REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: **A15/2025**

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

2.12.2025 [redacted]

DATE SIGNATURE

In the matter between:

RAILWAY FURNISHERS (PTY) LTD Appellant

and

JOSEPHINA MOKOENA Respondent

JUDGMENT

JANSE VAN NIEUWENHUIZEN J

Introduction

[1] The issue to be determined in this appeal is crisp, to wit; whether the appellant should have complied with the provisions of the National Credit Act, 34 of 2005, even though the sale agreement entered into between the appellant and the respondent is not governed by the National Credit Act, 34 of 2005 ("NCA").

Facts

[2] The respondent purchased goods from the appellant for a total amount of R 3 666, 00. The parties entered into a sale agreement in terms of which the purchase price will be paid in 22 monthly instalments of R 150, 00 which equates to R 3 300,00, with a final payment of R 66, 00.

[3] The respondent defaulted in her payment obligations and the appellant issued summons in the Magistrates Court Brits, Madibeng ("the court *a quo*") for payment of the amount owed and mora interest at the rate of 11,25 % from date of service of the summons to date of final payment.

[4] The respondent did not enter appearance to defend, and the appellant applied for default judgment against the respondent. The court *a quo* refused the application and held that, although the sale agreement is not governed by the NCA, the appellant still had to perform an affordability assessment.

Legal position

[5] The court *a quo's* rationale for its finding is encapsulated in the judgment as follows"

"(5) The magistrate is still of the opinion that even though, for all technical reasons it may be argued that the NCA has no application, the scope and the

intention of the NCA should be applied to all transactions where something is paid over time, except for incidental credit because the credit act regulates credit."

[6] The court *a quo* is quite correct that the NCA has, in accordance with its preamble, been enacted to, *inter alia, "prohibit certain unfair credit and credit-marketing practices."*

[7] In order to achieve the aforesaid goal, the legislature defined, in section 8, credit agreements that are subject to the provisions of the NCA. Once an agreement falls within the ambit of section 8, section 80 (reckless credit) and section 81 (prevention of reckless credit) apply and the credit provider is obliged to perform a proper affordability assessment.

[8] In the result, the *"scope and the intention"* of the NCA appears clearly from its provisions and as long as the sale agreement in question does not fall within the ambit of the NCA, the court *a quo* erred in applying its provisions to the agreement.

[9] The court might well be correct that the scope of section 8 should be widened to include sale agreements such as the one in question, but in view of the principle of separation of powers, such an exercise is best left to the legislator to undertake.

Order

[10] In the result, I propose the following order:

1. The appeal is upheld.

2. The order of the court *a quo* is set aside and replaced with the following:

   "Default judgment is granted against the respondent for:

   1. Payment in the sum of R 2 265, 00;

   2. Mora interest on the aforesaid amount at 11,25% per annum, calculated from the date of service of the Summons to date of final payment;

3. Costs of suit."

[redacted]

JANSE VAN NIEUWENHUIZEN J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION

I agree.

[redacted]

LABUSCHAGNE J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION

DATE OF HEARING:

14 October 2025

DATE DELIVERED:

November 2025

APPEARANCES

Counsel for the Applicant: Adv Rip SC

Instructed by: Lourens & Schwartz Attorneys Inc