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REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION PRETORIA

Case number: **2020/34021**

(1) REPORTABLE: ~~YES~~ / NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

(3) REVISED. ~~YES~~-/ NO

DATE 09/04/2026

SIGNATURE

In the matter between:

THE STANDARD BANK OF SOUTH AFRICA LTD

Plaintiff/Respondent

(Registration number: 1962/000738/06)

and

BHEKI HAMILTON ZONDI

First Defendant/First Applicant

(ID Number: 7[...])

EUNICE NTHABISENG MOFOKENG

Second Defendant/ Second Applicant

(ID Number: 8[...])

This Judgment was handed down electronically and by circulation to the parties' legal representatives by way of email and shall be uploaded on caselines. The date for hand down is deemed to be on.....

JUDGMENT

MODISA AJ:

- [1] This is an opposed application for leave to appeal against the whole judgment and/or order which was handed down on 20 August 2025 in favour of the Respondent's application for summary judgment.
- [2] Section 17 of the *Superior Courts Act* 10 of 2013 (*"the Act"*) provides that leave to appeal may only be given should the Court be of the opinion the appeal would have a reasonable prospect of success or should there be some other compelling reason why the appeal should be heard.
- [3] In *Ramakatsa and Others v African National Congress and Another*¹, the Supreme Court of Appeal held as follows:
- "The test of reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of*

¹ [2021] JOL 49993 SCA, para 10.

succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist.”

- [4] The Defendants (who are the Applicants in this application for leave to appeal) argue that this Court should have granted them leave to file a supporting affidavit to the notice to oppose the summary judgment application for the interest of justice.
- [5] They further argue that this Court erred by making a finding that there is no *bona fide* defence which was disclosed to Court having regard to the fact that there is evidence that they consistently effected payment on a monthly basis of R3 000.00 (Three Thousand Rand) which amount was increased to R 6000.00 (Six Thousand Rand) from September 2023. In my view, this does not constitute a *bona fide* defence.
- [6] The Applicants were obliged to comply with the terms of the loan agreement by effecting payment of the agreed amount.
- [7] I am also of the view that the tacit variation defence is not before this Court by virtue of the fact that it should have been canvassed in a properly filed opposing affidavit.
- [8] Counsel for the Applicants also argued that the substance of the defence is contained in the plea and this Court should have looked at the detailed plea. Once again, in the absence of an affidavit resisting summary judgment, the Court can only be confined in what is contained in an affidavit in support of summary judgment proceedings rather than a plea.

[9] Counsel for the Applicants also referred this Court to the judgment of *Maharaj v Barclays National Bank Ltd*².

[10] The judgment of *Maharaj* does not come to the assistance of the Applicants having regard to the fact that on a proper reading of this judgment, the Defendant in a summary judgment application is still obliged to file an affidavit to demonstrate that he or she has a *bona fide* defence to the Plaintiff's claim.

[11] The Court in *Maharaj* stated the following:

"Accordingly, one of the ways in which a defendant may successfully oppose a claim for summary judgment is by satisfying the Court by affidavit that he has a bona fide defence to the claim. Where the defence is based upon facts, in the sense that material facts alleged by the plaintiff in his summons, or combined summons, are disputed or new facts are alleged constituting a defence, the Court does not attempt to decide these issues or to determine whether or not there is a balance of probabilities in favour of the one party or the other. 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 may be. The word 'fully', as used in the context of the Rule (and its predecessors), has been the cause of some Judicial controversy in the past. It connotes, in my view, that,

² 1976 (1) SA 418 (A) at page 426

*while the defendant need not deal exhaustively with the facts and the evidence relied upon to substantiate them, he must at least disclose his defence and the material facts upon which it is based with sufficient particularity and completeness to enable the Court to decide whether the affidavit discloses a bona fide defence. (See generally, Herb Dyers (Pty.) Ltd. v Mohamed and Another, 1965 (1) SA 31 (T); Caltex Oil (SA) Ltd. v. Webb and Another, 1965 (2) SA 914 (N); Arend and Another v. Astra Furnishers (Pty.) Ltd., *supra* at pp. 303 - 4; Shepstone v. Shepstone, 1974 (2) SA 462 (N)). At the same time the defendant is not expected to formulate his opposition to the claim with the precision that would be required of a plea; nor does the Court examine it by the standards of pleading. (See Estate Potgieter v. Elliott, 1948 (1) SA 1084 (C) at p. 1087; Herb Dyers case, *supra* at p. 32.)*

In the present case the trial Judge found that there were material facts which the defendant 'could and should have dealt with' in his affidavit and without which the Court was not able to come to a decision that he appeared to have a bona fide defence. 'In the result' the application for summary judgment was granted. (I may mention, en passant, that the learned Judge does not appear to have considered whether, despite the shortcomings of the affidavit, he should not exercise a discretion in defendant's favour). It was submitted on appeal that in so finding against the defendant the trial Judge erred.

It must be conceded at once that the defendant's affidavit, in so far as it purports to set forth the defence on the merits (as outlined above), is not a wholly satisfactory document. There is some force in certain of the criticisms levelled at it by the Judge a quo. I shall consider these in due course. The affidavit does, nevertheless, appear to disclose a defence which seems, on the

*face of it, to be bona fide. As I understand the position, the defendant's case is that, as a customer of the bank of long standing, he did obtain short-term overdraft facilities from the bank in December 1972. It is true that he does not state whether he availed himself of these facilities and, if so, to what extent. Nor does he say specifically that monies borrowed on overdraft were duly repaid in accordance with the arrangements made. I think, however, that it is to be inferred from the affidavit as a whole and especially from para. 11, in which defendant avers that he has met all his obligations to the bank, that any overdraft incurred in December 1972 was duly liquidated.”*³

[12] The most important issue, which is part of their grounds of appeal, is that their case was presented by way of submissions from the bar and this Court erred in deciding the matter on that particular issue.

[13] I turn to deal with this issue since I regard same as a decisive factor. This Court made a finding in para [50] of its judgment to the effect that in terms of Rule 32(3)(b) of the Uniform Rules of Court the Defendant is obliged to put his or her defence before Court on affidavit and not merely orally from the bar with reference to the plea.

[14] In circumstances where all conditions have been fulfilled by the Plaintiff entitling him or her to summary judgment, a mere statement from the bar that the Defendant has a defence on the merits is demonstrated by the plea, is insufficient to stay judgment.

³ Maharaj *supra* at 426 to 427

[15] I referred to the judgments of *Cf Stofberg v Lochner* 1946 OPD 333 and *Loots v Van Staden* 1962 (1) SA 152 (O); as well as *Nedbank Ltd v Peterson* (unreported, GP case no 61659/2020 dated 20 August 2021) at paragraph [46].

[16] The fact that there was no opposing affidavit filed in respect of summary judgment is fatal to the Applicants' case.

[17] The issue of the non-existent opposing affidavit in respect of the summary judgment application should be common cause between the parties.

[18] It seems to me that the Applicants are also raising other issues pertaining to their legal representation. At the time when the matter was heard, there was never any application for a postponement nor any application for leave to file an affidavit was made. It could not have been expected from this Court to *mero motu* grant a postponement and/or leave to file an affidavit to oppose summary judgment when they were properly legally represented and no such an application was made.

[19] I agree with Counsel for the Applicants that anything which occurred post July 2025 is irrelevant for these proceedings.

[20] In so far as the constitutional enquiry of Rule 46 A is concerned, I am of the view that it is for the Applicants to satisfy the Court that there are alternative means in satisfying the judgment debt and they failed to do so.

[21] In my view, the Applicants do not have prospects of success and this application ought to be dismissed.

[22] In the premises, the following order is made:

1. The application for leave to appeal is dismissed with costs and such costs to be on Scale B.

MODISA AJ
ACTING JUDGE OF THE HIGH COURT

DATE OF HEARING: 30 MARCH 2026

DATE OF JUDGMENT: 09 APRIL 2026

APPEARANCES

On behalf of the Defendants/ Applicants: MJ Mogotsi

Instructed by: Carrim Attorneys

On behalf of the Plaintiff/ Respondent: T Ndaba

Instructed by: Van Hulsteyns Attorneys