REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: **2023-119691**

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

16 February 2026 [redacted]

DATE SIGNATURE

In the matter between:

ABSA BANK LIMITED Plaintiff

and

PHUMLANI LUCAS MBUCANE Defendant

JUDGMENT

MODIBA, J

[1] This is an application for summary judgment. It arises in the plaintiff's action against the defendant following the alleged breach of an instalment sale

agreement (the agreement) concluded between the parties. In the action, the plaintiff seeks confirmation of the cancellation of the agreement, that the defendant returns to the plaintiff a 2018 MAZDA 3 1.6 DYNAMIC 5DR (the motor vehicle) alternatively the Sherrif should attach and return the motor vehicle to the Plaintiff. It also seeks other ancillary relief.

[2] The defendant has defended the action by filing a notice of intention to defend, and subsequently a plea. The plaintiff contends that the defendant has failed to raise a *bona fide* defence or no defences at all and filed a plea for the sole purpose of delaying the proceedings. Further, it contends that the defendants' defences do not raise any triable issues. It seeks summary judgment against the defendant for the relief prayed for in its particulars of claim.

[3] On 24 February 2021, the parties concluded the agreement by way of a written instrument. The plaintiff alleges that the defendant fell behind on his monthly instalments due in terms of the agreement and is thus in breach. On 15 November 2023, the defendant was in arrears in the amount of R16 603.14. As a result of the breach, it cancelled the agreement and accelerated the outstanding balance as entitled to do so in terms of the agreement, and issued summons on 16 November 2023.

[4] The defendant filed a plea, raising several defences. This prompted the plaintiff to apply for summary judgment. It contends that the defendants' plea fails to disclose a *bona fide* or any defences at all. The defendant opposes the application for summary judgment on several grounds. I consider these below.

[5] The defendant must satisfy the court that he has a *bona fide* defence. To satisfy the court in this regard, he must disclose his defence and the material facts upon which it is based with sufficient particularity and completeness to enable the Court to make that determination.[1] He is not required to show that his defence is likely to prevail. If he can show that he has a legally cognisable defence on the face of it, and that the defence is genuine or *bona fide*, summary judgment must be refused. The defendant's prospects of success are irrelevant.[2]

[6] The defendant disputes that he breached the agreement. He pleaded that he honoured the monthly instalments. His main defence is that he did not know that he was obliged to insure the motor vehicle for the duration of the agreement. Accordingly, he denies liability to the plaintiff for the amounts charged to his account in respect of the monthly premiums as they are not part of the agreement. He further contends that the plaintiff failed to advise him when it insured the motor vehicle. It also did not give him the policy documents. As a result, on two occasions when the motor vehicle was involved in a collision, he did not claim from the insurance.

[7] The plaintiff relies on clause 16(ii) of the agreement, in terms of which a duly signed certificate of balance establishes the amount owing. The defendant takes issue with the balance allegedly owed. He contends that the certificate of balance is not enough to sustain the plaintiff's claim in the absence of a

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[1] *Maharaj V Barclays National Bank Ltd* 1976 (1) SA 418 (A) at 426A-C.
[2] *Tumileng Trading CC v National Security and Fire (Pty) Ltd* 2020 (6) SA 624 (WCC) paragraph [13].

statement of account. He also denies that the plaintiff duly cancelled the agreement and dispatched the s 129 notice to him.

[8] It is worth mentioning that the plaintiff's case as pleaded is based on the defendant's failure to pay the monthly instalments. It merely alleged that in terms of the agreement, the defendant was required to insure the motor vehicle but failed to do so. Although it is common cause between the parties that the alleged arrears are made up of the insurance premiums the plaintiff charged to the defendant's account, the basis on which they were charged is not pleaded. While I disregard averments made from the bar to fill this vacuum, I make no adverse finding against the plaintiff in this regard because, if this application fails, it will have an opportunity to file a replication or even to amend its particulars of claim.

[9] The defendant does not dispute that the agreement was concluded between the parties. According to the defendant, it was the first time he bought a motor vehicle financed by the bank. He previously owned three motor vehicles for which he had paid cash. The sale consultant at the dealership from which he bought the motor vehicle applied for finance on his behalf. He had no interactions with the plaintiff. The sales consultant did inform him of the requirement to insure the motor vehicle but said to him that he could cancel it if he did not afford it. He did not read the agreement. He understood that it dealt with the purchase of the motor vehicle and the instalments towards the purchase price. He requested that the premiums should be debited on a different date from the instalments, to avoid the debit order being put through when he did not have funds. He cancelled the insurance because he did not

afford it. At no point did the bank inform him that it had insured the motor vehicle on his behalf.

[10] Although a party who signed an agreement is presumed to have the *animus* (intention) to enter into the transaction contained in it and that he bears the onus to establish that he in fact had not concluded the agreement as he is bound by the ordinary meaning and effect of the words which appear over his signature,[3] the defendant has put up a version regarding the circumstances under which the agreement was signed to rebut this presumption.

[11] On the authority in *Sebola*, the plaintiff has dispatched his obligations in terms of s 129. It is under no obligation to ensure that the notice has come to the attention of the defendant as that would ordinarily be impossible.[4] However, for reasons set out below, this alone does not support a conclusion that the defendant lacks a *bona fide* defence.

[12] If the defendant was not aware of the obligation to insure the motor vehicle, he has a *bona fide* defence regarding his liability for the premiums charged to his account, particularly if the plaintiff failed to advise him that it has taken out insurance in respect of the motor vehicle and as a result of this omission, he suffered prejudice as he could not claim from the insurance when he could have done so. This defence also traverses the plaintiff's reliance on the certificate of balance as the defendant's version is that he was never informed of the amount of the premiums he had to pay towards the insurance

[3] *Langeveld v Union Finance Holdings (Pty) Ltd* 2007 (4) SA 572 (W) at paragraph 12-13.
[4] *Sebola and Another v Standard Bank of South Africa Ltd and Another* (CCT 98/11) [2012] ZACC 11 2012 (5) SA 142 (CC) at 74.

the plaintiff took out on his behalf. The plaintiff's right to cancel the agreement is also traversed by this defence. Whether the agreement was duly cancelled hinges on the defendant's liability for the amount claimed.

[13] All these issues are triable. The defences raised by the defendant and the facts on which they are based, which are in dispute between the parties, justify the exercise of the court's discretion to dismiss the application for summary judgment and grant him leave to defend the action.

[14] In the premises, the application for summary judgment is dismissed with costs and the defendant is granted leave to oppose the action.

[redacted]

LT MODIBA
JUDGE OF THE HIGH COURT
JOHANNESBURG

Appearances

For the Plaintiff: Ms Madi

Instructed by: Smit Sewgoolam Incorporated

For the defendant: Mr Keka

Instructed by: Legal Aid South Africa

Date of hearing: 09 February 2026

Date of judgment: 16 February 2026

This Judgment is handed down electronically by circulation to the parties' legal representatives by email and publication on Case Lines and SAFLII. The date for the handing down is deemed 10am on 16 February 2026.