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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: 031621-2023

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHERS JUDGES: NO
(3) REVISED: NO
(4) DATE: 20 OCTOBER 2025
(5) SIGNATURE:

In the matter between:

NEDBANK LIMITED

Applicant/Plaintiff

And

DUMISANI HILTON MALULEKE

Respondent/Defendant

This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on CaseLines by the Judge or her Secretary. The date of this judgment is deemed to be 20 October 2025.

JUDGMENT

COLLIS J:

INTRODUCTION

1] This is an opposed summary judgment application in which the Plaintiff seeks the return of a motor vehicle.¹

2] In the Defendants plea, the ownership of the Plaintiff to the motor vehicle is not denied.

BACKGROUND

3] The Plaintiff and the Defendant entered into a written instalment sale agreement (“the agreement”) in respect of the vehicle.

4] In terms of the *underlying agreement*, the Defendant was required to pay to the Plaintiff the monthly instalments as specified in the agreement as per the schedule forming part of the agreement at the time or times stipulated therein without deduction or set off and at the address of the Plaintiff. These payments were to be made by way of debit order without withholding or deferring any payment for any reason whatsoever.

5] The underlying agreement provided that should the Defendant fail to comply with any conditions of the agreement at any time, or fail to pay any amounts due to the Plaintiff, the Plaintiff shall be entitled to cancel the agreement, obtain return of the vehicle, sell same, retain payments already made in terms of the agreement, and claim from the Defendant the balance (if any) as damages.

6] As per the Particulars of Claim, it is alleged that the Plaintiff duly performed in terms of the agreement and gave possession of the vehicle to the Defendant.

7] Therein, it is further alleged that the Defendant breached the agreement by failing to pay the monthly instalments. This is also common cause.

LEGAL POSITION

¹ CaseLines 01 – 4 SJ Application.

8] Following the amendment to Uniform Rule 32, the legal position under Rule 32 in its amended form is as follows:

“[16] The purpose of a summary judgment application is to allow the court to summarily dispense with actions that ought not to proceed to trial because they do not raise a genuine triable issue, thereby conserving scarce judicial resources and improving access to justice. Once an application for summary judgment is brought, the applicant obtains a substantive right for that application to be heard, and, bearing in mind the purpose of summary judgment, that hearing should be as soon as possible. That right is protected under section 34 of the Constitution.²

9] A Court faced with an application for summary judgment must consider whether the defendants’ affidavit complies with the provisions of rule 32(3)(b) and, in this regard, whether:

9.1 it accords with the defendants’ plea – in other words, whether the defendants have, with reference to their plea, disclosed a bona fide defence to the action, alternatively whether the defendants have, with reference to their notice of intention to amend their plea, disclosed a bona fide defence to the action in the affidavit;

9.2 the affidavit discloses fully the nature and grounds of the defence and the material facts relied upon therefor.

10] In the event of it being found that the affidavit, with reference to the Plea, does not comply with the provisions of rule 32(3)(b), summary judgment should be granted against a defendant.

11] It has been held that meritless denials and allegations are merely intended to delay the matters and is ultimately infringing on the applicant’s right to summary

² Raumix Aggregates (Pty) Ltd v Richter Sand CC GJ Case number 2109/8153 and other cases, a decision of the Full Court dated 4 October 2019.

judgment as stated by the Supreme Court of Appeal in NPGS Protection & Security Services CC v FirstRand Bank Ltd.³ Herein the Court said the following:

“[14] Indeed, the court would be remiss in its duties of such defences, clearly devoid of any bona fides, stand in the way of plaintiffs who are entitled to relief. The ever- increasing perception that bald averments and sketchy propositions are sufficient to stave off summary judgment is misplaced and not supported by the trite principles developed over many decades by our courts. See for example, the well- known judgment of this court in Maharaj v Barclays National Bank Ltd. 1976 (1) SA 418 (A) where the proper approach to applications for summary judgment is stated.”

12] It is now settled law that the defendant must not be vague, sketchy and laconic in his opposing affidavit. Such attributes entitle the court to form the impression that the defendant cannot or will not play open cards.⁴

13] It is also of crucial importance in summary judgment proceedings that a comprehensive disclosure of the material facts upon which the defence is based be made. This is particularly so as the evaluation of the defendant’s opposing affidavit frequently entails not a consideration of what the defendant has said, but of what he did not say.⁵

14] In *casu*, the underlying agreement is subject to the National Credit Act and the Plaintiff has duly complied with the provisions of section 129, which has been fully pleaded.

³ 2020 (1) SA 494 SCA.

⁴ *Appliance Hire (Natal) (Pty) Ltd v Natal Fruit Juices (Pty) Ltd* 1974 (2) SA 287 (D) 290H–291B; *Breitenbach v Fiat SA (Edms) Bpk* 1976 (2) SA 226 (T) 229A; *Diesel Power Plant Hire CC v Master Diggers (Pty) Ltd* 1992 (2) SA 295 (W) 298C–F; *Creative Car Sound and Another v Automobile Radio Dealers Association* 1989(Pty) Ltd 2007 (4) SA 546 (D&C) 556I–557A.

⁵ *Kassim Brothers (Pvt) Ltd v Kassim* 1964 (1) SA 651 (SR) 653B.

15] Compliance with the provisions of the NCA has not been denied by the Defendant and for this reason there exists no legal basis for the Defendant to keep possession of the vehicle.

DEFENCES RAISED BY THE DEFENDANT

16] In the Answering Affidavit the Defendant had raised the following defences:

16.1 Failure by the Plaintiff to have complied with the provisions of Rule 41A;

16.2 Failure by the Plaintiff to have complied with Section 129 of the NCA and

16.3 Failure by the Plaintiff to have complied with the provisions of Rule 32.

17] In respect of the first defence raised the Defendant pleads as a special plea that the Plaintiff failed to have complied with the provisions of with Rule 41A in that no notice in this respect was served on the Defendant.

18] In this regard the relevant notice together with the summons, was served on the Defendant on 4 May 2023 and the return reads that service occurred by affixing. The return of service clearly reads as follows:

“...a copy of the COMBINED SUMMONS AND NOTICE IN TERMS OF RULE41A was served by affixing to the main gate.”

19] Counsel for the Plaintiff therefore contends, that it is incorrect to allege that the notice in terms of Rule 41A was not served on the Defendant.

20] In the matter of Wesley Groenewald,⁶ this exact defence was raised at summary judgment stage by the Defendant and found wanting. Herein, the Court held:

“[9] The Plaintiff concedes that it did not file the Notice in terms of Rule 41A of the Uniform Rules. The Defendants are culpable too, because they also did not file the notice prior to their plea. The rule’s objective is the expedition of disputes through mediation and where no resolution of the matter is possible, to identify issues that require adjudication. In this matter neither party followed the

⁶ [2021] FB.

rule. It is also clear from the fact that they could not agree on restructuring that no mediation would be forthcoming.

[10] In *M N v S N*⁷ the Court reiterated that the rules are there for the Court and not the Court for the rules and was not prepared to uphold the objection of non-compliance with Rule 41A.”

21] Rule 41A provides for Form 27 to be filed, in which the party should indicate whether the matter can or may be referred for mediation and/or not and provide the reasons for such refusal.

22] In the present proceedings the Plaintiff indeed had filed such notice and for this reason this Court concludes that the point *in limine* is not well taken.

23] As to the additional defence raised relating to the non-compliance with Section 129 of the NCA, the Plaintiff has alleged that it send the section 129 notice per registered post to the *domicilium* address on 12 September 2022, as that was the chosen method of delivery by the Defendant.⁸ The trace report reflects that the letter was received by the correct post office in 2023 and that the necessary notice was dispatched to the Defendant.

24] Our Constitutional Court, in *Sebola*⁹ made the following clear that the delivery of the notice in terms of sections 129 and 130 requires the credit provider to aver and prove that the notice in section 129 was delivered to the consumer.

25] Further that where the post is used, it will suffice to show delivery if there is proof of registered dispatch to the address of the consumer, together with proof that the notice reached the appropriate post office for delivery to the consumer, in the absence of proof to the contrary (see paragraph [87]).

⁷ *M N v S N* (10540/16) [2020] ZAWCHC 157 (13 November 2020).

⁸ CaseLines 001 – 21.

⁹ *Sebola and Another v Standard Bank of South Africa Ltd and Another* (CCT 98/11) [2012] ZACC 11; 2012 (5) SA 142 (CC); 2012 (8) BCLR 785 (CC) (7 June 2012).

26] In *casu*, the section 129 was sent to the correct chosen domicilium address, being Hillmoor Manor, Unit 4[...], F[...] Street, Meyersdal¹⁰, it was received by the correct post office and the first notification despatched to the Plaintiff.

27] In light of the above, this Court cannot conclude that there is any merit in the second defence raised.

28] The further defence raised by the Defendant is that there has been a general denial made by the Defendant that the Plaintiff has failed to comply with the provisions of Rule 32, in that the Plaintiff has failed to verify its cause of action and the amount claimed.

29] This defence so raised is simply incorrect as the deponent to the affidavit filed in support of the summary judgment application in paragraph 2 thereof specifically dealt with this aspect.

30] Given the totality of the defences raised by the Defendant, this Court cannot conclude that the affidavit of the Defendant discloses fully the nature and grounds of the defence and the material facts relied upon.

31] As the Defendant admits having received the motor vehicle and having admitted that ownership vests in the Plaintiff until having been paid in full and having admitted having breached the terms of the agreement in the plea with no triable issue having been raised, the Plaintiff would be entitled to the relief which it seeks.

32] The Defendant has not showed any bona fide defence to the claim. Based on the admissions in the Plea, it is clear that there is simply no defence to the claim for the return of the vehicle.

¹⁰ CaseLines H2.

COSTS

33] The underlying agreement provides for costs on an Attorney and Client scale to be awarded upon litigation being embarked upon in terms of the agreement. As the Plaintiff is the successful party in these proceedings, it will be awarded costs on this scale.

ORDER

34] In the result the following order is made:

34.1 Confirmation of termination of the agreement.

34.2 The Defendant is directed, or anybody else who is in possession of the motor vehicle, to forthwith deliver to the Applicant a VOLKSWAGEN POLO 1.0 TSI COMFORTLINE DSG motor vehicle with engine number C[...] and chassis number A[...] to the Applicant.

34.3 The Plaintiff is authorised to apply to the Court on the same papers, supplemented insofar as may be necessary, for judgment in respect of any damages and further expenses incurred by the Plaintiff in the repossession of the said vehicle, which amount can only be determined once the vehicle has been repossessed by the Plaintiff and has been sold.

34.4 Costs on an Attorney and Client scale.

COLLIS J

JUDGE OF THE HIGH COURT,
GAUTENG DIVISION, PRETORIA

APPEARANCES:

Counsel for the Plaintiff: Adv. C.J WELGEMOED

Instructing Attorney: STRAUSS DALY NC.

For the Defendant: IN PERSONA

Date of Hearing: 03 February 2025

Date of Judgment: 20 October 2025