



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

CASE NO: 2025-063352

In the matter between:

NEDBANK LIMITED

PLAINTIFF

and

MABUGANA GROUP CC

FIRST DEFENDANT

(REGISTRATIONNUMBER: 2006/90227/23)

OLGA MABUGANA

SECOND DEFENDANT

(ID NUMBER: 8[...])

Coram: Mngadi J

Heard: 5 May 2026

Delivered: 5 May 2026

ORDER

The following order is granted:

1. Summary judgment is granted in favour of the plaintiff against the first and second defendants jointly and severally, the one paying the other to be absolved, for:
 - (a) Payment in the sum of R229,087.78.

- (b) Interest on the aforesaid amount at a rate of 0.00% per annum calculated and capitalised from 31 March 2025 to date of payment, both days inclusive.
- (c) Costs of suit on the attorney and own client scale on the magistrate's court scale.

JUDGMENT

Mngadi J:

Introduction

[1] This is an application for summary judgment.

[2] On 14 October 2024, summary judgment for the return of a motor vehicle, sold by the plaintiff to the first defendant, being a 2020 Ford Ranger Raptor, with chassis number A[...] (the motor vehicle), was granted in favour of the plaintiff (the first summary judgment application). In granting the first summary judgment application, the court also granted the following relief:

'Plaintiff is given leave to apply to court on the same papers, duly supplemented as far as may be necessary or institute new proceedings for judgement for damages and further expenses incurred by the plaintiff in the repossession of the aforesaid vehicle, which amount [c]an only be determined once the vehicle has been repossessed and sold by the Plaintiff.'

[3] As a consequence of the first summary judgment application, the motor vehicle has been physically reclaimed from the first defendant and has been sold and the plaintiff alleges that the first defendant remains indebted to it in an amount of R229 087.78. Rather than supplement its original papers, the plaintiff issued out a fresh summons for the shortfall allegedly owed to it and now seeks summary judgment for a second time in that amount. The second summary judgment application is opposed by the defendants.

The parties

[4] The first defendant is the principal debtor, and the second defendant appears to be the wife of the only director of the first defendant,¹ who is allegedly liable in terms of a deed of suretyship that she concluded as additional security for the obligations of the first defendant to the plaintiff arising out of the sale to it of the motor vehicle.

The first summary judgment application

[5] The first summary judgment application was brought under case number 5893/2024P. This was a paper application, while the present summary judgment application is a digital application with its own distinctive case number.

[6] Included in the order granted in the first summary judgment application was the following order:

‘The instalment sale agreement concluded between parties dated 14 May 2021 (annexure “A1”) is here by rectified by substituting the engine number Y[...] with engine number Y[...].’

This order has some significance to the defence raised by the defendants.

[7] There can be no doubt that the defendants are aware of the granting of the first summary judgment application. After all, the motor vehicle has been removed from the possession of the first defendant, of which the first defendant and the second defendant’s husband, as its only director, must have been aware, and the second set of particulars of claim delivered in this matter makes clear reference to summary judgment having already been granted. There has, however, been no attempt whatsoever to set aside the first summary judgment order. It accordingly remains in place.

The second summary judgment application

[8] The relief claimed by the plaintiff in this application is the following:

- ‘1. Payment in the sum of R229,087.78.
2. Interest on the aforesaid amount at a rate of 0.00% per annum calculated and capitalised from 31 March 2025 to date of payment, both days inclusive.
3. Costs of suit on the attorney and own client scale.’

¹ The first defendant was converted from a close corporation to a private company on XXXXXX.

[9] The capital amount claimed is supported by a certificate of balance put up by the plaintiff in terms of the provisions of clause 17.3 of a document entitled 'Contract for Vehicle Finance Juristic' which is attached to the plaintiff's particulars of claim, which reads as follows:

'The nature and amount of your obligation and the applicable interest rate will be determined and proved by a certificate or any other written evidence ("Certificate") purporting to have been signed by one of our managers, whose capacity or authority does not have to be proved. Unless the contrary is proved, the Certificate will on the production thereof be binding and be prima facie proof of the content thereof and of the fact that the amount is due and payable. The Certificate will be valid as a liquid document (alternatively proof of a liquidated amount) in any competent court or for any other purpose.'²

[10] Clause 12.2 of that same document also makes provision for the plaintiff to claim costs on the attorney and own client scale.

The sale of the motor vehicle

[11] The sale by public auction of the motor vehicle reclaimed from the first defendant by the plaintiff resulted in an amount of R326 038.42 being credited to the first defendant's account with the plaintiff. Prior to that credit being applied, the capital amount outstanding by the first defendant to the plaintiff was the amount of R633 839.48. After application of the credit, according to the plaintiff, the amount due to it by the first defendant was the amount of R216 900.27.

[12] It will readily be appreciated that the figures mentioned above do not add up. Deduction of the amount of R326 038.42 from R633 839.48 leaves a balance of R307 798.06. However, since the amount claimed is less than the amount that could have been claimed, the discrepancy raises no issue.

The defences raised to summary judgment

[13] The defendants delivered a plea and an affidavit resisting the granting of summary judgment. From these documents, several defences are proposed, each of

² *Nedbank v Botha and Another* 2016 JOL 36735 FB.

which is now considered. Before doing so, it bears mentioning that some of the defences raised are not properly raised in relation to the relief now claimed in this application, but relate to defences that could, more appropriately, have been raised at the time that the first summary judgment application was before this court. They were not then raised and the first summary judgment order, as previously noted, was granted, has not been appealed and consequently remains effective. It appears to me that those defences have now been proffered by the defendants as a consequence of them failing to properly comprehend what is being sought in the plaintiff's particulars of claim in this matter. What is being sought is payment of a defined sum of money, as a consequence of the first summary judgment application. Some of the defences raised by the defendants in this application relate to whether the first summary judgment application should have been granted. Those defences consequently will not amount to defences pertinent to the claim that now requires adjudication.

[14] The first defence raised by the defendants is that certain paragraphs that should, according to the defendants, have been included in the plaintiff's particulars of claim were not so included. The consequence of this, so the defendants contend, is that the plaintiff has no cause of action. I disagree. Until the first summary judgment is set aside, the plaintiff has a cause of action to claim the sum of money that it seeks in this summary judgment application.

[15] The next defence raised is that the plaintiff alleged that it was a registered credit provider but did not attach a formal document to buttress that allegation. It has, however, put up such a document in its summary judgment application. It would seem that this is an opportunistic defence taken by the defendants that does not actually relate to the relief claimed in this application. This was a point that should have been taken in the first summary judgment application.

[16] The defendants next claim is that the plaintiff has relied upon a fraudulent document to claim the relief that it seeks. This seems to me to be a contrived defence that is predicated upon an error in recording the full chassis number of the motor vehicle in the credit agreement concluded. What occurred was that a single number in the sequence of numbers that comprise the chassis number was omitted

in the credit agreement. The true number was A[...], but what was recorded was A[...] (the last number 9 was omitted in the sequence). This, in my view, is a patent error. It does not change the identification of the motor vehicle the subject of the instalment sale agreement. Rather than see the duplicitous presence of fraud at work, I prefer to see evidence of the presence of Hanlon's Razor.³

[17] The conclusion of the defendants' defence of fraud is that the plaintiff supplied it with a different motor vehicle than what had been agreed upon. The complaint lacks merit.

[18] The defendants also claim not to have received any notifications sent to them by the plaintiff in terms of s 129 of the National Credit Act 34 of 2005. This is not an issue relevant to this application. In any event, the case has been adequately pleaded by the plaintiff to which there has been no response, that such notices were not required because of the nature of the agreement concluded and that notices were sent simply out of excessive caution. It appears to me that this is correct.

[19] The final point raised by the defendants is that the second defendant did not secure the consent of her husband when concluding her deed of suretyship. She, herself, does not make that claim in the affidavit resisting summary judgment. Instead, that allegation is made by the sole director of the first defendant, who has deposed to that affidavit. His name is Nthambeleni Steven Mabugana (Mr Mabugana). His name is obviously incorporated into the name of the first defendant. He is also the husband of the second defendant.

[20] The credit agreement was concluded between the plaintiff and the first defendant, of which Mr Mabugana, on his own version, is the only director. It is also not in dispute that the first defendant was 'duly represented by the Second Defendant' when concluding the credit agreement.⁴ Mr Mabugana would therefore have this court accept that he granted his wife authority to conclude the transaction on behalf of his company, but did not consent to her signing a deed of suretyship

³ Hanlon's Razor is an adage that simply postulates that one should 'never attribute to malice that which is adequately explained by stupidity.'

⁴ Defendants' affidavit resisting summary judgment, para 3.

that supported the same transaction. I do not see this version as constituting an irresolvable dispute of fact and am satisfied it can be dismissed as being far-fetched and untenable.⁵ In addition, the deed of surety relates to the liability of the second defendant and the second defendant has not sought to impugn the deed of surety in question.

Conclusion

[21] The defendants are required in terms of Rule 32(3)(b) to satisfy the court that they have a *bona fide* defence by disclosing fully the nature and grounds of the defence and the material facts relied upon therefor. No defences, in my view, of any merit that warrant the matter being referred to trial have been shown to exist. The application must accordingly be granted.

Costs

[22] As to costs, the scale upon which they should be ordered has been agreed upon in the credit agreement concluded between the parties and I can discern no reason why those costs should not now be awarded.

Order

[23] I accordingly grant the following order:

1. Summary judgment is granted in favour of the plaintiff against the first and second defendants jointly and severally, the one paying the other to be absolved, for:
 - (a) Payment in the sum of R229,087.78.
 - (b) Interest on the aforesaid amount at a rate of 0.00% per annum calculated and capitalised from 31 March 2025 to date of payment, both days inclusive.
 - (c) Costs of suit on the attorney and own client scale on the magistrate's court scale.

Mngadi J

⁵ *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* 1949 (3) SA 1155 (T).

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