IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 36218/19

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

[redacted] 22 June 2026

SIGNATURE DATE

In the matter between:

NEDBANK LIMITED **PLAINTIFF/ APPLICANT**

and

MPUTI ALFRED MAMPURU **DEFENDANT /RESPONDENT**

This judgment was prepared and authored by the Judge whose name is reflected and is electronically circulated to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be ***22 June 2026***

JUDGMENT

ENGELBRECHT AJ

Introduction

1. Nedbank Limited (Nedbank) brings an application for summary judgment, seeking payment of a shortfall under an instalment sale agreement for a motor vehicle. Mr Mputi Alfred Mampuru (Mr Mampuru) opposes the application.

Background and chronology

2. In March 2018, Nedbank and Mr Mampuru entered into a written instalment sale agreement (the Agreement) under which Mr Mampuru was to pay monthly instalments as provided for. Failure to pay amounts due to Nedbank would entitle Nedbank to cancel the Agreement, obtain the return of the vehicle, sell the vehicle, retain payments already made in terms of the Agreement, and claim from Mr Mampuru the balance (if any) as damages.

3. When Mr Mampuru breached the Agreement, Nedbank, in May 2019, instituted action seeking confirmation of termination of the Agreement, return of the vehicle, and an order authorising Nedbank to apply to this Court on the same papers (supplemented insofar as may be necessary), for judgment in respect of any damages and further expenses, the amount of which could only be determined after repossession and sale of the vehicle.

4. Mr Mampuru did not enter an appearance to defend or file a plea.

5. On 19 September 2019, default judgment was granted in terms of rule 31(5) of the Uniform Rules. The order confirmed termination of the Agreement and ordered the return of the motor vehicle. Paragraph (c) of the order gave authorisation for application on the same papers, supplemented insofar as necessary, for judgment in respect of damages and further expenses incurred by Nedbank in the repossession of the vehicle, "*which amount can only be determined once the vehicle has been repossessed by [Nedbank] and has been sold*". In brackets, the order recorded "*Quantum portion postponed sine die*".

6. Nedbank repossessed the vehicle and had it valued. The vehicle was sold on 14 November 2019, and the net proceeds of the sale were credited to Mr Mampuru's account, as reflected in a notification of 28 November 2019. The notification recorded that the outstanding balance at the time was R161 780.13, and Mr Mampuru was called upon to make payment. He did not. By 12 February 2024, the issued certificate of balance reflected the amount due as R164 219.16.

7. Nedbank made an application for default judgment once more. The damages affidavit dated 27 February 2024, filed on Nedbank's behalf, indicated an intention to seek judgment in the amount of R164 219.16 and no interest. On 25 April 2025, default judgment was refused on the basis that service was stale. The default application was then served on Mr Mampuru on 12 June 2025.

8. On 26 June 2025, Mr Mampuru's legal representative filed a notice of intention to defend on his behalf, and on 30 June 2025, Mr Mampuru filed his plea to the particulars of claim.

8.1. He raised a special plea of prescription, alleging that the prescription period began to run on 23 May 2019, alternatively on 19 September 2019, when default judgment was granted. Applying a three-year prescription period, he pleaded that the claim for the payment of the shortfall was to have been pursued by 23 May 2022, alternatively 19 September 2022. It was asserted that the claim had become prescribed in accordance with the provisions of the Prescription Act 68 of 1969 (Prescription Act), although no specific provision of the statute was identified.

8.2. A further special plea challenged the jurisdiction of this Court to entertain the claim, on the basis that clause 20 of the Agreement provided that "*any legal proceedings that may be brought in terms of this agreement may be heard in a magistrate's court, regardless of the amount claimed*", and because the amount claimed (R164 219.16) falls within the monetary jurisdiction of the Magistrates' Court.

8.3. When it came to the merits, Mr Mampuru "*noted*" all of the allegations in the Statement of Claim (SOC). The only denial offered concerned the allegations in the SOC regarding jurisdiction. Then, purportedly relying on a repetition of his special pleas, Mr Mampuru denied being indebted to Nedbank.

9. Mr Mampuru's plea was followed on 5 July 2025 by an answering affidavit opposing default judgment.

10. Nedbank then filed its application for summary judgment on 16 July 2025. It no longer pursued default judgment.

Summary judgment

11. Summary judgment procedure provides for a speedy judgment in favour of a deserving plaintiff where it can be shown that the defendant does not have a triable defence.

12. Rule 32 (2) provides:

"(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 less than 15 days from the date of the delivery thereof."

13. The defendant, in response, is required to set out facts which proven at trial, will constitute an answer to the plaintiff's claim.

14. The Court, in evaluating the application for summary judgment, must be guided by the consideration in *Maharaj v Barclays National Bank Ltd*,[1] where Corbett JA stated the following;

"*The grant of the remedy is based on the supposition that the plaintiff's claim is unimpeachable and that the defendant's defence is bogus and bad in law.*"[2]

15. Generally speaking, the defendant must meet four requirements to thwart the grant of summary judgment: he must disclose the nature of the grounds of his defence, he must disclose the facts on which he bases his defence, the defence must be *bona fide*, and the defence must be good in law. The facts that he provides must be such that, if proven at trial, they will constitute an answer to the plaintiff's claim.

Basis for the application and the defence raised in answer

16. In bringing its summary judgment application, Nedbank relies on the content of the 19 September 2019 order, the subsequent repossession and sale of the vehicle leading to a credit to Mr Mampuru's account, as well as a certificate of

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[1] 1976 (1) SA 418 (A).
[2] At 424G.

indebtedness that reflects the amount due by Mr Mampuru. An updated certificate of balance dated 25 February 2025 reflects an indebtedness in the amount of R167 755.18, but the notice of motion seeks payment only of the amount of R164 219.16, being the amount of indebtedness reflected in the February 2024 certificate of balance. No interest is sought, but the notice of motion includes a prayer for costs on the attorney-and-client scale.

17. Dealing with the defences Mr Mampuru raised in his plea, Nedbank:

17.1. relied on the judgment of the Supreme Court of Appeal (SCA) in *Standard Bank of South Africa Ltd and Others v Thobejane and Others; Standard Bank of SA Ltd v Gqirana N O and Another*[3] (*Thobejane*) to dispose of the jurisdictional challenge;

17.2. in response to the prescription claim, referred to the unreported judgment in *FirstRand Bank Limited t/a Wesbank v Shosholoza Steel Suppliers (Pty) Ltd and Others*[4] (*Shosholoza*) which held that prescription was interrupted by the issue of summons, even though the calculation of damages had to be postponed on the ground that the amount due could not be ascertained at the time;[5]

17.3. highlighted that no further defence emerged from the plea, so that there was no defence to the claim for payment; and

17.4. accordingly submitted that no *bona fide* defence was raised to its claim.

18. Mr Mampuru's response in the answering affidavit setting out the basis for opposition to summary judgment:

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[3] 2021 (6) SA 403 (SCA).
[4] [2014] ZAGPJHC 55.
[5] At paras 30 – 32.

18.1. sought to make something of the fact that an earlier attempt to obtain default judgment was met by an order to re-serve the default application, and complained that Nedbank was taking a *"detour"*, describing its actions in bringing the summary judgment application as *"contempt"*;

18.2. highlighted that there was a difference between the amount assertedly credited to Mr Mampuru's account and the amount of credit reflected in correspondence under the National Credit Act 34 of 2005 (NCA), so that the due amount reflected in the certificate of balance is to be questioned;

18.3. complained of absence of evidence that any amount was credited to Mr Mampuru's account;

18.4. referred to the presence on CaseLines of documents relating to another matter, said to be prejudicial to Mr Mampuru on the basis that he does not know what is to be made of the presence of these documents on the CaseLines profile in his matter;

18.5. submitted that the jurisdictional point was to be resolved by reference to the terms of the Agreement, which provided for the institution of proceedings in the Magistrates' Court; and

18.6. sought dismissal of the summary judgment application on the basis that the Court did not enjoy jurisdiction, alternatively that the claim had become prescribed, because prescription started running again when the amount of indebtedness was capable of being established, and was established in November 2019.

The issues

19. The plea and affidavit in opposition to summary judgment raise three issues for determination:

19.1. whether the jurisdictional objection is good in law;

19.2. whether the prescription point is good in law; and

19.3. whether concerns expressed about the calculation of the amount due provide a basis to refuse summary judgment.

20. I highlight that the complaint about the "*detour*" does not raise an issue for determination. After service of the default judgment application, notice of intention to defend was given and a plea filed. There was no basis for Nedbank to pursue default judgment by that stage. It was not precluded in law, then, from bringing a summary judgment application within the prescribed period. Nedbank did so.

Jurisdiction

21. The asserted claim that this Court lacks jurisdiction cannot be sustained.

22. In *Thobejane* the SCA made an order that the "*High Court must entertain matters within its territorial jurisdiction that fall within the jurisdiction of the Magistrates' Courts, if brought before it, because it has concurrent jurisdiction with the Magistrates Court*",[6] and the "*High Court is obliged to entertain*

[6] *Thobejane* Order para 1.

matters that fall within the jurisdiction of a Magistrates' Court because the High Court has concurrent jurisdiction".[7] The SCA further ordered that "*There is no obligation in law on financial institutions to consider the cost implications and access to justice of financially distressed people when a particular court of competent jurisdiction is chosen in which to institute proceedings"*.[8] In making these orders, the SCA confirmed long-standing jurisprudence to the effect that a Court that enjoys concurrent jurisdiction cannot decline to exercise its jurisdiction.

23. Confronted with the unassailable authority of the SCA, counsel for Mr Mampuru nevertheless valiantly argued that, under the *pacta sunt servanda* principle, the action ought to have been instituted in the Magistrates' Court, because the parties agreed on the jurisdiction of the Magistrates' Court. That argument cannot be upheld. It is plain that clause 20 of the Agreement was permissive in its language, using the word "*may*" rather than "*must*", thereby allowing an election to proceed in the Magistrates' Court.

24. The judgment of the Constitutional Court in *Saboath General Traders (Pty) Ltd t/a Sausage Saloon and Another v Mthatha Mall (Pty) Ltd*[9] is dispositive. There, the agreement between the parties contained a clause in which they had "*unconditionally and irrevocably*" consented to the jurisdiction of the High Court, but action was then instituted in the Magistrates' Court. The Constitutional Court recorded the position in *Foize Africa (Pty) Ltd v Foize*

[7] *Thobejane* Order para 2.
[8] *Thobejane* Order para 4
[9] [2023] ZACC 43.

Beheer BV,[10] where the SCA held that "*parties to a contract cannot exclude the jurisdiction of a court by their own agreement*". The majority in the Constitutional Court, moreover, considered that consent to the jurisdiction of one Court does not amount to an agreement to the exclusive jurisdiction of that Court.[11] Zondo CJ (as he then was), for the minority, held that the effect of the clause in that case was "*nothing more than that, if either party instituted proceedings in the High Court against the other arising out of the lease, the latter could not object on the basis that the High Court had no jurisdiction*".[12] The situation is no different here: Nedbank was entitled under the Agreement to institute action in the Magistrates' Court, but the clause did not ouster its entitlement nevertheless to proceed in the High Court if it wished to do so.

Prescription

25. That brings me to the consideration of the special plea of prescription. It must meet the same fate as the jurisdictional plea.

26. Our Courts treat the claim for cancellation, return of goods, and the subsequent payment of the shortfall as linked elements within a credit provider's enforcement arsenal. Waiting for the vehicle to be sold to calculate the exact figure is merely a mechanism to quantify the pre-existing debt, rather than a completely separate, delayed debt.[13]

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[10] 2013 (3) SA 91 (SCA) at para 21.
[11] At para 35.
[12] At para 66.
[13] *BMW Financial Services (SA) (Pty) Ltd v Heydenreich* [2023] ZAGPJHC 307.

27. In *Rademeyer v Ferreira,*[14] the Constitutional Court put it thus:

> *"[59] … Prescription of a debt starts running as soon as the debt becomes due, or when knowledge of the debt becoming due can reasonably be expected of the creditor.* ***Prescription is judicially interrupted when process initiating a lawsuit for recovery of that particular debt is issued and served on the debtor.*** *In our law breach of contract is remediable through two mutually exclusive options — a claim for specific performance that seeks, notwithstanding the breach, to keep the contract alive; or cancellation of the contract and a claim for damages.*
>
> *[60] When an election is made to sue for specific performance, axiomatically that lawsuit cannot possibly be a basis for the judicial interruption of the running of prescription in respect of cancellation and a damages claim in respect of the same debt arising from breach of the contract.* ***Judicial interruption of the running of prescription*** *of the latter can self-evidently only occur* ***when the election is made to cancel and sue for damages****. And, plainly,* ***where summons has been issued and served to determine liability in respect of damages for breach of contract within the three-year prescription period, it matters not that you sue after the three-year period to determine the quantum of the damages in respect of that same claim. This is because the later***

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[14] [2024] ZACC 24.

claim for the assessment of damages is a continuation of the first proceedings to determine liability. ..."[15]

28. That is the essence of what the *Shosholoza* judgment reflects, albeit in the context of an amendment to particulars of claim, where it held that a claim made, but envisaging calculation of the amount at a later stage, constitutes a claim for payment of damages that interrupts prescription as contemplated in s 15(1) of the Prescription Act.[16]

29. In the present case, Nedbank issued and served summons for the determination of the liability in consequence of the breach of the Agreement. The assessment of damages pursuant to the repossession and sale of the vehicle is a continuation of the initial process, in which Nedbank obtained an order expressly postponing the determination of damages *sine die*. The factual situation is distinguishable from that prevailing in *Nedbank Limited v Leboss Guest Lodge Pty Ltd and another,*[17] where an initial summons was issued only for cancellation of the agreement and repossession, and a separate summons was later issued for recovery of the shortfall amount. To put it simply:

29.1. the 2019 action included the claim for any post-sale shortfall;

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[15] Emphasis supplied.
[16] *Shosholoza* at paras 30 – 32.
[17] [2025] JOL 69776 (GJ).

29.2. the 2019 default judgment order expressly postponed only the quantification of that amount;

29.3. that order was never abandoned or set aside; and

29.4. the present summary judgment application is a continuation of the same proceedings to determine the postponed indebtedness.

<u>The asserted dispute on calculation</u>

30. All that remains is the question whether the allegations made in the affidavit opposing summary judgment concerning the calculation of the asserted indebtedness can stand in the way of the grant of the relief sought.

31. The first issue that confronts Mr Mampuru is that he raises no cognisable defence on the merits in the plea. In the plea, allegations concerning indebtedness were simply noted and otherwise ostensibly denied through reliance on the special pleas.

32. The second issue is that clause 17.4 of the Agreement provides that:

> "*We may provide a certificate from any one of our managers whose position we need to prove showing the amount that is due and how it is calculated. Unless you are able to satisfy the court that the amount in the certificate is incorrect, you agree that we may use the certificate as face value proof of the amount you owe us if we take legal action against you.*"

33. In *Senekal v Trust Bank of Africa Ltd*[18] the Appellate Division (as it then was) considered the purpose of a certificate of balance clause and held that its primary purpose is to facilitate proof of the amount of indebtedness, and that a certificate shall be sufficient or *prima facie* proof of the amount due. The evidential weight of a certificate of balance has also been recognised in *Rossouw and Another v FirstRand Bank Ltd,*[19] where the SCA held that, where a contract provides that a certificate of balance constitutes *prima facie* proof of indebtedness, such a certificate is sufficient evidence of the amount due unless the debtor places evidence before the Court to challenge its correctness.

34. Of course, a certificate of indebtedness is not immune from scrutiny. A genuine dispute about the amount owing constitutes a triable issue. However, it is not sufficient to deny indebtedness without raising particulars that show the balance is wrong. A defendant must do more than raise unparticularised suspicions.[20] A bare denial, unsupported by any facts, does not discharge the onus placed on Mr Mampuru by clause 17.4, "*to satisfy the court that the amount in the certificate is incorrect*".

35. In the present case, the basis upon which the correctness is challenged is that:

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[18] 1978 (3) SA 375 (A).
[19] 2010 (6) SA 439 (SCA) at para 48.
[20] *Saglo Auto v Black Shades Investments* 2021 (2) SA 587 (GP).

35.1. a notice in terms of s 127(5)(b) of the National Credit Act 34 of 2005 (National Credit Act) asserted that the amount credited to the account was R40 500, although the letter reflected that the proceeds of the sale of the vehicle amounted to R39 678.42;

35.2. but the damages affidavit asserts a credit of R39 678.42, as does the affidavit in support of the summary judgment application;

35.3. Nedbank has not provided the Court with *"the date of the alleged payment and bank statements proving the alleged payment"*;

35.4. if Nedbank were to provide date of payment, Mr Mampuru could *"draw my bank statement to show the Honourable court that the alleged amounts never reached my bank account"*;

35.5. no amount of money was paid to Mr Mampuru after repossession of the vehicle;

35.6. a notice in terms of s 127(5)(b) of the National Credit Act *"can easily be drafted and manipulated to suit the Plaintiff's narrative"*; and

35.7. failure to account on monies that had not reached Mr Mampuru's bank account constitutes a *bona fide* reason for him to defend the matter;

36. As regards the difference between the s 127(5)(b) notice and the amount credited, it would appear that the reference to R40 500 credit in the letter is a

clerical discrepancy. The amount asserted to be credited – on oath – is consistent with the amount reflected in the letter as being the proceeds of the sale, after allowed deductions. The best that can be said about Mr Mampuru's position is that the letter incorrectly reflected the amount credited. However, the certificate of balance is produced together with statements on oath confirming that the amount credited is R39 678.42. There is no basis upon which Mr Mampuru can assert an entitlement to a credit exceeding the proceeds of the sale. Even if the letter incorrectly asserted a credit of R40 500, Nedbank enjoys a contractual entitlement to rely on the certificate of indebtedness in the summary judgment proceedings.

37. The remainder of the "*defence*" is ostensibly based on a wrong understanding that the proceeds of the sale would have been paid into Mr Mampuru's bank account, rather than credited to the loan account. Essentially, Mr Mampuru is asking for discovery to prove the contents of the certificate of balance. But this does not constitute a *bona fide* defence, especially not in the absence of anything other than speculation on the part of Mr Mampuru that the amount of R39 678.42 had not been credited to the loan account. He signed the Agreement, which entitled Nedbank to rely on the certificate of indebtedness, unless he could show a Court that the amount was incorrect. Apart from not setting out in his plea any defence on the merits (merely noting the allegations in the Statement of Claim), no *bona fide* defence emerges from the affidavit opposing summary judgment.

Conclusion

38. No triable issue emerges from the plea. The jurisdictional objection and the prescription point are bad in law. No defence on the merits is offered in the plea, and the attempt at amplifying the plea in the opposing affidavit by casting aspersions on the certificate of balance does not present a triable issue either.

Costs

39. Nedbank seeks attorney-and-client costs. Mr Mampuru advances the argument that the matter could have been instituted in the Magistrates' Court, and that, therefore, costs should be limited to an award for costs on the Magistrates' Court scale. I agree. The order reflects this.

Order

40. In the result, the following order is made:

1. *Summary judgment is granted in favour of the Plaintiff against the Defendant, for payment of the amount of R164 219.16.*

2. *The Defendant is ordered to pay the costs of suit on the scale as between attorney and client, such costs to be taxed on Magistrate's Court scale.*

[redacted]

M ENGELBRECHT
ACTING JUDGE OF THE HIGH COURT
OF SOUTH AFRICA,
GAUTENG DIVISION, PRETORIA

Judgment reserved: 10 June 2026

Judgment delivered: 22 June 2026

Appearances:

<u>For the Plaintiff/ Applicant:</u>
Advocate CJ Welgemoed
Instructed By: Strauss Daly Incorporated

<u>For the Defendant/ Respondent:</u>
Advocate DM Setumu (Trust Account Advocate)