



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NUMBER: 029252/2024

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

30/9/2025

DATE

SIGNATURE

In the matter between:

NEDBANK LIMITED

PLAINTIFF

AND

LEBOSS GUEST LODGE PTY LTD

FIRST DEFENDANT

MARIA LEBOHANG EZENWA

SECOND DEFENDANT

JUDGMENT

OOSTHUIZEN-SENEKAL CSP AJ:

Introduction

[1] This is an opposed application for summary judgment brought by the Plaintiff against the First and Second Defendants. The Plaintiff seeks to recover the shortfall arising from the repossession and subsequent sale of a motor vehicle purchased by the First Defendant in terms of an Instalment Sale Agreement. The Defendants oppose the application on several grounds, including prescription, incorrect citation of the Second Defendant, *res judicata*, and issues relating to the computation of the debt.

[2] At the outset, it must be recorded that the Defendants informed the Court they will not proceed with the special pleas previously raised. Accordingly, my discussion of those pleas will be brief.

Background

[3] On 21 February 2019, the Plaintiff and the First Defendant concluded an Instalment Sale Agreement in terms of which the First Defendant purchased a 2012 Land Rover Defender motor vehicle for R684,541.70. The First Defendant defaulted on monthly instalments, prompting the Plaintiff to cancel the agreement and obtain an order for the return of the vehicle, which was repossessed on 11 November 2021.

[4] Following repossession, the Plaintiff, in compliance with section 127 of the National Credit Act 34 of 2005 ("NCA"), notified the First Defendant of the estimated value of the vehicle and the subsequent sale thereof. The vehicle was sold on 20 December 2021 for R266,225.00, leaving a shortfall of R171,770.64.

[5] Summons was issued on 18 March 2024, within the three-year prescription period provided for in section 11(d) of the Prescription Act 68 of 1969.

[6] The Second Defendant, cited incorrectly in the summons but correctly identified by identity number and having entered an appearance to defend, has not been prejudiced by the misnomer.

Arguments by the Applicant

[7] The Plaintiff contends that the Defendants' opposition to the claim is without merit and should not withstand judicial scrutiny. According to the Plaintiff the debt in question became due on 20 December 2021, when the shortfall crystallised following the sale of the vehicle. Prior to this date, there was no liquidated claim against the Defendants as the balance could not be quantified. Summons was issued on 18 March 2024, well within the three-year prescription period which would only have lapsed on 20 December 2024. Thus, the Plaintiff argues that the defence of prescription is unsustainable.

[8] The Plaintiff acknowledges that there was an erroneous citation of the Second Defendant in the summons. However, it argues that this error was *bona fide* and did not prejudice the Defendants in any way. The summons was served on the correct individual, who duly entered an appearance to defend. The principle is supported by the authorities of *Mutsi v Santam Versekeringsmaatskappy BK en 'n ander*¹ and *Embling and Another and Two Oceans Aquarium CC*², which establish that such misnomers are curable where the true identity of the party is clear and no prejudice results.

¹ 1963 (3) SA 11 (O).

² 2000 (3) SA 691 (C).

[9] The Plaintiff further argues that the Defendants' reliance on the doctrine of *res judicata* is misplaced. The earlier proceedings concerned the cancellation of the agreement and the return of the vehicle. The present proceedings, however, concern a separate and subsequent cause of action, namely the residual debt after the sale of the vehicle and the calculation of the shortfall. As the causes of action are distinct, the requirements of *res judicata*, same parties, same cause, and same relief, are not satisfied.

[10] The Plaintiff has complied fully with the requirements of Rule 32. A sworn affidavit has been filed setting out the cause of action, the exact amount claimed, and confirming that the Defendants lack a *bona fide* defence. This satisfies the procedural requirements for summary judgment, leaving the Defendants with no factual or legal basis to resist the claim.

[11] Lastly, the Plaintiff maintains that the *quantum* of the claim has been properly established. Statutory notices were furnished to the Defendants setting out the calculation of the shortfall, which was further supported by a certificate of balance issued in accordance with the agreement. The Plaintiff further relies on the principle that upon cancellation and repossession, a credit provider is entitled to sell the asset and recover the residual shortfall, including contractual interest up to settlement, provided statutory notices are issued. The Defendants' complaints regarding alleged deficiencies in detail are unsubstantiated, and in any event do not constitute a valid defence in law.

[12] For these reasons, the Plaintiff submits that the Defendants' opposition in the present matter is ill-founded and the Court is urged to grant judgment in favour of the Plaintiff.

Arguments by the Defendants

[13] The Defendants oppose the application for summary judgment on multiple grounds. They contend, firstly, that the claim has prescribed, and secondly, that the incorrect citation of the Second Defendant renders the proceedings defective. They further assert that the matter is *res judicata*, on the basis that it was adjudicated in earlier proceedings concerning the cancellation and return of the vehicle. The essence of their opposition, however, does not rest on these preliminary points. Rather, it lies in their substantive arguments relating to the Plaintiff's entitlement to interest, the adequacy of the shortfall calculation, and the alleged existence of triable issues.

[14] In relation to interest, the Defendants maintain that the Plaintiff is not entitled to recover interest for the full duration of the agreement, as the contract was terminated prematurely. Their contention is that cancellation of the agreement extinguished any entitlement to contractual interest for the unexpired period, limiting the Plaintiff's claim to interest only on the outstanding balance from the date of cancellation or judgment. This, they argue, raises a fundamental issue of interpretation which, in their view, constitutes a triable defence.

[15] The Defendants further challenge the adequacy of the Plaintiff's calculation of the shortfall. They argue that insufficient detail has been provided to demonstrate how the claimed amount was arrived at, and that this deficiency necessitates further discovery. In their submission, reliance on a certificate of balance and statutory notices is inadequate as it does not disclose the breakdown of the sale proceeds, expenses incurred, and the method by which the final shortfall was computed.

[16] A further strand of their opposition is the contention that triable issues exist which require adjudication at trial. They submit that the questions

relating to the Plaintiff's entitlement to interest and the sufficiency of the shortfall computation are not straightforward and warrant determination through oral evidence and cross-examination. In support of this contention, they emphasise that summary judgment is a drastic remedy which should only be granted where it is plain that a Defendant has no *bona fide* defence and that opposition is merely dilatory.

[17] It follows that, while the Defendants have raised preliminary objections concerning prescription, misnomer, and *res judicata*, these are peripheral to the real issues in dispute. The core of their opposition rests on their assertions that the Plaintiff is not entitled to claim interest for the entire contractual period, that the shortfall calculation is inadequately substantiated, and that these issues, collectively, necessitate a referral to trial.

[18] It is recorded that at the hearing the Defendants expressly abandoned reliance on their special pleas.

Case Law and Legal Principles

Prescription

[19] Section 12(1) of the Prescription Act provides that prescription begins to run when a debt is due. In *Truter v Deyse*³, the Supreme Court of Appeal held that a debt is due when the creditor acquires a complete cause of action. The Plaintiff's claim only became enforceable when the vehicle was sold and the shortfall quantified on 20 December 2021. Summons was issued well within three years. Therefore, the plea of prescription is unsustainable and should fail.

³ 2006 (4) SA 168 (SCA) paragraph [17].

Incorrect citation

[20] In *Mutsi v Santam Versekeringsmaatskappy BK en 'n ander supra*, the Court held that citation errors that do not mislead or prejudice are misnomers. Similarly, in *Embling and Two Oceans Aquarium supra*⁴, the Court observed:

“Where the summons has been served on the correct defendant, who knew that it was intended to be the defendant, the error in citation cannot be elevated to a defence in law.”

[21] The facts here align with those cases: the correct party was served, appeared, and defended the action.

Res judicata

[22] The requirements for *res judicata* were restated in *National Sorghum Breweries Ltd v International Liquor Distributors (Pty) Ltd*⁵, namely: (a) same parties, (b) same cause of action, and (c) same relief. The earlier litigation involved cancellation and repossession; this matter concerns the shortfall debt. The cause of action and relief in the present matter differ, rendering the defence inapplicable.

Computation of Interest in a Fixed Instalment Sale Agreement

[23] An instalment sale agreement ordinarily fixes the number of instalments, their amount, and the period of repayment. Each instalment includes a capital component and an interest component, amortised across the term.

⁴ At 699G–H.

⁵ 2001 (2) SA 232 (SCA) paragraph [2].

Upon cancellation, the debtor remains liable for arrears, damages, and any residual shortfall after the resale of the goods.

[24] The Defendant's argument that the Plaintiff cannot claim interest beyond the two years the contract was operational is misplaced. Once cancellation occurs and the goods are sold, a new debt arises: the quantified shortfall. Interest is then chargeable on that shortfall, not on the unexpired balance of the original contract. In *Absa Bank Ltd v De Villiers*⁶, the Court held:

"The purpose of awarding interest on a judgment debt is to compensate the plaintiff for the loss of the use of the money from the date of default until the date of payment."

[25] Thus, the Plaintiff is entitled to interest on the shortfall from the date of summons or contractual stipulation until final payment.

Certificate of Balance as Prima Facie Proof

[26] A certificate of balance issued under the agreement constitutes prima facie proof of indebtedness. In *Standard Bank of SA Ltd v Oneanate Investments (Pty) Ltd (in liquidation)*⁷, the Supreme Court of Appeal held:

"A certificate of balance is no more than prima facie proof of the amount due. The debtor may rebut it by producing evidence which casts doubt on the correctness of the certificate."

[27] In this matter, the Plaintiff annexed a certificate of balance confirming the outstanding debt of R171,770.64. The Defendants' bare denial,

⁶ 2009 (5) SA 40 (C).

⁷ 1998 (1) SA 811 (SCA) at 827F–G.

unsupported by contrary evidence, does not rebut the prima facie proof. Their plea for further discovery does not amount to a bona fide defence.

Summary judgment principles

[28] In *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture*⁸, the Supreme Court of Appeal explained:

“Summary judgment proceedings are not intended to deprive a defendant with a triable issue or a sustainable defence of her day in court. They are intended to prevent sham defences from defeating the rights of parties by delay.”

[29] The Defendants’ contentions on interest and quantum are unsubstantiated and amount to no more than delaying tactics.

Conclusion

[30] The Plaintiff has demonstrated compliance with Rule 32 and established its claim with sufficient clarity. The defences of prescription, incorrect citation, and res judicata are without merit. The Defendants’ allegations regarding interest and computation of the debt are bald, unsubstantiated, and fail to disclose a triable issue.

[31] Importantly, the Defendants’ express abandonment of their special pleas leaves only the main issues of prescription, citation, res judicata, interest, and quantum for determination. Those issues, having been considered above, do not reveal a bona fide defence.

[32] In the circumstances, the application for summary judgment succeeds.

⁸ 2009 (5) SA 1 (SCA) paragraph [32].

Order

[33] In the result the following order is made:

1. Summary judgment is granted in favour of the Plaintiff against the First and Second Defendants jointly and severally, the one paying the other to be absolved, for payment of the amount of R171,770.64.
2. Interest thereon at the prescribed rate from date of summons to date of final payment.
3. Costs of suit on the scale as between attorney and client.



**CSP OOSTHUIZEN-SENEKAL
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG**

DATE OF HEARING: 9 September 2025

DATE OF JUDGMENT: 30 September 2025

APPEARANCES:

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