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**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

CASE NO: 12225/16P

In the matter between:

ABSA BANK LIMITED

Plaintiff

and

SUGAN KHRISHNA NAIDOO

Respondent

JUDGMENT

CORAM: THOBELA-MKHULISI J

Heard: 17 and 18 August 2026

Delivered: 18 August 2026

Introduction

1. This is a judgment, handed down *ex tempore*, in the trial between the parties that ran on 17 and 18 August 2026.

The parties

2. The plaintiff is ABSA Bank Limited (“**ABSA**”) and the defendant is Mr Sujan Krishna Naidoo (“**Mr Naidoo**”), a shareholder and director of a private company named The SKN Group (Pty) Ltd (“**SKN**”).

The issues

3. ABSA sues Mr Naidoo for payment of the amounts owed to it by SKN, together with interest plus costs, and in doing so it relies on the suretyship purportedly signed by Mr Naidoo. On the pleadings, Mr Naidoo denies signing the suretyship undertaking.
4. Accordingly, I am required to determine two questions: *First*, whether the suretyship undertaking alleged by ABSA to have been signed by Mr Naidoo was so signed by him and is valid.
5. If the suretyship undertaking is not valid, that is the end of the enquiry and the action by ABSA falls to be dismissed. If the suretyship is valid, the *second* question is the amount Mr Naidoo is indebted to ABSA for.

A summary of the evidence

6. The common cause facts on the pleadings and in evidence are the following:
On or about 22 December 2015, ABSA extended an overdraft facility limited to the amount of R2 million to SKN, and for an indefinite term.
7. That SKN operated a transactional account where overdraft facilities were

extended to it from time to time by ABSA is admitted on the pleadings. Further, during his cross-examination, Mr Naidoo conceded that the overdraft facilities extended to SKN ranged from R400 000 to R2 million, a concession that is consistent with the letters from ABSA in which overdraft facilities were extended to SKN.

8. More specifically, in letters dated 17 February 2014, 24 June 2015, 20 July 2015 and 22 December 2015, ABSA extended overdraft facilities to SKN in the amounts of R400 000, R2 million for a limited period, R1.3 million for a fixed term and R2 million for an indefinite term, respectively.
9. In his evidence, Mr Naidoo accepts that the security held by the bank for the first overdraft facility of R400 000 is a cession of an investment held with Discovery bearing reference 8[...]. He also accepts that the security recorded when the second facility letter for R2 million until 17 July 2015 was granted is an unlimited suretyship by him dated 17 February 2014, which is also recorded in the facility letter for R1.3 million and in the final facility letter for R2 million.
10. The suretyship undertaking was signed on the same date as the initial overdraft facility of R400 000 was extended to SKN, although the cession of the investment is the recorded security, not the suretyship undertaking. The evidence led by Mr Naidoo is that SKN held other loan agreements, vehicle asset finance agreements and other facility agreements with ABSA.
11. Whilst Mr Naidoo could not confirm the precise dates, he accepted that during 2017 SKN was placed under business rescue, and it became finally liquidated

during 2020. He also explained that before its final liquidation, SKN employed a Finance Manager, Ms Cassim, whom he says signed some of the facility letters to which he was referred by both his counsel *Mr Dlamini* and *Mr Aldworth*, counsel for ABSA. By way of example, Mr Naidoo testified that the signature for SKN accepting the overdraft facility for R2 million extended in the letter dated 22 December 2015 is that of Ms Cassim. It is of no consequence that Ms Cassim signed some of the agreements for SKN, because it is admitted on the pleadings that SKN and ABSA concluded the overdraft facility agreement on 22 December 2015, although the admission is phrased in the negative in that Mr Naidoo denies the conclusion of the agreement and its terms save to the extent that it is consistent with the terms of the agreement. Mr Naidoo has not placed the conclusion of the facility agreement on 22 December 2015 on the ground that his financial manager signed it in dispute.

12. On the issue of whether Mr Naidoo signed the suretyship agreement, ABSA led the evidence of Ms Indranie Pillay ("**Ms Pillay**"), who at the time of the signature of the suretyship was employed by ABSA in the position of Business Banking Sales Consultant.
13. Ms Pillay testified that she witnessed Mr Naidoo sign the suretyship undertaking, and that she countersigned this undertaking as a witness together with SKN's business banker, Mr Fahim Ali. Ms Pillay also testified that whilst she was not SKN's banker, she had seen Mr Naidoo in the bank, she could identify him and she confirms that it is he who signed the suretyship undertaking at ABSA's Durban North branch.
14. When ABSA's counsel put this version to Mr Naidoo, his response was that he

cannot comment on this evidence, and he did not deny that he did so. During his evidence in chief, when Mr Dlamini directed Mr Naidoo to the page on which ABSA contends he signed, Mr Naidoo responded that the signature is similar to his, but that he could not say for sure. Mr Naidoo did not deny that the signature was his. Whilst Mr Naidoo was non-committal and vague about the signature appearing on the last page of the suretyship undertaking, he denies that the initials on the first three pages of the agreement are his.

15. ABSA also led the evidence of Mr Willem Adriaan Prinsloo (“**Mr Prinsloo**”) Prinsloo, who is employed by ABSA in the position of Senior Manager in the Interest Calculating Solutions Department. This was to explain the error in the interest rate used by ABSA to calculate the amount outstanding in the certificate of balance, reflected as the amount of R1 741 661.22. Mr Prinsloo explained that it applied the wrong interest rate during the period July to August 2016, the maximum interest rate of R18.5% and not the contractual interest rate of Prime plus 3.5%. His evidence was largely unchallenged, the only material question being asked of Mr Prinsloo being to explain the debit interest and the interest on the excess amount appearing in the statement dated 10 December 2016 to 9 January 2017 for SKN’s relevant current account. According to Mr Prinsloo, after the correction of the interest rate, the correct amount outstanding as at 1 November 2016 is R1 737 017.11. This has been reduced to the amount of R1 721 057.11 pursuant to a payment made by Mr Naidoo.

Analysis

16. Prior to dealing with the merits, I undertook to furnish reasons for dismissing Mr Naidoo’s application for a postponement of the trial that *Mr Dlamini* made from

the bar at the beginning of the trial.

17. My reasons for dismissing this 'application' are the following: no substantive application was made for the postponement sought. Mr Dlamini's only submission in support of the postponement is that ABSA did not serve the summons on Mr Naidoo personally but instead on a security guard, and that the postponement would give ABSA an opportunity to effect proper service.
18. The question of service is without merit. ABSA served the legal process commencing its action at SKN's address and the security guard's acceptance of the legal process is irrelevant. Nothing obliged ABSA to effect service personally on Mr Naidoo; neither the Uniform Rules nor the contract contained such an obligation. Mr Dlamini's submission in closing that matters of this nature demand that personal service be effected, is without merit.
19. By the time that the trial is heard, all questions of service of legal proceedings instituted almost 10 years ago, in October 2016, have been overcome by events. In any event, a postponement is warranted only if it is in the interests of justice to grant one¹. It cannot be claimed as of right, and the party applying for postponement must show good cause having regard to whether the application has been timeously made, whether the explanation provided is full and satisfactory, whether there is prejudice to any of the parties and all the well-known factors expounded in *Myburgh*². None of these factors are satisfied.
20. Turning to the merits, three of the facility letters recording the overdraft facility agreed between SKN and ABSA record the security to be a suretyship agreement by Mr Naidoo dated 17 February 2014. The only suretyship

¹ **Shilubana & Others v Nwamitwa (National Movement of Rural Women and Commission for Gender Equality as Amici Curiae)** 2007 (5) SA 620 (CC) at para 10.

² **Myburgh Transport v Botha t/a SA Truck Bodies** 1991 (3) SA 310 (NmS) at pp 314-315.

agreement with this date, is that which contains a signature that Mr Naidoo says looks like his. I do not find the version offered by Mr Naidoo and that proffered by ABSA to be mutually destructive: Ms Pillay testified that she saw Mr Naidoo sign the suretyship agreement, an allegation that Mr Naidoo does not deny. Moreover, Mr Naidoo has not testified that the signature that appears on the final page of the agreement is his. Instead, he states that it looks like his, and whilst this answer is vague and non-committal, it is not a denial.

21. I have weighed the response by Mr Naidoo that the signature on the last page of the suretyship agreement looks like his, against the objective evidence of (i) the facility letters, three of which refer to a suretyship agreement by Mr Naidoo, (ii) the admission on the pleadings that the facility letter dated 22 December 2015 was concluded between the parties and (iii) Mr Naidoo's evidence that some documents, including the share certificate for SKN, were signed by SKN's Finance Manager. To the extent that the initials on the first three pages of the suretyship agreement are not identified by Mr Naidoo, and whilst he did not state that these initials belonged to Ms Cassim, all other signatures that he said were not his he has attributed to Ms Cassim, who appears to have signed some documents for SKN. In my view, it is highly improbable that SKN would sign facility letters referring to a suretyship agreement, described as having been signed by Mr Naidoo, if such an agreement did not exist. For these reasons, I conclude that it is more probable than not that Mr Naidoo did sign the suretyship agreement and that it is a valid suretyship undertaking.

22. As to the reliability of the witnesses who testified³ I find that as a member of staff who testified that she knew of Mr Naidoo and would see him in the bank with his business banker, Mr Ali, to be consistent with Mr Naidoo's evidence that SKN held several accounts and products with ABSA. Ms Pillay's observation and recollection of the signature of the suretyship agreement was clear, and unchallenged. Despite Mr Naidoo's vague answer about the signatures that look like his, I make no finding against his credibility. I also found Mr Prinsloo to be a credible witness.
23. In the result, in relation to the factual dispute about the signature of the suretyship agreement, I am satisfied that this was signed by Mr Naidoo on 17 February 2014.
24. The only question that remains is the amount outstanding. As stated, Mr Prinsloo's evidence was unchallenged, and I therefore accept the calculations he performed, which reflect the amounts outstanding as set out above.
25. As to costs, *Mr Aldworth* asks this court to grant costs on the attorney and client scale. The suretyship agreement upon which ABSA rests its claim makes no provision for costs to be awarded on such a scale. I am not prepared to have regard to Annexure A said to have been attached to the facility letter dated 22 December 2015, in circumstances where this annexure is not referenced in the facility letter at all. If banks wish to claim punitive costs, they should take the time to ensure their contractual documents are drafted with sufficient clarity on

³ **Stellenbosch Farmers' Winery Group Ltd and Another v Martell et Cie and Others** 2003 (1) SA 11 (SCA) at para 5.

costs, to enable them to claim such costs. In this instance, ABSA's suretyship document simply refers to costs, without specifying attorney and client costs, and the facility letter makes no reference to Annexure A to which I am directed on the question of costs.

Conclusion

26. In circumstances, I grant the following order:

1. Judgment is entered for the plaintiff for payment of the amount of R1 721 057.11.
2. Interest on the above amount at the prime rate of interest plus 3.5%, calculated daily and compounded monthly from 13 January 2018 to the date of payment in full, both days inclusive.
3. Costs of suit, to be taxed in accordance with Scale B.

Acting Judge Thobela-Mkhulisi

Pietermaritzburg High Court

18 August 2026