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

Case Number: 2022-048436

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

21 November 2025

In the matter between:

THE STANDARD BANK OF SOUTH AFRICA LIMITED Applicant

and

MAHOMED SALIM ESSOP DAWOOD Respondent

JUDGMENT

FURMAN AJ

[1] This is an action in which the plaintiff, The Standard Bank of South Africa Limited, sues the defendant, Mr Salim Essop Dawood Mahomed, for payment of an outstanding balance arising from the conclusion of various written loan agreements.

[2] The matter served before me as an opposed summary judgment application, the defendant having delivered a plea raising several defenses to the Plaintiff's claim.

[3] The plaintiff seeks judgment for the amount allegedly due and payable to it, together with interest and costs, as well as an order declaring specially executable the immovable property described as Section Number 13, as shown and more fully described on Sectional Plan No. SS 165/82, comprising the scheme known as Rainsworth Village, in respect of the land and building or buildings situated in the Township of Rainsworth, under the local authority of the Ekurhuleni Metropolitan Municipality, of which the floor area, according to the said sectional plan, is 149 square metres in extent, together with an undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the sectional plan, held under Deed of Transfer No. S[…] ("the property").

[4] The property is owned solely by the defendant.

FACTUAL BACKGROUND

[5] The plaintiff alleges that the defendant entered into five loan agreements with the plaintiff during the period 1993 to 2014, wherein the plaintiff agreed to advance credit to the defendant, and wherein the defendant agreed to provide, as security, registered mortgage bonds over the property.

[6] In addition, the plaintiff alleges that, in one instance, the plaintiff agreed to advance and loan monies to the defendant's wife and, in turn, the defendant agreed to bind himself as surety and co-principal debtor with his wife in respect of her indebtedness to the plaintiff. A further mortgage bond was registered by the plaintiff over the property, allegedly at the instance and request of the defendant, by virtue of him binding himself as surety and co-principal debtor with his wife in favour of the plaintiff.

THE PLAINTIFF'S CASE

[7] The plaintiff alleges that the defendant is indebted to it in the amount of R1 148 776.86, together with interest thereon at the rate of 9% per annum.

[8] The plaintiff alleges further that it is not in possession of the loan agreements allegedly concluded between the plaintiff and the defendant, and in one

instance the loan agreement concluded between the plaintiff and the defendant's wife as well as the suretyship agreement concluded by the defendant in favour of the plaintiff as security for the Defendant's wife's indebtedness to the plaintiff, which gave rise to the mortgage bonds registered over the property.

[9] The plaintiff contends that the mortgage bond documents themselves provide sufficient evidence of the conclusion of the alleged loan agreements and of their terms, which it alleges binds the defendant.

THE DEFENDANT'S CASE

[10] The defendant denies being indebted to the plaintiff as alleged, or at all.

[11] In amplification of this defense, the defendant admits the conclusion of the original loan agreement, which gave rise to the registration of the first mortgage bond over the property, and states that the full extent of his indebtedness to the plaintiff in respect of this loan agreement has been paid in full by him.

[12] The defendant denies having concluded any further loan agreements with the plaintiff and further disputes that he agreed to the registration of the five additional mortgage bonds over the property.

[13] In respect of the loan allegedly advanced to the defendant's wife, the defendant denies having agreed to stand as surety and co-principal debtor with his wife for any indebtedness she may have owed to the plaintiff. He likewise denies having provided authority for the registration of the mortgage bond in respect of this loan.

[14] The defendant, in his affidavit resisting summary judgment, goes to further lengths to attempt to justify his defense, setting out various steps taken by his attorneys of record to obtain further information relating to the alleged loan agreements purportedly concluded between himself and the plaintiff and the suretyship allegedly concluded by him in favour of the Plaintiff in respect of his wife's indebtedness to the plaintiff.

[15] The defendant states in his affidavit resisting summary judgment that the information sought has not been forthcoming, and that his bare denial, as contained in his plea, should not result in him being penalised by virtue of the fact that he is unable to place any further material facts or information before this Court in relation to his defense.

ISSUES FOR DETERMINATION

[16] As stated above, the plaintiff seeks judgment against the defendant on what, *prima facie*, appears to be validly concluded loan agreements, five of which were concluded between the plaintiff and the defendant, and one of which was concluded between the plaintiff and the defendant's wife, and in respect of which the defendant agreed to bind himself as surety and co-principal debtor with his wife in favour of the plaintiff.

[17] The defendant raises his defense on the basis that, but for the first loan agreement he did not conclude any further loan agreements, nor did he authorise the registration of further mortgage bonds over his property. On the face of it, the defendant attempts to utilise the plaintiff's inability to supply the underlying loan agreements as a reason to raise a defense to the plaintiff's claim.

THE PLAINTIFF'S SUBMISSIONS

[18] The plaintiff submits that the absence of copies of the underlying loan agreements does not preclude it from pursuing a claim against the defendant for the amounts which it alleges the defendant is indebted for.

[19] In this regard, counsel placed before this Court relevant case law which confirms this legal position. This position is not challenged, the question that arises, is whether such claim can be prosecuted on summary judgment.

[20] The plaintiff asserts that the defendant is attempting to capitalise on the plaintiff's unfortunate position in not being able to provide copies of the underlying loan agreements allegedly concluded by the defendant, in order to avoid summary judgment, and contends that the defenses raised by the

defendant in his plea and in his affidavit resisting summary judgment are simply a ruse to avoid the inevitable day of reckoning, being the ultimate granting of judgment against him.

DEFENDANT'S SUBMISSIONS

[21] The defendant admits the conclusion of the first loan agreement and the registration of the mortgage bond in respect thereof. This agreement was concluded in 1993 while the defendant and his wife were employees of the plaintiff.

[22] The defendant disavows his conclusion of any further loan agreements with the plaintiff, he denies having concluded a suretyship in favour of the plaintiff and also challenges his alleged authority for the registration of the additional mortgage bonds over his property. To the extent that the defendant's denials amount to bare denials, the defendant has brought this court into his confidence and explained how he, through his attorneys of record have attempted to obtain information to give credence to his defense. He refers to a Rule 35 (12) and (14) notice purportedly served by his attorneys and explains the fact that he is estranged from his wife and has been for some 7 years. He contends that he was unable to obtain any explanation for the conclusion of the loan agreements etc.

EVALUATION

[23] The fact that the plaintiff cannot provide this Court with a copy of one of the underlying loan agreements and suretyship, giving rise to the mortgage bonds registered over the property is significant. An organization, the likes of the plaintiff, have controls in place to avoid the loss of material documents, especially when these documents give rise to material consequences for both the plaintiff and/or its customers. Naturally and in the course of day to day business, a document can and does go missing from time to time. However, when it is alleged that 5 documents relating to the same Defendant have gone missing, one has to question whether there has been some nefarious activity on this customers account.

[24] This in no way brings into question the conduct of the plaintiff, however given the pervasive element of fraud in our society, it is not out of the realm of possibility that both the plaintiff and/or the defendant are the victims of an elaborate fraud. These issues cannot be dealt with on summary judgment, and will have to be dealt with by a trial court, which will have all the necessary evidence at its disposal to adjudicate properly on this dispute.

CONCLUSION

[25] Accordingly, having read the papers and having heard extensive submissions from counsel in the matter, I am satisfied that the defendant's defenses raised in its opposition to the summary judgment application raise triable issues which can only be resolved in a trial court.

Order

[26] The defendant is granted leave to defend the action.

[27] The matter is to proceed to trial.

[28] The costs of this application for summary judgment are costs in the cause.

FURMAN AJ
JUDGE OF THE HIGH COURT
JOHANNESBURG

For the Applicant:	R PETERSON instructed by Stupel & Berman Inc
For the Respondent:	A MANILALL instructed by Manilall Chunder & Company