REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
Date: 28 January 2026	E van der Schyff

CASE NO.: 2025-058357

In the matter between:

SB GUARANTEE COMPANY (RF) PTY LTD — APPLICANT / PLAINTIFF

AND

JUSTICE LAMLELA NGESE — RESPONDENT/ DEFENDANT

CASE NO.: 2025-086043

In the matter between:

SB GUARANTEE COMPANY (RF) PTY LTD — APPLICANT / PLAINTIFF

AND

VATASUTSUMA MZIMASI
MATHUNSI NGOBENI — RESPONDENT/ DEFENDANT

JUDGMENT

Van der Schyff J

[1] SB Guarantee Company (RF) Pty Ltd sought default judgment and an order declaring immovable property specially executable against two debtors in the unopposed motion court on 22 January 2026.

[2] It is common cause that the notices required to be delivered to debtors in terms of section 129 of the National Credit Act 34 of 2005 (the NCA) were not delivered to the domicilium addresses identified in the respective loan agreements. In both matters, the section 129 notices were sent to an email address by certified email.

[3] In both cases, the debtors concluded a Home Loan Agreement with Standard Bank. In addition, the debtors signed an Indemnity in favour of Standard Bank with SB Guarantee Company (Rf) Pty Ltd (SB Guarantee). Part A of the respective Home Loan agreements contains, amongst others, the details of the respective debtor's chosen domicilium addresses. In both cases, physical addresses were designated as the chosen domicilium address.

[4] The notices in terms of section 129 of the National Credit Act, were, however, delivered to the respective debtors' email addresses. Counsel submitted that the debtors identified email addresses in the Indemnity agreements and thus consented to the email addresses being used for delivering the section 129 notices. I disagree.

[5] Standard Bank is the credit provider, and SB Guarantee is the guarantor. Standard Bank and SB Guarantee, although not separated at arm's length, are two different legal entities. The debtors concluded separate agreements with each entity. Standard Bank was clearly aware of its legal obligation, as a credit provider, to deliver section 129 notices to the respective debtors during the pre-enforcement stage. For unknown reasons, Standard Bank, in its own wisdom, decided not to deliver these notices to the debtors' chosen domicilium addresses but instead to their email addresses.

[6] If regard is had to the Regulations published in terms of the NCA[1] and section 65 (1) of the NCA, as well as the purpose of, and legal importance attached to a domicilium address being identified, it is evident that the section 129 notice cannot be said to have been delivered to the addresses chosen by the respective debtors.

[7] On a proper reading of section 129(1)(a) with sections 129(1)(b), 130(1) and 130(3) of the NCA, it is clear that compliance with the requirements of section 129(1)(a) **prior** to the actual debt enforcement is mandatory. Section 129(1)(a) obliges a credit provider, before commencing legal proceedings to enforce a credit agreement, to draw the default to the notice of the consumer in writing. The Constitutional Court explained in *Sebola and Another v Standard Bank of South Africa Ltd and Another* 2012 (5) SA 142 (CC) that section 129(1)(a) has been described as a 'gateway' or a 'pre-litigation layer to the enforcement process.[2] It precludes legal enforcement of a debt before the credit provider has suggested to the consumer that he or she explore non-litigious ways to purge the debt.[3]

[8] This is, however, not the end of the matter. Of particular importance to the matters under discussion is the Constitutional Court's observation that while section 129(1)(b) appears to prohibit the commencement of legal proceedings altogether until the section 129 notice is delivered, section 130 clarifies that where action is instituted without prior notice, the action is not void.[4] Section 130(4)(b)(i) and (ii) provides that where the credit provider has not complied with the relevant provisions of the NCA, the court must "adjourn the matter before it; and make an appropriate order setting out the steps the credit provider must complete before the matter may be resumed." A failure to give notice does not render the proceedings a nullity, but it requires an adjournment of proceedings to permit the credit provider to give notice before the proceedings may resume.[5]

[1] GN R489 in GG 28864 of 31 May 2006.
[2] *Sebola* at para [45].
[3] *Sebola* at para [46].
[4] *Sebola* at para [53].
[5] *Benson and Another v Standard Bank of South Africa (Pty) Limited and Others* 2019 (5) SA 152 (GJ) at para [16].

[9] A Full Court of this Division dealt with the question whether an application for default judgment still needs to be adjourned if non-compliance with the NCA is cured prior to the hearing.[6] On the facts of the appeal before it, the appellants obtained actual notice of their rights as required in terms of section 129. The court held that the answer flows from section 130(4)(b)(ii) – "if there are no further steps that are required of the credit provider, there can be no purpose served in adjourning the proceedings. Further delay would serve no purpose". The court elaborated:

> '[T]he non-compliance must be properly cured, and the credit receiver must be given the statutory time to consider his or her position. But if that is done between the time that the non-compliance is cured and the time that the matter is heard in court, to require an adjournment for its own sake has no point and is inconsistent with the scheme of ss129 and 130.'

[10] In both matters before this court, the combined summons, which contained the section 129 notice as an annexure, was served by affixing it to the outer door of the chosen domicilium address. Non-compliance with the provision of section 129 was thus cured. Had the defendants decided to challenge the fact that they received the section 129 notice late and indicated their intention to exercise their rights, Standard Bank would have been obliged to accept the debtors' choice despite the summons having been issued. Such a scenario would, arguably, also have left Standard Bank accountable for legal costs that could have been avoided had the section 129 notice been delivered at the domicilium address.

[11] I thus hold the view that, in the current factual scenarios, no further steps are required by the credit provider. The section 129 notices were ultimately delivered at the addresses chosen by the debtors. It would, in my mind, be nonsensical and wasteful to require that the notices be delivered to the same addresses again.

[6] *Benson and Another v Standard Bank of South Africa (Pty) Limited and Others* 2019 (5) SA 152 (GJ) at para 18.

[12] In the matter under case number 2025-58357, the return of service of the Rule 46A application indicates that the "NOTICE OF SET DOWN AND APPLICATION FOR JUDGMENT IN TERMS OF RULE 46A" was served on Mr. Ngese personally.

[13] In the matter under case number 2025-86043 the return of service reflects that a "Notice of Set Down in terms of a Rule 46A Application" was served personally on Mr. Ngobeni. The wording of the return of service casts doubt on whether the Rule 46A application, or only a notice of set down, was served. The Uniform Rules of Court require that an application in terms of Rule 46A must be served personally on a defendant. Due to the possibility that this may just be an example of a badly phrased return of service, the plaintiff is provided with the opportunity to remedy the situation if possible.

ORDER

In the result, the following order is granted:

1. **Any costs levied in relation to sending the section 129 notices by email may not be accounted to the debtors' accounts;**
2. **In case number 2025-058357 the draft order marked 'X" dated and signed by me is made an order of court;**
3. **The matter in case number 2025-086043 stands down to the unopposed roll before me on 9 February 2025 at 10h00. If an improved return of service is not filed before the said date, the application will be removed from the roll.**

E van der Schyff

Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. In the event that there is a discrepancy between the date the judgment is signed and the date it is uploaded to CaseLines, the date the judgment is uploaded to CaseLines is deemed to be the date that the judgment is handed down.

For the plaintiff/applicant:	Adv. J. Themane
Instructed by:	Velile Tinto & Associates Inc.

Date of the hearing:	22 January 2026
Date of judgment:	28 January 2026