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**THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA**

CASE NO:121975/2025

- (1) Reportable: No
(2) Of interest to other Judges: No
(3) Revised: No

DATE 20 August 2026

SIGNATURE

In the matter between:

FIRSTRAND BANK LIMITED

APPLICANT

and

**THE LIGCABHO PROPERTY TRUST
PONDENT**

FIRST RES

LHUKOLE BONGANI EDWARD N.O

SECOND RESPONDENT

ROBERTO JORGE MENDOCA VELOSA N.O

(Representing iProtect Trustees (Pty) Ltd, cited herein,
in their capacity as trustees for the time being of the
Ligcabho Property Trust (IT2135/2012))

THIRD RESPONDENT

**LUKHELE BONGANI EDWARD
RESPONDENT**

FOURTH

LIGCHABO LE'AFRICA PROPERTIES CC

FIFTH RESPONDENT

**CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY**

SIXTH RESPONDENT

**KATHERINE QUAY BODY CORPORATE
RESPONDENT**

SEVENTH

**CITY OF MBOMBELA
METROPOLITAN MUNICIPALITY
RESPONDENT**

EIGHTH

**FEVER TREE VILLAGE HOMEOWNERS
ASSOCIATION NPC**

NINTH RESPONDENTS

YOUSUF MOHAMED HASSEN NO

TENTH RESPONDENT

Delivered: This judgment was handed down electronically by circulation to the parties and their legal representatives: by email transmission, upload to CaseLines, and publication on SAFLII. The date and time for the hand-down of the judgment is deemed to be 20 August 2026 at 11h00.

JUDGMENT

LESO AJ

Introduction

[1] The Applicant filed a motion for breach of a Credit-Loan-Agreement (“the agreement”) seeking a monetary judgment of R 2 578 588.19 plus interest and, further, seeks an order directing two immovable properties to be specially executable in terms of Rule 46A. The motion was filed almost three years after the conclusion of the credit agreement and after a three month default by the respondents.

[2] The Applicant seeks an order for the execution of the properties as follows:

- 2.1 The Katherine Quay Property: Unit 5[...] S[...] Township, Johannesburg, and
- 2.2 A Nelspruit Property: Portion 56 of Erf 4[...], Nelspruit E. 29 Township,1[...] M[...] Street, Mbombela.

[3] The First, Second, Fourth and Fifth respondents opposed the application.

Background

[4] On 09 November 2022, the Applicant and the Ligcabho Property Trust (IT2135/2012) (“the First Respondent”), obtained a Structured Loan Credit Facility (“the facility”), in terms of the foregoing agreement, for an advance in the amount of R 2 578 588.19. The Fourth and Fifth Respondents bound themselves as sureties and co-principal debtors.

[5] This claim arises from that agreement, secured by the two properties as described above. On 15 January 2025 when the section 129 Notice, in terms of the National Credit Act 34 of 2005 (“the Act”), was issued, the total arrears due as of December 2024 were R 126 502.76 and the total amount due was R2 507 828.08. In the section 129 Notice, the Applicant did not seek the payment of arrears specifically, but sought the escalated / accelerated payment of the full amount owed.

[6] In the section 129 Notice, the Applicant referred the Respondents to the provision, section 129, read with section 130 of the Act in the following terms:

- 6.1 To refer the matter to an Alternative Dispute Resolution Agent;
- 6.2 To refer the matter to the Consumer Court; or
- 6.3 To refer the matter to the Ombudsman-with-jurisdiction.

[7] It is not in dispute that the Respondents' temporary inability to service the facility arose from an external Asset Forfeiture Unit freeze on their business accounts in July 2024. This was lifted in December 2024.

[8] It is common cause that from April 2025, the First Respondent made substantial monthly payments toward the facility, including payments of R 40 000.00 on multiple occasions in April 2025, June 2025, July 2025, August 2025, and September 2025 to the total of R 155 000.00

[9] It is common cause that with the conclusion of the facility, the Applicant had reconciled itself that it would take a period of 240 months (20 years) from 9 November 2022 for First Respondent to repay the facility conferred by the agreement in whose terms this legal suit is brought.

[10] In order to succeed in its claim, the Applicant relies on a certificate of balance claiming arrears in the amount of R200 000.

[11] The Respondents proposed a structured repayment plan, paying over R 50 000.00 per month. The Applicant rejected their proposal with a counteroffer or engagement that the arrears be settled over a total of two months.

[12] The Respondents oppose the application on three primary grounds:

12.1 The Applicant's refusal to engage in Rule 41A mediation is unreasonable, contrary to the purpose of the Rule, and constitutes a failure to explore less restrictive means; and

12.2 The misjoinder alternatively rectification by amendment of citation of First Respondent and Third Respondent.

Summary of evidence

[13] The evaluation on the property was conducted on 11 October 2024 and the various section 129 Notices were issued and delivered on January 2025, 14 February 2025, and May 2025 respectively.

[14] The Applicant did not issue summons; the National Credit Certificate attached had expired and no transaction history was provided. The Applicant refused to participate in mediation and filed a Rule 41A Notice confirming that mediation was not suitable.

[15] Respondents disputed the arrears and *quantum* as per the Applicant's certificate of balance and argued that payments exceeding the monthly instalments reflect incorrect calculations of the arrears. Despite these payments, or that transaction history, the Applicant alleged, arrears inexplicably increased, giving rise to a genuine, material dispute regarding the correctness of their calculation.

Submissions of the Parties

[16] The Respondent complained that the Applicant's refusal to engage in Rule 41A mediation and the rejection of the proposed repayment plan, in the amount of monthly instalments to the value of R50 000.00, is unreasonable and undermines the purpose of alternative dispute resolution within the meaning of the Uniform Rules and the purposive object of the Act articulated earlier in this judgment. In turn, the Applicant argues that the failure to pay the proposed amount by the Respondent is an indication of bad faith.

[17] The Applicant, for its part, proposed the reserve price in respect to the sale of Unit 51 , Sandown Township, Johannesburg, with a reserve price of R 689 061.31 and Portion 56 of Erf 4[...] Nelspruit E,1[...] M[...] Street, with a reserve price of R 1 277 832.32.

[18] Lastly, the Respondent's counsel argued that the relief sought by the Applicant constitutes a disproportionate and constitutionally impermissible deprivation of the right to property under section 25 of the Constitution of the Republic of South Africa Act 108 of 1996

(“the Constitution”), particularly where viable, less drastic alternatives exist. The Applicant’s counsel responded that the Constitution does not find application because the properties in question are not primary residences.

Issues For Determination

[19] Before this Court, the questions presented have raised the following issues, as to—

19.1 Whether the Applicant’s refusal to engage in mediation is reasonable and in line with the NCA;

19.2 Whether there are disputes actually raised on the papers; and

19.2.1 Whether those are material to the Applicant’s entitlement to relief and, therein, whether the Applicant is entitled to the payment of the full Loan amount.

Analysis

[20] The Applicant’s conduct in refusing to negotiate with the Respondent and its refusal to enter into R41A mediation is at odds with section 3 of the Act. The purposes of this Act are to promote and advance the social and economic welfare of South Africans, promote a fair, transparent, competitive, sustainable, responsible, efficient, effective and accessible credit-market and industry to protect consumers. Specifically, section 3 envisions this to mean:

“(g) *addressing and preventing over-indebtedness of consumers, and providing mechanisms for resolving over-indebtedness based on the principle of satisfaction by the consumer of all responsible financial obligations;*

(h) *providing for a consistent and accessible system of consensual resolution of disputes arising from credit agreements; and*

- (i) *providing for a consistent and harmonised system of debt restructuring, enforcement and judgment, which places priority on the eventual satisfaction of all responsible consumer obligations under credit agreements.”*

[21] While the Act deals mainly with commercial transactions between credit providers and consumers, as defined, its provisions also have a significant impact on aspects of public law. It introduces new forms of protection for consumers. These include regulation of the consumer credit industry, prohibiting credit providers from extending ‘reckless credit’, and mechanisms to assist over-indebted consumers to manage their debt burden¹.

[22] In *Nedbank Ltd and Others v National Credit Regulator and Another*² the court stated that the interpretation of the NCA calls for a careful balancing of the competing interests sought to be protected, and not for a consideration of only the interests of either the consumer or the credit provider. Moreover, *in casu*, the Notice required by section 129(1)(a) refers to a specific credit agreement in respect of which the consumer is in default. It must ‘propose’ that the consumer refer the credit agreement to a debt counsellor, alternative dispute resolution agent, consumer court or ombud. These series of steps is apposite in that they give effect to the purpose of the Act which is for the ‘parties’ to resolve any dispute under the agreement or develop and agree on a plan to bring the payments under the agreement up to date. Even as a section 129(1)(a) Notice deals with only one credit agreement, their express object is to seek or bring about a consensual resolution relating to that agreement.³

[23] It is also clear that the Applicant was merely paying lip-service to the provision of section 129, read together with section 130, of the Act when it was advising the Respondents on mediation.

[24] The Applicant’s claim stems from the breach of the loan agreement by the Respondent as a result of the failure to pay the monthly instalment for three months in terms

¹ *Sebola and Another v Standard Bank of South Africa Ltd and Another* 2012 (5) SA 142 (CC) at para 41, giving content to sections 39-59 of the National Credit Act 32 of 2005.

² *Nedbank Ltd and Others v National Credit Regulator and Another* 2011 (3) SA 581 (SCA) at para 2.

³ *Ibid* at para 9.

of the credit loan agreement. The Applicant accelerated the debt and claimed the entire outstanding balance. The Applicant did not rely on the contract, nor did counsel indicate to this Court whether the Applicant verily relies on any provision of the standing credit loan agreement that is at issue in order to accelerate the debt and enforce its payment.

[25] The Applicant relies exclusively on its internal certificate of balance to assert arrears of R 201 091.59 (March 2025) to R 200 580.72 (November 2025). The Applicant does not explain how payments were allocated; and why the arrears escalated during months where payments were indeed made. The Applicant failed to provide an updated statement of account/transaction history detailing how the amount claimed came to be. A certificate of balance is not conclusive in evidence of the breach where the underlying transactions are disputed or where the certificate is inconsistent with objective payment records.

[26] The court cannot simply resolve the competing versions on the papers because the Applicant elected to proceed by way of motion court. The appropriate procedural consequence must then be determined in accordance with Rule 6(5)(g), having regard to the nature and extent of the dispute. The rule provides that: “(g) Where an application cannot properly be decided on affidavit the court may dismiss the application or make such order as it deems fit with a view to ensuring a just and expeditious decision.”

The Order

[27] Wherefor, the order is made as follows:

1. Application is dismissed with costs.

J T LESO

ACTING JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MBOMBELA

Appearances

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