IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 64306/15

(1)	REPORTABLE: ~~YES~~/NO
(2)	OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3)	REVISED.

[redacted]

21/10/2025

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SIGNATURE DATE

In the matter between:

SHACKLETON CREDIT MANAGEMENT (PTY) LTD Applicant

and

STANDARD BANK First Respondent

SIFISO JACOB MASINA Second Respondent

JUDGMENT

<u>LABUSCHAGNE J</u>

[1] The applicant is the cessionary of a claim of Standard Bank against Mr SJ Masina for payment of the shortfall after the sale of a repossessed motor vehicle.

[2] It is common cause that:

2.1 On 18 September 2014, Standard Bank of South Africa Ltd and second respondent concluded an instalment sale agreement , in terms of which Standard Bank sold a motor vehicle to second respondent.

2.2 On 13 October 2015, Standard Bank instituted action under the above case number against second respondent .

2.3 On 26 October 2015, the Honourable Court granted a court order in favour of Standard Bank against second respondent in the action ("the attachment order), in terms of which, *inter alia*:

2.3.1 The instalment sale agreement was confirmed to be cancelled.

2.3.2 Second respondent was ordered to return the vehicle to Standard Bank.

2.3.3 Standard Bank's claim for damages arising out of second respondent's breach of the instalment sale agreement, together with interest thereon was postponed *sine die.*

[3] Despite being valued at that time for R250 000.00, the vehicle was attached and sold at auction for R684 000.00.

[4] The outstanding balance after deduction of the proceeds of the sale and other reasonable deductions, as prescribed by the National Credit Act left a balance which, due to the lapsing of time reached *in duplum*. The amount claimed was reduced by interim payments from R907 459 to R 896 542.61

[5] The applicant took cession of the claim from Standard Bank in terms of a written cession agreement after *litis contestatio* and seeks an order substituting it as the plaintiff in the action in the place of Standard Bank.

[6] The proceedings were opposed by the second respondent (hereafter "Mr Masina") who also represented himself at the hearing.

[7] Mr Masina contends that he had called Standard Bank's call centre and had entered into an agreed repayment arrangement in terms of which he would repay an amount of R1 000.00 per month until his financial position improved.

[8] While he commenced paying the R1 000.00 per month, he didn't persist and has made sporadic payments in the past 10 years. He then offered R500.00 per month but did not comply with that arrangement either. He has repaid an amount of approximately R54 600.00 in the past 10 years.

[9] In email correspondence from Standard Bank's collecting agent, there is confirmation of an arrangement as contended for by Mr Masina. However,

there is also confirmation that he has been acting in breach of it. That rendered the balance due.

[10] Standard Bank's contract with Mr Masina required any amendment to be confirmed and signed by the bank in writing and to be signed by the parties. This did not take place. The payment arrangement is no defence in light of the aforesaid.

[11] Mr Masina also contends that the debt had been written off by Standard Bank and that he should have the benefit of that write-off. When a creditor writes off a debt, it is an internal bookkeeping arrangement that has certain tax implications. It does not amount to Standard Bank forgiving the debt owed by Mr Masina. In fact the debtor is not a party to the write off process. The creditor is fully entitled to further recover the debt as the write-off is not an act of largesse on the part of the creditor. Reliance on the write off by Mr Masina is no more than opportunism.

[12] During argument Mr Masina also queried certain VAT deductions in the calculation of the outstanding amount. However, these are permissible deductions when regard is had to the provisions of the National Credit Act, which has specific sections dealing with how the proceeds and expenses incurred in respect thereof are to be dealt with. The deductions made are consistent with the National Credit Act.

[13] The applicant took cession of a debtor's book of Standard Bank which includes the claim against the second respondent. As the cession took place after *litis*

contestatio, the cessionary's right vests in the proceeds of the proceedings and when substituted as the judgment creditor

[14] Where a cession of a claim takes place after *litis contestatio*, the cedent cedes not his/her interest in the claim, but in the result of the litigation, and as the subject-matter of the cession is *res litigiosa*, the cession itself does not transfer the right to prosecute the action to the cessionary. That right only accrues when the court substitutes the cessionary as plaintiff. The requirement that the substitution be approved by the court is designed to ensure that the debtor is not prejudiced (see **Fisher v Natal Rubber Compounders (Pty)(Ltd)** 2016 (5) SA 477 (SCA) at p.489 par [9]). I am satisfied that the claim for substitution has been established.

[15] In the absence of any defence, I grant the following order:

1. The applicant is substituted for Standard Bank as plaintiff in the action by virtue of the cession agreement.

2. The second respondent is directed to pay the applicant the amount of R896 542.61.

3. The aforesaid amount shall bear interest at the rate of 11.75% per annum from date of judgment to date of final payment.

4. Costs of suit on a party and party scale, including counsel's fees on Scale B.

[redacted]

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LABUSCHAGNE J

JUDGE OF THE HIGH COURT

APPLICANT'S COUNSEL	**: ADV C GORDON**
APPLICANT'S ATTORNEYS	**:LYNN AND MAIN INCORPORATED**

APPLICANT'S COUNSEL	**: MASINA SIFISO**
APPLICANT'S ATTORNEYS	**: UNKNOWN**