REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: **2025/028232**

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

6 March 2026 [redacted]

DATE SIGNATURE

In the matter between:

NEDBANK LIMITED Plaintiff

and

PALESA MAFOKWANA Defendant

JUDGMENT

MODIBA, J

[1] This is an application for summary judgment. It arises in an action the plaintiff instituted against the defendant for payment of the amount of R51 377.85, interest and costs on an attorney and client scale. The delivery of a plea by the defendant prompted the plaintiff to bring this application. It contends that the

defendant has not disclosed a *bona fide* defence to its action and that she filed a plea to delay the action.

[2] It is common cause that on or about 30 June 2021, the plaintiff and the defendant concluded an overdraft facility agreement in terms of which the plaintiff made available the sum of R50,000.00, to the defendant (overdraft agreement). The plaintiff alleges that the defendant breached the overdraft agreement by allowing it to be overdrawn and furthermore, failed to rectify such excess immediately upon demand by the plaintiff. She has failed to rectified the breach despite demand. This constitutes the plaintiff's cause of action in the action.

[3] The defendant opposes the application on various ground. First, she alleges that the plaintiff's claim has prescribed in terms of s 11(d) of the Prescription Act, 68 of 1969 (the Prescription Act), as the debt became due more than three years prior to the summons being served. She also alleges that the plaintiff withdrew the summons under case number 2023-103913 and instituted the present action because its claim under the overdraft agreement has prescribed.

[4] Second, the defendant alleges that she did not receive proper notice in terms of s 129 of the National Credit Act, 34 of 2005 (NCA) and that the plaintiff has failed to provide adequate proof of the delivery of or collection of the notice. This, the defendant contends, renders the summons defective. She also contends that she was under no obligation to furnish the plaintiff with her latest address after the plaintiff closed the transactional account which housed the overdraft facility.

[5] Lastly, the defendant disputes the certificate of balance. The plaintiff contends that the defendant's grounds of opposition lack merit as they are not *bona fide* nor do they raise any triable issue.

[6] To resist summary judgment, the defendant must sufficiently disclose the nature and grounds of his defence (in her plea) and the facts upon which it is founded (in her affidavit resisting summary judgment). She must also show that the defence is both bona fide and good in law.[1] As I find below, the defendant fails in both instances.

[1] *Maharaj v Barclays Bank Ltd* 1976 (1) SA 418 (A) at 425G–426E.

Prescription

[7] There is no merit to this ground of opposition. The overdraft agreement was concluded on 30 June 2021. The withdrawn action was instituted on 11 October 2023. Therefore, prescription cannot be the reason why the action was withdrawn as the plaintiff's claim had not prescribed. In her heads of argument, the plaintiff relied on facts that are not pleaded. As these facts were not properly pleaded, the applicant had no opportunity to reply thereto. Therefore, I have no regard thereto.

Section 129 letter

[8] The plaintiff contends that following the defendant's breach, its attorneys sent notices in terms of s 129(1) of the NCA by registered post to the defendant's chosen *domicilium citandi et executandi* and residential address. Notwithstanding demand, the defendant did not reply to the s 129 notices and exercise any of the rights afforded to her therein. She also did not remedy her breach. As at 12 September 2024, the defendant was indebted to the plaintiff in the sum of R51,377.85 as reflected in the certificate of balance.

[9] The defendant's contention that she did not receive proper notice in terms of s 129 of the NCA and that the plaintiff has failed to provide adequate proof of delivery or collection of such notice, rendering the summons defective, lacks merit. There is no legal obligation on the plaintiff to establish that the notice was delivered to the defendant and that she received it. Its obligation to serve the notice on the defendant is discharged when it establishes that it dispatched the notice by registered mail, it reached the correct branch of the post office, and the

post office notified the defendant that a registered item awaits collection.[2] It is up to the defendant to show that the notice has not come to her attention.

[10] The defendant chose her *domicilium citandi et executandi,* where she will receive serve of notices and process in terms of clause 21.1 of the overdraft agreement. On 13 February 2025, the plaintiff caused the s129 notice to be sent by registered mail to the defendant's chosen *domicilium* and residential address. In addition, it caused the notices to be sent to the defendant by certified mail and SMS. The plaintiff annexed to its particulars of claim the South African Post Office registered mail track and trace report, which shows that the first physical notifications of the registered mail in respect of the s129 notice was delivered to the defendant at her chosen *domicilium* and at her residential address on 13 February 2025. A certified SMS notification was sent and delivered to the defendant on her mobile number on 13 February 2024.

[11] The defendant had to notify the plaintiff of her change of address in terms of clause 21.2 of the overdraft agreement. Therefore, the plaintiff cannot be faulted for delivering the notice at her chosen *domicilum* address as it appears in the overdraft agreement. Notably, the defendant did not answer to the allegation that the s 129 notice was also sent to her by certified mail and SMS. I am therefore satisfied that the plaintiff has complied with its obligation in terms of s 129.

The certificate of balance

[12] The plaintiff relies on a certificate of balance to prove the amount the defendant owes in terms of the overdraft agreement. It has also filed an account summary and supporting statement of account in support of the certificate of balance. The defendant takes issue with the "contractual and factual basis for charging interest

[2] *Sebola v Standard Bank of SA Ltd* 2012 SA 142 (CC) and *Kubyana v Standard Bank of SA Ltd* 2014 (3) SA 56 (CC).

after the account was effectively barred in May 2023 and closed in July 2023". She also takes issued with the calculation of the total amount claimed, which includes legal fees and costs loaded onto the account. She contends that given that the plaintiff made no real effort to collect the debt when she raised the issue in July 2023.

[13] Clause 18 of the overdraft agreement provides that a certificate of balance would constitute *prima facie* proof of the amount due and payable by the defendant to the plaintiff. The defendant has not raised a triable issue regarding the alleged balance owing. The closure of the account did not absolve her from her indebtedness and the additional charges she takes issue with were charged in terms of the overdraft agreement.

[14] For all the above reasons, none of the defendant defences and grounds of opposition in the plea and affidavit resisting summary judgment constitute *bona fide* defences or raise any triable issue. Therefore, the application must succeed. I am satisfied that the plaintiff has made out a proper case for the relief sought in its notice of application for summary judgment dated 7 August 2025. The attached order signed and marked X is issued as prayed for in the plaintiff's notice of motion.

[redacted]

LT MODIBA

JUDGE OF THE HIGH COURT

JOHANNESBURG

Appearances

For the Plaintiff: Ms R Peterson

Instructed by: Lowndes Dlamini

For the Defendant: In person

Date of hearing: 26 February 2026

Date of Judgment: 6 March 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.