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

CASE NUMBER: 2023/031959

In the exception between:-

MERCY MMALEHLOHONOLO MOKGOLO
(Identity Number:8[...])

Applicant

and

NEDBANK LIMITED

Respondent

This order is handed down electronically to the parties via email to the email address indicated in the respective practice notes. The date of the order is deemed to be 19 November 2025.

JUDGMENT

Reid J

Introduction

[1] The applicant applies on an urgent basis for an order to stay and suspend the operation and execution of a summary judgment handed down on 3 September 2025 under the above case number, pending the finalisation of the applicant's rescission application. The summary judgment orders the attachment and auction of a 2012 Nissan Juke 1.6 Acenta+, with Engine No: H[.], Chassis No: S[...] (the vehicle).

[2] The applicant also requests that the Sheriff of the Court and/or any other person be interdicted and restrained from attaching, removing, selling or otherwise disposing of the applicant's assets, including the vehicle that forms the subject of the instalment sale agreement, pending the outcome of the rescission application.

[3] In oral argument, the applicant requested for the restoration of the vehicle to her possession. This was not requested in the notice of motion and the respondent consequently had not had an opportunity to deal with this additional prayer. As such, the relief for restoration is not before this Court and I do not deal with it.

[4] The applicant represented herself and the respondent was represented by Adv Naudé.

Material background

[5] On 3 September 2025 a summary judgment was granted by D'Oliviera AJ in favour of the respondent.

[6] The summary judgment reads as follows:

6.1. *"Summary judgment is granted in favour of the plaintiff in the following terms:*

- 1. The written agreement concluded between the plaintiff and the defendant dated 15 December 2017 is cancelled.*
- 2. The sheriff is authorised and directed to attach, seize and hand over the following vehicle to the plaintiff: 2012 Nissan Juke 1.6 Acenta+, with Engine No: H[...], Chassis No: S[...].*

3. *The defendant is ordered to pay the plaintiff's costs of suit.*
4. *The plaintiff is given leave to approach the court in due course on the same papers, duly supplemented, to recover the shortfall between what the plaintiff recovers on the vehicle and the amount owed by the defendant to the plaintiff."*

[7] After the summary judgment was granted, the vehicle was attached, seized and handed over to the respondent. The respondent remains in possession of the vehicle.

[8] The intention of the respondent to sell the vehicle on auction, came to the attention of the applicant by virtue of being notified in terms of the CaseLaw system. This was the instigating factor for the launching of this application to stay the execution of the auction of the vehicle.

[9] The applicant filed a rescission application in terms of Rule 42(1)(a) to set aside the judgment based on:

- 9.1. Defective and irregular service of the combined summons.
- 9.2. Non-compliance with the National Credit Act (sections 129 and 86(10).
- 9.3. Hearsay evidence and conflicting Certificates of Balance.
- 9.4. Misapplication of Rule 32 (court weighed merits instead of assessing triable issues).
- 9.5. Updated Certificate of balance not uploaded on Case line nor served on defendant or handed up in court.

[10] The applicant has confirmed that the last payment made by herself to the respondent, was on 1 November 2022 in the amount of approximately R1,000. In the instalment agreement the parties agreed to payment of approximately R14,000 per month. At this stage the outstanding amount is approximately R185,000 and it is increasing every month.

[11] The defence of the applicant to the main claim, is that she is under debt counselling and has the intention to pay of the outstanding amount. In relation to the outstanding arrears, the following was said by D'Oliviera AJ in the summary judgment:

"32 The result of the defendant's election to persist in her default is:

32.1 The agreement ran to completion on 25 December 2023, which was the date the defendant should have paid the last instalment.

32.2 The credit agreement cannot be reinstated by payment of arrears.

32.3 The amount owed by the defendant to the plaintiff has increased from R141,946.66, at the date of service of combined summons, to R171,278.361, at the date of the hearing. The amount owed will continue to increase with the aggregation of interest at a compound rate of 14.3%."

[12] The applicant admits that she remains in arrears and has failed to honour the debt.

Legal principles

[13] '(T)he basic principles for a grant of a stay in execution' were expressed in the judgment of Waglay J in *Gois t/a Shakespeare's Pub v Van Zyl and Others* 2011 (1) SA 148 (LC) at para 37, where the learned judge held:

"The general principles for the granting of a stay in execution may therefore be summarised as follows:

- (a) A court will grant a stay of execution where real and substantial justice requires it or where injustice would otherwise result.*
 - (b) The court will be guided by considering the factors usually applicable to interim interdicts, except where the applicant is not asserting a right, but attempting to avert injustice.*
 - (c) The court must be satisfied that:*
 - (i) the applicant has a well-grounded apprehension that the execution is taking place at the instance of the respondent(s); and*
 - (ii) irreparable harm will result if execution is not stayed and **the applicant ultimately succeeds in establishing a clear right.***
 - (d) Irreparable harm will invariably result if there is a possibility that the underlying causa may ultimately be removed, ie where the underlying causa is the subject-matter of an ongoing dispute between the parties.*
 - (e) The court is not concerned with the merits of the underlying dispute - the sole enquiry is simply whether the causa is in dispute."*
- (own emphasis)

[14] *In casu*, the applicant does not have a clear right to possess, or prevent execution of a summary judgment, where the clear right of ownership of

the vehicle lies with the respondent in terms of the agreement. Only after the debt has been paid in full, the vehicle will become the property of the applicant. In terms of the agreement this was supposed to have happened in 2023.

[15] The instalment agreement has been terminated by the failure of the applicant to pay the monthly payment, and the termination of the agreement has been accepted by the respondent.

[16] The applicant has no clear right to possession of the vehicle in the absence of ownership. The balance of convenience favours the respondent: should the execution be stayed, the arrears amount will increase. This would be to the prejudice of not only the respondent, but also the applicant.

[17] As such, I find that the application cannot succeed.

[18] The respondent has requested that the application be dismissed on the merits, for it to be finalised. If the matter is struck, the applicant can proceed with the application on the normal roll.

[19] In the circumstances of this matter, I agree with the respondent that a postponement will delay the inevitable. In addition, the arrear amount will increase to the prejudice of both parties. This would not be in the interest of justice.

[20] As such, I deem it appropriate that the application be dismissed rather

than being struck from the roll.

Cost

[21] The general principle is that the successful party is entitled to its costs.

[22] The issue of costs is in the discretion of the court, to be executed judicially.

[23] I find no reason to deviate from the general principle in costs and the respondent is entitled to its costs.

[24] I find no reason to deviate from the normal scale of costs, which is party and party. In terms of Rule 68A of the Uniform Rules of Court, costs other than that of Scale A should only be imposed where there is a reason for granting a higher scale of costs. This matter does not justify the granting of a higher scale. The applicant should thus be ordered to pay the cost of the respondent on Scale A, party and party.

Order

In the premise, the following order is granted:

- (i) The application is dismissed.
- (ii) The applicant is to pay the costs of the respondent on Scale A, party and party.

**FMM REID
JUDGE OF THE HIGH COURT
GAUTENG DIVISION JOHANNESBURG**

DATE OF ARGUMENT: 16 OCTOBER 2025

DATE OF JUDGMENT: 19 NOVEMBER 2025

APPEARANCES

FOR THE APPLICANT: **IN PERSON**
MERCY MMALEHLOHONOLO MOKGOLO
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FOR THE RESPONDENT: **ADV NAUDĒ**

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