IN THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION, MBOMBELA MAIN SEAT

JUDGMENT

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

10/04/2026 SHAI AJ
DATE SIGNATURE

CASE NUMBER 5117/2024

STANDARD BANK OF SOUTH AFRICA LIMITED	**APPLICANT/PLAINTIFF**

And

C JENNINGS EXECUTIVE DEVELOPMENT CC	**1ST RESPONDENT/DEFENDANT**
COLLIN PETER JENNINGS	**2ND RESPONDENT/DEFENDANT**
JENNIFER DORIS JENNINGS	**3RD RESPONDENT/DEFENDANT**

JUDGMENT

SHAI AJ

Introduction

[1] This is an application for summary judgment.

[2] The applicant had issued summons against the respondents.

[3] On 21 February 2020 the applicant and the first respondent entered into a written overdraft facility agreement, in terms whereof an overdraft facility amounting to R470 000 was made available to the First respondent.

[4] On 19 November 2018 the second and third respondents signed a guarantee which was supposed to be used as a collateral over the overdraft facility. The second and third respondents unconditionally guaranteed and undertook as principals to and in favour of the applicant the due, punctual and full payment of all of the debts which the first respondent owed and may in the future owe to the applicant in terms of or arising in connection with agreements concluded or be concluded between the first respondent and the applicant and to pay to the applicant any and all amounts which are or may become due and payable in respect of the debts.

[5] The first respondent defaulted on payment.

[6] It is worth mentioning at the outset that the first respondent has since been liquidated and the second respondent is deceased[1].

[7] The agreement is governed by the provisions of the National Credit Act 34 of 2005 ("the NCA")

Plea

[8] In its plea the third respondent raises several *points in limine*. For purposes of this judgment, it suffices to deal with the following-

8.1 No notice in terms of the provisions of section 129(1) of the NCA was given;

8.2 The Particulars of Claim are not signed by an advocate.

[9] Furthermore, the third respondent raises reckless credit as its defence.

Facts

[10] All the facts stated above are common cause or not in dispute between the parties.

Issue

[11] The issue for determination is whether the raised *points in limine* and the defence of reckless lending/credit raised by the respondent suffice in this application for purposes of qualifying as triable issues. That is, whether the defence could be held to be a bona fide defence in this application.

The law

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[1] Paragraph 3 of respondent's Plea

[12] Rule 32(3) provides that the Respondent in a summary judgment application should show that he has a bona fide defence.

[13] The test is whether on the set of facts before it, the court is able to conclude that the defence raised by the Defendant is bogus or is bad in law.[2]

[14] The defence should, if advanced at trial, have the potential to dislodge the applicant/plaintiff in its claim.

[15] In *Maharaj v Barclays Bank Ltd*[3] it was held that the grant of the remedy is based on the supposition that the Plaintiff's claim is unimpeachable and that the Defendant's defence is bogus and bad in law.[4]

[16] The court has a discretion to grant or refuse summary judgment, even if the requirements resisting summary judgment have not been met.[5]

<u>Section 129 notice</u>

[17] A section 129 notice is intended to give an option to a respondent to refer a credit agreement to a debt counsellor, alternative dispute resolution agent, consumer court or ombud, with the intent to resolve the dispute and possibly agree on a plan to bring the repayments under the credit agreement up to date.

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[2] Afri-Coast Engineers SA (Pty) Ltd v The Amatola Water Board, Case number 546/18, delivered 8 May 2018

[3] 1976 (1) SA 418 (A)

[4] Ibid, at 423 G

[5] Mahomed Essop (Pty) Ltd v Sekhukhulu sons 1967 (3) SA 728 D

[18] The applicant failed to give such notice to enable the respondents to avail themselves for either of these options.

[19] The applicant proceeded to issue summons before the aforesaid notice was given.

<u>POC not signed by Counsel</u>

[20] Rule 18(1) provides:

"A combined summons … shall be signed by both an advocate and an attorney …."

This provision is peremptory and non-compliance therewith renders the POC defective.

[21] Applicant's POC is not signed by an advocate.

<u>Reckless credit/lending</u>

[22] Pleaded with particularity, reckless credit can successfully be raised by a defendant in a claim of this nature, where the NCA is applicable, as shown in the *Mbatha*[6] case and *Nedbank Limited v Tshoga*[7].

<u>Evaluation</u>

[23] The respondent in its plea which is, by the way, not withdrawn, made admissions to all allegations made by the applicant in its Particulars of Claim.

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[6] SA Taxi Securitisation (Pty) Ltd v Mbhata and two Similar case 2011(1) SA 310 (GSJ)

[7] [2022] ZAGPPHC 196

[24] The *points in limine* and the defence of reckless credit raised by the third respondent are, in my view, triable issues which have the potential to dislodge the applicant's claim.

[25] The application is, therefore bound to fail.

Conclusion

[26] In the premise, the following order is made:

26.1 The application for summary judgment is dismissed.

26.2 The applicant is ordered to pay costs on a Party and Party Scale B.

[redacted]

SHAI AJ

DATE OF HEARING: : 9 December 2025

DATE OF JUDGMENT : 10 April 2026

This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be **12h30** on **10 APRIL 2026.**

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