IN THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION, MBOMBELA MAIN SEAT

JUDGMENT

Case No.: 1134/2025

(1) REPORTABLE: **NO**

(2) OF INTEREST TO OTHER JUDGES: **NO**

(3) REVISED **YES/NO**

DATE 05/05/2026

SIGNATURE NSIBANDE AJ

In the matter between:

NEDBANK LIMITED **(Registration Number: 1951/000009/06)**	**APPLICANT**

And

MONTANA NURSERIES (PTY) LTD **(Registration Number: 2017/298084/07)**	**1ST RESPONDENT**
ROSS FAMILY FARMING (PTY) LTD **(Registration Number: 2017/298038/07)**	**2ND RESPONDENT**
ALAN ROBERT ROSS **(ID NUMBER: 5[...])** In his capacity as surety and Co-principal debtor for Montana Nurseries (Pty) Ltd	**3RD RESPONDENT**

ARNOLDINA CLAZINA ROSS **4TH RESPONDENT**

(ID NUMBER: 5[...])

In her capacity as surety and
Co-principal debtor for Montana
Nurseries (Pty) Ltd

DANE ALAN ROSS **5TH RESPONDENT**

(ID NUMBER: 8[...])

In his capacity as surety and
Co-principal debtor for Montana
Nurseries (Pty) Ltd

JUDGEMENT

NSIBANDE AJ

Introduction

[1] This is an application for Summary Judgment wherein the Applicant Nedbank Limited, herein after referred to as the bank. The Applicant claims payment of an amount of R419 398.89 (Four Hundred and Nineteen Thousand Three Hundred and Ninety-Eight Rand Eighty-Nine Cents).

[2] The amount claimed emanates from an overdraft fascility granted to the 1st Respondent and the 2nd -5th Respondents signed as sureties.

[3] The Respondents are opposing the granting of the Summary Judgment, and have raised, in particular a non compliance issue with the National Credit Act 34 of 2005 as amended by the Plaintiff.

FACTS

[4] On the 12th May 2021 in Mbombela the bank afforded the 1st Respondent an over draft facility with a maximum of R200 000.00 (Two Hundred Thousand Rands).

[5] As security, the 2nd-5th Respondents executed deeds of suretyship.

[6] On the 16th October 2023 the bank temporarily increased the overdraft facility with an amount of R300 000.00 (Three Hundred Thousand Rands). The Respondent utilized the increased overdraft facility and exhausted it.

[7] On the 04th March 2025 the bank issued Summons against the Respondents claiming payment of the amount of R419 389.89 (Four Hundred and Nineteen Thousand Three Hundred and Ninety-Eight Rand Eighty-Nine Cents) interest from 16th October 2023.

[8] The Respondents defended the claim and subsequently filed their plea dated 25th June 2025. On the 01st July 2025 the bank filed the Summary Judgement application which is before the Court.

ISSUES

[9] The bank avers that the First Respondent is in breach of the agreement in that it has utilize d the facility but has failed to make full and punctual payment of the amounts due in terms of the 1st and 2nd agreement. (*The agreements*)

[10] As a result of this breach, the bank is claiming for payment of amount of claiming payment of the amount of R419 389.89 (Four Hundred and Nineteen Thousand Three Hundred and Ninety-Eight Rand Eighty-Nine Cents), which has become due and payable.

[11] In its Heads of Argument, the bank further argues that the provisions of the National Credit Act 34 of 2005, as amended does not find application to the agreements.

[12] The Plea filed on behalf of the Respondent, essentially raises issues of non-compliance with the provisions of the National Credit Act 34 of 2005. The Respondents raised the following defences;

1. That the bank did not comply with the provisions of the National Credit Act.
2. The Deeds of suretyship executed in favour of the bank by the 2nd to 5th Respondents are *void ad origine*, and the terms in it constitute illegal provisions contrary to the National Credit Act.
3. That the bank in extending credit in the overdraught failed to investigate the financial abilities of all the Respondents.
4. That the bank was a holder of a mortgage bond over the property known as remaining extent of portion 36 (portion of portion 1) of the farm Alkmaar 286 JT, and that the bond was cancelled on the 19th July 2024, Rand Merchant Bank issued a guarantee to the bank with a settlement, which settlement required the Respondents to pay from

the guarantee an amount of R522 805.70 (Five Hundred and Twenty-Two Thousand Eight Hundred and Five Rand Seventy Cents) to the bank.

5. That the bank failed to properly account to the Respondent and failed to send monthly statements that is reconciled.
6. That the bank failed to give notice to the Respondent that it was in arrears before attempting to cancel the agreement.
7. That the bank had to furnish a letter to the Respondent to rectify the indebtedness in the interest of justice.
8. That cancellation of the credit agreement occurred *contra bonos mores*.
9. Since the suretyship is *void ab initio*, there is no enforceable claim against the 2ndto5th Respondents.
10. The sureties did not receive the notices in terms of Section 129 of the National Credit Act.

[13] The Court is called upon the decide on whether to grant the Summary Judgement or to dismiss the Application.

LEGAL PRINCIPLES

[14] The legal principles governing summary judgement proceedings are well established.

[15] In Maharaj v Barclays National Bank Ltd 1976 (I) SA 418 A, Corbett JA stated the principles and the requirements expected from a respondent in order to successfully defend a claim for Summary Judgment as follows;

"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 be determine whether or not there is a balance of probabilities in favour of one party or the other. All that the Court enquires into is: (a) whether the defendant had "fully" disclosed the nature and grounds of his defence and the material facts upon which it is founded, and (b) whether or not 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 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.

[16] Another relevant judgment on Summary Judgment proceedings has been provided by Navsa JA in Joob Joob Investments (Pty) Ltd V Stocks Mavundla Zek Joint Venture 2009 (5) SA 1 SCA who held

"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 Plaintiff who were endeavouring to enforce their rights.

The rationale for summary judgment proceedings is impeccable. The procedure is not intended to deprive a defendant with a triable issue or sustainable defence of her or his day in Court. After a century of successful applications in our courts, summary judgment proceedings can hardly continue to be described as extraordinary"

[17] Another case where the requirements and what is required of a respondent in summary judgment was a full court judgment in the matter of Raumix Aggregates (Pty) Ltd V Ritchter Sand CC 2020 (1) SA 532 (GJ) when it was held as follows;

"The purpose of summary judgment application is to allow the court to summarily dispense with actions that ought not to proceed to trial because they do not raise a genuine triable issue thereby conserving scarce judicial resources and improving access to justice.

Once an application for summary judgment is brought, the applicant obtains in substantiative right for that application to be heard, and bearing in mind the purpose of summary judgment, *that hearing should be as soon as possible. That right is protected under section 34 of the Constitution."*

[18] The Court has also taken reference to the decision held in Nedbank V Maredi and Another 2014 ZAGPPHC 25, which held as follows;

> *"a" a <u>bona</u> <u>fide</u> defence, which means a defence set up bona fide or honestly which proved at trial, would constitute a defence to the Plaintiff's claim"*

ANALYSIS

[19] Having regard to the above applicable legal principles to summary judgment proceedings and applying same to the issues before Court, the following observation is made:

1. In the papers before the court, the applicant relies on the provisions of the NCA to ascertain and to enforce its rights against the Respondent.
2. That the Applicant in its Heads of Argument, as well as in the arguments in court states that the provisions of the NCA finds no application in the agreements entered into by the parties.
3. The Respondent on the other side insist that the provisions of the NCA are applicable to the agreements, and relies on the non-compliance thereof in its defence and in resisting the summary judgement.

It is common cause between the parties that the dispute between them revolves around a credit agreement.

What the parties do not agree upon is whether or not the provisions of the NCA are applicable to the agreements entered between them. This is not the dispute that is before this court. The dispute before this court is whether or not the summary judgement can or cannot be granted.

As indicated above, both parties relied upon the terms of the NCR in their arguments and submissions.

It is of paramount importance that the court makes reference to the preamble to the NCR, which states the one of the purposes of the Act as follows ;

> "*to promote responsible credit granting and use and for that purpose to prohibit reckless credit granting*"

The court is referring to this purpose of the Act, not because the court has found that the credit facility by the Applicant to the Respondent was reckless, but because this is one of the defences raised by the Respondent. This defence is good in law and has been raised *bona fide,* it must be tested at a trial.

<u>Remedy</u>

Taking into consideration all the factors mentioned above the court finds that the Respondent has been successful in raising a *bona fide* defence which is good in law which defence needs to be tested at a trial.

The court is not making a ruling that the NCR is applicable to the agreements entered into by the parties, but merely stating that should it be found that the NCR is applicable and the agreements are not compliant with the terms thereof, then the defence is good in law.

In this regard, the court will not shut out the Respondent to raise the defence at trial, as a result the Respondent is granted the opportunity to prove its defence at the trial.

Order

It is the courts considered decision that the Respondent has successfully resisted the granting of the summary judgement by providing a defence that is *bona fide* and good in law, as a result the Court makes the following order

1. The Application for summary judgement is dismissed.
2. The Applicant to pay the costs on a party and party scale B.

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NSIBANDE AJ

ACTING JUDGE OF THE HIGH COURT,

MPUMALANGA DIVISION, MBOMBELA

Date of hearing: 31 October 2025

Date of judgment: 05 May 2026

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