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

Not reportable

Case no: 1983/2025

In the matter between

SA TAXI IMPACT FUND (RF) (PTY) LTD

APPLICANT/PLAINTIFF

(Registration No: 2012/093936/07)

And

MATLI SEKELEOANE

RESPONDENT/DEFENDANT

(Identity No: (75[...]))

Neutral citation: *SA Taxi Impact Fund (RF) (Pty) Ltd v Sekeleoane* (1983/2025) [2026] ZAFSHC 221 (27 March 2026)

Coram: DANISO J

Heard: 13 November 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 10h00 on 27 March 2026.

Summary: Summary judgment – plaintiff's affidavit – cause of action and the amount not established to warrant summary judgment – summary judgment dismissed.

ORDER

Summary judgment is refused. Costs shall be costs in the cause.

JUDGMENT

Daniso J

[1] This summary judgment application arises from a summons issued by the applicant as plaintiff against the respondent as defendant for the return of a 2022 Toyota Quantum/HIACE (the vehicle), payment of an amount of R482 723.61 together with interest and costs.

[2] The relief sought in the particulars of claim is predicated on the defendant's uncured breach of a vehicle instalment agreement (the agreement) concluded by the parties on 1 February 2022, attached to the particulars of claim as Annexure 'B'. The plaintiff alleges that in terms of the agreement, the defendant purchased the vehicle from the plaintiff, a credit provider duly registered in terms of s 40 of the National Credit Act 34 of 2005¹ (NCA) for an amount of R513 400.25. The purchase price and related credit costs and interest were repayable in 75 monthly installments of R18 239.23 from 1 April 2022 to 1 June 2028. The defendant breached the agreement by failing to pay the instalments due. As of 3 April 2025, the defendant's account was in arrears with an amount of R482 723.71. The certificate of balance in that regard is annexure 'C'. The agreement entitles the plaintiff to cancel the agreement, obtain the return of the vehicle and claim the outstanding amount.

[3] In the plea, the conclusion of an instalment sale agreement and the breach due to non-payment is not disputed. The claim is resisted on the grounds that the allegations pleaded in the particulars of claim do not align with Annexure 'B' which is attached to the particulars of claim as proof of the agreement. It is the defendant's case that as opposed to the plaintiff's allegations, Annexure 'B' makes no provision for the repayment of the purchase price in 75 monthly instalments of R18 230.23 from 1 April 2022 to 1 June 2028. Instead, the agreement requires the defendant to pay 74 monthly instalments in an amount of R16 671.04 with effect 1 April 2022 to 1 May 2028. Following the defendant's plea, the plaintiff launched these opposed summary judgment proceedings.

¹ Annexure 'A' is a copy of the s 40 registration certificate.

[4] Summary judgment is intended to ensure that a plaintiff obtains judgment without the necessity of a trial and a defendant with a triable issue or a sustainable defence, has her day in court.² The procedure is governed by Uniform Rule 32.

[5] Subrule (2)(a), (b) and (c) prescribe the procedural requirements to be met by a plaintiff who seeks the expedited judgment, namely, the summary judgment application must be accompanied by an affidavit made by the plaintiff or by any other person who can swear positively to the facts³ verifying the cause of action, the amount claimed, the facts upon which the claim is based and where the claim is founded on a written agreement. A copy of the written agreement must be annexed to the affidavit. Additionally, the plaintiff must engage fully with the defendant's plea and show on what basis it does not raise a bona fide defence. Once there is compliance with the procedural requirements, the defendant's opposing affidavit must render facts to satisfy the court that she has a bona fide defence to the plaintiff's action by disclosing fully the nature and grounds of the defence and the material facts relied upon therefor.⁴

[6] In the plaintiff's supporting affidavit, the defendant's pleaded allegations that the agreement provided for the repayment of the loan in 74 monthly instalments in an amount of R16 671.04 with effect 1 April 2022 to 1 May 2028; are not disputed. It is the plaintiff's case that the agreement was amended in terms of s 120 of the NCA pursuant to the defendant's breach during November 2023. As a result of the amendment, the term of the agreement was extended from 1 May 2028 to 1 June 2028. The monthly instalments were also reduced from R18 403.24 to R18 244.42.⁵ The amendment notice is attached to the affidavit as Annexure 'SAT5'.

[7] The defendant's opposing affidavit raises *in limine* objections that the deponent of the plaintiff's verifying affidavit, Mr Mbuso Ivan Dube, has no authority to act and depose to the plaintiff's affidavit filed in support of the summary judgment. This fact is apparent from his own assertion. In para 1.1. of the affidavit, Mr Dube avers that:

'I am the Legal Operations Manager of **POTPALE INVESTMENTS (RF) (PTY) LTD** (the

² *Joob Joob Investments v Stocks Mavundla Zek Joint Venture* [2009] ZASCA 23; 2009 (5) SA 1 (SCA) paras 31-33.

³ *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A) at 422A-423E.

⁴ Subrule 3(b).

⁵ Paragraph 9.2 of the plaintiff's affidavit.

plaintiff) situated at **179 15th Road, Randjespark, Midrand**. Therefore, I am duly authorized to depose to this affidavit. The facts herein contained are within my personal knowledge and belief and are both true and correct.'

[8] It is the defendant's case that the affidavit relates to a different entity as the plaintiff in this matter is SA TAXI IMPACT FUND (RF) (PTY) LTD. The defendant further disputes the validity of the agreement and states that the s 40 certificate (Annexure 'A') relied upon by the plaintiff is not valid for the period during which the agreement was concluded. As regards the alleged amended terms of the agreement, the defendant argues that the plaintiff has not provided proof that the notice of amendment was sent to the defendant, the particulars of the alleged amendments have also not been pleaded in the particulars of claim. In the heads of argument, the defendant raises an additional 'point *in limine*' that because the heading of the plaintiff's index erroneously refers to the 'HIGH COURT OF SOUTH AFRICA DIVISION, PIETERMARITZBURG' and the case number as 1983/2025P, the papers are not what they purport to be, the application must be dismissed.

[9] Counsel for the plaintiff Mr Verhoef, without addressing all the *in limine* objections countered that the defences raised by the defendant are merely technical – they do not raise a triable issue. He explained that the reference to POTPALE INVESTMENTS (RF) (PTY) LTD in the plaintiff's supporting affidavit is merely a typographical error. POTPALE INVESTMENTS (RF) (PTY) LTD and SA TAXI IMPACT FUND (RF) (PTY) LTD belong to the same financial group. He further argued that it is clear from the supporting affidavit that the initial agreement concluded on 1 February 2022 was amended and as a result, the terms of the initial agreement were restructured to assist the plaintiff who was experiencing financial constraints. The notice of the amendment of the agreement was sent to the defendant and, except for relying on technicalities including the erroneous reference to the High Court, Division Pietermaritzburg, the defendant has not disputed the breach of the agreement. The amounts due by the defendant have been verified by the certificate of balance therefore, the plaintiff has made out a case for summary judgment.

[10] Except to point out that it is improper for a defendant to raise a defence pertaining to the validity of the agreement for the first time in the opposing affidavit because subrule (2)(b) requires a plaintiff to fully engage with the plea and aver why it does not raise any issue for trial and that the objection against the incorrect citation of

the Court in the index of the plaintiff's papers is an opportunist non-starter as an index is not a pleading, I am not persuaded that plaintiff's application meets the requirements envisaged in rule 32(2)(a), (b) and (c).

[11] On the facts germane to this matter, the plaintiff is a legal entity hence the supporting affidavit was deposed to by Mr Dube. *Ex facie* the affidavit, Mr Dube rendered the affidavit on behalf of a different entity, POTPALE INVESTMENTS (RF) (PTY) LTD and not on behalf of the plaintiff. This requirement is essential to the effectiveness of the affidavit as a basis for summary judgment. The explanation provided in argument attributing the discrepancy to a typographical error does not assist the plaintiff's case. It has been pointed out in *Director of Public Prosecutions, Johannesburg and Another v Schultz and Others; Director of Public Prosecutions, Bloemfontein v Cholota*,⁶ that the purpose of arguments is to 'summarize, interpret and apply the law to the evidence already presented, not to introduce new factual or legal issues'.⁷ Accordingly, Mr Dube is not the person 'who can swear positively to the facts' of this matter as contemplated in subrule (2)(a).

[12] Furthermore, the cause of action and the amount claimed is not corroborated by the agreement attached to the supporting affidavit, annexure 'SAT5'. In terms of this agreement, the monthly instalment due by the defendant after the amendment is an amount of R18 244.42 whereas, in the supporting affidavit the monthly instalment is indicated as an amount of R18 239.23. Inexplicably, according to annexure 'SAT5', the date of the agreement is 27 January 2022 which is a month before the initial agreement was concluded on 1 February 2022.

[13] Based on all these reasons above, I hold that the claim against the defendant including the amount claimed has not been established to warrant summary judgment.

Order

[14] In the circumstances, I make the following order:

⁶ *Director of Public Prosecutions, Johannesburg and Another v Schultz and Others; Director of Public Prosecutions, Bloemfontein v Cholota* [2026] ZACC 3; 2026 (3) BCLR 175 (CC) para 30.

⁷ *Ibid* para 30.

Summary judgment is refused. Costs shall be costs in the cause.

NS DANISO
JUDGE OF THE HIGH COURT

APPEARANCES

For the Applicant/Plaintiff: A Verhoef

Instructed by: Macroberts INC, Pretoria
C/O MM Hatting Attorneys, Bloemfontein

For the Respondent/Defendant: A Thulo

Instructed by: Tumelo Attorneys, Bloemfontein