REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: 2024-123018

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES

28/4/2026 ______________________________
DATE SIGNATURE

In the matter between:

SA TAXI FINANCE SOLUTIONS RF (PTY) LTD Plaintiff/Applicant

and

DUMISANI NZUZA Defendant/Respondent

JUDGMENT

WENTZEL J

Introduction

[1] This is an application for summary judgment arising from an instalment sale agreement governed by the National Credit Act 34 of 2005 ("the NCA") in respect of a 2010 Toyota Quantum 2.7 Sesfikile motor vehicle ("the taxi"). The plaintiff seeks cancellation of the agreement, return of the financed taxi, postponement of its claim for any balance or shortfall pending return and valuation of the vehicle, and punitive costs.

[2] The defendant opposes summary judgment contending that he has disclosed bona fide defences raising triable issues principally concerning the section 129 notice and the quantification of the arrears that he says are inaccurate, inflated and affected by

disputed interest variations, insurance premiums, ancillary charges and alleged non-compliance with the NCA.

[3] The plaintiff's central answer is that the defendant admits arrears, that the disputed accounting issues do not affect the fact of breach, and that the court need not finally determine the amount owing at this stage because s 130(2) of the NCA contemplates repossession and sale before any residual damages claim is quantified.

[4] That submission has force as in many instalment-vehicle has been returned, valued and sold. That does not mean, however, that a court must necessarily grant cancellation and repossession- it must be satisfied that the statutory preconditions to enforcement have been met and that no bona fide defence exists to the relief for cancellation and return of the taxi at this stage.

The legal framework

[5] The requirements under Rule 32 are trite: The plaintiff must verify the cause of action by affidavit and explain why the pleaded defences raise no triable issue; the defendant must fully disclose the nature and grounds of his defence with sufficient particularity to show a bona fide, legally sustainable defence. This requires the defendant to disclose the nature and grounds of the defence and the material facts upon which it rests. This does not require the defendant to prove the defence on a balance of probability.

[6] The authorities such as *Maharaj v Barclays National Bank Ltd*,[1] *Tumileng Trading CC v National Security and Fire (Pty) Ltd*,[2] and *Saglo Auto (Pty) Ltd v Black Shades Investments (Pty) Ltd* [3] reaffirm that the court does not decide factual disputes finally at this stage, but must be persuaded that the defence is bona fide, not a sham and is not merely a delaying tactic. The defendant must demonstrate that the defences raised constitute triable issues; bare denials will not suffice.

[7] In NCA matters, the statutory pre-enforcement procedures in sections 129 and 130 form part of the cause of action. Where they have not been complied with, the proceedings are not a nullity but must be adjourned and appropriate steps ordered in terms of section 130(4) to ensure compliance. That principle is clear from *Sebola and Another v Standard*

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[1] 1976 (1) SA 418 (A)
[2] 2020 (6) SA 624 (WCC)
[3] 2021 (2) SA 587 (GP)

Bank of South Africa Ltd and Another, [4]*Kubyana v Standard Bank of South Africa Ltd*,[5] *Blue Chip 2 (Pty) Ltd t/a Blue Chip 49 v Ryneveldt and Others*,[6] and *Absa Bank Ltd v Mkhize and Two Similar Cases*.[7]

[8] At the same time, the Full Court in *Benson and Another v Standard Bank of South Africa (Pty) Ltd and Others*[8] held that where any non-compliance has been properly cured before the matter is heard, and no further steps are required of the credit provider, it would serve no purpose to adjourn the matter merely for its own sake. In *Firstrand Bank Ltd v Maseng and Others* [9] that approach was applied: It was held that once the section 129 notice had in fact been delivered and sufficient time elapsed before the hearing, there was no need for further delay.

[9] A different line of authority, exemplified by *Firstrand Bank Ltd t/a First National Bank v Moonsammy t/a Synka Liquors* [10]and *Land and Agricultural Development Bank of South Africa v Chidawaya and Another*,[11] emphasises strict compliance. In terms of this line of authority non-compliance with section 129 cannot be cured simply by attaching a notice to the summons; the only statutory mechanism for curing the non-compliance is via a stay under section 130(4) to allow proper compliance. Those judgments nonetheless accept that the defence is dilatory; its effect is a pause and a direction to take remedial steps, not a permanent bar to enforcement.

[10] Recent decisions in this Division involving taxi finance, such as *SA Taxi Finance Solutions (Pty) Ltd v Mokobi* [12]and *SA Taxi Development Finance (Pty) Ltd v Nkosi*,[13] confirm that summary judgment may be granted for cancellation and return of the vehicle where the defendant's defences are contrived, but also that fully-particularised disputes about NCA compliance and the accounting can justify a refusal of summary judgment and a referral to trial.

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[4] 2012 (5) SA 142 (CC)
[5] 2014 (3) SA 56 (CC)
[6] 2016 (6) SA 102 (SCA)
[7] 2014 (5) SA 16 (SCA)
[8] 2019 (5) SA 152 (GJ)
[9] 2022 ZAGPPHC 908
[10] 2021 (1) SA 225 (GJ)
[11] 2016 (2) SA 115 (GP)
[12] 2023 ZAGPJHC 751
[13] 2025 ZAGPJHC 1053

Common cause facts

[11] The defendant concluded a written instalment sale agreement with Potpale Investments RF (Pty) Ltd ("Potpale") for a Quantum 2.7 Sesfikile motor vehicle on standard terms which included retention of ownership by the credit provider until full payment, a variable interest rate linked to prime, debiting of insurance and Khusela protection premiums. The defendant chose a domicilium address at 54 Crean Street, Westonaria.

[12] The rights under the agreement were ceded to the plaintiff. In his opposing affidavit the respondent no longer persists in disputing the cession and accepts that Potpale's rights, title and interest were transferred to the plaintiff. The plaintiff's locus standi is thus effectively common cause.

[13] The vehicle was delivered to the respondent who made payments for several years but thereafter fell into arrears. He ultimately admits that he was in arrears at the time of summons, but disputes the amount, contending that the arrears have been inflated by unlawful or unnotified interest and other charges dealt with below.

The section 129 notice

[14] The plaintiff's case is that a section 129(1)(a) notice was sent by registered post to the respondent's chosen domicilium and that the South African Post Office tracking shows the article was processed through the system. The notice was also annexed to the combined summons, which was duly served.

[15] The respondent does not merely say "*I did not receive it*." He specifically relies on the track-and-trace report annexed to the summons which records the registered item as "*In Transit*" and does not, on its face, reflect "*delivery to the relevant post office or postal agency*" as required by section 129(7)(a). He pleads that "*In Transit*" is not written confirmation of delivery to the relevant post office, so the statutory proof-of-delivery requirement is not met and the presumption the plaintiff invokes never arose.

[16] Section 129(5) and (7) require delivery by registered mail and proof by written confirmation of delivery to the relevant post office or postal agency. The authorities relied

upon by the plaintiff, including *Sebola*,[14] *Kubyana*,[15] *Benson*[16] and *Maseng*,[17]do not dispense with that requirement. They recognise that actual receipt is not necessary, but they do require proof that the notice reached the appropriate postal destination or that any non-compliance was cured before judgment.

[17] In *Maseng*, the Pretoria High Court emphasised that the notice was attached to the founding papers and, importantly, that it was common cause that the respondents had collected the section 129 notice at the relevant post office more than 20 business days before the hearing. That is not the case here. The respondent's counsel correctly distinguished *Maseng* and pointed out that the defendant's complaint is not merely that he personally did not receive the notice; it is that the plaintiff's own tracking document does not prove delivery to the relevant post office at all.

[18] The Pretoria court emphasised that written confirmation of delivery to the relevant post office suffices and that whether the consumer in fact received the notification slip is legally irrelevant once such confirmation exists. But in that case the uncontested evidence was that the item had reached the correct post office, a "*first notification*" had been issued, and the debtor had collected the notice prior to the hearing.

[19] By contrast, in *Moonsammy*[18] the Gauteng Local Division held, with reference to the amended text of sections 129(5)-(7) and the Constitutional Court jurisprudence, that non-compliance cannot be cured by simply attaching a notice to the summons; the statute contemplates prior delivery and, failing that, a stay under section 130(4). *Chidawaya* [19] took a similar view, stressing that the section 129 notice is a pre-litigation step that must precede enforcement, although it is a dilatory defence rather than a nullity.

[20] *Mokobi* [20]and *Nkosi* [21] attempt to navigate the tension between the *Benson and Maseng* approach and the stricter approach taken in and *Moonsammy and Chidawaya*. *Mokobi* applied *Benson* where the debtor had in fact received the section 129 notice with the

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[14] *Sebola and Another v Standard Bank of South Africa Ltd and Another* 2012 (5) SA 142 (CC).
[15] *Kubyana v Standard Bank of South Africa Ltd* 2014 (3) SA 56 (CC).
[16] *Benson and Another v Standard Bank of South Africa (Pty) Ltd and Others* 2019 (5) SA 152 (GJ).
[17] *Firstrand Bank Ltd v Maseng and Others* 2022 ZAGPPHC 908
[18] *Firstrand Bank Ltd t/a First National Bank v Moonsammy t/a Synka Liquors* 2021 (1) SA 225 (GJ).
[19] *Land and Agricultural Development Bank of South Africa v Chidawaya and Another* 2016 (2) SA 115 (GP)
[20] *SA Taxi Finance Solutions (Pty) Ltd v Mokobi* 2023 ZAGPJHC 751
[21] *SA Taxi Development Finance (Pty) Ltd v Nkosi* 2025 ZAGPJHC 1053

summons, had long been in default and had not suggested any steps he wished to take under the NCA. The court held that requiring an adjournment for its own sake would be inconsistent with the scheme of sections 129 and 130. *Nkosi* similarly treated address discrepancies and non-receipt complaints as contrived on the particular facts, in circumstances where track-and-trace and other evidence showed that the notice reached the correct post office and any address variations were purely clerical and of no moment.

[21] In the present matter, the factual matrix is different. The track-and-trace report, as pleaded by the respondent and annexed to the summons, never progresses beyond "In Transit" and does not record delivery to a specific post office or the issuing of any first notification. That is objectively distinguishable from *Maseng* and *Nkosi*, where the reports confirmed delivery to a particular post office and, in *Maseng*, even subsequent collection.

[22] The plaintiff relies heavily on *Benson* and *Mokobi* to argue that the fact that the section 129 notice as annexed to the summons plus the passage of time cures any defect. In this court's view, that argument cannot override the statutory requirement that proof of delivery "*is satisfied by*" written confirmation of delivery to the relevant post office. Where, as here, the very track-and-trace document relied upon is equivocal and reflects only "*In Transit*", the plaintiff has not complied with the Act; it has failed to produce "*written confirmation*" contemplated by section 129(7)(a).

[23] On the present papers, there is thus a genuine dispute whether there has been compliance with section 129(5)-(7), or whether any non-compliance had been adequately cured in the *Benson* sense by the time of this hearing. That question cannot be resolved without further evidence on how "In Transit" should be understood in the South African Post Office's system and whether the item in fact reached the correct post office. This is clearly a triable issue.

[24] However, the defence raised is merely a dilatory one as in terms of section 130(3)-(4), if the court determines that the credit provider has not complied with the relevant provisions of the NCA, it must adjourn the matter and make an appropriate order setting out the steps the credit provider must complete before the matter may be resumed. *Moonsammy* emphasises that this is the only statutorily-contemplated cure. This court is not persuaded that this is a case like *Benson* or *Mokobi*, where the non-compliance had plainly been cured before the hearing and where an adjournment would serve no purpose.

[25] The question is whether it is appropriate to adjourn the matter at the summary judgment stage to allow compliance with section 129 to take place. This may have been appropriate had this been the only defence raised. But should it be found that the defence raised concerning the computation of the arrears is bona fide raised and raises a triable issue, little purpose will be served in postponing the matter. This is because leave to defend will in any event be granted in relation to the quantification of the claim.

[26] Moreover, absence compliance in due course with the provisions of section 129, the respondent has disclosed a bona fide and legally cognisable defence to enforcement.

Arrears, interest and accounting

[27] In the plea the defendant specifically pleads reliance on contractual notice provisions requiring written notice of changes concerning the rate of interest or charges. He alleges non-compliance with those provisions and with the NCA.

[28] The defendant accepts he is in arrears, but disputes that the arrears figure advanced by the plaintiff is accurate or lawfully constituted. He alleges that the plaintiff varied the interest rate without the written notices required by clauses 10.3 and 10.4 of the agreement; increased or debited insurance, Khusela protection and service-fee charges without notice; failed to provide regular statements as required by the NCA; and, as a result, that the outstanding balance is unknown, disputed and inflated, requiring a full accounting and recalculation.

[29] These allegations are not bald. The defendant annexes the standard terms, identifies the specific clauses dealing with interest-rate changes and notices, and points out that the SMS log produced by the plaintiff contains arrears notifications but no messages that clearly set out changes in the interest rate or premiums. He also reconciles the initial quotation, which reflected a composite monthly instalment including insurance and Khusela premiums, with later payment patterns and unexplained increases.

[30] The plaintiff contends that the defendant's defence is not bona fide because the agreement itself included insurance and Khusela Asset Protection charges and because the defendant missed several instalments. That may ultimately prove correct. But at the summary judgment stage the question is not whether the plaintiff's version is more probable; it is whether the defendant has disclosed a defence which, if proved, may defeat or reduce the claim or affect the plaintiff's entitlement to enforcement.

[31] This court is therefore satisfied that the defendant has raised a bona fide, triable issue regarding the accounting and composition of the arrears. That does not exculpate him from all liability, but it is sufficient to defeat a claim for summary judgment on monetary amount presently sought.

The plaintiff's entitlement to cancellation and repossession of the taxi at this stage

[32] The plaintiff argues that the interest rate charged has always remained within the NCA's statutory cap for developmental credit and that the arrears plainly arise from missed instalments rather than any alleged overcharging. It emphasises that its present relief is confined to cancellation and return of the vehicle, with any residual damages only to be claimed after the vehicle's sale and valuation under section 130(2). It submits that disputes about the exact quantum of arrears cannot prevent cancellation and its repossession of the taxi.

[33] Here, however, the defendant's challenge goes beyond quantum in a narrow sense. He squarely alleges that the plaintiff has not complied with express contractual notice provisions, has debited unnotified charges and has failed to provide NCA-compliant statements, so that the very basis on which the plaintiff asserts an "*enforceable default*" is contested. That is not an issue that can be resolved by a quick glance at the account; it is inherently an accounting dispute better suited to determination after evidence led at a trial in due course.

[34] The recent decision of the Supreme Court of Appeal in *The Loan Company (Pty) Ltd v National Credit Regulator* confirms the importance of distinguishing lawful contractual debt from unlawful or excessive charges under the NCA. The SCA held that a consumer's obligations under a credit agreement consist only of the capital advanced and the lawful charges, including interest, that may properly be added under the agreement. Although *The Loan Company* concerned pawn transactions, the principle is wider; a credit provider enforcing a credit agreement may not rely on amounts that are not lawfully recoverable. Where the composition of arrears is genuinely disputed and depends on accounting, notice and statutory compliance, the matter is ordinarily unsuitable for summary judgment.

[35] *The Loan Company* underscores the importance of proper disclosure of charges and compliance with the NCA's consumer-protective framework in the enforcement of regulated credit. In that light, the defendant's request that the court withhold final pronouncements on the correctness of the arrears and instead order a full accounting

after the vehicle has been sold is not frivolous. On the summary-judgment standard, these allegations, if proven, would materially affect the residual indebtedness and the lawfulness of past charges.

[36] The plaintiff also relies on *SA Taxi Development Finance (Pty) Ltd v Nkosi*, where summary judgment was granted for cancellation, return of the vehicle, postponement of the residual damages claim and retention of monies paid. That case is distinguishable. There, the court accepted that the s 129 notice reached the relevant post office and that the defences raised did not disclose a triable issue. Here, the defendant squarely disputes the statutory delivery record.

[37] *Benson* held that proceedings commenced without prior notice are not a nullity and may, in appropriate circumstances, be adjourned to permit compliance. It also held that where non-compliance has been cured before the hearing, no useful purpose may be served by adjournment. But that does not mean that a court may grant enforcement relief where the factual record does not establish delivery or cure.

[38] *Moonsammy* adopted a stricter approach and held that non-compliance with s 129 cannot simply be cured by attaching the notice to summons; the court refused summary judgment and stayed the action pending proper compliance. Whether one adopts the approach in *Benson* or the approach in *Moonsammy*, the result on these papers is the same: the court is not in a position to grant final enforcement relief summarily.

[39] The plaintiff argues that because the s 129 notice was attached to the summons, the defendant became aware of his statutory rights and chose not to exercise them. That submission cannot be accepted as an answer to the present evidential difficulty. The issue is not only knowledge; it is whether the court can be satisfied that the statutory preconditions for enforcement have been met before granting cancellation and repossession.

[40] It follows that the proposed middle course - refusing summary judgment on the amount of arrears but granting cancellation, repossession and sale - is not competent on these papers. The return and sale of the vehicle is not neutral or merely procedural relief. It is enforcement of the credit agreement. It would substantially alter the parties' rights and may trigger the very residual debt calculation that the defendant seeks to challenge.

[41] The plaintiff may ultimately establish that the defendant was in default independently of any disputed charges, that the s 129 notice was properly delivered or that any non-compliance was cured, and that it is entitled to cancellation and return of the vehicle.

Those issues must be determined at trial or after proper statutory compliance has been demonstrated.

[42] The defendant has therefore disclosed bona fide defences raising triable issues concerning first, the composition and lawfulness of the arrears; second, the notification and implementation of interest and charges; and third, compliance with s 129 and s 130 of the NCA.

[43] This is not a case in which the court can say, without reasonable doubt, that the defendant has no defence that may possibly succeed.

[44] Summary judgment must accordingly be refused.

Costs

[45] The plaintiff asks for attorney-and-client costs, relying both on the cost clause in the agreement and on authorities dealing with vexatious or contrived defences. The defendant, in turn, points out that he has raised substantial, reasonably arguable disputes on section 129 compliance and the accounting; he contends that punitive costs are inappropriate where the outcome is that leave to defend is granted.

[46] In *Nkosi* and *Mokobi*, punitive costs were awarded where the defendants' defences were found to be unmeritorious and obstructive. Here, by contrast, the combination of the "In Transit" track-and-trace issue and the structured accounting complaints places the matter in a very different category. Although the defendant is in breach, his defences are not sham, and he is entitled to a trial on the outstanding issues.

[47] In those circumstances, the appropriate order is that costs of the summary-judgment application be costs in the cause. It would be unfair at this stage to punish the defendant with attorney-and-client costs where the result is that leave to defend is granted and substantial issues remain to be adjudicated.

[48] Should the plaintiff be able to establish its entitlement to enforce the instalment sale agreement in its terms at the trial, it will be entitled to attorney and client costs in terms of the agreement that will include the costs of the summary judgment application.

Order

[34] In the result, the following order is made:

1. The application for summary judgment is refused.

2. The defendant is granted leave to defend the action.
3. To the extent that the plaintiff persists in enforcement relief under the National Credit Act, the plaintiff must establish compliance with ss 129 and 130 before cancellation, repossession, sale or any residual damages claim may be granted.
4. Costs of the summary judgment application are costs in the cause.

WENTZEL-THOMPSON J
JUDGE OF THE HIGH COURT
JOHANNESBURG

Date of the hearing: 11 March 2026
Date of the judgment: 28 April 2026

For the Applicant: TL Smith
instructed by MVR Attorneys

For the Respondent: J Janse van Rensburg
instructed by Truter Crous Wiggil Attorneys