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

CASE NUMBER: 024506/2024

Date of Hearing:	22 July 2025
Date of Judgment?	29 September 2025
Reportable?	No
Of interest to other judges?	No

In the matter between:

THE STANDARD BANK OF SOUTH AFRICA LTD

Applicant

and

SEKHETHELA, MAILE

Respondent

JUDGMENT

Mc Aslin AJ:

1. The Applicant seeks relief arising from various banking facilities made available to the Respondent, namely, a current account, three credit card accounts and an instalment sale agreement in respect of a motor vehicle.
2. The Applicant alleges, in relation to each agreement, the conclusion and terms of the agreement, its performance in terms of the agreement, the Respondent's breach of the agreement, its compliance with section 129 of the National Credit Act 34 of 2005 ("the

Act”), its cancellation of the agreement and the amounts outstanding in relation to each agreement.

3. In his answering affidavit the Respondent deals with many of these allegations in a curious manner. The answer from the Respondent, for the most part, to the allegations made by the Claimant is the following: *“The content of this paragraph is noted”*.
4. In argument Ms Letsipa, who appeared for the Respondent – who is, himself, an admitted advocate of this court and who apparently practised as such until 2024, could not tell me what the “noting” of an allegation was meant to convey.
5. It is well established in our law that an affidavit in motion proceedings fulfils a dual role of defining the issues between the parties and of setting out the evidence of the party on whose behalf the affidavit is filed.¹ Insofar as an affidavit fulfils the role of a pleading, it must follow that the rules that pertain to pleadings should apply to that function of an affidavit.
6. In relation to an answering affidavit the commensurate rule of pleading would be Uniform Rule 22, which deals with the requirements for a plea in action proceedings. Sub-Rule 2 states that *“the defendant shall in his plea either admit or deny or confess and avoid all the material facts alleged in the combined summons or declaration or state which of the said facts are not admitted and to what extent, and shall clearly and concisely state all material facts on which he relies.”* Sub-Rule (3) then provides that *“every allegation of fact in the combined summons or declaration which is not stated in the plea to be denied or to be admitted, shall be deemed to be admitted. ...”*
7. Applying these principles to motion proceedings, a deponent to an answering affidavit is obliged to admit or deny every material allegation in the founding affidavit. If he/she fails to do so, the allegation in the founding affidavit is then deemed to be admitted.
8. This is the conclusion reached by Tokota J writing for the full court in the matter of The Minister of Social Development v Mpayipheli 2018 JDR 0917 (ECM) and relying on the decision of Van der Spuy AJ in the matter of Makhuva and Others v Lukota Bus Service (Pty) Ltd and Others 1987 (3) SA 376 (V) at 386E-F.

¹ Botha v Smuts & Another 2025 (1) SA 581 (CC) at [190]

9. The view of the learned judges in the two matters to which I have just referred was that an allegation that is simply noted is neither admitted nor denied, and so it must be taken to be admitted.
10. In the matter of Dulce Vita CC v Van Collier 2013 JDR 0552 (SCA) the court was also faced with the mere noting of an allegation. However, the respondents in that matter then sought to argue that the noted allegation was actually disputed when regard was had to other documents in the record.
11. The Supreme Court of Appeal dealt with the matter on the basis that no genuine dispute of fact had been created as envisaged in the matter of Wightman t/a JW Construction v Headfour (Pty) Ltd & Another 2008 (3) SA 371 (SCA) at [13] and, consequently, the court proceeded on the basis that the noted allegation was not in dispute and had to be accepted as true.
12. The reasoning of the Supreme Court of Appeal seems to have been premised on the respondent's attempt to create a dispute through other documents where none existed on the affidavits. In the absence of such a factual matrix, I am of the view that the decisions of Tokota J and Van der Spuy AJ should be applied.
13. There is no credible reason for the failure to admit or deny an allegation in an affidavit. At its worst, the failure to do so is disingenuous and, at its best, it is simply sloppy. In either event a court should not indulge a litigant that actively seeks to avoid dealing squarely with the issues or is just too lazy to do so.
14. The failure to engage properly with the issues in a case results in pleadings and affidavits that are much longer than they need to be and that, in turn, results in the wasting of judicial resources. This case is a good example of what I have just mentioned, where the Respondent filed an answering affidavit of 97 pages without ever dealing issuably with the material allegations in the founding affidavit.
15. Before I address where the issues lie in this matter, I should mention that the Respondent argued that I should not have any regard to the replying affidavit since it was filed 7 courts days late. The Applicant applied for condonation for the late filing of the replying affidavit which, after hearing argument on the matter, I granted on the basis that the Respondent was not prejudiced by the short delay and the interests of justice required that condonation be granted.

16. In Claim A the Applicant seeks confirmation that it cancelled the agreement pertaining to the current account together with payment of the amount of R376 030.66 with interest and costs. The Respondent, by merely noting the allegations or by express admissions, admits the conclusion of the agreement, the performance of its obligations by the Applicant, his breach of the agreement, the cancellation of the agreement and the certificate of balance relied on by the Applicant.
17. In Claim B the Applicant asks for confirmation of its cancellation of the personal loan agreement and payment of the amount of R160 428.58 together with interest and costs. The Respondent, on the same basis as before, admits the conclusion of the agreement, that he breached the agreement, that the Applicant cancelled the agreement as a result of his breach and the certificate of balance relied on by the Applicant.
18. In Claim C the Applicant seeks an order confirming its cancellation of the instalment sale agreement and the return of the motor vehicle that was financed in terms of the agreement viz. a 2021 model GWM Steed 5 2.2 MPi Workhorse ("the Motor Vehicle") together with ancillary relief. As before, the Respondent admits the conclusion of the agreement, the performance by the Applicant of its obligations, his breach of the agreement and the cancellation of the agreement.
19. Claims D, E and F are claims for the balance outstanding on three credit cards issued by the Applicant to the Respondent. The Applicant alleges that it is not in possession of a signed copy of the agreement in terms of which the credit cards were issued, and it attaches a signed copy of the Respondent's application for the credit cards together with a copy of the standard terms and conditions that govern the issue of such credit cards.
20. Regrettably, the Respondent latches onto this opportunity and denies the conclusion of the credit card agreement and alleges that *"failure to attach the alleged agreement is fatal to this claim and the applicant ought to have proceeded by way of action"*. I say it is regrettable because the record shows that the Respondent made use of the credit cards, he made proposals to settle his credit card debts and he made payments into the credit card accounts. Clearly, there was an agreement in terms of which the credit cards were issued, and the Respondent's denial of that agreement is manifestly without any credibility.

21. It was also not necessary for the Applicant to have proceeded by way of action with these claims because the law recognises the capacity for disingenuity of some respondents and, accordingly, caters for the position where no genuine dispute is raised by a respondent (see: Wightman (*supra*)). This is such a case, and the Respondent's denial of the conclusion of the credit card agreements falls to be rejected.
22. The Respondent proceeds to give a bare denial of all the ensuing allegations by the Applicant, and it seems to me that the bare denials all flow from the initial denial of the conclusion of the credit card agreement. Consequently, no genuine dispute is raised by the bare denials.
23. In addition, and in relation to Claims D and E, by merely noting the allegations, and based on the reasoning set out above, the Respondent, in effect, admits that he did not pay the amount owing under the credit card agreements and that he did not remedy his breach after receiving the notices that were issued by the Applicant in terms of section 129 of the Act. There is also no answer to the paragraph in the founding affidavit where the Applicant alleges that it duly cancelled the credit card agreements, and so that allegation must also be taken to be admitted.
24. What then are the Respondent's defences to the claims? A perusal of the papers reveals the following issues: (i) Did the Applicant comply with the provisions of the Act? (ii) Are the Respondent's accounts with the Applicant under debt review? (iii) Did the Applicant render it impossible for the Respondent to perform when it locked the Respondent's accounts?
25. The defence in relation to the Applicant's compliance with the Act is not raised with any measure of clarity, at least insofar as the Respondent does not assert that any specific provision in the Act was not complied with by the Applicant. Rather, the points in relation to the Act are raised in broad and vague terms.
26. For example, the Respondent alleges in one sweeping statement that the credit agreements were "*reinstated by operation of law*". Yet, each credit agreement was cancelled by the Applicant, which cancellation is not disputed by the Respondent. In addition, the evidence shows that the Respondent has not paid the arrears due on those credit agreements. Consequently, there is no basis on which the credit agreements could have been reinstated by operation of the law.

27. In another example the Respondent asserts that an inference should be drawn that the credit extended to him was reckless. However, there is no counter-application for any formal relief in terms of the Act and there is also insufficient evidence adduced by the Respondent for the court to conduct such an enquiry. For example, there is no evidence of what enquiries were made by the Applicant or what the financial position of the Respondent was at any material time. In any event, once the credit agreements have been cancelled, as is common cause in this matter, there is no declaration that can be made in terms of section 83(1) of the Act which, on my understanding of the provision, only applies to credit agreements that are extant.
28. Insofar as section 129 of the Act is concerned, the Applicant alleges in respect of each claim that it duly complied with the statutory provision and annexes the supporting documentation. This allegation is admitted in relation to some of the claims, whilst in others it is simply denied. Part of the supporting evidence included by the Applicant is confirmation that the Respondent received and read the e-mail containing the section 129 notice. Consequently, I am satisfied, on a conspectus of the evidence, that the Applicant did comply with section 129 of the Act, and so there is nothing that can be said in relation to this provision of the Act.
29. I turn now to the Respondent's assertion that its debts with the Applicant are under debt review. In that regard it is common cause on the papers that the Respondent only approached a debt councillor after the credit agreements were cancelled by the Applicant and after the Applicant proceeded to institute this application. In light thereof, section 86(2) of the Act precludes the debts from being subjected to the debt review process, and there is nothing to be made of this defence.
30. The Respondent's final attempt to avoid the relief being sought in this application is a curious one. He alleges that *"[a]s a point of departure, it must be noted that it was the applicant who prevented the respondent from making payments and bringing the arrears back to regular status. The respondent made it clear that he needed the bank accounts to be functional in order to make payments but the applicant refused to remove the lock on the accounts and instead resorted to litigation"*.
31. It is common cause that at a point in time the Applicant did lock the Respondent's accounts but as explained by the Applicant in its replying affidavit, *"[t]he only effect of an account being locked is that the Respondent would not be able to draw against those facilities. All credits will and still is processed."*

32. That explanation accords with what I would consider to be commercial sense. I do not accept that a commercial bank would prevent a customer from paying arrears on its bank accounts, and it seems to me that the Respondent misunderstood the effect of the lock that was placed on his accounts.
33. The Respondent also misunderstood the Applicant's correspondence concerning the discussions that took place on a payment plan for the arrears on the Respondent's accounts. The Respondent thought that the Applicant insisted that he repay his full indebtedness in the region of about R1 million, whereas the correspondence clearly shows that the Applicant required the Respondent to pay all his arrears and not the full indebtedness.
34. During argument Ms Letsipa conceded that her and the Respondent had misunderstood the relevant communication from the Applicant, which is a great pity because on my assessment of the evidence, it was that misunderstanding that led to a hardening of the parties' attitude to resolving the matter amicably.
35. Be that as it may, the Respondent has failed to establish a valid defence to any of the claims advanced by the Applicant and the Applicant is entitled to the primary relief that it seeks. The Applicant seeks ancillary relief in the form of interest on the outstanding amounts together with costs on the scale as between attorney and client.
36. The interest is claimed in terms of the various credit agreements. However, I am unable to find where the credit agreements provide for costs on the scale as between attorney and client.
37. Nevertheless, in my view the Respondent's conduct in the case warrants censure. The Respondent pleaded his case in an unduly prolix manner. His defences were raised with vagueness and ambiguity, instead of the required clarity. The Respondent was opportunistic in parts of his defence and, ultimately, compelled the Applicant to go through a protracted hearing without the Respondent putting up any genuine defence. In my view, the way in which the Respondent conducted his case warrants a punitive order of costs.
38. Finally, the Applicant seeks confirmation in each claim that it had cancelled the credit agreement in question. As I have sought to demonstrate, the cancellation of each credit agreement is not in dispute. In addition, the cancellation of a contract is a

product of a party's election following a breach of the contract by the other party. It is not a product of an order of court. A court can only find that the cancellation of a contract was lawful, or it was not lawful. A court is not required to confirm the cancellation of a contract for the cancellation to be valid in law.

39. In light of the above I make the following order:

- (i) In relation to Claim A the Respondent is to pay the Applicant the amount of R376 030.66 together with interest at the rate of 15.25% *per annum*, calculated daily and compounded monthly in arrears from 12 February 2024 to date of payment (both days inclusive) together with costs on the scale as between attorney and client.
- (ii) In relation to Claim B the Respondent is to pay the Applicant the amount of R160 428.58 together with interest at the rate of 11.75% *per annum* from R0.00 to R147 000.00 and 14.25% *per annum* from R147 000.00 to the maximum amount, calculated daily and compounded monthly in arrears from 12 February 2024 to date of payment (both days inclusive) together with costs on the scale as between attorney and client.
- (iii) In relation to Claim C the Sheriff or his Deputy is authorised and directed to attach and hand over to the Applicant the motor vehicle identified as a GWM Steed 5 2.2 MPi Workhorse P/US/C 2021 with engine number D[...] and chassis number L[...]. In the event of there being a shortfall after the motor vehicle has been repossessed and sold, the Applicant is granted leave to approach the Court on the same papers, duly supplemented, for payment of the difference between the balance outstanding on the account and the amount for which the motor vehicle was sold. The Respondent is to pay the costs on the scale as between attorney and client.
- (iv) In relation to Claim D the Respondent is to pay the Applicant the amount of R265 214.40 together with interest at the rate of 12.75% *per annum*, calculated daily and compounded monthly in arrears from 12 February 2024 to date of payment (both days inclusive) together with costs on the scale as between attorney and client.

- (v) In relation to Claim E the Respondent is to pay the Applicant the amount of R134 538.06 together with interest at the rate of 12.75% *per annum*, calculated daily and compounded monthly in arrears from 12 February 2024 to date of payment (both days inclusive) together with costs on the scale as between attorney and client.
- (vi) In relation to Claim F the Respondent is to pay the Applicant the amount of R77 525.17 together with interest at the rate of 12.75% *per annum*, calculated daily and compounded monthly in arrears from 12 February 2024 to date of payment (both days inclusive) together with costs on the scale as between attorney and client.

C J Mc Aslin
Acting Judge of the High Court
29 September 2025

On behalf of the Applicant:

Adv. J C Viljoen

Instructed by:

Stupel & Berman Inc

On behalf of the First & Second Respondent:

Adv. R B Letsipa

Instructed by:

Ramobokela Inc