

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

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

CASE NO: 2024-106824

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO

(3) REVISED.

SIGNATURE

DATE 25 May 2026

In the matter of:

TRANSEC 5 (RF) LIMITED

Plaintiff

And

MANTABOGE TALANE

Defendant

Delivered: This judgment is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading to Caselines. The date of hand-down is deemed to be 25 May 2026

JUDGMENT

LUKHAIMANE AJ

- [1] The plaintiff applies for summary judgment against the defendant. The plaintiff's cause of action is founded upon an instalment sale agreement concluded between the defendant and Potpale Investments (RF) on 24 November 2020¹, which agreement was later ceded to the plaintiff. However, nothing turns on the cession. In terms of the agreement, the plaintiff financed the purchase of the defendant's motor vehicle. For the sake of convenience, the parties are referred to as in the main action.
- [2] In terms of the agreement the plaintiff sold a 2020 TOYOTA QUANTUM / HI-ACE 2.7 SESFIKILE 16S to the defendant, with engine number 2[...] and chassis number A[...] (the vehicle).
- [3] In its particulars of claim, the plaintiff alleged that the defendant had breached the agreement by failing to make the monthly instalments to it and was in arrears in the amount of R101 394.64 as at September 2024². After giving notice to the defendant in terms of the National Credit Act³ (NCA) the defendant remained in breach of the agreement which entitled the plaintiff to cancel the agreement, which it duly did.
- [4] The plaintiff then instituted action against the defendant seeking judgment for orders confirming cancellation of the agreement, the return of the vehicle to the plaintiff and costs. The plaintiff does not seek any monetary relief and asks that the damages component of its claim be postponed *sine die*.
- [5] On 9 December 2024, following the defendant's plea which was served and filed on 20 November 2024, the plaintiff delivered notice of intention to amend the particulars of claim and, on 6 January 2025, effected the amendment by

¹ Annexure B to POC; CaseLines 002-14 to 21

² POC CaseLines 002-65

³ 34 of 2005

delivering the amended page on the particulars of claim. The plaintiff brought the application on 21 January 2025. The plaintiff took the view that the defendant's plea did not appear to be *bona fide*, had been delivered to delay the plaintiff's claim and applied for summary judgment for the relief set out above. The plea was essentially that his vehicle was stolen and replaced by his insurer. However, this replacement vehicle broke down a lot and since demanding that the insurer rectifies the issue on 16 May 2024, the insurer has failed to do so. Despite stating that he intended to join the insurer to the claim, as at the date of the application, the defendant had not yet done so.

- [6] The defendant opposes the application for summary judgment and raises points *in limine* without dealing with the merits of the claim, i.e no defence to the claim is advanced except a bald denial⁴.
- [7] The defendant contends that summary judgment cannot be granted as there is non-compliance with Rule 32 of the Uniform Rules of Court and the relief sought in the application is not competent in a summary judgment application. The defendant contends that the plaintiff is not entitled to cancellation of the agreement, return of the vehicle and postponement of the claim for damages.
- [8] The defendant further states that the application was brought 21 (twenty-one) days late on 21 January 2025 instead of 11 December 2024, if regard is had to when she filed her plea. The defendant further argued that the plaintiff's notice of motion is procedurally flawed and ought to be dismissed as it is tantamount to an application brought under Uniform Rule 6, initiating new proceedings altogether.
- [9] The plaintiff contends that the defendant did not raise the issue of the liquid document in her pleadings and should not be allowed to do so in argument.

⁴ Defendant's plea CaseLines 002-80

The plaintiff further contends that the defendant's plea does not raise any triable issues let alone a defence and the summary judgment application should be granted.

[10] The principles governing summary judgment are provided for in Rule 32 of the Uniform Rules of Court and have become trite. Rule 32 provides as follows:

“(1) The plaintiff may, after the defendant has delivered a plea, apply to court for summary judgment on each of such claims in the summons as is only -

- (a) on a liquid document;
- (b) for a liquidated amount in money;
- (c) for delivery of specified movable property; or
- (d) for ejectment,

together with any claim for interest and costs.

(2)

- (a) Within 15 days after the date of delivery of the plea, the plaintiff shall deliver a notice of application for summary judgment, together with an affidavit made by the plaintiff or by any other person who can swear positively to the facts.
- (b) The plaintiff shall, in the affidavit referred to in subrule (2)(a) verify the cause of action and the amount, if any, claimed, and identify any point of law relied upon and the facts upon which the plaintiff's claim is based, and explain briefly why the defence as pleaded does not raise any issue for trial.
- (c) If the claim is founded on a liquid document a copy of the document shall be annexed to such affidavit and the notice of application for summary judgment shall state that the application will be set down for hearing on a stated day not being less than 15 days from the date of delivery thereof. “

[11] Rule 30A of the Uniform Rules of Court provides for non-compliance with rules and court orders and states as follows:

- “(1) Where a party fails to comply with these Rules or with a request made or notice given pursuant thereto, or with an order or direction made by a court or in a judicial case management process referred to in Rule 37A, any other party may notify the defaulting party that he or she intends, after the lapse of 10 days from the date of delivery of such notification, to apply for an order –
- (a) that such rule, notice, request, order or direction be complied with; or
 - (b) that the claim or defence be struck out.
- (2)

[12] It is true that after becoming aware of the fact that the plaintiff had filed its application for summary judgment 21 days late, the defendant had 10 days within which to give notice thereof to the plaintiff, who in turn would have had 15 days to cure the irregular step. Both parties failed to act on the irregular step. The plaintiff further failed to file a substantive condonation application for the court to condone the non-compliance, instead raising such from the bar during argument. More importantly though, the defendant is precluded from raising the issue of the non-compliance at this juncture. It took a further step in the litigation, thereby condoning the plaintiff’s non-compliance. In addition, the defendant has failed to show any prejudice that he has suffered or stands to suffer. Therefore, the court finds that the parties are properly before court for the consideration of the matter.

[13] For a defendant to succeed in resisting an application for summary judgment, it must be shown that there is a *bona fide* defence to the applicant’s claim which raises a triable issue⁵. The defendant must fully disclose the nature and grounds of the defence, and the material facts relied upon therefor. In

⁵ Rule 32(3)(b) of the Uniform Rules of Court

Breitenbach v Fiat SA (Edms) Bpk⁶, the court held that bald, vague and sketchy defences should not be tolerated.

- [14] The plaintiff accepts that the application must be accompanied by an affidavit from a person who can swear positively to the facts and verify the cause of action in the particulars of claim. The facts alleged must be in the deponent's personal knowledge. Firsthand knowledge of every fact is not required. If the applicant is a corporate entity, the deponent may rely on records in the company's possession⁷.
- [15] The applicant's deponent is a legal operations manager who has control and possession of the applicant's records, accounts and other documents for this claim⁸. In any case, the defendant does not raise this as a bone of contention in its papers.
- [16] It is the plaintiff's case that the defendant is required to demonstrate that it has a *bona fide* defence that if proved at trial, would be a complete defence to the plaintiff's claim⁹. It must fully disclose the nature, grounds and the material facts relied on for the defence¹⁰. Such disclosure must be of sufficient particularity and completeness to enable the court to decide whether a *bona fide* defence has indeed been disclosed.
- [17] In his plea, the defendant did not dispute that as of September 2024, he was in arrears for R101 394.64, plus interest as per the affidavit of the plaintiff's legal operations manager and evidenced by a certificate of balance. As indicated above, the defendant's plea was mostly about the dispute with the in-

⁶ 1976 (2) SA 226 (T) at 229F-H

⁷ Dean Gillian Rees v Investec Bank Limited 2014(4) SA (SCA) at paragraph 12

⁸ Heads of Argument CaseLines 014-71

⁹ Maharaj v Barclays National Bank Ltd 1976 (1) SA 418 (A) at 426 B-C

¹⁰ Breitenbach v Fiat SA (Edms) Bpk 1976 (2) SA 226 (T)

surer and not a denial that he owes the plaintiff money for the vehicle. Besides, the exact quantification of the defendant's indebtedness is not an issue at present. The plaintiff only seeks cancellation of the agreement and return of the vehicle to it. It is the indebtedness and not the actual quantum that entitles the plaintiff to the relief that it seeks.

[18] In *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joints Venture*¹¹, the court held that:

[31] So too in South Africa, the summary judgement procedure was not intended to 'shut (a defendant) out from defending', unless it was very clear indeed that he had no case in the action. It was intended to prevent sham defences from defeating the rights of parties by delay, and at the same time causing great loss to plaintiffs who were endeavoring to enforce their rights.

*[32] The rationale for summary judgement proceedings is impeccable. The procedure is not intended to deprive a defendant with a triable issue or a sustainable defence of her/his day in court. After almost a century of successful application in our courts, summary judgment applications can hardly continue to be described as extraordinary. Our Courts, both of first instance and at appellate level, have during that time rightly been trusted to ensure that a defendant with a triable issue is not shut out. In the *Maharaj v Barclays National Bank Ltd 1976 (1) SA 418 (A)* case at 425G – 426E, Corbett JA, was keen to ensure first, an examination of whether there has been sufficient disclosures by a defendant of the nature and grounds of his defence and the facts upon which it is founded. The second consideration is that the defence so disclosed must be both bona fide and good in law. A court which is satisfied that this threshold has been crossed is then bound to refuse summary judgment. Corbett JA also warned against requiring of a defendant the precision apposite to pleadings. However, the learned judge was equally astute to ensure that recalcitrant debtors pay what is due to a creditor.*

¹¹ (161/08) [2009] ZASCA 23; 2009 (5) SA 1 (SCA); [2009] All SA 407 (SCA) (27 March 2009)

[33] *Having regard to its purpose and its proper application, summary judgment proceedings only hold terrors and are ‘drastic’ for a defendant who has no defence. Perhaps the time has come to discard these labels and to concentrate rather on the proper application of the rule, as set out with customary clarity and elegance by Corbett JA in the Maharaj case at 425G – 426E,”*

[19] In the matter of NPGS Protection and Security Services CC and Another v FirstRand Bank Ltd¹², the court held as follows in relation to denials in pleadings:

“Rule 32(3) of the Uniform Rules requires an opposing affidavit to disclose fully the nature and grounds of the defense, and the material facts relied upon therefor. To stave off summary judgment, a defendant cannot content him or herself with bald denials, for example, that it is not clear how the amount claimed was made up. Something more is required. If a defendant disputes the amount claimed, he or she should say so and set out a factual basis for such denial. This could be done by giving examples of payments made by them which have not been credited to their account”

[20] The defendant has failed to profer a defence to the claim. The defendant’s difficulty is that in seeking to stave off summary judgment, she does not disclose a defence to the plaintiff’s claim for cancellation of the agreement and repossession of the vehicle. The plaintiff’s right to cancel the agreement accrued once the defendant was in breach and had failed to remedy her breach after notice thereof had been given to the defendant pursuant to the terms of the agreement and sections 129 and 130 of the NCA. There is thus no response by the defendant to the fact that she failed to comply with the instalment obligations under the agreement nor is there one as to the plaintiff’s entitlement to cancel the agreement and return of the vehicle. The defendant received the

¹² (314/2018) [2019] ZASCA 94; [2019] 3 All SA 391 (SCA); 2020 (1) SA 494 (SCA) (6 June 2019) at paragraph 11

s129 and 130 notices as they were not only confirmed to have been delivered to the post office, which delivery she received notice of; they were also attached to the summons.

[21] A defendant may not refuse to plead over. He must raise all his defences at the first opportunity to plead¹³. If a defendant fails to admit, deny or confess and avoid all the material facts alleged, he is deemed to admit the allegations. The defendant's argument is that because he holds the application to be non-compliant with the rules, he is exempt from providing a defence to the claim, which belief is erroneous in law. The defendant progressed the litigation and failed to raise the non-compliance; further failing to advance a defence to the claim.

[22] I am of the view that the plaintiff has satisfied the requirements for summary judgment, and the defendant has not provided a defence to the claim. The plaintiff was entitled to cancel the agreement, which it did. As far as the non-compliance is concerned, the balance of prejudice favours the plaintiff.

[23] As far as costs are concerned, these are awarded on attorney and client scale as provided for in the instalment sale agreement.

[24] Under the circumstances I make the following order:

1. The cancellation of the instalment sale agreement is confirmed;
2. The defendant is directed to restore to the plaintiff possession of the vehicle, being a **2020 TOYOTA QUANTUM / HIACE 2.7 SESFIKILE 16S** with Chassis Number: **A[...]** and Engine Number: **2[...]**;

¹³ Thyssen v Cape St Francis Township (Pty) Ltd 1966 (2) SA 115 (E)

3. The plaintiff is entitled to retain all monies paid to it by the defendant pursuant to the instalment sale agreement;
4. The damages component of the plaintiff's claim is postponed *sine die*.
5. Costs of suit on attorney and client scale.

LUKHAIMANE AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances

Counsel for Applicant : Adv E Mann

Instructed by : MVR Attorneys Inc

For the Respondents : T Morotolo (T Morotolo Attorneys)

Date of hearing : 22 April 2026

Date of Judgment : 25 May 2026