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

CASE NUMBER: 058795/2024

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

DATE 20/10/2025

SIGNATURE

In the matter between:

SA TAXI DEVELOPMENT FINANCE (PTY) LTD

APPLICANT

AND

JABULANI NKOSI

RESPONDENT

JUDGMENT

Oosthuizen-Senekal CSP AJ:

Introduction

[1] This is an application for summary judgment brought by the Applicant, SA Taxi Development Finance (Pty) Ltd, against the Respondent, Mr

Jabulani John Nkosi. The application arises from an instalment sale agreement relating to a 2023 Toyota Quantum/Hi-Ace 2.5 D-4D 16S motor vehicle.

[2] The Applicant seeks cancellation of the agreement, return of the vehicle, postponement of any residual damages claim pending such return, retention of all monies paid by the Respondent, and costs on the scale as between attorney and client.

[3] The Respondent has entered an appearance to defend and opposes summary judgment on several grounds, including non-receipt of a section 129 notice, denial of a valid cession, and an alleged settlement agreement. The question before this Court is whether the Respondent has demonstrated a *bona fide* defence or a triable issue sufficient to justify the matter proceeding to trial.

Background

[4] On or about 20 April 2023, at Midrand, the Respondent and Potpale Investments (RF) (Pty) Ltd (“Potpale”) entered into a written instalment sale agreement in terms of which Potpale financed the purchase of a 2023 Toyota Quantum/Hi-Ace 2.5 D-4D 16S motor vehicle, engine number 2[...], chassis number A[...].

[5] The Respondent paid a deposit of R34,300.00 and undertook to repay the balance in 112 equal monthly instalments of R15,628.48 each, subject to an interest rate linked to prime. The agreement further provided that Potpale could, without notice, cede or assign all rights, title, and interest in the agreement to a third party.

[6] On 13 July 2017, Potpale and the Applicant concluded a cession agreement in terms of which all rights under the Respondent's account were transferred to the Applicant. The Respondent thereafter fell into arrears with his monthly payments, and as of 18 October 2024, the arrears stood at R270,347.84.

[7] A notice in terms of section 129(1)(a) of the National Credit Act 34 of 2005 ("the NCA") was duly dispatched by registered post to the Respondent's *domicilium* address as chosen in the agreement. The "track-and-trace" record confirmed that the notice reached the relevant post office.

[8] Following the Respondent's continued default, the Applicant issued summons seeking cancellation of the agreement and return of the vehicle. The Respondent entered an appearance to defend and filed an opposing affidavit raising various defences.

Submissions by the Applicant

[9] The Applicant contends that all contractual preconditions for enforcement have been met and that the Respondent's defences are contrived and without merit.

[10] It is submitted that the instalment sale agreement was validly concluded with Potpale, that the subsequent cession in favour of the Applicant was lawful, and that the Respondent is precluded from challenging its validity. Relying on *Letseng Diamonds Ltd v JCI Ltd and Others*¹ and *Corporate Finance Solutions (Pty) Ltd v Dwergieland Kleuterskool CC*

¹ [2008] ZASCA 157.

*and Others*², the Applicant argues that only the contracting parties to a cession can question its enforceability.

[11] The Applicant maintains that the section 129 notice was properly dispatched by registered post and that, in terms of *Sebola and Others v Standard Bank of South Africa Ltd*³ and *SA Taxi Development Finance (Pty) Ltd v Phalafala*⁴, proof of delivery to the correct post office suffices.

[12] It is further submitted that the Respondent's allegations of a payment arrangement or settlement are unsupported by documentary evidence and do not constitute a *bona fide* defence. The Applicant therefore prays for summary judgment in accordance with its notice of motion.

Submissions by the Respondent

[13] The Respondent disputes the Applicant's entitlement to summary judgment and contends that he has a *bona fide* defence. He asserts that the vehicle originally described in the summons did not correspond with the vehicle he purchased, and that the Applicant only rectified this after amending its particulars of claim.

[14] He further denies any contractual relationship with Potpale, insisting that his agreement was concluded with SA Taxi Finance, who has been debiting his account since inception. He claims to have entered into a settlement with the Applicant on 1 September 2024, in terms of which he agreed to pay R5,000 per month towards the arrears but instead made a lump sum payment of R20,000 covering four months'

² Unreported Judgment, Full Bench, South Gauteng High Court, Case no A5020/11, 8 December 2011.

³ [2012] ZACC 11.

⁴ [2013] ZAGPJHC 55.

instalments. He contends that this arrangement was reduced to writing, signed, and retained by the Applicant, who now refuses to release it.

[15] The Respondent also raises non-compliance with sections 129 and 130 of the NCA. He maintains that the statutory notice was sent to an incorrect address, 1[...] S[...] N[...] Street, Lenasia South Ext 4, instead of his chosen domicilium, 4[...] 1[...] S[...], N[...] Street, Kiasha Park, Lenasia. He asserts that he never received the notice, as such he was deprived of his statutory right to debt counselling, and consequently has suffered prejudice.

[16] Finally, the Respondent argues that summary judgment is a drastic measure which denies him a full hearing, and that his defences raise triable issues deserving of determination at trial.

Legal Principles

[17] Rule 32 of the Uniform Rules of Court permits a plaintiff to apply for summary judgment where the defendant has entered an appearance to defend but has no *bona fide* defence. The rule aims to prevent sham defences and delay tactics, while ensuring that defendants with genuine disputes are not denied a trial.

[18] In *Maharaj v Barclays National Bank Ltd*⁵, the Appellate Division held that the defendant must disclose fully the nature and grounds of the defence and the material facts upon which it relies. The court must be satisfied that the defence is *bona fide* and not merely intended to delay judgment.

⁵ 1976 (1) SA 418 (A).

[19] In *Tumileng Trading CC v National Security and Fire (Pty) Ltd*⁶, the court reaffirmed that a plea disclosing no triable issue may be excipiable, yet even a skeletal defence will suffice to resist summary judgment if it is genuine and legally sustainable.

[20] With regard to section 129 of the NCA, *Sebola and Others v Standard Bank of South Africa Ltd supra* established that proof of registered dispatch and “track-and-trace” delivery to the correct post office ordinarily suffices to prove compliance.

[21] As for cession, it is trite that a debtor cannot challenge the validity of a cession to which he is not a party, provided the cedent and cessionary both recognise its validity, as held in *Letseng Diamonds Ltd v JCI Ltd supra*.

Evaluation

[22] The Court accepts that an instalment sale agreement was concluded in April 2023 and that it expressly provided for the cession of rights without notice to the debtor. The cession agreement of 13 July 2017 between Potpale and the Applicant therefore validly transferred Potpale’s rights to the Applicant. The Respondent’s attempt to deny this cession is unsustainable in law.

[23] The Respondent’s alleged settlement agreement is unsubstantiated. No written proof or supporting documentation has been produced. His assertion that the Applicant “is withholding” a signed copy is speculative and unsupported by evidence. Without corroboration, this version does not raise a triable issue or a *bona fide* defence.

⁶ [2020] ZAWCHC 28.

[24] Regarding the section 129 notice, the Applicant has furnished a “track-and-trace” confirmation demonstrating that the notice was duly dispatched by registered post to the Respondent’s chosen *domicilium citandi et executandi*, being the address furnished by him in the instalment sale agreement. The tracking report evidences that the registered article reached the relevant post office serving that area. The Respondent nevertheless contends that the notice was sent to an incorrect address, namely “1[...] S[...] N[...] Street, Lenasia South Ext 4,” whereas his chosen address was “4[...] 1[...] S[...], N[...] Street, Kiasha Park, Lenasia.”

[25] This contention, however, is misplaced. The Applicant, in its replying papers, attached evidence obtained through a Google Maps search confirming that both descriptions in fact refer to the same physical location. The Respondent has provided no contrary evidence to suggest that the Google-verified address differs in any material way from the *domicilium* address recorded in the contract. The Court is satisfied that the discrepancy between “S[...]” and “S[...],” and between “Lenasia South Ext 4” and “Kiasha Park, Lenasia,” is merely typographical and not geographical. They describe the same area serviced by the same postal office.

[26] The purpose of section 129 of the NCA is to ensure that a consumer is afforded notice of default and the opportunity to seek assistance before legal proceedings are instituted. It is not intended to enable a debtor to evade liability by relying on minor clerical variations in the recorded address. The Constitutional Court in *Sebola and Others v Standard Bank of South Africa Ltd supra* held that a credit provider discharges its obligation if, on a balance of probabilities, it can show that the notice reached the correct post office from which the consumer could

reasonably have collected it. Actual receipt by the consumer is not required, and the Court may infer sufficient delivery from evidence of proper dispatch and arrival at the relevant postal facility.

[27] The Applicant has met that standard. The Respondent's bare denial of receipt, unsupported by independent proof that the address was incorrect or that the notice was misdirected, does not rebut the presumption of due delivery. The principle articulated in *SA Taxi Development Finance (Pty) Ltd v Phalafala supra* is apposite: non-receipt of a section 129 notice prior to service of summons is not a defence where the debtor has, through the summons, become fully aware of the credit provider's intention to enforce the agreement. To insist upon re-notification would serve no practical purpose and would elevate procedural formality over substantive justice.

[28] In the present matter, the Court is accordingly satisfied that the section 129 notice was sent to the correct address as provided by the Respondent himself, and that the minor discrepancies identified do not constitute material non-compliance with the NCA. The Respondent has failed to demonstrate any prejudice occasioned by the manner of service. His defence on this ground is therefore ill-conceived and cannot succeed.

[29] The Respondent's challenges to the cession, the alleged compromise, and the delivery of the section 129 notice are without legal foundation. His opposing affidavit consists largely of bald denials and speculative assertions which fail to disclose any genuine issue requiring trial.

[30] In light of the evidence, the Applicant has established its entitlement to relief. The Respondent has failed to demonstrate any *bona fide* defence.

Conclusion

[31] Summary judgment is indeed a drastic remedy, but it is justified where the Respondent's defences are unfounded and contrived. In this instance, the Respondent has not raised any genuine or triable issue that would warrant a trial. The Applicant has demonstrated compliance with all statutory and contractual requirements, and the Respondent remains in default.

[32] Accordingly, the Court finds that the Applicant is entitled to the relief sought.

Order

[33] In the result the following is made:

1. The instalment sale agreement concluded between the parties on or about 20 April 2023 is cancelled.
2. The Respondent, Mr Jabulani John Nkosi, is directed to forthwith return to the Applicant, SA Taxi Development Finance (Pty) Ltd, the 2023 Toyota Quantum/Hi-Ace 2.5 D-4D 16S motor vehicle, engine number 2[...], chassis number A[...].
3. The Applicant's claim for any further damages as contemplated in paragraph 16 of the particulars of claim is postponed *sine die*, pending return and valuation of the motor vehicle.
4. The Applicant is entitled to retain all monies paid by the Respondent under the agreement.

5. The Respondent is ordered to pay the costs of suit on the attorney-and-client scale.

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

DATE OF HEARING: 10 September 2025
DATE OF JUDGMENT: 20 October 2025

APPEARANCES:

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