 2025
Date of reasons: 22 September 2025