IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2025-065783

DATE: 04.03.2026

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED

In the matter between

NEDBANK LTD Plaintiff / Applicant

and

MOKOENA, SIFISO COMFORT Defendant / Respondent

J U D G M E N T

MOULTRIE J: The applicant is the plaintiff in an action in which it seeks various kinds of relief against the respondent (as defendant) arising out of a credit agreement concluded between the parties in respect of the purchase of a vehicle.

The particulars of claim allege that the respondent breached the agreement, in that he fell behind on payments in respect of the funds extended to him, and that the agreement has consequently been cancelled. The respondent delivered a plea. The plea does not dispute the content of the agreement or, indeed, the allegation that the respondent was in breach thereof. This was confirmed by Mr Mokoena who appeared in person today before me.

The particulars of claim allege that any breach of the agreement by the respondent entitles the applicant (in addition to various other remedies) to take repossession of the goods. Although various prayers are contained in the notice of motion for summary judgment, Mr McTurk made it clear at the hearing before me that only the relief sought is that contained in prayers 1 and 2, those being confirmation of the cancellation of the agreement and return of the goods, and conceded that the relief sought in prayers 3 and 4 was not amenable to summary judgment.

In view of the content of the plea and the information furnished to me in court by the respondent, it is more than clear that the respondent has no *bona fide* defence *vis-à-vis* the relief of cancellation and return of the goods. In argument before me, the respondent raised a number "defences". I will deal with each of them briefly in turn.

Firstly, although he alleges non-compliance with section 108 of the National Credit Act, 34 of 2005 in relation to the giving of regular statements, Mr Mokwena was not able to identify any authority that would justify the refusal of summary judgment in the limited respects sought as a result of any such violation, and I can think of no reason why this would be the case. In any event, and more fundamentally, no such violation has been pleaded, and the only defences that may be raised in a summary judgment application are those foreshadowed in the plea (Absa Bank Ltd v Meiring 2022 (3) SA 449 (WCC) para 20).

Secondly, the respondent disputes certain of the entries on annexure SJ4, being the transaction history attached to the summary judgment application. Once again no defence was raised by the respondent in his plea in relation to this matter, and for that reason alone, this defence does not avail him. However, even accepting that it can be taken into account, Mr McTurk referred me to the provisions of Section 111 of the National Credit Act, which provides the relevant remedy for non-compliance with the requirement to provide an explanation for any disputed entries in a statement. Effectively, that remedy is that it is only if such a concern is raised prior to the commencement of enforcement proceedings that there would be any reason for me not to consider this application for summary judgment. And in the current matter, it is apparent that the enforcement proceedings had already commenced at the time that the concern was raised.

The third argument raised by Mr Mokwena was a factual dispute over the amount outstanding under the credit agreement. Mr Mokwena, however, conceded (correctly in my view) that the dispute of the amount outstanding is one that would stand over for later determination in relation to the remaining elements of the claim in respect of which summary judgment is not sought.

The same applies to the fourth argument raised by Mr Mokwena, namely the contention that the amount claimed is not a liquidated sum in money as required by Rule 32. Mr Mokwena again (correctly) conceded during the hearing that this is not a defence that avails him in circumstances where no amount is actually claimed in the current summary judgment proceedings.

Finally, Mr Mokwena raised an argument based on the general proposition that the conduct of the applicant or plaintiff and its legal representatives had been unjust towards him. He referenced Section 34 of the Constitution, which provides that every person has the right to have their disputes determined fairly in a Court, as well as the case of *Beinash v Wixley* 1997 (3) SA 721 (SCA) relating to the abuse of Court processes. I engaged with Mr Mokwena on this matter but he was not able to identify any particular manner in which the procedure that had been followed in Court had been unjust or was in breach of Section 34 or constituted an abuse, and only referred to a concern regarding "procedural ambush" regarding the filing of heads of argument. I do not accept that there is any reason why I should not grant summary judgment in this matter in the limited respects that are sought, and indeed, Mr Mokwena was constrained to concede during argument that he had not been excluded from any possibility of making any argument he may wish to make or raise any defence which he is entitled to raise in this Court.

In the circumstances, it is apparent that the applicant is entitled to an order in terms of prayers 1 and 2 of the notice of motion.

I see no reason why the applicant should not be entitled to its costs of suit, although I do not consider that the matter was a particularly complex one. I do accept that it was justified in appointing counsel.

And therefore I make the following order:

1. The applicant's cancellation of the agreement is confirmed.
2. The respondent is to return the goods described as a 2014 MAN 27440, engine number 5[...] and chassis number A[...] to the applicant.

3. The respondent is ordered to pay the applicant's costs of suit, including the costs of counsel on scale "A".

……………………………….

MOULTRIE J

JUDGE OF THE HIGH COURT

Hearing and judgment: 4 March 2026

Ex tempore judgment revised: 14 May 2026

For the plaintiff: S McTurk instructed by MacRobert Inc.

For the defendant: In person.