IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN

Case No: 2026-002650

In the matter between:

NEDBANK LIMITED Applicant

and

ADRIAAN VAN ROOIEN Respondent

Reportable / Not reportable

Coram: Anderssen AJ

Heard: 11 June 2026

Delivered: Electronically on 31 July 2026

Summary: Summary judgment – reckless credit defence – failure to meet requirement of 'fully' – discretion exercised in favour of the respondent – best interests of minor children a deciding factor in exercising judicial discretion

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ORDER

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1. The application for summary judgment is refused.

2. The respondent is granted leave to defend the main action.

3. The costs of the summary judgment application shall be costs in the cause.

JUDGMENT

Anderssen AJ:

Introduction

[1] The applicant ("*Nedbank*") concluded an instalment sale agreement, within the provisions of the National Credit Act[1] ("*NCA*"), with the respondent ("*VR*") in terms of which VR purchased a 2017 Volkswagen Polo Vivo. The purchase price, together with interest, was to have been repaid in 72 monthly instalments (at a rate of R3 441.70 per month). Nedbank remained the owner of the vehicle until the purchase price had been paid in full. In the event of a failure by VR to meet his obligations in terms of the agreement, Nedbank retained the right to cancel the agreement and to claim the full amount owing at the time. To this end they would be entitled to the return of their vehicle so that same may be sold and, in addition, to claim damages from VR. Nedbank deliver a section 129-notice to VR when he fell in arrears. When VR did not pay the arrears, Nedbank caused a summons to be issued.

[2] Nedbank now seeks summary judgment against VR, who appeared in person at the hearing. VR, in his plea, raised a defence of 'reckless

[1] 34 of 2005.

lending' averring that, at the time the agreement was concluded his salary and financial obligations were such that the monthly instalment was not reasonably affordable. The averment is made that Nedbank did not conduct a proper and reasonable affordability assessment as it was required to do in terms of the NCA. Nedbank claims this is no *bona fide* defence as it conducted a credit assessment prior to concluding the agreement based on the representations made to it by VR and concluded that VR could afford the loan. According to the Income and Expense sheet VR had R5 133.34 available to him from his salary and could therefore afford the monthly instalments.

The legal position

[3] One of the aims of the NCA is to promote responsibility in the credit market by encouraging responsible borrowing and discouraging reckless lending.[2] When seeking to resolve consumer over-indebtedness through debt enforcement or debt restructuring, for instance, the NCA also places a premium on the satisfaction of all responsible – as opposed to irresponsible – financial obligations.[3] The concept 'reckless credit' is defined in s 80(1)(a) and (b) of the NCA:

(1) A credit agreement is reckless if, at the time that the agreement was made, or at the time when the amount approved in terms of the agreement is increased, other than an increase in terms of section 119 (4) –

(a) the credit provider failed to conduct an assessment as required by section 81 (2), irrespective of what the outcome of such an assessment might have concluded at the time; or

(b) the credit provider, having conducted an assessment as required by section 81(2), entered into the credit agreement with the consumer despite the fact that the preponderance of information available to the credit provider indicated that-

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[2] Section 3(c).

[3] Section 3(g) and (i).

(i) the consumer did not generally understand or appreciate the consumer's risks, costs or obligations under the proposed credit agreement; or

(ii) entering into that credit agreement would make the consumer overindebted.

[4] Section 80(1) should be read with section 81(1)(a) and (2), which determines that when applying for a credit agreement, and while that application is being considered by the credit provider, there are obligations resting on both the prospective consumer and the credit provider. On the one hand the prospective consumer must fully and truthfully answer any requests for information made by the credit provider as part of the assessment. On the other hand

a credit provider must not enter into a credit agreement without first taking reasonable steps to assess-

(a) the proposed consumer's-

(i) general understanding and appreciation of the risks and costs of the proposed credit, and of the rights and obligations of a consumer under a credit agreement;

(ii) debt re-payment history as a consumer under credit agreements;

(iii) existing financial means, prospects and obligations; and

(b) whether there is a reasonable basis to conclude that any commercial purpose may prove to be successful, if the consumer has such a purpose for applying for that credit agreement.

[5] Section 81(3) prohibits a credit provider from entering into a reckless credit agreement with a prospective consumer. Should a credit provider breach this prohibition, a court has various remedies as set out in section 83, which includes declaring that the credit agreement is reckless and setting aside all or part of the consumer's rights and obligations under that agreement, as the court determines just and reasonable in the circumstances; or suspending the force and effect of that credit

agreement.[4]

[6] Rule 32(3)(b) allows VR to satisfy the court by affidavit that he has a *bona fide* defence to the action and such affidavit must disclose fully the nature and grounds of the defence and the material facts relied upon therefor. The summary judgment procedure is not intended to deprive defendants with a triable issue, or a sustainable defence, of their day in court.[5] What is required of a court hearing a summary judgment application is, first, an examination of whether there has been sufficient disclosure by a defendant of the nature and grounds of the defence and the facts upon which it is founded. Second, whether the defence so disclosed is both *bona fide* and good in law. If these thresholds have been met, the court is bound to refuse summary judgment.[6]

[7] Rule 32(5) affords the court hearing an application for summary judgment a discretion as to whether to enter summary judgment or not. Thus, even if a defendant fails to comply with the provisions of Rule 32(3)(b), which requires a full disclosure of the nature and the grounds of the defence (or counterclaim) as well as the material facts upon which they rely, it does not mean that summary judgment will follow.[7] The requirement that, in the defendant's affidavit, the nature and the grounds of their defence, and the material facts relied upon therefor, are to be disclosed 'fully', was

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[4] ***ABSA Bank Ltd v De Beer*** 2016 3 SA 432 (GP) at [64].

[5] ***Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture*** 2009 (5) SA 1 (SCA) at 11G-12D.

[6] See ***Maharaj v Barclays National Bank Ltd*** 1976 (1) SA 418 (A) at 425G-426E and ***Tumileng Trading CC v National Security and Fire (Pty) Ltd*** (3670/2019) [2020] ZAWCHC 28 (30 April 2020); 2020 (6) SA 624 (WCC) at para [13].

[7] See in this regard ***Soil Fumigation Services Lowveld CC v Chemfit Technical Products (Pty) Ltd*** (680/2002) [2004] ZASCA 31 (31 March 2004); [2004] 2 All SA 366 (SCA); 2004 (6) SA 29 (SCA) at para [10].

discussed in the ***Breitenbach***-matter.[8] What is required is that the defendant's defence be not set out so baldly, vaguely or laconically that the Court, with due regard to all the circumstances, receives the impression that the defendant has, or may have, dishonestly sought to avoid the dangers inherent in the presentation of a fuller or clearer version of the defence which they claim to have.[9]

[8] In ***SA Taxi Securitisation***,[10] the Court said the following:

> *Since the enactment of the NCA, there seems to be a tendency in these Courts for defendants to make bland allegations that they are "over-indebted" or that there has been "reckless credit". These allegations, like any other allegations made in a defendant's affidavit opposing summary judgment, should not be "inherently and seriously unconvincing", should contain a reasonable amount of verificatory detail, and should not be "needlessly bald, vague or sketchy". A bald allegation that there was "reckless credit" or there is "over-indebtedness" will not suffice.*

Discussion

[9] The answering affidavit sets out the reckless lending defence in sparse terms. VR simply points out that, when the agreement was concluded, his monthly gross income was R9 092.62 and his net income was R7 643.34. The credit report reflected a discretionary income of R4 477.63 (after deduction of living expenses of R1 423.71 and ITC expenses of R1 753.00 according to the credit report). VR avers that the monthly instalment represented about 45% of his monthly net income and, according to the assessment, left him with a calculated surplus of R974.69. VR also complains in his answering affidavit that Nedbank failed to consider his practical expenses such as transport and food, his minimum living

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[8] ***Breitenbach v Fiat SA (Edms) Bpk*** 1976 (2) SA 226 (T) at 228B/C.
[9] ***Breitenbach*** at 229A.
[10] ***SA Taxi Securitisation (Pty) Ltd v Molete; SA Taxi Securitisation (Pty) Ltd v Makhoba*** (51330/09, 52948/09, 53080/09) [2010] ZAGPJHC 24 (30 March 2010); [2011 (1) SA 310](#) (GSJ)

expenses and his actual financial commitments.

[10] To this can be added that, when the ITC expenses in respect of clothing accounts and other credit facilities are added to the monthly instalment, it raises the 45% ratio to 81%. On this fact alone I am concerned that Nedbank may not have properly considered that "*entering into that credit agreement would make the consumer overindebted*" as it was obliged to do.

[11] At the hearing VR admitted that he managed to make payments initially but he pointed out that the moment his circumstances changed (an increase in rental and his children now living with him) he was unable to make the payments.

[12] The credit report, with the credit assessment, provides the following information:

• Gross income declared	R9 092.62
• LESS statutory deductions	R1 449.28
• Total nett income	**R7 643.34**
• LESS living expenses	R1 423.71
• Discretionary income	**R6 219.63**
• LESS total ITC expenses	R1 753.00
• Discretionary income	**R4 466.63**
• LESS new MFC payment	R3 419.94
• Net surplus	**R974.69**

[13] On the face of it the 'living expenses' of R1 423.71 seems very low. The quantification of this amount is not explained. No regard was had to the new expenses that would be introduced by the purchase of the vehicle, such as the costs of insuring the vehicle and fuel charges, when

determining what the net surplus would be. The report also did not include VR's then transport costs even though the history of payslips showed that he had been employed by the same person for some time.

[14] The Income and Expense declaration contained in the application for finance is equally disappointing. It does not cast light on the quantification of the 'living expenses'. It only includes an amount of R1 000 for 'food and entertainment'. All other items (save for the clothing accounts) were left blank. It is inconceivable that the schedule would not reflect the costs relevant to VR's accommodation (the rental he pays), electricity, telephone, and maintenance / education costs for the two minor children – particularly as the schedule allows for these expenses to be filled in. According to the application VR was living at 6[...] D[...] Street in Moorreesburg.

[15] The income and expense declaration also recorded another source of income as being "spousal/child" but gives no further information. The information obtained and the investigation done appears less than satisfactory and seems to support VR's complaint. Nedbank was obliged to consider "*existing financial means, prospects and obligations*" but it does not appear as if this was properly considered on the little information provided. It simply records that VR had a net income of R7 643.34 per month. I cannot see from either document how this was calculated as it appears from VR's 15 annexed payslips that he was paid weekly, received an hourly wage and was, at times, paid overtime.

[16] To the extent that VR's answering affidavit did not provide more information on what he disclosed to the credit provider and what he was

asked to disclose when making application for finance, I am able to exercise my discretion in terms of Subrule (5). The question is whether I should do so. The defence was properly raised in the plea and confirmed in the answering affidavit. I have already expressed above my concern regarding the sparsity of information in the income and expense schedule and the credit assessment, which appear *ex facie* these documents. This is clearly a triable issue and oral evidence will be necessary to determine whether the credit was recklessly advanced.

[17] I am further persuaded that I should exercise the court's discretion in favour of VR because of the principle that in all matters concerning a minor child, the best interests of that child is paramount. In VR's answering affidavit he has recorded that the vehicle is essential for him to earn an income and that he needs it to meet his family obligations. He expressed the fear that losing the vehicle would mean losing his employment. At the hearing it transpired that VR works at an abattoir and drives to work very early in the morning (around 03h00) when public transport is not available to him. He is financially responsible for his two minor children, aged 12 and 8, and fearful that he will lose his employment if he no longer has the car because it has been repossessed.

[18] In light of the above I am of the view that VR has raised a *bona fide* defence, good in law, even if not fully explained. I am able to exercise my discretion in favour of VR and grant him leave to defend the main action as I do not believe the matter is suited to final relief on motion. VR has tendered to Nedbank to pay R2 000 per month, which tender he has increased to R2 500. Should he fail to make these payments, he does so

at his peril because, if the defence ultimately fails, he will owe Nedbank a substantial amount in damages.

[19] After hearing oral argument I stood the matter down and directed the parties to engage in settlement discussions – should settlement not be achieved, I would hand down my judgment. I have, since then, been furnished with further affidavits from Nedbank's attorney indicating that the parties did enter into settlement negotiations and that these did not bear fruit as VR is only able to afford paying R2 500.00 (instead of R3 441.70) per month. I was informed that restructuring the agreement had not worked in the past and that extending the repayment period was not feasible either. VR also provided me with an affidavit reiterating his defences.

[20] I was informed by my registrar, on 30 July 2026 at 13h36, that she received an enquiry regarding when this judgment would be delivered. This surprised me as the judgment was, to the best of my knowledge, delivered electronically on 26 June 2026. An investigation established that my registrar had attempted to distribute the judgment electronically on 26 June 2026 but that the emails were going out excluding the scanned copy of the judgment. My apologies to the parties for the delay.

[21] The order is reflected above.

ANDERSSEN J S

Acting Judge of the High Court

Appearances:

For the applicant: Adv N Hammond
Instructed by: Smith Tabata Buchanan Boyes

For the respondent: Mr Van Rooien (in person)