

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case number: 2024/136477

[1] REPORTABLE: NO

[2] OF INTEREST TO OTHER JUDGES: NO

[3] REVISED: NO

SIGNATURE

DATE: 20 NOVEMBER 2025

In the matter between:

NEDBANK LIMITED

Plaintiff

and

BENNIS MOKOENA

Defendant

JUDGMENT

DALRYMPLE AJ:

- [1] The plaintiff applies for summary judgment against the defendant. The plaintiff's cause of action is founded upon an instalment sale agreement concluded between the parties in terms of which the plaintiff financed the purchase of the defendant's motor vehicle, being a 2014 Land Rover Evoque Si4 Dynamic motor vehicle with engine number 1[...] and chassis number S[...] ("the vehicle").

- [2] In terms of the agreement, the defendant was liable to pay the plaintiff monthly instalments in reduction of her indebtedness to the plaintiff. In the event the defendant breached the agreement by, *inter alia*, failing to make payments due to the plaintiff, the plaintiff would be entitled to cancel the agreement, take possession of the vehicle and claim payment of the outstanding balance.
- [3] In its particulars of claim, the plaintiff alleged that the defendant had breached the agreement in failing to make the monthly instalments to it and was in arrears in the amount of R41 488,21 as at the time of the issue of the plaintiff's summons in November 2024. After giving notice to the defendant in terms of the National Credit Act¹ the defendant remained in breach of the agreement which entitled the plaintiff to cancel the agreement, which it duly did.
- [4] The plaintiff then instituted action against the defendant seeking judgment for orders confirming cancellation of the agreement, for return of the vehicle to the plaintiff and costs. The plaintiff does not seek any monetary relief and asks that the damages component of its claim be postponed *sine die*.
- [5] The defendant filed her plea on 1 April 2025. The plaintiff took the view that the defendant's plea did not raise any triable issues, did not appear to be *bona fide*, had been delivered to delay the plaintiff's claim and applied for summary judgment for the relief set out above.
- [6] A defendant is required, in an affidavit opposing summary judgment to disclose fully the nature and grounds of the defence and the material facts relied upon.²
- [7] In *Breitenbach v Fiat SA (Edms) Bpk*³ the court held that bald, vague and sketchy defences should not be countenanced. In *Joob Joob Investments*

¹ 34 of 2005

² Rule 32(3)(b); *PCL Consulting (Pty) Limited t/a Philips Consulting SA v Tresso Trading 119 (Pty) Limited* 2009 (4) SA 68 (SCA) at para [8]

(Pty) Limited v Stocks Mavundla Zek Joint Venture⁴ the Supreme Court of Appeal explained that summary judgment procedure is not intended to deprive a defendant with a triable issue or a sustainable defence or of his or her day in court. In considering whether a defendant does indeed have a triable issue or sustainable defence, the court should first consider whether there was a sufficient disclosure by the defendant of the defence sought to be relied upon. Second, it should be considered whether the defence so disclosed is *bona fide* and good in law.

[8] In *NPGS Protection and Security Services CC and Another v FirstRand Bank Limited*⁵ the Supreme Court of Appeal confirmed again that summary judgment applications require an opposing affidavit to disclose fully the nature and grounds of the defence and the material facts relied upon therefore. To stave off summary judgment, a defendant cannot content him or herself with bald denials, for example, that it is not clear how the amount claimed was made up. Something more is required. If a defendant disputes the amount claimed, he or she should say so and set out a factual basis for such denial.⁶

[9] In her plea, the defendant put the plaintiff to the proof of the allegation that she had failed to pay monthly instalments and was indebted to the plaintiff in an amount of R41 488,21 as at the time of issue of summons. She did not proffer any countervailing facts to suggest that she was not so indebted. In addition, she did not dispute that as at 23 October 2024, the total outstanding amount due to the plaintiff was R325 038,31 plus interest from the aforesaid date at a rate of 14.95% per annum, calculated and capitalised from 24 October 2024 to the date of payment as evidenced by a certificate of balance.

[10] In her affidavit opposing summary judgment, the defendant contended that she had a *bona fide* defence premised on there being a material dispute of fact. The dispute of fact pertained to the amount of her indebtedness. This was premised on her having made payments to the plaintiff before receipt of

³ 1976 (2) SA 226 (T) at 229 F to H

⁴ 2009 (5) SA 1 (SCA) at paras [31] and [32]

⁵ 2020 (1) SA 494 (SCA)

⁶ *NPGS* at para [11]

the summary judgment application. The defendant also did not dispute being in default with her obligations under the agreement but averred that she was attempting to rectify the default by making various payments towards the arrear amount. She attached proof of three payments to her affidavit in support of this. Despite the fact that two of the proofs of payment reflected that payments were made before the filing of her plea, they were not referred to in her plea nor were they attached to her plea. The defendant made no allegations in the plea as to any payment being made to the plaintiff at all.

[11] Counsel for the defendant submitted, both in her heads of argument and in oral argument, that the subsequent payments made by the defendant to the plaintiff after receipt of the plaintiff's summons (but before receipt of the application for summary judgment) altered the quantum of the arrears. This, so it was argued, introduced a genuine dispute of fact rendering the matter incapable of resolution on paper and justifying refusal of summary judgment.

[12] In summary judgment proceedings, a defendant cannot raise a defence in her affidavit that is not raised in her plea without amending the plea.⁷ This is because the summary judgment is adjudicated upon the defendant's pleaded defence. But leaving aside that the payments referred to in her affidavit were not referred to in her plea, the defendant's difficulty is that the facts relied upon by her in seeking to stave off summary judgment do not disclose a defence to the plaintiff's claim for cancellation of the agreement and repossession of the vehicle. The plaintiff's right to cancel the agreement accrued once the defendant was in breach and had failed to remedy her breach after notice of thereof had been given to the defendant pursuant to the terms of the agreement and sections 129 and 130 of the National Credit Act.

[13] The plaintiff exercised its right of cancellation, at the very latest upon service of its summons on the defendant. The defendant does not suggest that she had made payment in respect of the arrears and remedied her default before cancellation of the agreement. On the contrary, she admits to being in default

⁷ *AHMR Hospitality v Da Silva* 2024 (3) SA 100 (WCC) at para [14]

and her case is that she made payments in reduction of her indebtedness after the issue of summons and cancellation. She conceded this was an attempt to rectify her default.

[14] There is thus no dispute raised by the defendant that she failed to comply with the instalment obligations under the agreement nor is there a dispute as to the plaintiff's entitlement to cancel the agreement. The defendant's suggestion that there is a genuine dispute of fact in relation to the extent of her arrears does not assist her. On her own version, the payments in reduction of her indebtedness were made after cancellation of the agreement by the plaintiff and after issue of summons and without her challenging her indebtedness before then. Counsel for the plaintiff argued that the subsequent payments in any event amounted to admissions of indebtedness, and even if taken into account, the plaintiff did not extinguish the extent of her arrears. These submissions are sound.

[15] The precise quantification of the plaintiff's indebtedness is not in issue at present. The plaintiff does not seek a money judgment but seeks only confirmation of cancellation of the agreement and return of the vehicle to it. It is the defendant's indebtedness per se, and not the quantum thereof that entitles the plaintiff to the relief it seeks. Factual disputes as to the extent of the quantum are thus not relevant at this stage. The subsequent payments the plaintiff made will have the effect of reducing her overall indebtedness but that is a matter for another day.

[16] The defendant was in breach of her obligations under the instalment sale agreement and did not remedy her breach timeously. The plaintiff was entitled to cancel the agreement which it did. The defendant's plea does not disclose any *bona fide* defences nor raise any triable issues. A proper case for summary judgment has been made out.

[17] The plaintiff did not rely on any contractual right to costs but asked for costs of counsel.

[18] The following order is made:

[1] Summary judgment is granted in favour of the plaintiff against the defendant for return to the plaintiff of a 2014 Land Rover Evoque Si 4 Dynamic motor vehicle with engine number 1[...] and chassis number S[...].

[2] The defendant is to pay the plaintiff's costs on Scale A.

[3] The damages component of the plaintiff's claim is postpone *sine die*.

T DALRYMPLE

ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

This judgment was handed down electronically by circulation to the parties' and/or parties' representatives by email and by being uploaded to CaseLines. The date for hand-down is deemed to be 20 November 2025.

DATE OF HEARING: 14 OCTOBER 2025

DATE OF JUDGMENT: 20 NOVEMBER 2025

APPEARANCES:

COUNSEL FOR THE PLAINTIFF:

INSTRUCED BY:

N JONGANI

**VAN DEVENTER DLAMINI
INC**

COUNSEL FOR THE DEFENDANT:

INSTRUCTED BY:

K MAIMANE

RHULANI BALOYI INC