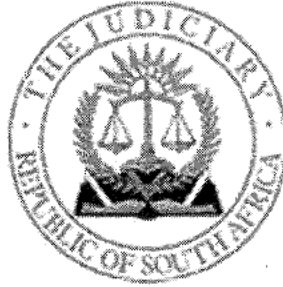


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2024-013927

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
26 November 2025	
DATE	SIGNATURE

In the matter between:

GRINDROD BANK LIMITED

Applicant

and

SANDILE HOPESON NOMVETE

Respondent

This Judgment is handed down electronically by circulation to the applicant's legal representatives and the respondent by email, publication on Case Lines. The date for the handing down is deemed 26 November 2025.

Summary: Parties – Substitution in terms of Rule 15 - Rules providing simplified form of substitution, subject to right of affected party to apply for relief – Court still having power to grant substitution of parties on substantive application where rules not applying – In absence of such application, effectiveness of notice under the Rule depending on whether it was given in situation covered by Rule – Where substitution application upheld, substitution will materialise.

Mistake – When party entitled to repudiate contract on ground of *justus error* – Contract – Repudiation of – *Justus error* – Signature of the contract at the request of the other party. Respondent not bothering to read – Respondent bound by such contract.

JUDGMENT

Mudau, J

Introduction

- [1] This opposed application concerns a claim for a substantial sum of money, founded upon a written demand guarantee. The applicant, Grindrod Bank Limited ("Grindrod"), seeks an order against the respondent, Mr. Sandile Hopeson Nomvete, in the amount of R70 million, executed as security for the obligations of Mesismart (Pty) Ltd ("Mesismart") under a term loan facility extended by the applicant, together with mora interest and costs on an attorney and client scale.
- [2] The respondent resists the application on several grounds: (a) prescription in terms of the Prescription Act 68 of 1969; (b) alleged non-compliance with requirements regarding the computation and articulation of the debt and the certificate of balance; (c) alleged disputes of fact; and (d) in substance, that he did not sign the guarantee knowingly, and that the guarantee agreement is void *ab initio* due to an absence of true consensus, as his signature was procured by a material and reasonable mistake (*justus error*).

In Limine

- [3] The original applicant, Grindrod Bank Limited, caused a notice to be filed on 9 January 2025, substituting it with African Bank Limited ("African Bank") in terms of Uniform Rule of Court 15(2). The respondent, Mr. Sandile Hopeson Nomvete, opposes this substitution without any substantive relief being sought.

The Legal Framework

- [4] The substitution of parties is governed by Uniform Rule 15. It is trite that the Rule was not introduced to grant the High Court the power to substitute a party to proceedings. It already had, and still has, that inherent power under the

common law when the rule was introduced.¹ The rule provides for two distinct procedures. Substitution by Notice (Rule 15- (2) & (3)) allows for a party to be substituted by the delivery of a notice, where the substitution is necessitated by death, marriage, insolvency, or "any other reason". Upon delivery of the notice, the proceedings continue as if the new party had always been a party.

- [5] Rule 15 is designed to simplify the procedure where a party to proceedings has changed status. Previously, when a party died, married, became insolvent, attained majority, was placed under curatorship, or suffered any other change in status, it was necessary to apply to the court to substitute some other person in his place. Rule 15 renders such an application unnecessary, and the alteration may now be effected by notice, subject to the rights, under subrule (4), of any party who is affected by the substitution to apply to court for relief.
- [6] The respondent contended that in the absence of a properly enrolled and supported application, there is simply no *lis* before the Court in respect of substitution. In terms of rules 15 (2) and (3), substitution occurs on notice - not on application. The notice of substitution was delivered on 9 January 2025, and African Bank was, on that date, commensurately substituted for Grindrod as the applicant in these proceedings. Rule 15 (2) provides that upon substitution, "such proceedings shall thereupon continue in respect of the person thus added or substituted [African Bank] as if he [African Bank] had been a party from the commencement thereof and all steps validly taken before such addition or substitution shall continue of full force and effect ...".
- [7] The settled approach to matters of this kind follows the considerations in applications for amendments of pleadings. In broad terms, it means that, in the absence of any prejudice to the other side, these applications are usually granted.² Rule 15 (4) provides a remedy to challenge a substitution. In this case, the Rule 15 notice was given in a situation covered by the Rule. Clearly, if the respondent intended to challenge the substitution of African Bank for Grindrod as applicant, and wanted to do so properly, then it was the respondent, not

¹ See *Curtis-Setchell & McKie v Koeppen* 1948 (3) SA 1017 (W) at 1021; *Putzier and Another v Union and South West Africa Insurance Co Ltd* 1976 (4) SA 392 (A) at 402E - F).

² See *Tecmed (Pty) Ltd and Others v Nissho Iwai Corporation and Another* 2011 (1) SA 35 (SCA) at [14].

African Bank, who was required to launch an application in terms of uniform rule 15 (4); within 20 (twenty) days of the delivery of the notice of substitution on 9 January 2025 (thus by February 2025); with a view to "set aside or vary" the substitution of African Bank for Grindrod that took place on 9 January 2025. The respondent failed to invoke Rule 15 (4). I find no prejudice to the respondent pursuant to the proposed substitution in terms of the Rule.

Prescription

- [8] The respondent's first point in limine is that the claim has prescribed because more than three years have elapsed since the guarantee was purportedly signed. Section 12 (1) of the Prescription Act³ provides that prescription begins to run only when the debt becomes due. A surety's obligation becomes due when the principal debtor is in breach, and the creditor calls upon the surety to perform. The respondent contends that the debt became due when Mesismart defaulted in 2019. As these proceedings were instituted in 2024, he argues that the claim has prescribed. This defence is fundamentally flawed and betrays a misunderstanding of the nature of the instrument sued upon.
- [9] Section 11(d) of the Prescription Act provides that a debt shall prescribe upon the lapse of three years. Section 12(1) stipulates that prescription begins to run "as soon as the debt is due". The critical question, therefore, is when the respondent's debt under the guarantee became due. The guarantee in question is not a traditional accessory suretyship. It is explicitly framed as an independent, primary, and autonomous obligation. The distinction is not merely semantic; it carries significant legal consequences. Our courts have consistently recognised that in the case of an on-demand guarantee or undertaking, the creditor's cause of action against the guarantor arises, and the debt becomes due, only when a demand for payment is made.⁴
- [10] This principle finds clear expression in the wording of the guarantee itself. Clause 7.1 is unambiguous: the respondent "shall pay such amount to Grindrod upon receipt of written demand by Grindrod". (Emphasis added) The

³ Act 68 of 1969.

⁴ See *Coface South African Insurance Co Ltd v East London Own Haven t/a Own Haven Housing Association* 2014 (2) SA 382 (SCA) at [16]; *Lombard Insurance Co Ltd v Landmark Holdings (Pty) Ltd and Others* 2010 (2) SA 86 (SCA)).

"Guarantee Period" is defined as terminating only upon the full and final discharge of Mesismart's obligations. The respondent's obligation was thus contingent and inchoate until the applicant elected to make a demand. The first such demand was made on 30 November 2021. This application was issued on 9 February 2024. This is indisputably within the three-year prescriptive period. The defence of prescription is, as a matter of law, clearly untenable and, as indicated above, must fail.

- [11] On the undisputed facts, the respondent repeatedly acknowledged indebtedness, thereby interrupting prescription in terms of section 14 of the Prescription Act.
- [12] The replying affidavit details, with annexed documentary proof, at least seven acknowledgments, including: the 12 October 2021 emails recording agreed payment of R1.5 million and discussions about arbitration (Annexure "RA1"); actual payment of R1.5 million on 5 November 2021; a detailed email of 11 November 2021 setting out the Respondent's personal assets relative to Mesismart's debt (Annexure "RA2"). Further acknowledgments on 15 February 2022, 10 August 2022, and 4 October 2022 (Annexures "SHN2(a)", "RA4", "RA5"). These acknowledgments constitute unequivocal admissions that the debt exists. The contention that prescription has completed is therefore untenable.
- [13] These acknowledgments constitute unequivocal admissions that the debt exists. The contention that prescription has completed is therefore untenable. In sum, suffice it to state that the respondent's letter of 8 November 2023, in which he acknowledged Mesismart's debt, even in a representative capacity, would likely have interrupted prescription running in respect of the principal debt. The point raised on prescription must accordingly be dismissed.

Factual Background

- [14] The factual matrix is largely common cause. On 3 May 2013, the applicant and Mesismart concluded a written loan agreement. This agreement was amended and extended on eight subsequent occasions. The respondent, in his capacity as a director of Mesismart, signed these addenda. On 19 August 2019, two

documents were executed: The Eighth Addendum to the loan agreement and the Guarantee Agreement, which forms the subject of this dispute.

- [15] The Guarantee, styled as such, contains several notable provisions: Clause 5.1 unequivocally states that the respondent's obligation is "as a principal and primary obligation" and not merely as an ancillary obligation. Clause 5.1.2 creates an on-demand obligation, requiring payment "on first demand" by the Lender. Clause 5.1.3 constitutes a separate indemnity, which persists even if the underlying obligations of Mesismart become "void, voidable or unenforceable". "Clause 9 provides that a certificate signed by a manager of the applicant shall constitute *prima facie* proof of the indebtedness".
- [16] Mesismart defaulted on its repayment obligations. The applicant's first written demand pursuant to the guarantee was made upon the respondent on 30 November 2021. Further demands followed. A payment of R1.5 million was made by Mesismart in November 2021, but the balance remains outstanding. This application was instituted on 9 February 2024.

The Legal Framework for Motion Proceedings

- [17] The approach of this Court in application proceedings where disputes of fact arise is governed by the seminal authority of *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*.⁵ The rule is that where a dispute of fact arises on the affidavits, a final order may be granted only if the facts averred in the applicant's affidavits, which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order. In essence, the respondent's version must be accepted, unless it is so far-fetched or clearly untenable that the Court is justified in rejecting it on the papers alone.⁶
- [18] This principle was further refined in *Wightman t/a JW Construction v Headfour and Another*,⁷ where the court held:

"[A] real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit

⁵ [1984] ZASCA 51; 1984 (3) SA 623 (A).

⁶ *Id* at 634E-635C.

⁷ 2008 (3) SA 371 (SCA) at [13].

seriously and unambiguously addressed the fact said to be disputed... A bare denial... may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment."

The Defence of Justus Error

- [19] The respondent's core defence on the merits is that he never intended to personally bind himself. He avers that the guarantee was included in a bundle of documents presented to him as a routine addendum to Mesismart's facilities, and that he signed it under a bona fide but mistaken belief as to its nature.
- [20] After a meticulous analysis of the affidavits, I am satisfied that this defence does not disclose a real, genuine, and bona fide dispute of fact that can stave off the grant of a judgment. The respondent's version is, in the context of the objective evidence, so far-fetched and clearly untenable that it can be safely rejected on the papers.
- [21] My reasons for this conclusion are as follows. The objective theory of contract and the "Signature Rule" are principles that South African law adheres to. According to this rule, the outward expressions of parties to a contract, such as signatures, are interpreted as a sign of their agreement with the terms and conditions of the contract. The search for consensus is not a search for the parties' subjective, inward states of mind, but for a manifestation of mutual assent, judged from the perspective of a reasonable person in the position of the other party.⁸
- [22] A cornerstone of this objective approach is that a person who signs a contractual document is taken to have assented to all its terms, and is generally bound thereby, regardless of whether they have read or understood the document. This is sometimes referred to as the "signature rule." As stated in *George v Fairmead (Pty) Ltd*,⁹ the signatory is held to his signature; his only escape is to prove that his signature was obtained by fraud or '*justus error*'. "When a man is asked to put his signature to a document he cannot fail to realise that

⁸ *Saambou-Nasionale Bouvereniging v Friedman* 1979 (3) SA 978 (A) at 993.

⁹ 1958 (2) SA 465 (A) at 470.

he is called upon to signify, by doing so, his assent to whatever words appear above his signature. In cases of the type of which the three I have mentioned are examples, the party who seeks relief must convince the Court that he was misled as to the purport of the words to which he was thus signifying his assent.”¹⁰ The respondent’s professed ignorance, stemming from his own failure to peruse the document, falls far short of this escape route.

The Nature of the Document and the Respondent's Sophistication

- [23] The document signed by the respondent was not a complex, obscure clause buried in a lengthy agreement. It was a standalone document, clearly and boldly titled “GUARANTEE”. The respondent is not an unsophisticated layperson. He is a director of a company that engaged in multi-million-rand financial transactions and had a longstanding banking relationship with the applicant, involving eight previous addenda. For such a person to claim that he signed a document of this title without any apprehension of its personal financial implications is, in my view, inherently implausible and verges on the reckless.
- [24] In this matter, there is an absence of a proper evidential foundation for misrepresentation. The defence of “*justus error*” requires that the mistake was induced by the other party’s misrepresentation, whether innocent or fraudulent.¹¹ The respondent’s version is notably vague on what precise representation was made by the applicant’s representative, Mr Pillay. He does not allege that Mr Pillay actively told him “this is not a guarantee” or “this document does not create personal liability”. At its highest, his case is one of omission – that the document was not specifically highlighted. In the context of an arm’s-length commercial banking relationship, the mere presentation of a document for signature, without more, cannot be elevated to a misrepresentation that induces a reasonable mistake. The respondent bore a duty to himself and his company to acquaint himself with the documents he was signing.
- [25] There is more. The respondent’s conduct after signing the guarantee further undermines the credibility of his defence. When demands were made, his response in the letter of 8 November 2023 was not an immediate and indignant

¹⁰ *Id* at 472A.

¹¹ See *Sonap Petroleum (SA) (Pty) Ltd v Pappadogianis* [1992] ZASCA 56; 1992 (3) SA 234 (A) at 239I-J.

repudiation of the guarantee on the grounds of having been misled. Instead, he engaged with the debt, acknowledged Mesismart's liability, and sought a delay in proceedings. This failure to promptly raise the issue of "*justus error*" is more consistent with a belated tactical defence than a genuine belief that he had never assumed personal liability.

[26] The case of *Constantia Insurance Company Ltd v Compusource (Pty) Ltd*,¹² relied upon by the respondent, is distinguishable. In that case, the clause in question was an unusual and onerous term hidden in a lengthy quotation. Here, the entire document, from its title to its substantive clauses, was patently and unequivocally a guarantee. A reasonable person in the shoes of the applicant could justifiably have believed that the respondent, by signing a document so clearly labelled, was assenting to its terms.

[27] Consequently, I find that the respondent's version on *justus error* is so clearly untenable and contradicted by the objective facts that it must be rejected for the purposes of applying the *Plascon-Evans* rule. No triable issue has been raised.

The Certificate of Balance and the Quantum of the Claim

[28] The respondent challenges the certificate of balance, arguing that it certifies only Mesismart's debt and not his personal indebtedness. This argument ignores the specific terms of the guarantee. Clause 9 provides that a certificate "shall constitute *prima facie* proof of the amount of the indebtedness" of the Borrower (Mesismart). The respondent's obligation under Clause 7.1 is to pay "such amount" – that is, the amount due by Mesismart as evidenced by the certificate. The certificate is therefore the very mechanism contemplated by the contract to quantify the "Guaranteed Obligations". The respondent's technical objection is without merit. The certificate, as provided, is valid and constitutes *prima facie* proof of the debt, in line with the principles set out in *Senekal v Trust Bank of Africa Ltd*.¹³

Conclusion

¹² 2005 (4) SA 345 (SCA).

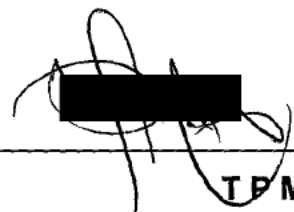
¹³ 1978 (3) SA 375 (A).

[29] The applicant has established its claim on a clear and proper reading of the Guarantee Agreement. The respondent's defences are, upon rigorous examination, legally and factually unsustainable. The claim has not prescribed, and no bona fide dispute of fact exists regarding the validity of the guarantee. To hold otherwise would be to undermine the sanctity of contract and the commercial certainty that on-demand guarantees are designed to provide. In the premises, the applicant is entitled to the relief sought.

Order

[30] Accordingly, the following order is granted:

1. African Bank Limited is substituted for Grindrod Bank Limited as the applicant in these proceedings;
2. The Respondent is ordered to make payment to African Bank Limited in the sum of R70,000,000.00 (SEVENTY MILLION RAND); and
3. The Respondent shall pay the costs of the application as between attorney and own client scale.



**JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG**

Appearances

For the Applicant : P Lourens

Instructed : ENS Inc

Respondent : K Pama-Sihunu

InstructedBy : Davids Attorneys Inc

Date of hearing : 05 November 2025

Date of Judgment : 26 November 2025

