IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN

Case no: **D11901/2024**

In the matter between:

FIRSTRAND BANK LIMITED **APPLICANT**

and

RAJENDRA PILLAI **RESPONDENT**

Coram: MOSSOP J
Heard: 4 February 2026
Delivered: 4 February 2026

ORDER

The following order is granted:

1. The applicant's application is dismissed.

2. The respondent's counter application is granted, and the following is ordered:

(a) The applicant is directed to render to the respondent within two months of the date of this order a true and proper statement of account, with substantiating documents, reflecting the admitted payment by the respondent of the amount of R114 000 into his home loan account held with the applicant and proof of how and when the aforementioned sum was depleted and applied by the applicant;

(b) The applicant is ordered to debate the home loan account with the respondent within one month of the date upon which it was rendered to the respondent in terms of sub-paragraph 2(a) above.

3. There shall be no order as to costs.

JUDGMENT

MOSSOP J:

Introduction

[1] This is an ex tempore judgment.

[2] The applicant seeks a money judgment against the respondent in the amount of R108 000. The debt allegedly arises out of the breach by the respondent of his repayment obligations to the applicant in respect of a loan that he received from the applicant (the loan). The loan was negotiated by the respondent in order to purchase an immovable property, which was, in turn, bonded to the applicant by the respondent as security for the loan received. The applicant also seeks an order declaring the bonded immovable property to be specially executable.

[3] The respondent resists that relief on the basis that he paid an amount of R114 000 into his bond account (the bond account) with the applicant that has not been accounted for by the applicant, and that he is consequently not in breach, or arrears, with his payment obligations to it.

The alleged indebtedness

[4] The applicant is a large national commercial bank that, inter alia, lends money to its customers. It alleges that in July 2005 it agreed to advance a loan to the respondent in the amount of R250 000. Five months later, in December 2005, it agreed to lend a further sum of R112 000 to him.

[5] As mentioned earlier, the monies loaned to the respondent were used by him to acquire an immovable property (the property). The property has the formal description of:

'Portion 8[…] of Erf 1[...] C[...], Registration Division F.T., Province of KwaZulu-Natal in extent 232 square metres held by Deed of Transfer T05/41243'.

[6] The property is a residential property, and a first mortgage bond was passed over it by the respondent in favour of the applicant on 17 August 2005 and a second mortgage bond was similarly passed over the property on 13 January 2006.

[7] In breach of the loan agreement, the applicant alleges that the respondent has not adhered to the repayment obligations that he agreed to and fell into arrears. The consequence of that breach was that summons was issued against him, which has led, inexorably, to this application for judgment.

The respondent's defence to the applicant's claim

[8] The respondent has throughout the life of the applicant's legal proceedings against him conducted his own defence without the assistance of a legal representative. He has, however, delivered an answering affidavit that bears the hallmark of having been created by someone with some knowledge of how such affidavits should be drafted.

[9] The respondent suggests in his answering affidavit that there are unaccounted for funds in the amount of R114 000 that he has paid to the applicant. The applicant came to refer to this alleged payment as a 'pre-payment'. I am not sure why it was given this moniker, but to ensure consistency, I shall also use it to refer to this alleged payment.

[10] There was initially some uncertainty over the quantum of the pre-payment because of the following statement made by the respondent in his answering affidavit:

'The applicant failed to highlight the fact that the bond account was advanced by more than R114 000 (one hundred and fifteen thousand rands) in April 2018, thereabouts, and have failed to submit to the respondent the reasons and whereabouts these funds are allocated to and why this amount was not used to settle the account.'

[11] The respondent, however, went on to assert in his answering affidavit that the applicant acknowledged in April 2018 that:

'… as of April 2018, the bond had an additional excess of R114 000 (one hundred and fourteen thousand)'.

[12] It would seem therefore that the pre-payment amount is R114 000 and not R115 000, despite the wording of the extract first mentioned above. Expanding upon this submission, the respondent asserted that a representative of the applicant had advised him that:

'… the additional advanced (sic) will be used by the applicant to pay the instalments when the bond holder fails to do so.'

[13] The respondent accordingly denies that he failed to comply with his repayment obligations to the applicant. He admits that he entered into the transactions with the applicant. In a portion of his answering affidavit, under the heading 'Counter Claim', he brings a counter application against the applicant. In it, he claims a debatement of his bond account with the applicant that includes an explanation of what became of the pre-payment.

The applicant's reply

[14] The applicant replied to the answering affidavit and took the point initially that what the applicant claimed was unsupported by any documentary proof of what he alleged had occurred, the inference being that the respondent should not be believed in the absence of such documentation. This would appear to include sowing doubt over the correctness of the allegations regarding the pre-payment.

[15] The applicant, in reply, put up a statement of the respondent's bond account with it covering the period 2018 until 2025[1] (the account extract), which purported to demonstrate that the respondent was, and remains, in arrears with his repayment

[1] It will be remembered that the initial transaction was concluded in 2005 and so the documents put up merely cover a short period in the total history of the respondent's banking relationship with the applicant.

obligations to the applicant. I am not sure why this was only put up in reply and to my thinking it should have formed part of the founding papers.

[16] Having considered the account extract, I am not sure that it established the point that the applicant set out to make, as I now explain.

Analysis

[17] I have difficulties with both versions in this matter, but principally with the applicant's version.

[18] Commencing with the applicant's version, the principal difficulty is that it has not satisfactorily dealt with the pre-payment by the respondent.

[19] The existence of the pre-payment is critical to the respondent's defence and to the just resolution of this matter. In the event that its existence is not established, it appears to me that judgment must inevitably be entered against the respondent. The criticism by the applicant of the fact that the respondent did not put up any documentary proof establishing the pre-payment is a valid criticism. It has been settled law for nearly eighty years in this country that where a payment is alleged to have been made, the party alleging such payment must establish it.[2] The respondent, without putting up proof of this pre-payment, has simply and baldly alleged that he made it. A simple say so, without any form of objective proof, would ordinarily be insufficient to establish the alleged payment relied upon.

[20] But this issue turns out to be no issue at all, because despite huffing and puffing about the lack of documentation, the applicant, surprisingly, admits the pre-payment was, indeed, made by the respondent. The applicant states in its replying affidavit that:

'… during April 2018, the Respondent pre-paid an amount of R114 000.00 into the home loan account, where after (sic), the respondent had stopped making payments towards the account. The monthly instalments and administration costs were set off against the aforesaid pre-payment until the said amount had been depleted.

[2] *Pillay v Krishna* 1946 (AD) 946 at 960.

[21] However, the account extract put up by the applicant does not reveal the presence of the pre-payment, which was admittedly made during April 2018. There is no suggestion that it was paid into another account held by the respondent with the applicant: the applicant states that it was made into the bond account. The account extract also does not seem to reflect the periodic drawdowns apparently made against the pre-payment. I confess that I have some difficulty with the idea that drawdowns were made from the pre-payment because the account extract reveals a balance owing of R81,345.49 as at 25 December 2017 and payment of R114 000 into the bond account would have settled the balance immediately. There would logically be no further instalments due after the pre-payment and no need for any drawdowns.

[22] The applicant, after acknowledging that the pre-payment was made in April 2018, further submitted in the final sentence of the extract mentioned in which that concession was made that:

‘The Respondent failed to make any further payments towards the home loan account which resulted in the accumulation of the arrears.’

[23] The account extract needs to be considered in a little more detail. It does not cover the entire history of the loan but commences on 25 December 2017, before the admitted pre-payment was made. It indicates that there was no payment made by the respondent to the applicant in the month of January 2018, but in February, March, April and June 2018, payments in the amount of R4 000 each were made. These payments, and the payment in July 2018 referred to immediately hereafter, all have the reference ‘asst-cash’ applied to them. I do not know precisely what this means, but it appears at the most elementary level of understanding that these were cash payments made into the applicant’s bond account. In July, August, and November 2018, there were further payments made into the bond account. These payments were in the reducing amounts of R3 000, R2 000 and R1 000 respectively. The payments in respect of August and November simply have the reference ‘paymnt’.[3]

[3] It appears that the respondent was required to, at least initially, pay to the applicant the sum of R2 371,29 and R1 062,34 per month, which totals R3 433,63.

[24] There were still further payments made into the bond account. Admittedly, the further payments received by the applicant after that date ultimately became pitifully small, but they were received by the applicant, nonetheless, and must be brought into the reckoning. Fourteen further payments made by the respondent, ranging from R200 to R1 000 were made over the period December 2018 to April 2023. It is tempting to view the sparsity of the payments made post April 2018 as establishing a default on the part of the respondent, but I am not sure that I am able to conclude therefrom that the respondent was in arrears because the now admitted pre-payment remains unaccounted for.

[25] It appears that the applicant, while attaching the account extract, has not itself paid any attention to its contents. It is astonishing that it has not taken the time to do so. It is further astonishing that it has asserted that no further payments were made by the respondent post April 2018 when the account extract references 18 such payments in total. While the payments may not have been made in a regular and fixed amount, they were nonetheless made, and it is entirely unacceptable for the applicant to state that they were never made. That reflects severely on the credibility of its allegations.

[26] As regards the respondent's version, the first difficulty that I had is that he asserted that the pre-payment was to be applied to the bond account 'when the bond holder fails to do so'. Of course, the bond holder, being the applicant, was not required to make any payments and accordingly it could not fail to make payments: all the payments were to be made by the respondent. But that error can perhaps be overlooked as being the incorrect use of a term by a person who ordinarily would not be drawing legal papers.

[27] The second difficulty I initially had with the respondent's version has, in truth, turned out not to be an issue at all. It related to the documentary proof of the pe-payment. The applicant's problem in this regard has vanished with the admission in reply that the pre-payment was made. The account extract has been put up, but as already mentioned, there is no trace of the pre-payment in it. Nonetheless, the applicant has admitted the pre-payment, and I must therefore accept that it was

made. Its effect on the respondent's bond account accordingly remains unexplained and unexplored on the papers.

[28] This leaves the applicant in a difficult position. Its version is that the pre-payment was made in April 2018 and that it was then drawn against each month when the respondent did not make his required monthly payment to it in the stipulated amount. Ultimately, according to the applicant, the pre-payment was depleted in its entirety. The account extract relied upon, however, reveals none of this.

[29] The account extract states that as of December 2017 the amount owing on the respondent's bond account was approximately R81 000. The admitted receipt by the applicant of the pre-payment in the amount of R114 000 in April 2018 would have settled the outstanding balance completely. In the circumstances, I cannot safely conclude that the respondent was, indeed, in arrears as claimed by the applicant and that he remains in arrears.

Conclusion

[30] In my view, the applicant has not made out its case on a balance of probabilities and judgment must consequently be refused. In the light of the fact that I am not able to grant judgment against the respondent as claimed by the applicant, there is no need to consider whether the property should be declared specially executable.

[31] As regards the respondent's counter application, it appears to me to be sound, and it should be granted.

Costs

[32] The respondent has conducted his own defence throughout. In the circumstances, it would be just to order that there be no order as to costs.

Order

[33] I accordingly make the following order:

1. The applicant's application is dismissed.

2. The respondent's counter application is granted, and the following is ordered:

(a) The applicant is directed to render to the respondent within two months of the date of this order a true and proper statement of account with substantiating documents reflecting the admitted payment by the respondent of the amount of R114 000 into his home loan account held with the applicant and shall further render to the respondent proof of how and when the aforementioned sum was depleted and applied by the applicant;

(b) The applicant is ordered to debate the home loan account with the respondent within one month of the date upon which it was rendered to the respondent in terms of sub-paragraph 2(a) above.

3. There shall be no order as to costs.

MOSSOP J

APPEARANCES

Counsel for the applicant:	Ms H Singh
Instructed by:	Woodhead Bigby Incorporated 92 Armstrong Avenue La Lucia
Counsel for the respondent:	In person