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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
HELD AT PRETORIA**

CASE NO: A266/2024

DOH: 18 February 2026

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

DATE 16 APRIL 2026

SIGNATURE

In the matter between:

S[...] Z[...] M[...]

First Appellant

D[...] C[...] Y[...] M[...]

Second Appellant

And

**STANDARD BANK OF SOUTH AFRICA
LIMITED**

Respondent

This judgment has been handed down remotely and shall be circulated to the parties by way of email / uploading on Caselines. The date of hand down shall be deemed to be 16 April 2026.

ORDER

The following order is granted:

1. Prayer 1 of the order granted on 4 August 2021 is hereby amended as follows:

‘Payment of the amount of **R 1 452 793. 23** (One million Four Hundred and Fifty-Two Thousand, Seven Hundred and Ninety-Three Rand, and Twenty-Three cents)’

Otherwise, the appeal is dismissed.

2. The appeal against paragraph 3 of the order of 7 March 2024 is dismissed.
3. Respondent’s application to lead further evidence succeeds with costs.
4. Appellants must pay Respondent’s costs of appeal.

JUDGMENT

Bam J, (Swanepoel et Van Niekerk JJs concurring)

Introduction

1. This is an appeal against the judgment and order granted by the court *a quo* on 4 August 2021, and paragraph 3 of the order of 7 March 2024. Both orders were granted by Vuma AJ. The appeal is with leave of the Supreme Court of Appeal, granted on 12 June 2024; the court below refused leave to appeal. Appellants’ grounds may be summarised thus:

- (i) The respondent, (Standard Bank or the Bank) failed to comply with the mandatory requirements of Section 129 of the National Credit Act (NCA), pertaining to the delivery of the notice, in that the Track and Trace report attached to its Particulars of Claim was sent to the wrong Post Office, which is Hatfield, as opposed to Randburg. As a consequence, summary judgment ought not to have been granted.
- (ii) The Bank failed to verify the amount claimed as required by Rule 32 (2) (b) of the Uniform Rules. In the result, the Bank's application for summary judgment was fatally defective and summary judgment ought not to have been granted.
- (iii) As to the order of 7 March 2024, appellants contend that the court erred in awarding costs de *bonis propriis*, in spite of the respondent having not made a request for such costs.

2. The Bank opposes the appeal. As regards grounds (i) and (ii), the Bank says that it will be severely prejudiced if the Appellants are allowed to pursue these defences for the first time, before this court. The Bank refutes the idea that the points raised are points of law. It has also applied to introduce further evidence as provided for in Section 19 (b) of the Superior Courts Act, Act 10 of 2013, to deal with the point relating to the Track and Trace once and for all, submits the Bank. As regards paragraph 3 of the order of 7 March 2024, the Bank submits that the court a *quo* exercised its discretion judiciously, with no suggestion that it misdirected itself as to the law or the facts. Consequently, there is no room for this court to interfere with the

order. I start by sketching out the background facts, after introducing the parties.

Parties

3. First Appellant is S[...] Z[...] M[...], an adult male corporate manager and communications consultant. First Appellant resides at xxx Avenue, Nortcliff Johannesburg. Second Appellant is D[...] C[...] Y[...] M[...], an adult female radiographer. Second Appellant resides at xxx Avenue, Weltevreden Park, Johannesburg. First and Second appellant were previously married to one another. They divorced in April 2018. The Respondent is Standard Bank of South Africa Limited, a public company with limited liability, duly registered in terms of South African laws, with its principal place of business noted as 9th Floor, S[...] Street, Johannesburg.

Background

4. The following is either common cause or has not been seriously contested:
 - i) On 30 August 2007, Appellants concluded a home loan agreement with the Bank in terms of which the Bank agreed to advance an amount of R 2 500 000, 00 (Two Million Rand Five Hundred Thousand Rand) for the purchase of the Appellants' home, (the property). A mortgage bond was registered over the property as the Bank's security. The loan was to endure for a period of 240 months or 20 years. Appellants agreed to pay monthly installments in the amount of R 25 804.71.

- ii) As of 28 May 2020, Appellants were in arrears with their monthly payments in the amount of R 153 805.97, with the full outstanding balance on the home loan standing at R 1 651 789.59. On 29 May 2020, the Bank issued a notice as provided for in Section 129 of the National Credit Act, NCA, (the notice) for delivery to the Appellants' *domicillium* address as set out in the home loan agreement. On 23 July 2020 the Bank issued a summons seeking, *inter alia*, payment of the amount of R 1 651 789, 59, together with interest and a special order declaring the property executable.
- iii) On 17 June 2021 the Bank filed for summary judgment against Appellants.

Proceedings before the court a quo

- 5. The application for summary judgment was argued on 4 August 2021. In the main, Appellants raised two defences. They are: (a) That the matter had been settled; and (b) The Bank's breach of the Constitutional safeguards built around the law of primary residences. Both defences were dismissed. The argument regarding settlement foundered when the Appellants conceded that they had not provided the Bank with the requested information, to enable it to consider restructuring their home loan.
- 6. With regard to the Bank's breach of the Constitutional safeguards on primary residences, while the Appellants had made a general statement in their plea that they had not received the notice in terms of Section 129 of the National Credit Act, (notice), they added in their answering affidavit that the Bank

knew at the time it issued the notice that the Appellants had not lived at the *domicillium* address for some four years and that they had moved to the bonded home. However, the argument did not go very far as the Appellants conceded that they had not provided the Bank with the written notice, within 14 days of their change of address, as provided for in Clause 17.3 of the home loan agreement. Under the circumstances, the court found that the notice had been duly delivered, in line with the provisions of the NCA and the home loan agreement.

7. A further point raised during argument was the claim that the Appellants had been prejudiced by the Bank's conduct of sending the notice to the *domicillium*. It was submitted had the Appellants received the notice, they would have utilised the options provided for in Section 129 in order to agree a payment plan to bring their account up to date. The court dismissed the point, given the common cause fact that the Appellants failed to provide the Bank with the information required to consider their request to restructure the home loan. Summary judgment was thus entered in favour of the Bank in the amount of R1 651 789.59, together with interest, and the property was declared executable.

Application for leave to appeal and first application for leave to amend / supplement grounds of appeal

8. On 26 August 2021, Appellants filed a notice of application for leave to appeal. Two years passed before the application was set down for argument, on 24 October 2023. On the day of the hearing, without notice to

the Respondent and without leave from the court, Appellants sought to argue a point which had neither been pleaded, nor previously raised in the summary judgment proceedings. The point was not even foreshadowed in their Notice of Application for Leave to Appeal. The point had to do with the fact that the amount of R 1 651 789, 59 sought in prayer 1 of the Notice of Motion to the summary judgment application, had not been verified in the founding affidavit, as required in terms of Rule 32 (2) (b) of the Uniform Rules. Accordingly, continued the argument, the Bank's application for summary judgment was fatally defective and summary judgment ought not to have been granted.

9. Mr. Rakgoale, on behalf of the Bank, resisted the introduction of the new point, citing prejudice and suggesting that the Appellants were abusing the process by raising a defence to the summary judgment application, after the fact. He refuted the suggestion that the Bank had failed to verify the amount and submitted that Rule 42 (b) and (c) was the appropriate procedure to follow, to correct what is clearly a patent error. The court refused to entertain the new ground and instead ordered a postponement. The order issued by the court, however, came with some directives. Relevant for present purposes are the following directives:

- (i) The appellants were required to bring an application to amend their grounds of appeal within 20 days.

- (ii) They had to provide the court with legal authority which entitles them to raise as a ground of appeal, a point which had not been raised during summary judgment proceedings.
- (iii) Appellant's attorney had to provide an affidavit stating why he should not be personally liable for the costs occasioned by the postponement, the scale of which had yet to be decided.

Second application to amend / supplement grounds of appeal

10. The application for leave to appeal was again set down for 7 March 2024.

On 22 February, Appellants brought yet another application to amend/supplement their grounds of appeal. The new ground had to do with the fact that the Track and Trace report attached to the Bank's Particulars of Claim was delivered to the wrong post office, which is Hatfield, whereas the Appellants' local post office was Randburg. On this basis, it was contended that the Bank had not complied with Section 129 as the notice would not have reached the Appellants.

11. The Bank countered that the Appellants had not complied with Rule 28 in that it had not been afforded the opportunity to respond. When the court convened on 7 March, it refused the application to amend/supplement the grounds of appeal brought on 23 November 2023, with costs; refused the application to amend/supplement grounds of appeal brought on 22 February 2023, with costs; and ordered the Appellants' attorney to pay the costs occasioned by the postponement, on attorney and client scale, *de bonis propriis*. The application for leave to appeal was postponed to 12 March for

final argument, based on the original grounds as filed on 26 August 2021. On 25 March 2024, the application for leave to appeal was dismissed, with costs.

Proceedings before this court: Ground 1: Failure to comply with the notice in terms of S129 (notice)

12. Appellants submit that the crisp point of law they wish to submit before this court is that the legal conclusion drawn by the Bank in its summary judgment application that it had complied with the compulsory requirements of the notice was incorrect and misleading. Appellants submit that on the Bank's own papers, it was plain that it had not complied with the provisions of Section 129 because the registered letter, according to the Track and Trace report attached to the Particulars of Claim, was sent to the incorrect post office, which is Hatfield as opposed to Randburg.

13. For the first time, Appellants submit before this court that the Bank's Particulars of Claim were in fact excipiable and, on the basis of its failure to comply with the notice requirement, the Bank's cause of action was not complete or had not yet accrued to it at the time. Appellants further submit that the power of a court to determine a matter relating to a credit agreement is suspended until such time that Section 129 has been complied with. Accordingly, they ask the court to set aside the summary judgment and direct the Bank to comply with the notice requirement before it applies for summary judgment. Alternatively, this court should set aside the summary

judgment, adjourn the proceedings and direct the Bank to comply before it resumes with the summary judgment proceedings.

14. The rule relating to raising a point of law for the first time on appeal is trite. In *Naude and Another v Fraser*¹, it was said that a court of appeal may not be precluded from giving the right decision, on accepted facts, merely because a party failed to raise a legal point. In *Barkhuizen v Napier*, it was said:

‘The mere fact that a point of law is raised for the first time on appeal is not in itself sufficient reason for refusing to consider it. If the point is covered by the pleadings, and if its consideration on appeal involves no unfairness to the other party against whom it is directed, this Court may in the exercise of its discretion consider the point.’²

15. It is this rule that the Appellants have latched on to in pursuing the two grounds before this court, which were neither pleaded nor raised during the summary judgement proceedings. In *Rowland and Others v Logos Carriers CC* the appellant in that case sought to introduce a legal point of jurisdiction on the eleventh hour. Refusing to entertain the point, the court reasoned:

‘[37] The question of whether an appellate court may entertain a point raised for the first time on appeal is settled: as held in *Paddock Motors (Pty) Ltd v Igesund*, such a point may be considered if specific conditions are met—namely, the issue must be covered by the pleadings, its determination must not cause unfairness to the opposing party, the relevant facts must be common cause or clearly established on the record, and there must be no reason to think that additional evidence would have been led had the point been raised earlier.

¹ (150/97) [1998] ZASCA 56; 1998 (4) SA 539 (SCA); [1998] 3 All SA 239 (A) ; 1998 (8) BCLR 945 (SCA) (26 June 1998), paragraph 7; *Alexkor Ltd and Another v Richtersveld Community and Others* (CCT19/03) [2003] ZACC 18; 2004 (5) SA 460 (CC); 2003 (12) BCLR 1301 (CC) (14 October 2003), paragraph 44.

² (CCT72/05) [2007] ZACC 5; 2007 (5) SA 323 (CC); 2007 (7) BCLR 691 (CC) (4 April 2007), paragraph 39.

[38] The present case does not fall within these exceptions. While the question of jurisdiction is a legal issue, it is not one devoid of factual implications. Had the jurisdictional challenge been raised timeously, Logos would have had the opportunity to clarify the first appellant's true income, sources of income, and residential circumstances. The bare assertion in the answering affidavit that the first appellant earns R15 000,00 is unsubstantiated.³

16. The point of departure therefore, is to consider whether the point pertaining to the Bank's alleged non-compliance with Section 129 is a legal point? The answer must be a clear no. It is not a legal issue. Even if this conclusion is wrong, the point dealing with the notice requirement is not one that can be dealt with free of factual detail. The Appellants, as I had indicated in the background section, had pleaded a bare denial in their plea, suggesting that they never received the notice. The same bare denial was repeated in the answering affidavit to the summary judgment application with suggestions that the Bank knew that it had to deliver the notice at the bonded address as opposed to the notice or *domicillium* address.

17. In their application for leave to appeal filed on 26 October, Appellants' grounds relating to the notice were simply that: (i) The court failed to attach sufficient weight to the purpose of the notice, and that is, to have any practical effect, the notice must be personally served; and (ii) The court failed to have regard to one of the Appellants' key defences, that the respondent avoided giving effect to Section 129, by serving the notice at the *domicillium* as opposed to the mortgaged property. As is apparent, the

³ (376/2024) [2026] ZASCA 36 (24 March 2026), paragraphs 37-38.

Appellants' case around the notice has been constantly evolving. The point regarding the Track and Trace report was never raised at any stage before the court *a quo*. This should be the end of this ground of appeal.

18. Perhaps for completion, the Bank, as I had indicated, has applied for leave to introduce evidence of the full Track and Trace report. In its founding affidavit to the application to lead further evidence, the Bank cites the prejudicial manner in which the Appellants have conducted themselves throughout this litigation, with their defences constantly changing, notwithstanding that they have been legally represented. The Bank submits that had the Appellants raised the point at the appropriate stage, it would have been alerted to the incomplete Track and Trace report and taken steps to present before the court the full report, via an application to amend. The Bank adds that the registered slips attached to its Particulars of Claim state very clearly that the notice was directed to the Appellants' *domicillium* address in Randburg.

19. Ironically, the Appellants chose to oppose the application. The relevant rule was espoused in *Singh and Another v Ebrahim*, and it reads:

‘(1) There should be some reasonably sufficient explanation, based on allegations which may be true, why the evidence which it sought to lead was not led at the trial.

(2) There should be a *prima facie* likelihood of the truth of the evidence.

(3) The evidence should be materially relevant to the outcome of the trial.

Non-compliance with any one of these requirements would ordinarily result in a refusal of the application to lead further evidence.’⁴

⁴ (413/09) [2010] ZASCA 145 (26 November 2010), paragraph 132.

20. On the first requirement, I am satisfied with the Bank's explanation. The Bank has also attached a confirmatory affidavit from its instructing attorneys, suggesting that it was an oversight that the full Track and Trace report was not attached. The registered slips on their own indicate that the registered mail was directed at the correct post office. The Bank suggests that had the point been raised pointedly, at the appropriate time, it would have presented the full track and trace report. As to the second requirement, relating to the *prima facie* likelihood of the truth of the evidence, credit providers generally rely on the Track and Trace report to substantiate their compliance with Section 129. In *Kubyana v Standard Bank of South Africa Ltd*, the court remarked:

'Once a credit provider has produced the track and trace report indicating that the section 129 notice was sent to the correct branch of the Post Office and has shown that a notification was sent to the consumer by the Post Office, that credit provider will generally have shown that it has discharged its obligations under the Act to effect delivery. The credit provider is at that stage entitled to aver that it has done what is necessary to ensure that the notice reached the consumer.'⁵

21. Finally, the Track and Trace report is material to this particular ground of appeal. I am satisfied that the requirements set out in *Singh*⁶ have been met. The Track and Trace report demonstrates that the registered mail was not sent to the incorrect post office as submitted in the Appellants' heads of argument. This ground of appeal is thus dismissed. I may add that failure to deliver the notice is not fatal. Where the court is not satisfied as to the

⁵ (CCT 65/13) [2014] ZACC 1; 2014 (3) SA 56 (CC); 2014 (4) BCLR 400 (CC) (20 February 2014), paragraph 53.

⁶ Note 6 *supra*.

delivery of the notice, it must adjourn the proceedings so that the credit provider effect such delivery. The point is made in *Sebola and Another v Standard Bank of South Africa Ltd and Another*.

‘Thus, while section 129(1)(b) appears to prohibit the commencement of legal proceedings altogether (“may not commence”), section 130 makes it clear that where action is instituted without prior notice, the action is not void. Far from it. ...The bar on proceedings is thus not absolute, but only dilatory. The absence of notice leads to a pause, not to nullity.⁷

Ground 2: Failure to verify the amount as required by Rule 32(2) (b)

22. In essence, the Appellants submit, for the first time before this court, that the Bank’s summary judgment application ought not to have been granted because the deponent to the founding affidavit failed to verify the amount claimed. Appellants submit that the application was fatally defective for want of compliance with Rule 32 (2) (b). They state that they were prejudiced by about R 200 000.00, which is the difference between the judgment amount of R 1 651 789, 59, and the correct amount outstanding at the time of R 1 452 739. 23. On this basis, the Appellants invite the court to set aside the order or vary the amount of summary judgment by ordering the correct amount of R 1 452 739.23.

23. There is no dispute that this defence was not raised during the summary judgment proceedings. This ground too is not a legal point. On this basis alone, this point should not be entertained.

⁷ (CCT 98/11) [2012] ZA C 11; 2012 (5) SA 142 (CC); 2012 (8) BCLR 785 (CC) (7 June 2012), paragraph 53.

24. In the founding affidavit to the summary judgment application, the deponent under the heading, 'Facts upon which the Plaintiff's claim is based' refers to the higher amount of R 1 651 789.59 as the amount outstanding as at 20 May 2020, and attaches a certificate of balance of that date. Later in the founding affidavit, the deponent states that the full amount owed by the Defendants (Appellants) to the Plaintiff and secured by the bond, is the amount of R 1 452 793.23, which amount excludes further interest from 7 June 2021 to date of full payment, both dates inclusive. The amount is then substantiated by way of a certificate of balance dated 7 June 2021.

25. What had happened, and the Appellants say as much in their first application to amend their grounds of appeal, is that none of the parties had regard to the later certificate of balance during summary judgment proceedings. In other words, the oversight occurred on both sides. Nevertheless, to rectify the mistake caused by the oversight, the court, as stated in its reasons handed down on 24 April 2024, shared its views that the appropriate route to correct the amount was to pass an order in terms of Rule 42 (b) or (c). The Bank had made a submission along the same vein.

26. During the hearing before the court *a quo*, on 7 March 2024, Appellants, according to the reasons, made a *volte-face*, and pursued the line that the court grant them leave to appeal, indicating that they were not going to follow the Rule 42 route. Now, two years later, with costs mounting, the Appellants ask this court, as an alternative to the main relief sought, that this

court correct the amount granted during the summary judgment proceedings. I am reminded of the words of the court in *Madibeng Local Municipality v Public Investment Corporation Ltd*⁸, that litigation is not a game.

27. To sum up, there was and is no fatal defect as the Appellants seek to make out in their papers before this court. The correct amount outstanding at the time was verified in the summary judgment application. The point as is now formulated undermines our established principles of interpretation as espoused in *Coral Lagoon Investments 194 (Pty) Ltd and Another v Capitec Bank Holdings Limited*⁹. This is so because, the Appellants, without reading the affidavit as a whole, simply suggest that the verification of the various amounts renders the application defective. This is consistent with the manner the Appellants have conducted themselves throughout this litigation, constantly changing the substratum of their grounds.

28. At first, the ground was that the amount of R 1651 789.59 claimed in the first prayer of the Notice of Motion to the summary judgment application had not been verified. Before this court, it is the verification of various amounts in the founding affidavit that renders the application fatally defective. The

⁸ (603/2017) [2018] ZASCA 93 (1 June 2018), paragraph 30.

⁹ (Case no.887/2021) [2022] ZASCA 144 (24 October 2022), paragraph 15:

It is trite that interpretation is, generally speaking, an objective process of attributing meaning to the words used in a document, read in the context of the document as a whole and having regard to the apparent purpose of the words. It

is a unitary exercise which must be approached holistically: simultaneously considering the text, context and purpose.

submission is devoid of merit. There was no defect to the summary judgment application, much less a fatal one.

Ground 3: The court erred as to costs

29. The formulation of this ground is rather strange in that all that the Appellants suggest is that the court erred in ordering costs *de bonis propriis* in that the Bank had neither sought nor supported such order. They state that the Bank must have accepted their explanation as to the manner in which their grounds were handled and supplemented along the way. Appellants add that the court descended into the arena inappropriately in granting the order. While it is not clear what the last point suggests, the law when it comes to interference by an appellate court on the exercise of a true discretion by a lower court is trite, and is set out in *Trencon Construction (Pty) Limited v Industrial Development Corporation of South Africa Limited and Another*, where it was said:

[85] A discretion in the true sense is found where the lower court has a wide range of equally permissible options available to it. This type of discretion has been found by this Court in many instances, including matters of costs, damages, and in the award of a remedy in terms of section 35 of the Restitution of Land Rights Act. It is “true” in that the lower court has an election of which option it will apply and any option can never be said to be wrong as each is entirely permissible.

[88] When a lower court exercises a discretion in the true sense, it would ordinarily be inappropriate for an appellate court to interfere unless it is satisfied that this discretion was not exercised—

“judicially, or that it had been influenced by wrong principles or a misdirection on the facts, or that it had reached a decision which in the

result could not reasonably have been made by a court properly directing itself to all the relevant facts and principles.” (Footnote omitted.)’¹⁰

30. That the Bank had neither sought nor voiced anything regarding the costs order ultimately granted by the court is no reason for this court to interfere. Costs, as it is now settled, unless expressly otherwise enacted, are a matter for the presiding judicial officer¹¹. There is no suggestion that the court below did not exercise its discretion judiciously or misdirected itself as to the facts or the law. This ground of appeal must accordingly fail.

Order

1. Prayer 1 of the order granted on 4 August 2021 is hereby amended as follows:

‘Payment of the amount of **R 1 452 793. 23** (One million Four Hundred and Fifty-Two Thousand, Seven Hundred and Ninety-Three Rand, and Twenty-Three cents)’

Otherwise, the appeal is dismissed.
2. The appeal against paragraph 3 of the order of 7 March 2024 is dismissed.
3. Respondent’s application to lead further evidence succeeds with costs.
4. Appellants must pay Respondent’s costs of appeal.

¹⁰ (CCT198/14) [2015] ZACC 22; 2015 (5) SA 245 (CC); 2015 (10) BCLR 1199 (CC) (26 June 2015), paragraphs 85, 88.

¹¹ *Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others* (CT5/95) [1996] ZACC 27; 1996 (2) SA 621 (CC); 1996 (4) BCLR 441 (CC) (19 March 1996), paragraph 3.

BAM J

**JUDGE OF THE HIGH COURT
OF SOUTH AFRICA,
GAUTENG DIVISION,
PRETORIA**

SWANEPOEL J

**JUDGE OF THE HIGH COURT
OF SOUTH AFRICA,
GAUTENG DIVISION,
PRETORIA**

VAN NIEKERK J
JUDGE OF THE HIGH COURT
OF SOUTH AFRICA,
GAUTENG DIVISION,
PRETORIA

Date of Hearing: **18 February 2026**

Date of Judgment: **16 April 2026**

Appearances:

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