



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 6574/2024

In the matter between:

AFRICAN DIRECT EDUBOND (PTY) LTD

APPLICANT

and

SHUPING PHILIP MOLAHLOE

FIRST RESPONDENT

SHUPING PHILIP MOLAHLOE N O

SECOND RESPONDENT

Neutral citation: *African Direct Edubond (Pty) Ltd v Shuping Philip Molahloe and Another* (6574/2024) [2026] ZAFSHC 78 (2 March 2026)

Coram: CHESIWE J

Heard: 14 August 2025

Delivered: This judgment was handed down in open court and electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 13h00 on 2 March 2026.

Summary: Summary judgment – rule 32 of the Uniform Rules of Court – written loan agreement – breach of contract – no *bona fide* defence – alleged restructured agreement – National Credit Act 34 of 2005.

ORDER

- 1 The respondent to make payment in the amount of R854 470, 26 (eight hundred and fifty-four thousand, four hundred and seventy rand, and twenty-six cents), being the total outstanding loan amount together with interest accrued thereon as at 20 March 2025;
 - 2 Interest on the amount referred to above at the interest rate of 17 percent per annum compounded monthly on the arrears from 21 March 2025 to date of final payment;
 - 3 The respondents to pay the costs of the application.
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JUDGMENT

Chesiwe J

Introduction

[1] This is an application for summary judgment. The applicant instituted a claim against the respondent for payment in the amount of R854 470, 26 (eight hundred and fifty-four thousand, four hundred and seventy rand, and twenty-six cents) with interest accrued thereon as from 21 March 2025. The application is opposed by the first respondent, Shuping Philip Molahloe, and the second respondent, Shuping Philip Molahloe N O in his capacity as the executor of his deceased wife's estate, Mmatsatsi Margaret Molahloe (collectively referred to as the respondents).

[2] The application originates from a loan agreement entered into between the applicant and the respondents on 4 May 2018, whereupon the applicant borrowed the respondents an amount of R550 056, 94 (five hundred fifty and thousand fifty-six rand, and ninety-four cents) (the loan amount). The respondents failed to honour the monthly loan repayments which were due and payable in terms of the loan agreement. The applicant instituted the action on 19 November 2024 by serving the respondents with a combined summons for the loan amount, to which the detailed terms of the written loan

agreement were attached. The first respondent filed his opposing affidavit and substituted the second respondent, who had passed on, as the executor of her estate.

Background

[3] The respondents were to pay a monthly amount of R7 269, 04 (seven thousand, two hundred, and sixty-nine rands and four cents). The respondents defaulted on their monthly payments of the loan between the period of 1 June 2018 and 31 July 2024. The applicant's legal representative addressed a letter of demand to the respondents on 14 August 2024 which was in accordance with s 129 (1) of the National Credit Act 34 of 2005 (the Act). The respondents were unable to remedy their breach of the loan agreement. The applicant then proceeded with instituting summons, which was followed by this summary judgment application.

[4] The respondents in their plea to the combined summons denied that the contract was breached during February 2019, as a restructuring agreement was entered into and that the monthly repayments would be in the amount of R8 000, 00 (eight thousand rand) and they continued payments of this amount. In the opposing affidavit for summary judgment, the respondent averred a *bona fide* defence in payments towards the loan were made on a monthly basis and the applicant accepted the payments. Further that, the applicant kept the loan active and as a result, the default was cured by the continued monthly payments of R8 000, 00 (eight thousand rand). The respondents raised a further defence that the applicant ought to have advised that the loan agreement was cancelled as they unknowingly continued to make payments into a cancelled agreement. Further that the applicant ought to also have let the respondents know that payments should no longer be made as the loan agreement has been cancelled.

Submissions

[5] Counsel for the applicant submitted in oral argument that the loan agreement has been cancelled as the respondents breached the loan agreement. That the defence of a restructured agreement does not exist as the respondents are unable to give details about this agreement and that the first respondent were already 19 months in breach before his

wife passed on. Further that the applicant has met the requirements for summary judgment.

[6] Counsel on behalf of the respondents submitted in oral argument that the parties have been involved in negotiations to settle the matter and the respondents continued to pay R8 000 towards the loan. Further that the respondents are aware of the shortfall as the R8 000 is lesser than the monthly loan instalment. The respondents conceded that they are struggling to keep up with the payments and that there is no written agreement to prove the restructured agreement between the parties.

[7] Thus, the common cause facts are that the applicant and respondents concluded a loan agreement, that the applicant performed in terms of the loan agreement and that the respondents are indebted to the applicant though the respondents deny the breach.

Issue

[8] For determination by this Court is whether the respondents' opposing affidavit discloses a *bona fide* defence to the applicant's claim and whether the respondents have shown that the defence is not merely aimed at delaying the applicant's claim.

Legal principles

[9] An application for summary judgment is governed by the provisions of rule 32. The purpose of a summary judgment is to assist the applicant where the respondent cannot set out a *bona fide* defence or raise an issue to be tried, but simply enters a defence to delay judgment. Rule 32(1) provides that:

'The plaintiff may, after the defendant has delivered a plea, apply to court for summary judgment on each of such claim in the summons.'

The respondents are therefore required to set out a defence with reasonable clarity and illustrate a *bona fide* defence.

[10] In *Maharaj v Barclays National Bank Ltd*,¹ the court said the following:

¹ *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A) at 426B-C.

'All that the Court enquires into is: (a) whether the defendant has 'fully' disclosed the nature and grounds of his defence and the material facts upon which it is founded, and (b) whether on the facts so disclosed, the defendant appears to have, as to either the whole or part of the claim, a defence which is both *bona fide* and good in law. If satisfied on these matters, the Court must refuse summary judgment, either wholly or in part, as the case maybe.'

[11] The respondents concluded a loan agreement with the applicant which had terms and conditions in respect of default on payments. In the agreement, the following terms are stipulated:

'Default: you will be in default of this agreement if:

17.1.3 you fail to pay any amount due in terms of this Agreement on the due date;

17.1.4 you commit a breach of any provision of this Agreement, whether or not such breach is material;

17.1.5 you commit a breach of any provisions of the Bond.'

[12] The respondents have failed to honour the loan agreement. The respondents' statement of account reflects monthly payment of R8 000, with interest being far more than the monthly repayments of R11 340 (eleven thousand, three hundred and forty rand). The respondents will not be able to keep up with the loan agreement. Further to that, the letter of demand reflects the arrears as R336 237, 76 (three hundred and thirty-six thousand, two hundred and thirty-seven rand, and sixty-seven cents) which was due on 19 August 2024.

[13] The respondents conceded that they are in arrears of the said loan amount however, intend to pay the arrears as soon as the money from the estate of the deceased spouse is paid out. Nevertheless, the deceased spouse passed away on 6 November 2024, and a year later payment has been sporadic. The last payment was on 30 September 2024. This confirms that the respondents are unable to pay the loan.

[14] The respondents further raised a defence that the parties had a restructured agreement, which was denied by the applicant. The respondents could not produce such

restructured agreement, nor substantiate the defence for a restructured agreement with any evidence. Clause 22.12 of the loan agreement states as follows:

‘[S]ave in so far as this Agreement authorises us to increase or reduce any fee, charge, cost, initial Term and/or Subsequent Term Repayment amount or to change the interest rate upon written notice to you, any agreed changes to this Agreement changes are recorded telephonically, we will provide you with written confirmation of the change. We will deliver to you a document reflecting the agreed amendment no later than 20 (twenty) Business Days after the date of the agreed change to this agreement.’

[15] The respondents have failed to pay their loan for over a year and in light of this, this Court is of the view that the applicant has satisfied the court that, the respondents do not have a *bona fide* defence to the action and have entered a notice to defend solely for the purpose of delay.

[16] In *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture*,² it was stated clearly that:

‘So too in South Africa, the summary judgment procedure was not intended to “shut (a defendant) out from defending”, unless it was very clear indeed that he had no case in the action. It was intended to prevent sham defences from defeating the rights of parties by delay, and at the same time causing great loss to plaintiffs who were endeavouring to enforce their rights.’

Conclusion

While the respondents need not deal exhaustively with the facts and evidence relied upon to substantiate, they ought to at least disclose a *bona fide* defence upon which if based with sufficient particularity, it will enable the court to decide if the disclosed defences are *bona fide*. As already stated, the respondents are in breach of a contract. Summary judgment is an extra ordinary remedy and very stringent in that it permits a judgment to be given without trial. However, in my view, the respondents failed to show a *bona fide* defence nor raised an issue for trial.

²*Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture* [2009] ZASCA 23; 2009 (5) SA 1 (SCA); [2009] 3 All SA 407 (SCA) para 31.

Order

[17] The application for summary judgment is granted as follows:

- 1 Respondent to make payment in the amount of R854 470, 26 (eight hundred and fifty-four thousand, four hundred and seventy rand and twenty-six cents), being the total outstanding loan amount together with interest accrued thereon as at 20 March 2025;
- 2 Interest on the amount referred to immediately above at the interest rate of 17 percent per annum compounded monthly on the arrears from 21 March 2025 to date of final payment;
- 3 The respondents to pay the costs of the application.

A handwritten signature in black ink, appearing to be 'S CHESIWE', is written over a solid black rectangular redaction box.

S CHESIWE
JUDGE OF THE HIGH COURT

Appearances

For the appellant:

Instructed by:

A Swanepoel

Mayet and Associates Attorneys,
Bloemfontein

For the respondent:

Instructed by:

T Mogoera

Roestoff Attorneys Inc.
Bloemfontein