IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NUMBER: 14522-2014

DATE: 28 JULY 2026

Case No: 14522/2014

(1) REPORTABLE: YES/NO

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

(3) REVISED

..... DATE 29 July 2026

SIGNATURE

In the matter between:

FIRSTRAND BANK LIMITED t/a WESBANK Applicant

and

PERBYL MARELIZE POIRIER Respondent

JUDGMENT

DU PLESSIS AJ

A. INTRODUCTION

[1] This is an opposed application in which the applicant, a registered credit provider, seeks payment of R77 439.63 together with interest at 14% per annum from 15 November 2014 to date of final payment, and costs. The amount claimed is the shortfall said to remain after the applicant repossessed and sold a 2009 Hyundai Tucson 2.0 GLS motor vehicle which had been financed by it under an instalment sale agreement concluded with the respondent on 24 July 2010.

[2] Adv D M Pool appeared for the applicant. There was no appearance for the respondent. The respondent has throughout acted in person. She is not a legal practitioner, but she is, on the papers, an experienced forensic auditor. Although she did not appear at the hearing, she has delivered an answering affidavit, a supplementary affidavit, and a further affidavit in response to the applicant's reply and heads of argument, and has thereby placed her full opposition before the court. The application is opposed on the papers and I determine it on that footing, notwithstanding her non-appearance. Her grounds of opposition are, in essence, that the applicant has not complied with the National Credit Act 34 of 2005 ("the NCA"), that the account on which the claim is founded is the subject of an unresolved and properly raised dispute, and that the quantum of the claim has not been established.

[3] The application was launched in March 2015. It is heard for the first time on its merits in July 2026, more than eleven years later. That fact, and the reasons for it, feature in what follows.

B. THE PROCEDURAL HISTORY

[4] The procedural history is unusual and I set it out at the outset, because much of the argument turns on it.

[5] On 4 August 2014 this court granted default judgment against the respondent. The order is annexure TM2 to the founding affidavit. It is important to record precisely what was ordered:

> *"1. Defendant is directed to forthwith return the motor vehicle ... to plaintiff, and failing immediate compliance with this order, the sheriff or his deputy is authorised and directed to take the motor vehicle into his possession wherever same may be found and to deliver it to plaintiff;*
>
> *2. Leave to apply for: 2.1 Damages, if any, in an amount to be calculated in accordance with Section 127(5) – (9) of the NCA; 2.2 Interest on the said damages to be determined at a later date;*
>
> *3. Costs ..."*

[6] A warrant for delivery issued on 14 August 2014. On 11 September 2014 the sheriff attached the vehicle at [...] K[...] N[...], W[...] Street, Little Falls, Roodepoort, and handed it to an agent of the applicant. The vehicle was sold on 14 November 2014 for R100 320.00 (inclusive of VAT of R12 320.00).

[7] The present application was issued on 6 March 2015 and served personally on the respondent on 18 March 2015. It came before this court on 24 April 2015, 22 July 2015 and 9 September 2015. On the respondent's version — which is not contradicted anywhere on the papers — counsel for the applicant informed the court on 24 April 2015 that he could not proceed with the application in good conscience; on 22 July 2015 the court declined to proceed and directed the applicant to produce proof of compliance with s 127 of the NCA; and on 9 September 2015 the applicant undertook to attend to that defect. The respondent delivered her answering affidavit on 25 August 2015 and a supplementary affidavit in September 2015.

[8] The applicant delivered a replying affidavit on 18 March 2016 and heads of argument on 25 April 2016. The respondent delivered a further affidavit in October 2016 responding to both. On 26 October 2016 the matter was postponed *sine die*, with costs reserved.

[9] Nothing then happened for approximately eight years. The chronology of events prepared by the applicant's counsel and uploaded to CaseLines records the year 2016 and then jumps to October 2024, when a hearing date application form was submitted by the applicant's newly appointed attorneys. Updated heads of argument were settled on 3 December 2025. A notice of substitution of attorneys, a notice of set-down and a proposed joint practice note were served by email on 15 June 2026, and by the sheriff on 22 and 23 June 2026. The matter was set down for hearing on 28 July 2026.

[10] No explanation for the period between October 2016 and October 2024 appears anywhere in the papers. When I raised the delay from the bench, Adv Pool was unable to offer any explanation for it. I return to this below.

[11] After the matter was argued and judgment reserved, Adv Pool submitted supplementary heads of argument. These address six matters: the existence of a prayer for a money judgment; the effect of s 131 and the post-attachment operation of s 127; proof of the shortfall; the unsigned confirmatory affidavit; the delay; and the formulation of interest and the *in duplum* limit. I have had regard to them, and I deal with the additional matters they raise where those matters arise below. I am indebted to counsel for the candour with which several of them were dealt with.

C. SERVICE AND THE PROPRIETY OF PROCEEDING IN THE RESPONDENT'S ABSENCE

[12] Because the respondent did not appear, I satisfied myself before proceeding that she had proper and timeous notice of the hearing.

[13] The applicant effected service of the notice of set-down, the notice of substitution of attorney and the joint practice note at [...] K[...]-N[...], V[…] D[…] Street, Little Falls Extension 1, Roodepoort. That is the respondent's residential address; it is the address at which the vehicle was attached in 2014, and the address from which she has conducted this litigation. The sheriff's return of 23 June 2026 records that, the complex gate having been found locked on an attempted service the previous day, service was effected by affixing a copy of the process to the principal gate at the premises, after a diligent search and enquiry established that no other manner of service was possible, in accordance with Rule 4(1)(a)(iv). A photograph of the premises, bearing the door number […] and marked in manuscript "[...] K[...] N[...]", is annexed to the return.

[14] In addition, the applicant's attorney transmitted the notice of set-down and the updated heads of argument to the respondent's email address on 15 June 2026, and a report confirming successful delivery to that address is before me. Service by email is competent under Rule 4A, and the parties have by agreement conducted this litigation by email for a number of years.

[15] Having regard to the proof of service now placed before me, I am satisfied that the respondent had proper and timeous notice of the hearing. She has, moreover, placed her full opposition before the court in successive affidavits. I was accordingly entitled to determine the matter on the papers in her absence.

[16] I record one matter concerning the joint practice note. It is signed by counsel for the applicant alone; the space for the respondent's signature is blank. It is, in truth, a unilateral practice note. The applicant's attorney's covering email of 15 June 2026 stipulated that if the respondent did not revert by 13h00 on 19 June 2026 the applicant would treat her as agreeing and would upload the document as a unilateral note. I have treated the note as the applicant's document only.

D. THE APPROACH TO THE FACTS

[17] The applicant seeks final relief on motion. The rule in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E–635C therefore applies: final relief may be granted only if the facts averred by the applicant that are admitted by the respondent, together with the facts alleged by the respondent, justify that order. The respondent's version falls to be rejected on the papers only if it is so far-fetched or clearly untenable that the

court is justified in rejecting it merely on the papers. The fact that the respondent did not appear does not alter this test: her opposition is contained in affidavits that are before me, and it is against those affidavits that the applicant's entitlement to final relief must be measured.

[18] A respondent who wishes to raise a real dispute must engage with the facts rather than deny them baldly. The converse is equally true. An applicant who elects motion proceedings takes the risk that a genuine dispute of fact will emerge, and cannot complain if the application is refused on that account.

[19] It is necessary to say something about the replying affidavit. It deals, ad seriatum, with paragraphs 1 to 35 of the answering affidavit. In respect of paragraphs 36 to 199 — that is, the entire paragraph-by-paragraph answer to the founding affidavit, comprising the bulk of the respondent's case — the deponent says only that the paragraphs "appear to contain a rehash of the allegations already made", that she does "not wish to burden the court further", and that "[i]n so far as the allegations contained in the paragraphs are not in accordance with the submissions made by the Applicant ... same are denied."

[20] That is not an answer. It is a formula. The specific, documented allegations in those paragraphs — the date on the valuation, the address to which the s 127 notices were directed, the arithmetic in paragraph 11 of the founding affidavit, the terms of annexure PMP8 — are met with nothing. Where a deponent to a replying affidavit elects to answer serious, particularised allegations with a blanket denial, the court is entitled to treat those allegations as not seriously disputed.

E. THE STATUTORY FRAMEWORK

[21] Section 131 of the NCA provides that if a court makes an attachment order in respect of property that is the subject of a credit agreement, ss 127(2) to (9) and 128, read with the changes required by the context, apply to the goods attached under that order. It is common cause, and the order of 4 August 2014 expressly recognised, that this is such a case.

[22] Section 127, so applied, requires the following. Within ten business days after taking possession, the credit provider must give the consumer written notice setting out the estimated value of the goods (s 127(2)). If the consumer responds, the goods must be returned unless the consumer is in default; if the consumer does not respond, the credit provider must sell the goods as soon as practicable for the best price reasonably obtainable (s 127(4)). Within a further period the credit provider must give the consumer written notice of the settlement value immediately before the sale, the gross and net proceeds, and the remaining settlement value or balance (s 127(5)(b)). If an amount remains, the credit provider "may demand payment" (s 127(7)), and only if the

consumer fails to pay within ten business days of that demand may the credit provider commence proceedings for judgment (s 127(8)). Section 127(10) makes non-compliance an offence.

[23] Section 168 governs how such notices are to be delivered: by hand, fax, email, or registered mail to the person's last known address, unless another manner is prescribed.

[24] Section 130(3)(a) is central. It provides:

> *"Despite any provision of law or contract to the contrary, in any proceedings commenced in a court in respect of a credit agreement to which this Act applies, the court may determine the matter only if the court is satisfied that — (a) in the case of proceedings to which sections 127, 129 or 131 apply, the procedures required by those sections have been complied with ..."*

[25] Section 130(4)(b) provides that if the court determines that the credit provider has not complied with the relevant provisions, the court "must" adjourn the matter and make an appropriate order setting out the steps the credit provider must complete before the matter may be resumed.

[26] The applicant relies on *Sebola v Standard Bank of South Africa Ltd* 2012 (5) SA 142 (CC) and *Kubyana v Standard Bank of South Africa Ltd* 2014 (3) SA 56 (CC). Although those authorities were decided in the context of s 129, the principle for which they stand is directly applicable to the delivery of a s 127 notice. The credit provider bears the onus of placing before the court sufficient evidence of the delivery of the statutory notice. Proof of actual receipt by the consumer is not required. Proof of *dispatch in the manner the Act requires* is. A bare assertion that a notice was sent, unsupported by any record of dispatch, does not discharge that onus.

F. THE APPLICANT'S PRINCIPAL ARGUMENT: THE UNRESCINDED DEFAULT JUDGMENT

[27] In its supplementary heads the applicant first addresses whether the notice of motion seeks a money judgment. It plainly does: the notice of motion prays for payment of R77 439.63 with interest, and these are the second-stage monetary proceedings contemplated by the order of 4 August 2014. That much was never in issue. My concern has never been the existence of the prayer, but whether the applicant has established its entitlement to the relief prayed.

[28] The applicant's argument, developed in the 2016 heads and repeated in the updated heads, is essentially this: the respondent's real complaint is about the default judgment of 4 August 2014; she has never applied to rescind it; the judgment stands until set aside; compliance with the NCA was necessarily

determined when that judgment was granted; and she is now trying to "close the barn door after the horse has bolted".

[29] The first two propositions are correct. The default judgment stands until set aside, and the respondent cannot collaterally attack it in these proceedings (*Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills (Cape)* 2003 (6) SA 1 (SCA)). To the extent that the respondent asks me to order the applicant to rescind that judgment, I cannot do so. There is no counter-application and no rescission application before me.

[30] The third proposition, however, is wrong, and it is wrong in a way that is fatal to the applicant's case.

[31] The default judgment of 4 August 2014 was a judgment for the return of the vehicle. It was not, and could not have been, a judgment for the shortfall. The order granted the applicant *leave to apply* for "[d]amages, if any, in an amount to be calculated in accordance with Section 127(5) – (9) of the NCA". The court which granted that order therefore expressly reserved, rather than determined, the question of compliance with s 127(5) to (9). Whatever was decided in August 2014 about s 129, nothing was decided about s 127 — for the good reason that the vehicle had not yet been attached, valued or sold.

[32] The present application is the application for which leave was reserved. The compliance which s 130(3)(a) requires me to be satisfied about is compliance with s 127 as applied by s 131 — and specifically with subsections (2), (5), (7) and (8), all of which post-date the default judgment. The applicant's contention that this was all settled in 2014, and that the respondent's only remedy was rescission, cannot be sustained. It is an answer to a case the respondent is not making.

G. COMPLIANCE WITH SECTION 127

(i) The s 127(2) notice — annexure TM7

[33] Annexure TM7 is a letter dated 17 September 2014, in the name of "S George, WesBank", recording that the applicant was placed in possession of the vehicle on or about 15 September 2014, that the goods were valued at R62 000.00 excluding VAT, and that the respondent had ten business days from receipt within which to seek reinstatement.

[34] Three difficulties arise.

[35] **First**, the letter is addressed to "1[...] W[...] Street, Fellside, 2[…]". By 17 September 2014 the applicant knew that this was not where the respondent lived. Its own sheriff had attached the vehicle at [...] K[...] N[...], W[...] Street, Little Falls, Roodepoort six days earlier, in the respondent's personal presence. Its own founding affidavit, at paragraph 5, certifies from an

inspection of its records that the respondent's residential address is [...] K[...] N[...]. There is documentary evidence (annexure PMP8) that the respondent's change of address had been communicated in writing to the applicant's employees in March and April 2014. Section 168 requires delivery to the person's *last known address*. Fellside was not the respondent's last known address on 17 September 2014, and the applicant knew it.

[36] **Second**, and decisively, there is no evidence whatever that annexure TM7 was ever dispatched. The document bears no postal marking, no franking, no registered mail receipt, no track-and-trace record, and no proof of posting of any kind. The respondent took this point in her answering affidavit. The applicant's answer, in paragraph 35 of its replying affidavit, is this:

> *"In amplification of the denial it needs to be noted that the required notices in terms of section 127 of the National Credit Act are generated automatically and posted via normal post. There would be no record of same."*

[37] That is not a denial. It is an admission. The applicant tells this court, on oath, that it dispatches statutory notices under s 127 by ordinary post and keeps no record of having done so. Ordinary post is not one of the methods contemplated by s 168. And a credit provider which keeps no record of dispatch places itself in the position of being unable, ever, to discharge the onus which *Sebola* and *Kubyana* place upon it. The applicant's own affidavit thus establishes that it cannot prove compliance with s 127(2).

[38] The respondent goes further and says that the dates on annexures TM7 and TM8 fall within the period of the national postal strike of late 2014, so that the applicant could have had no reasonable expectation of delivery. The applicant has not answered this allegation at all — not in the replying affidavit, not in the 2016 heads, and not in the updated heads of December 2025. I do not need to make a finding about the strike. It is enough that a specific and serious allegation, capable of being met with evidence, has simply been ignored across three sets of papers spanning a decade.

(ii) The s 127(5)(b) notice and the s 127(7) demand — annexure TM8

[39] Annexure TM8 is a letter dated 15 November 2014, in the name of "K Topley, WesBank", also addressed to 1[...] W[...] Street, Fellside. It sets out the calculation of the shortfall and calls upon the respondent to pay within ten business days of receipt. It is the document which is said to constitute both the s 127(5)(b) notice and the s 127(7) demand.

[40] Every objection recorded above applies to annexure TM8 with equal force. It is directed to an address the applicant knew to be wrong; there is no evidence of dispatch of any kind; and the applicant has admitted that no such evidence exists.

[41] The consequence is significant. Section 127(8) permits a credit provider to commence proceedings for judgment *only* if the consumer fails to pay in response to a s 127(7) demand. If no demand was delivered, the condition precedent to these proceedings was never fulfilled. The respondent makes precisely this point in her October 2016 affidavit. It has never been answered.

(iii) The applicant's "substantial compliance" argument

[42] In its supplementary heads the applicant meets these difficulties in two ways. It accepts, correctly, that this is not a voluntary-surrender case under s 127(1), but a case in which the post-attachment regime of ss 127(2) to (9) is incorporated by s 131. For that structural proposition it relies on *FirstRand Bank Ltd t/a WesBank v Davel* [2019] ZASCA 168, *Gcasamba v Mercedes-Benz Financial Services SA (Pty) Ltd* [2022] ZAFSHC 197 and *BMW Financial Services (SA) (Pty) Ltd v Moosa* [2020] ZAGPPHC 552. I accept the incorporation of that regime — indeed I have already so held. But acceptance of the framework does not advance the applicant past the difficulty that arises within it.

[43] The applicant's substantive answer is that its evidence of business process — that the notices were generated automatically and posted in the ordinary course, with no proof of posting retained — constitutes substantial compliance which, on a holistic application of *Plascon-Evans*, ought to be accepted. Counsel candidly acknowledged that the applicant "must stand or fall by" that evidence and can provide nothing further. I cannot accept the submission, for three reasons.

[44] **First**, s 130(3)(a) does not pose a *Plascon-Evans* question. It sets an objective threshold: the court "may determine the matter only if" it is "satisfied" that the required procedures were complied with. *Plascon-Evans* governs how a court resolves disputed facts on motion; it does not lower the level of satisfaction the statute demands before the court may act at all.

[45] **Second**, *Sebola* and *Kubyana* require proof that the notice was dispatched in a manner the Act permits. Section 168 permits delivery by hand, fax, email or registered mail. Ordinary post is not among them. Taking the applicant's evidence at its highest — that the notice was generated and committed to ordinary post — that is not compliance, substantial or otherwise, with the prescribed manner of delivery. Substantial compliance is a doctrine that may forgive an imperfection in an otherwise proper method; it cannot supply an entire absence of any permitted method, coupled with an admitted absence of any proof of dispatch.

[46] **Third**, the notices were directed to an address the applicant's own founding affidavit shows it knew to be wrong. A notice sent by a non-prescribed method, to a known-incorrect address, with no proof of dispatch, cannot

constitute substantial compliance on any view. The applicant's frank concession that no proof exists and none can be produced does not cure the defect; it confirms it.

(iv) Conclusion on s 127

[47] I am not satisfied that the procedures required by s 127, as applied by s 131, have been complied with. Section 130(3)(a) therefore precludes me from determining this matter in the applicant's favour.

H. THE QUANTUM

[48] Even if I were wrong about the NCA, the applicant faces a second, independent difficulty. It has not proved what it claims.

[49] Clause 21.5 of the agreement entitles the applicant to obtain judgment on the amount stated in a manager's certificate "unless you disagree with such amount and are able to satisfy the court that the amount in the certificate is incorrect." A certificate of balance signed by Ms M Vorster on 10 February 2015 certifies indebtedness of R77 439.63. In my view the respondent has shown, largely on the applicant's own documents, that the correctness of that figure is genuinely in dispute.

[50] The founding affidavit contradicts itself. Paragraph 11 states that the balance outstanding, and consequently the damages sustained, "amounts to R249 685.29", and in the same breath annexes a certificate certifying R77 439.63. Neither figure is reconcilable with annexure TM8, which puts the settlement value immediately before the sale at R180 821.42, or with paragraph 13 of the replying affidavit, which gives the balance owing at repossession as R180 509.68. The applicant has never corrected paragraph 11, although the error was raised with its attorneys and its holding company in May 2015, in open court in 2015, in the answering affidavit of August 2015, and again in October 2016. Eleven years have passed and the founding affidavit stands unamended.

[51] In its supplementary heads the applicant candidly concedes that paragraph 11 contains a serious numerical inconsistency which "cannot simply be ignored or repaired by submission". It submits, however, that the court should distinguish the erroneous narrative in paragraph 11 from the "operative" amount reflected in the prayer, the certificate of balance and annexure TM8; that the certificate is at least prima facie proof under clause 21.5; and that the respondent, who attacks the reliability of the figure, has produced no counter-certificate or alternative calculation of her own.

[52] I am unable to accept that the difficulty is so confined. A certificate under clause 21.5 is only *prima facie* proof, and its evidential weight is displaced where the applicant's own founding affidavit and annexures are mutually

irreconcilable and the very components of the calculation are unproven. Here the proceeds said to have been realised on the sale are not independently established, and the valuation on which the shortfall depends post-dates the sale. A consumer does not bear an onus to produce a reconstructed counter-calculation in order to point out that the credit provider's own documents do not add up. The concession on paragraph 11, taken with the unproven proceeds and the post-dated valuation, leaves the certified figure not merely criticised but unproven.

[53] The agreement is mischaracterised. Paragraphs 6 and 10 of the founding affidavit describe the agreement as a "Rental Agreement", while the certificate of balance, annexures TM7 and TM8 and the agreement itself describe an instalment sale agreement. The measure of loss and the applicable statutory regime differ between the two. The respondent took this point in terms; it has never been answered.

[54] The valuation post-dates the sale, and the proceeds are not proved. Annexure TM5, the valuation certifying a forced sale market value of R62 000.00 excluding VAT, is dated 13 January 2015 — two months after the vehicle was sold on 14 November 2014 — and describes the value as one that "will be utilized as a reserved price for public auction purposes", in the future tense, for an auction that had already occurred. No auction record, sale agreement or proof of receipt of the R100 320.00 is before me, and the applicant's own tax invoice of 14 November 2014 (the respondent's annexure PMP16) reflects a different figure of R125 251.72, unexplained. The applicant's assertion that the respondent "has produced no evidence challenging the calculation" inverts the onus: it is for the applicant to prove its damages.

[55] The disputed entries. Annexure PMP23, the applicant's own certificate of compliance signed by Ms Badena Mohamed, certifies that "[n]o disputes exist in respect of entries made as contemplated in section 111 of the Act". Section 111(2) obliges a credit provider who receives a written notice of dispute to respond to it before enforcing a default arising from the disputed entry. On the respondent's version — supported by annexures PMP4, PMP6, PMP7 and PMP8, whose authenticity is not challenged — she had raised written disputes about the interest rate and about insurance premiums debited without her consent, and those disputes were live when the certificate was signed. The applicant answers that her queries "had been addressed and corrected by February 2013". That deals with the insurance premiums. It does not deal with the interest rate, which the applicant nowhere suggests was ever corrected.

[56] These features, taken together, satisfy me that the correctness of the certified balance is genuinely in dispute and cannot be resolved on the papers.

I. THE CONFIRMATORY AFFIDAVIT OF MR LETSOALO

[57] A discrete point requires mention. The applicant denies that the respondent's meeting with Mr Wilson Letsoalo in September 2013 ever took place, and annexes a confirmatory affidavit of Mr Letsoalo, marked “WB1”, to that effect.

[58] The document before me is unsigned. It is undated (“DONE at ________ on the ___ DAY of MARCH 2016”). The attestation clause is blank, the commissioner's name, capacity and address are blank, and it refers in the same breath to March 2016 and January 2016. It is not an affidavit. In its supplementary heads the applicant properly accepts that it must be disregarded, and I do so.

[59] The applicant submits that nothing turns on the meeting. The point is not central to the disposition. But once WB1 falls away, the denial of the meeting is a bare one, deposed to by a deponent who does not claim personal knowledge, against a respondent who has produced a contemporaneous email from the applicant's own employee (annexure PMP8) referring to the meeting and the agreed actuarial audit. On *Plascon-Evans* the respondent's version on that limited issue must prevail.

J. THE DELAY

[60] The matter was postponed *sine die* on 26 October 2016 with costs reserved. It was re-enrolled in 2024 and heard in 2026. The papers are silent as to what happened in between. When I raised the delay from the bench, counsel was initially unable to explain it; in the supplementary heads he tentatively suggests that it “may have been” attributable to the transfer of the file from the applicant’s former attorneys to its present attorneys of record. That suggestion is advanced tentatively, is not supported by any evidence, and does not account for a dormancy of some eight years — least of all the period preceding any such transfer.

[61] A delay of that magnitude in a claim for R77 439.63, prosecuted against an unrepresented litigant, calls for explanation. Documents, deponents and recollections do not improve with eight years of inactivity. Mr Letsoalo is described as a former employee. The deponents to the applicant's affidavits have not been heard from since 2016.

[62] I do not decide this application on delay alone, and I make no finding of abuse of process. But the delay is relevant to costs, and it bears on the disposition I should adopt under s 130(4)(b), to which I now turn.

K. THE APPROPRIATE ORDER

[63] Section 130(4)(b) enjoins a court which determines that a credit provider has not complied with the relevant provisions of the Act to adjourn the matter and

to set out the steps to be completed before it may be resumed. Ordinarily I would do exactly that. I am satisfied that it would serve no purpose here, for three reasons.

[64] **First**, the applicant has already been given that indulgence, more than once. On the uncontradicted evidence, this court adjourned the matter in April, July and September 2015 for the specific purpose of enabling the applicant to produce proof of compliance with s 127, and directed it in terms on 22 July 2015 to do so. The applicant undertook on 9 September 2015 to attend to it. The matter then stood postponed *sine die* from October 2016 to 2024. In the eleven years since the direction was given, the applicant has produced nothing. It has told this court on oath that nothing exists to produce.

[65] **Second**, the defect in the s 127(2) notice is by its nature incurable. The purpose of that notice is to give the consumer the opportunity, within ten business days, to reinstate the agreement and resume possession of the vehicle before it is sold. The vehicle was sold in November 2014 and has long since passed into the hands of a third party. No order I make can restore to the respondent the opportunity that the section was designed to give her.

[66] **Third**, and independently of the NCA, the applicant elected to pursue a disputed claim for damages by way of motion proceedings, and a genuine dispute of fact has emerged on the quantum which cannot be resolved on affidavit.

[67] Against that background I must address the two courses the applicant urges in its supplementary heads as alternatives to dismissal.

[68] The first is severance. The applicant submits that interest is severable, and that I may grant judgment for the capital of R77 439.63 while limiting or deferring interest so as to respect the *in duplum* ceiling. That submission cannot succeed. Section 130(3)(a) bars me from determining the matter in the applicant's favour at all where compliance with s 127 is not shown; the bar is not confined to the interest component. Independently, s 127(8) makes a delivered s 127(7) demand a precondition to the very institution of proceedings for judgment; absent proof of that demand, the capital claim is itself premature. Severance presupposes a competent capital claim to which interest attaches as an incident. Here it is the capital claim that is barred, and there is nothing to sever.

[69] The second is a referral of the quantum to oral evidence under Rule 6(5)(g), which the applicant seeks in the further alternative. I have considered it and I decline it. A referral cannot cure the s 127 defect, which is a legal bar and, as to the reinstatement notice, an incurable one because the vehicle was sold years ago. The applicant's own supplementary heads accept that a referral "cannot be used to mend a case devoid of essential evidence", and the

essential proof of dispatch admittedly does not exist. As to the quantum, a referral more than eleven years after the events, upon a documentary record that both sides describe as degraded and with the applicant’s deponents long since departed, in respect of a claim of some R77 000, would be neither proportionate nor in the interests of justice. The applicant has had ample opportunity, across three sets of affidavits and eleven years, to establish its claim. The proper order is that the application be dismissed.

[70] I emphasise what I am not deciding. I am not deciding that the respondent owes the applicant nothing. I am not setting aside the default judgment of 4 August 2014, which stands. I am not making any finding that any person has committed an offence or has deliberately misled this court; the respondent's allegations to that effect are serious, but this is not the forum in which they can properly be investigated, and the deponents concerned have not been heard. What I decide is that this applicant, on these papers, has not established an entitlement to the relief it seeks.

L. INTEREST — IN DUPLUM

[71] Although the point does not arise on the order I make, I record it because it was addressed in argument. The applicant claims interest at 14% per annum from 15 November 2014 to date of payment — a period which by the date of hearing exceeds eleven and a half years. In its supplementary heads the applicant properly concedes that, on the capital of R77 439.63, the common-law in duplum ceiling would have been reached at about the turn of 2021 to 2022, and that any interest awarded must be limited accordingly; it proposes, in mitigation, that interest run only from the resumption of proceedings in June 2026, alternatively from the date of order. The common-law *in duplum* rule, and s 103(5) of the NCA in respect of credit agreements, limit the interest that may accrue so that it does not exceed the outstanding capital. Neither the founding papers nor the draft order acknowledges any such cap. Had I granted the relief sought, I would in any event not have granted interest exceeding the capital of R77 439.63.

M. COSTS

[72] Costs follow the result. The respondent has been substantially successful.

[73] The respondent did not appear at the hearing, but she is nonetheless entitled to her costs of opposition. As a litigant in person she is not entitled to recover fees for professional legal services she did not incur. She is entitled to her necessary disbursements — filing, printing, copying, and the like — on the party and party scale. The costs reserved on 26 October 2016 should follow the same course.

N. ORDER

[74] In the result, I make the following order:

1. The application is dismissed.
2. The applicant is ordered to pay the respondent's costs, such costs to be limited to the respondent's necessary disbursements, taxed on the party and party scale, scale A, and to include the costs reserved on 26 October 2016.

____

J DU PLESSIS
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES

For the applicant:	Adv D M Pool
Instructed by:	Strauss Daly Inc, Pretoria
For the respondent:	In person — no appearance at the hearing
Date of hearing:	28 July 2026
Date of judgment:	29 July 2026