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**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

Case Number : 705/2022

Not Reportable

**SHACKLETON CREDIT MANAGEMENT
(PTY) LIMITED**

PLAINTIFF

and

KAMAL DEOLALL

FIRST DEFENDANT

SHANITHA DEOLALL

SECOND DEFENDANT

Coram: Reddy J

Reserved: 26 March 2026

Heads filed: 16 April 2026

Delivered: Judgment is handed down electronically by distribution to the parties' legal representatives by e-mail and uploaded to Caselines. The date that the judgment is deemed to be handed down is **1 June 2026 at 10h00.**

Summary: Application for summary judgment — plaintiff (cessionary of Standard Bank) claims R250 626.90 plus interest on a personal loan agreement — defendants plead prescription, defective cession, lack of jurisdiction, illegibility of agreement, and absence of breakdown — whether the defences raise a *bona fide* triable issue — none of the special pleas or merits defences withstand scrutiny — claim not prescribed because of periodic payments, tacit acknowledgment and service of summons within the prescriptive period — cession valid and properly pleaded — court has jurisdiction over both defendants — no triable issue raised — summary judgment granted with costs.

JUDGMENT

REDDY J

Introduction

[1] Before me is an unopposed application for summary judgment brought by the plaintiff, Shackleton Credit Management (Pty) Limited (Shackleton), against the first and second defendants, Kamal Deolall and Shanitha Deolall (the Deolalls). The Deolalls are married in community of property. On 26 March 2026, this application appeared on the unopposed motion court roll. The Deolalls did not file an opposing affidavit to resist the application. Additionally, they did not appear in court that day.

Submissions by Shackleton in the unopposed court

[2] Advocate Smit for Shackleton addressed the court on the merits of the application, and further argued that the Deolall's plea raised no *bona fide* defence constituting a triable issue. Moreover, Advocate Smit contended that the Deolalls had filed their plea solely to stave off the litigation. Additionally, Shackleton had fully complied with the procedural requirements of Uniform Rule 32.

[3] Advocate Smit further submitted that, the Deolalls having filed no resisting affidavit, there was no sworn material before the court capable of clothing the bare averments of the plea with legal or factual substance. Advocate Smit placed store on, inter alia, *Maharaj v Barclays National Bank Ltd*¹; *Jili v Firstrand Bank Ltd t/a Wesbank*² and passages in L de Villiers van Winsen et al, Herbstein & Van Winsen *The Civil Practice of the High Courts of South Africa* (5th ed) vol 1 at 532 and 536.

[4] Having heard Advocate Smit's oral submissions, I was of the view that the matter warranted more careful consideration of the defences pleaded before summary judgment was granted, notwithstanding the absence of any opposing affidavit. That being so, I invited Advocate Smit to file brief written heads of argument addressing each pleaded defence. The heads were duly filed on 16 April 2026 and have been considered together with the papers and the oral submissions made on 26 March 2026.

Background facts

[5] Shackleton is a cessionary of Standard Bank of South Africa Limited ("Standard Bank"). It seeks judgment for payment of R250 626.90, together with

¹*Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A).

² [2013] ZAKZNHC

interest thereon at the contractual rate of 11.560% per annum, calculated daily and compounded monthly from 11 July 2017 to date of final payment, and costs of suit.

[6] The material facts are as follows. Standard Bank extended a personal loan facility to Mr. Deolall pursuant to a written credit agreement entered on or about 28 July 2015. The agreement is governed by the National Credit Act 34 of 2005 (“the NCA”). Mrs. Deolall is joined in her capacity as a spouse married in community of property.

[7] Standard Bank ceded its rights under the loan agreement to CVI Shackleton (Pty) Ltd by way of a written deed of cession, which bears an execution date of 13 December 2019, although Shackleton’s deponent, Ms Victoria Lynne Bissett, concedes that a clerical error arose in the declaration in that the cession was only fully concluded on 18 December 2019 when Standard Bank, as the last party, appended its signature. Shackleton thereafter substituted itself as plaintiff under the name Shackleton Credit Management (Pty) Limited. The court was furnished with a copy of the substitution notice.

[8] Mr. Deolall made payments on the account on 28 July 2017, 28 March 2018, 1 August 2018, 28 September 2018, and 12 April 2019. On 3 September 2020, during a telephone conversation with Yassar Basdew, a call centre employee at Shackleton, Mr. Deolall acknowledged his indebtedness. Corroborative evidence confirmed this.

[9] Simple summons was issued and served on the Deolalls on 4 April 2022. Service on the first defendant was effected via his spouse (the second defendant) at

their shared address, and service on the second defendant was effected personally. Shackleton thereafter followed the prescribed procedural route: a declaration was delivered on 16 January 2025; a notice of bar was served on 10 April 2025; and, after being placed under bar, the defendants delivered a plea on 17 April 2025. The summary judgment application was served on 12 May 2025, within the fifteen-day window contemplated by Uniform Rule 32(1) as amended. The matter was set down for 26 March 2026.

The defences

[10] The Deolalls raised the following defences in their plea:

- (a) prescription in that the loan agreement was concluded on 28 July 2015 and the summons was served only in 2022, exceeding the three-year period under the Prescription Act 68 of 1969;
- (b) no cause of action against Mrs. Deolall, as Shackleton pleaded no independent cause of action against her in its declaration;
- (c) lack of jurisdiction, as all parties are domiciled in KwaZulu-Natal and the matter should therefore be heard in the Durban or Pietermaritzburg High Court;
- (d) failure to specify in the agreement that Shackleton did not identify, with sufficient particularity, which agreement is relied upon;
- (e) defective cession as the cession does not specify what was ceded and does not explain the defendants' nexus to the cession;
- (f) illegibility of Annexure B as the copy of the loan agreement annexed to the declaration was said to be illegible; and

(g)absence of a breakdown, as Shackleton did not furnish a breakdown of the amounts claimed despite repeated requests.

Legal Principles

[11] The court's power to grant summary judgment is found in Uniform Rule 32. Summary judgment is a drastic remedy. It shuts the door of the court against a defendant without a trial. In *Maharaj v Barclays National Bank Ltd*, the court held that it is therefore available only where the plaintiff can establish its claim clearly and the defendant fails to raise a bona fide defence that is good in law and that raises a genuine triable issue.³

[12] The defendant who resists summary judgment must, in an affidavit, disclose the nature and grounds of the defence and the material facts relied upon. The defence must be *bona fide* and not merely a delaying tactic. The court does not enquire into the probabilities; it asks only whether the defence, if accepted as true, would constitute a valid defence.⁴

[13] The Deolalls have not filed an affidavit resisting summary judgment. Put plainly, there is no sworn material before the court to lend factual substance to the bare averments of the plea. Notwithstanding this, the court is obliged to consider whether the plea, in its entirety, discloses a triable defence. It is trite that a court should not grant summary judgment as a matter of course simply because no resistance affidavit was filed. The court must be satisfied that the plaintiff has established the prerequisites for the remedy.

³ Op cit fn 1

⁴*Breitenbach v Fiat SA (Edms) Bpk* 1976 (2) SA 226 (T) at 228B–C.

Defences

Prescription

[14] The Deolalls plead that the action became prescribed before summons was served in 2022. This contention is anchored on the date of conclusion of the loan agreement, being 28 July 2015, and appears to submit that, calculated from that date, three years elapsed before service.

[15] The argument misplaces the application of prescription in our law. Prescription begins to run from the time a debt becomes due, not from the date of conclusion of the agreement.⁵ Even if one were to accept, for the sake of argument, that the prescription ran from the date of the final instalment or the date on which the full balance became due, two distinct acts by Mr. Deolall interrupted the running of the prescription.⁶ First, Mr. Deolall made payments on the account as late as 12 April 2019. Each payment constitutes an acknowledgment of liability which interrupts the running of prescription. Consequently, the prescriptive period was, at the very earliest, extended to 12 April 2022.

[16] Moreover, on 3 September 2020, Mr. Deolall expressly acknowledged the indebtedness in the telephonic communication with Shackleton's call centre employee. That acknowledgment constituted a further interruption. Service of summons on 4 April 2022 accordingly extinguished any prescriptive period that

⁵See s 12(1) of the Prescription Act 68 of 1969.

⁶See Prescription Act above s 14.

may otherwise have begun to run. As I see it, the claim had not prescribed by the time the summons was served.

[17] It follows that this defence is entirely without merit. It does not raise a genuine triable issue.

No cause of action against Mrs. Deolall

[18] The Deolalls contend that Shackleton pleaded no cause of action against Mrs. Deolall in the declaration. This contention is not borne out by the pleadings. To this effect, paragraph 3 of the declaration records, expressly, that Mrs. Deolall is married to Mr. Deolall in community of property. What ought to be underscored is that the Deolalls admitted in paragraph 5 of the plea that their marriage was a marital regime in community of property.

[19] Our law is clear. Where spouses are married in community of property, the joint estate is liable for debts incurred by either spouse in the management of the joint estate during the subsistence of the marriage. It follows as a necessary legal consequence that a creditor is entitled to proceed against both spouses to obtain a judgment enforceable against the joint estate. Mrs. Deolall was properly joined. No separate cause of action against her individually is required.

[20] This defence is without legal foundation and is rejected.

Jurisdiction

[21] The Deolalls contend that this court lacks jurisdiction because all parties are based in KwaZulu-Natal. Convenience does not determine jurisdiction. The

enquiry is whether the court has a recognised basis for exercising jurisdiction over each defendant in respect of the claim asserted.

[22] As regards Mr Deolall, clause 13 of the loan agreement records the address 2[...] C[...] N[...] A[...], Bosduif Crescent, Safari Gardens/Safarituine, Rustenburg as his *domicilium citandi et executandi*. Absent any written notification from Mr. Deolall of a change of address, the Rustenburg address remains operative. This court accordingly has jurisdiction over the first defendant *ratione domicilii* and *ratione contractus*. The principle that the plaintiff follows the defendant to his forum is well established.⁷

[23] As regards Mrs Deolall, she is not a party to the loan agreement and has nominated no independent *domicilium* under it. She is joined solely in her capacity as spouse married in community of property to Mr. Deolall. The cause of action asserted against her is not an independent claim, but the self-same claim advanced against the joint estate. Section 17(5) of the Matrimonial Property Act 88 of 1984 expressly contemplates that a creditor may institute proceedings against both spouses jointly in respect of a debt recoverable from the joint estate.⁸ Where a single, indivisible claim is brought against spouses jointly and severally in respect of the joint estate, and this court has jurisdiction over one spouse in respect of that claim, it has jurisdiction over the other spouse in respect of the same claim. To hold otherwise would be to require a plaintiff to fragment a single joint estate claim across different jurisdictions, a result that the law does not require or permit.

⁷ *Thermo Radiant Oven Sales (Pty) Ltd v Nelspruit Bakeries (Pty) Ltd* 1969 (2) SA 295 (A) at 305C.

⁸ s17(5) of the Matrimonial Property Act 88 of 1984 provides that, where a debt is recoverable from the joint estate, a creditor may institute legal proceedings against the spouse who incurred the debt, or against both spouses jointly. The plaintiff has correctly joined both spouses.

Jurisdiction over Mrs. Deolall is accordingly established as an incident of jurisdiction over the joint estate claim.

[24] A court has a discretion to decline jurisdiction in favour of a more convenient forum, but that discretion arises only on application. No such application has been made. The jurisdiction defence fails as to both defendants.

Failure to specify the agreement and illegibility

[25] The Deolalls plead that Shackleton does not specify which agreement is relied upon, and that Annexure B to the declaration is illegible. Both contentions are unfounded. The declaration identifies the loan agreement with specificity. It identifies the parties, the date, the nature of the facility, and annexes a copy of the agreement. Shackleton's affidavit in support of the summary judgment application further annexes a legible copy of the agreement for the Deolalls' edification.

[26] The averment of illegibility is an exercise in grasping at straws. There are no primary facts. The illegibility allegation is unsubstantiated. To my mind, it is the kind of formulaic objection courts have repeatedly deprecated.

[27] It does not disclose a genuine triable issue.

Defective cession

[28] The Deolalls plead that the cession is defective because it does not specify what was ceded and does not explain how they are linked to the cession. The first cession agreement, properly read, identifies in points 1 to 6 precisely what was ceded. Clause 14.1 of the loan agreement further provides that Standard Bank may

cede its rights under the agreement to any person without the borrower's prior consent. Accordingly, there is a contractual basis for the cession, and no consent was required.

[29] The Deolalls' complaint that the declaration's date, 13 December 2019, differs from the actual execution date, 18 December 2019, is, as Shackleton's deponent correctly concedes, the result of a clerical error. It does not impeach the validity of the cession, an independent legal event governed by the agreement itself. The error is immaterial to Shackleton's entitlement.

[30] This defence, too, fails.

Absence of a breakdown

[31] The Deolalls assert that they were not furnished with a breakdown of the claim despite requests to Standard Bank and its legal representatives. The claim, however, is a liquidated amount based on a credit agreement and a certificate of balance. The amount of R250 626.90 is pleaded in the declaration and confirmed by the certificate of balance and the account statement. A liquidated amount requires no further breakdown. It is a quantum ascertainable from the document itself.

[32] Even so, the Deolalls' complaint about a breakdown is directed at Standard Bank and its representatives. Shackleton is a cessionary and stands in the shoes of the cedent insofar as the rights under the agreement are concerned.

[33] It follows that the defence is without merit.

Section 129 notice

[34] The Deolalls put Shackleton to proof of delivery of the s 129(1)(a) notice. Three aspects require separate consideration; the legal obligation, the scope of the obligation as between the Deolalls, and the effect of the registered items having been returned to sender.

[35] The NCA's s 129(1)(a) obligation runs to the consumer, the party to the credit agreement to whom credit is granted.⁹ That person is Mr. Deolall. Mrs. Deolall is not a consumer under the agreement; she is joined on community of property grounds alone. There is accordingly no independent statutory obligation to deliver a s 129 notice to her, and the absence of a separate compliant delivery to her does not impeach Shackleton's right to proceed.

[36] Towards this end, the s 129 letter, to both the summons and the declaration, was sent by registered post on 15 March 2022 to Mr. Deolall's *domicilium* address at Rustenburg, the very address he nominated in the agreement for the receipt of legal notices. The track-and-trace records confirm that the registered item was tendered at the Rustenburg post office and was ultimately returned to sender after the consumer failed to collect it.

[37] The law is settled that a s 129(1)(a) notice is duly delivered when sent by registered post to the consumer's chosen address in the credit agreement and

⁹ "Consumer" is defined in s 1 of the National Credit Act 34 of 2005 as the party to a credit agreement to whom credit is granted. Mrs. Deolall is not a party to the loan agreement and accordingly does not fall within the statutory definition.

received at the designated post office, even if the notice is ultimately not collected by the consumer.¹⁰ A consumer may not nominate an address for receipt of notices and thereafter defeat the statutory mechanism by declining to collect registered mail addressed to that address.¹¹ The fact that the registered item was returned to sender does not invalidate delivery. The track-and-trace records show the item reached the Rustenburg post office, which satisfies the delivery requirement. Compliance with s 129 is accordingly established.

[38] The defence is not a *bona fide* one.

Conclusion

[39] Viewing the defences in their entirety, I am satisfied that none of them raises a genuine triable issue capable of resisting summary judgment. The plea reads as a careful series of technical objections, each designed to delay the inevitable. The Deolall's have not placed a single fact before this court that, if proven at trial, would constitute an answer to Shackleton's claim.

[40] Shackleton's case, by contrast, is pleaded with precision and is supported by appropriate documentary evidence, the loan agreement, the cession, the certificate of balance, the payment history, the record of the acknowledgment of liability, and proof of compliance with the NCA. The requirements of Rule 32(2) are satisfied.

[41] I conclude that Shackleton has established an unanswerable case. Summary judgment must be granted.

¹⁰ *Sebola and Another v Standard Bank of South Africa Ltd and Another* 2012 (5) SA 142 (CC) para 86-88.

¹¹ *Kubyana v Standard Bank of South Africa Ltd* 2014 (3) SA 56 (CC) paras 35-38.

Costs

[42] Costs follow the result. There is no reason to depart from the ordinary rule. The Deolalls, despite having been served with the application and the set-down notice on more than one occasion, chose neither to resist the application on affidavit nor to appear in court. Shackleton is entitled to its costs.

[43] As to the scale of costs, I have considered whether the loan agreement contains a contractual basis for costs on an attorney-client scale. There is no contractual entitlement to costs on any enhanced scale. The costs award shall be on the party-and-party scale.

Order

[44] Resultantly, I make the following order:

1. Summary judgment is granted against the first and second defendants, jointly and severally, the one paying the other to be absolved, for:
 - (a) payment of the sum of R250 626.90;
 - (b) interest on R250 626.90 at the rate of 11.560% per annum, calculated daily and compounded monthly from 11 July 2017 to date of final payment; and
 - (c) costs of suit on the party-and-party scale.
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A REDDY
JUDGE OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG

Appearances:

For the Plaintiff: Advocate D Smit

Instructed by: Lynn & Main Attorneys, Pietermaritzburg
C/O VRTW Inc, Mahikeng

For the Defendants: No appearance