



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

CASE NO: 21/23415

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

26/1/2023
DATE

J Moorcroft
SIGNATURE

In the matter between:

NEDBANK LIMITED

Plaintiff / Applicant

and

NOJOZI, NOGOLIDE FEZIWE

Defendant / Respondent

JUDGMENT

MOORCROFT AJ:

Summary

Action and subsequent application for default judgment – Plaintiff not proceeding as defendant had started making payments in terms of settlement agreement – Plaintiff entitled to costs at the agreed scale – Defendant entitled to cost order in respect of a day

when the matter had to be removed from the roll after the defendant had timeously filed an answering affidavit and the matter could not proceed on the unopposed motion court roll

Order

[1] In this matter I make the following order:

1. *The plaintiff is ordered to pay the wasted costs of the enrolment on 19 July 2022 on the scale as between attorney and client;*
2. *Save as aforesaid, the defendant is ordered to pay the costs of the action and the default judgment application on the scale as between attorney and client.*

Analysis:

[2] The reasons for the order are set below.

[3] The plaintiff launched its action in 2021, claiming two amounts totalling R4,6 million due in respect of two loans, one secured by a bond and the other on an overdraft agreement. A settlement agreement between the parties was made an order of court in January 2022 and subsequently, in May 2022 the plaintiff applied for default judgment because of alleged non-payment in terms of the settlement agreement.

[4] The matter was enrolled for 19 July 2022 in the opposed motion court. On the day it was removed from the roll in the circumstances outlined below.

[5] In August 2022 the smaller of the two claims were paid and the default judgement application was intended to proceed on the remaining claim. It was enrolled on the opposed roll for 23 January 2023.

[6] The defendant started making payments in terms of the settlement agreement and the dispute was settled on that basis. The question of costs could not be settled and therefore remained outstanding. The matter was then argued on 23 January 2023.

[7] The plaintiff was justified to launch its action and the subsequent application for default judgment and an application for executability in terms of Rule 46A of the Uniform Rules. It was argued on behalf of the defendant that the plaintiff was already debiting costs on its accounts and that costs should not be paid twice. This is obviously correct. The cost order granted above is not and must not be seen as authorising the debiting of costs in this litigation in addition to the agreed or taxed costs. The plaintiff will be entitled to only the costs taxed by the taxing master.

[8] The agreements that underline the litigation provide for a cost on the scale as between attorney and client and the plaintiff is contractually entitled to costs on the attorney and client scale.

[9] The costs of the enrolment on 19 July 2022 referred to above stand on a different footing. The defendant gave notice of his intention to oppose the default judgment application on 23 June 2022, a few days after service of the application, and an answering affidavit was uploaded to CaseLines on 5 July 2022. The plaintiff persisted with the application on the basis that the answering affidavit - filed 14 days before the hearing date and 12 days after notice of intention to oppose had been given - was incomplete and unsatisfactory.

[10] On 19 July 2022 the matter was removed from the roll and the costs were reserved.

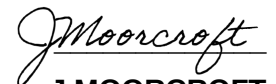
[11] When the defendant filed an answering affidavit in the Rule 46A application, the unopposed motion court roll was no longer the suitable forum and the application ought

to have been removed, and placed on the opposed roll. The plaintiff was of course also entitled to file replying affidavits, which it did in August 2022 after the defendant had filed two supplementary answering affidavits.

[12] It is appropriate therefore that the wasted costs of the appearance on 19 July 2022 be paid by the plaintiff. It is also appropriate in my view that such costs be paid on the same scale as the plaintiff is claiming.

Conclusion

[13] I therefore make the order as set out above.


J MOORCROFT

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **27 January 2023**.

COUNSEL FOR THE PLAINTIFF:	GM MAMABOLO
INSTRUCTED BY:	CLIFFE DEKKER HOFMEYR INC
ATTORNEY FOR THE DEFENDANT:	K SIMANGO
INSTRUCTED BY:	MEMELA JONES INC
DATE OF THE HEARING:	23 JANUARY 2023
DATE OF ORDER:	27 JANUARY 2023
DATE OF JUDGMENT:	27 JANUARY 2023