



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MIDDELBURG**

CASE NO: 5511/2022

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

SIGNATURE

DATE 26/08/2026

In the matter between:

FIRSTRAND BANK LTD

Applicant

and

MORNÉ IZAK BUYS

First respondent

EMRI SNYMAN

Second respondent

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be 26 August 2026 at 10h00.

JUDGMENT

Schutte AJ

Introduction

[1] In deteriorating financial circumstances, overindebted customers are drawn, or even forced, into more debt. And for that reason, amongst others, the National Credit Act 34 of 2005 (the “NCA”) seeks to balance the scales between consumer and credit provider. In this judgment, I will show that the NCA can only be fully appreciated by those consumers who embrace the protections offered by it.

[2] For the sake of convenience, I refer to the applicant as “the bank”, and where I refer to legislation, it will be to the NCA.

The common cause facts

[3] In 2015, the parties entered into a home loan agreement in terms of which the bank advanced R1 550 000 to the respondents, repayable together with interest over a period of 20 years. As security for the loan, the bank caused a bond to be registered in its favour over the respondents’ residential property.

[4] The respondents breached the terms of the loan agreement by failing to make timeous payments.

[5] On 14 November 2022, the first respondent contacted the bank to make payment arrangements. Also on the same day, the bank sent a section 129(1) notice by registered post to the respondents. At the time of the parties’ discussion on 14 November, the section 129(1) notices had not been received by the respondents.

[6] On 25 November 2022, the respondents contacted the bank, ostensibly in response to the section 129(1) notice. The respondents and the bank concluded,

what I will, for the sake of convenience, label a payment arrangement, and the details of which I will refer to herein later.

[7] On 6 December 2022, the outstanding bond amounted to R1 718 249.23, whilst the arrears were R225 785.22. The bank, as the plaintiff, proceeded with summons against the respondents, as defendants, claiming payment in the amount of R1 718 249.23 from the respondents. The sheriff served the summons on 14 December 2022.

[8] The respondents complied with the payment arrangement, and by March 2023 the bank pended the litigation, as agreed.

[9] Two years later, on 6 March 2025, the respondents served their applications for debt review. The respondents' bond repayments remained in arrears. On 19 August 2025, the bank served its application for default judgment on the respondents.

[10] The respondents eventually filed their plea, in which they raised various special pleas. The bank then applied for summary judgment, which the respondents oppose. The summary judgment application together with an application to declare the respondents' property specially executable served before me. At the time of the hearing, the respondents' debt review applications had not been finalised.

The test for summary judgment

[11] In terms of Rule 32(3)(b), the respondents must satisfy the court by affidavit that they have a *bona fide* defence to the action and in their affidavits disclose "fully the nature and grounds of the defence and the material facts relied upon therefor."

[12] In considering whether the respondents have raised a triable issue, I will have regard to their plea and answer in the application for summary judgment, read

together with the bank's supporting affidavit in the application for summary judgment and the bank's particulars of claim.

The first special plea: Non-compliance with section 130(1)(b)(i)

[13] In their first special plea the respondents argue that their payment arrangement with the bank constituted a response as envisaged in section 130(1)(b)(i) and that, by virtue of section 129(1), the bank was barred from issuing summons against the respondents.

[14] The bank's section 129 notice informed the respondents that the arrears on their home loan account, at that stage, amounted to R230 791.08, whilst the then instalment was R17 994.14. The outstanding bond balance, at the time, was R1 725 042.63. The notice informed the respondents that:

"In order to rectify this situation, we propose that you either:-

3.1. pay the default amount within 10 business days of delivery hereof;

3.2. contact us directly on 0[...] to discuss the possibility of making a firm arrangement to bring the default in terms of the Credit Agreement up to date; or

3.3. refer the Credit Agreement to a debt counsellor, alternative dispute resolution agent, consumer court or ombud with jurisdiction, with the intent that any dispute may be resolved under the Credit Agreement, or develop and agree on a plan to bring the payments under the Credit Agreement up to date.

4. If you fail to respond to this notice or reject our proposals contained in paragraph 3 above, within 10 business days from delivery of this notice, we may exercise our rights, amongst any other remedies available to us, to issue summons against you for the full outstanding account balance. Should judgement be obtained it may potentially lead to the loss of your home should we proceed to selling your home by means of a public auction, which would result in your or any occupiers being evicted there from."

[15] It was after receipt of this notice, on 25 November 2022, that the respondents and the bank concluded a payment arrangement. The terms of the arrangement

were as follows: The respondents would pay R23 000 by 24 December 2022, and R30 000 each by 24 January, 24 February, and 24 March 2023. The bank alleged that the payment arrangement also included a term that the bank would only pend litigation once the respondents had complied with the payment terms of the payment arrangement. The respondents, in their answering affidavits, stated that they did not recall that term.

[16] I have no issue in accepting that the parties had indeed agreed that litigation would only be pended once the respondents have complied with the payment terms of the payment arrangement. The objective facts support my finding: *Firstly*, there is no evidence before me that the respondents objected to the summons which had been served on them a mere three weeks after conclusion of the payment arrangement. *Secondly*, the bank pended litigation, exactly as agreed. *Thirdly*, the respondents' answer, that they did not recall the agreement that litigation would be pended, constitute a bare denial which is outweighed by the bank's direct evidence. *Fourthly*, the payment arrangement addressed only a portion of the arrears. A week before the issuing of summons, the arrears amounted to R225 785.22.

[17] Section 130(1) of the NCA states as follows:

“Subject to subsection (2), a credit provider may approach the court for an order to enforce a credit agreement only if, at that time, the consumer is in default and has been in default under that credit agreement for at least 20 business days and —

(a) at least 10 business days have elapsed since the credit provider delivered a notice to the consumer as contemplated in section 86 (10), or section 129 (1), as the case may be;

(b) in the case of a notice contemplated in section 129 (1), the consumer has —

(i) not responded to that notice; or

(ii) responded to the notice by rejecting the credit provider's proposals.”

[18] Section 129(1) of the NCA stipulates as follows:

“(1) If the consumer is in default under a credit agreement, the credit provider—

(a) may draw the default to the notice of the consumer in writing and propose that the consumer refer the credit agreement to a debt counsellor, alternative dispute resolution agent, consumer court or ombud with jurisdiction, with the intent that the parties resolve any dispute under the agreement or develop and agree on a plan to bring the payments under the agreement up to date; and

(b) subject to section 130 (2), may not commence any legal proceedings to enforce the agreement before—

(i) first providing notice to the consumer, as contemplated in paragraph (a), or in section 86 (10), as the case may be; and

(ii) meeting any further requirements set out in section 130.”

[19] The respondents’ case is that the payment arrangement was in response to the bank’s section 129 notice and therefore that they had responded to the notice as envisaged in section 130(1)(b)(i). Because they responded to the section 129 notice, the respondents argue, the bank could not proceed with the issuing of summons.

[20] The respondents’ argument boils down to the payment arrangement which included a term that litigation would proceed, constitutes a response, which prevented the bank from proceeding with litigation. Put bluntly, the respondents say the bank’s reservation of its right to proceed with litigation is exactly the reason why the bank could not have proceeded with litigation. The internal contradiction in this argument is obvious and unsustainable.

[21] There is another reason why the respondents’ argument must fail. Their argument loses sight of clause 4.35 of the loan agreement in terms of which the parties agreed that no waiver or relaxation of any provision of the loan agreement shall operate as an estoppel against the bank, nor shall it preclude the bank from enforcing any of its rights under the loan agreement.

[22] The NCA does not define the word “respond”. Does “respond” mean that the consumer must simply confirm receipt of the bank’s section 129(1)(a) notice? Does

“respond” mean advancing a reasonable payment proposal, even if unacceptable to the bank?

[23] Recently, in *Lueven Metals (Pty) Ltd v Commissioner for the South African Revenue Service*,¹ the Constitutional Court had this to say about the interpretation of legislation:

“While text, context and purpose are three aspects of the statutory interpretive exercise, this Court has emphasised that statutory provisions should be accorded their textual meaning whenever appropriate and be “interpreted purposively”, “properly contextualised” and “construed consistently with the Constitution” at all times. In such an interpretive scheme, these aspects are not isolated enquiries but parts of a unitary interpretative exercise.”

[24] I will, as did the Constitutional Court in *Lueven*, discuss each aspect separately.

[25] If regard is had only to the text, then section 130(1)(b) seems to suggest that a credit provider may only enforce a credit agreement in court if the consumer has not responded to the section 129(1) notice or responded by rejecting the credit provider’s proposals. The text, in isolation, supports the respondents’ argument that a response to the section 129(1) notice is enough to exclude debt enforcement through litigation.

[26] But the text should be contextualised. In my view, “respond” should be interpreted with due regard to what the notice is supposed to convey to the consumer. Section 129(1)(a) prescribes the minimum content of the notice. These are: *Firstly*, to draw the consumer’s attention to the default. *Secondly*, to propose that the consumer refer the credit agreement to a debt counsellor, an alternative dispute resolution agent, a consumer court, or an ombud. *Thirdly*, to inform the consumer that the purpose of referral would be that the parties resolve any dispute or develop and agree on a plan to bring the payments under the agreement up to date.

¹ *Lueven Metals (Pty) Ltd v Commissioner for the South African Revenue Service* [2026] ZACC 24 at para 14.

[27] Properly contextualised, section 129(1) expects of the credit provider to inform the consumer of the default and of the consumer's rights if the consumer disputes any issue relating to the credit agreement and, if not, to guide the consumer to an appropriate institution that may assist the consumer in negotiating in a structured manner a payment plan with the credit provider.

[28] The reason why the consumer's attention is drawn to the debt counsellor is, with respect, sound, because a consumer does not, in terms of section 86(2), enjoy the protection offered by the debt review process if the process is commenced after litigation has commenced regarding the relevant credit agreement. The section 129(1) notice is in essence a warning to the consumer that, if the consumer is over-indebted, the consumer is to approach a debt counsellor, because an application for debt review brought after the institution of litigation will not bind the credit provider regarding the specific credit agreement.

[29] The function of an alternative dispute resolution agent is, if regard is had to the definition clause, "to assist in the resolution of consumer credit disputes through conciliation, mediation or arbitration".² Conciliation and mediation are intended to avoid litigation, whilst arbitration suggests an alternative method of litigation. In terms of section 130(3)(c)(i), a credit provider may not proceed with enforcement steps where a dispute has been recorded by an alternative dispute resolution agent. This clause ties in with the section 129(1) obligation on credit providers to inform the consumer of the consumer's right to refer the matter to an alternative dispute resolution agent. Arbitration is an alternative to litigation, not a continuation thereof.

[30] Section 130(3)(c) states that a court may not determine a matter where the matter is already before a debt counsellor, an alternative dispute resolution agent, a consumer court or the ombud with jurisdiction.

[31] Properly contextualised, to respond to a section 129(1) notice is not to contact the credit provider to arrange to rectify the default but to refer the matter to achieve the protection offered by section 130(3). It is for that reason that I stated in the

² Section 1 of the NCA.

introduction that the NCA rewards those consumers who wholeheartedly embrace its provisions.

[32] If my house is on fire and I phone the fire brigade, they have not responded to my emergency by merely answering the phone or even returning my call. Once the fire has been put out, the firemen can proclaim that they had responded to my emergency. That is when the cause of my emergency has been eliminated.

[33] Likewise, a consumer who negotiates to pay the arrears off over a period will have responded to the notice when the arrears have been paid in full. A consumer who disputes the credit agreement will have only responded to the notice when the consumer refers the notice to the entities mentioned in section 129(1)(a). If the credit provider refuses to accept the consumer's payment proposals, a consumer will have only responded if the consumer refers the notice to the section 129(1)(a) entities.

[34] Properly contextualised, the respondents' interpretation of section 129(1) is unsustainable.

[35] The purpose of section 129(1) is to avoid immediate litigation by compelling the credit provider to first notify the consumer of the default and of the consumer's rights. Section 130(1)(b)(i) seeks to further avoid litigation where, amongst others, the consumer has responded to the section 129(1) notice. In my view, the purpose of sections 129(1) and 130(1)(b)(i), if read together, is to give a consumer in default ample opportunity to avoid litigation. My view is supported if regard is had to the Act's preamble wherein it is stated that one of the Act's purposes is "to promote a consistent enforcement framework relating to consumer credit."

[36] The respondents' interpretation is that section 129(1) affords a consumer who has defaulted on the terms of a credit agreement a second, legislative-mandated, bite at the cherry. In the respondents' interpretation, the credit provider will have no choice but to delay litigation if the consumer contacts the credit provider and offers to pay part of the arrears over a period. Such an interpretation would encourage a

defaulting consumer to make a half-hearted attempt at settling the arrears. I do not read section 129(1) to come to assistance of those consumers.

[37] The parties did not refer me to any case law. But in my research, I came across *FFS Finance t/a Ford Credit v Van Der Merwe*,³ wherein the facts were as follows: The credit provider applied for default judgment following the consumer's default of monthly instalments in terms of a vehicle finance agreement. The consumer contacted the credit provider to make payment arrangements. The credit provider informed the consumer to settle 50% of the arrears immediately and the balance within 3 months. The consumer could not make such an undertaking; hence, no agreement had been concluded.

[38] The court held that the credit provider had preference for only one payment option, being the one proposed by the credit provider. The court held that by reaching out, the consumer had proven that the consumer had no hostile mindset, but rather that the consumer understood the issue and was keen to resolve the issue. The court held that the credit provider's approach had "the tendency to negate a genuine attempt made to reach a resolution of the indebtedness without resorting to litigation as envisaged in the NCA".⁴ The court held that a credit provider should meaningfully engage with a consumer and that negotiating alternative payment terms should never be a tick-box event. A credit provider may not see the consumer's response as a "noisy irritation to be endured" by the credit provider.⁵ The court held that a consumer's proposal is an essential pre-requisite for litigation.

[39] I support the notion that the NCA compels credit providers to treat consumers with fairness and dignity, but I disagree that section 129(1) imposes that obligation. Section 129(1) imposes an obligation on the consumer to respond to the default by either rectifying it or referring the matter to any of the therein listed entities. A consumer who fails to convince the credit provider to accept the consumer's payment proposal is not defenceless. The consumer will be at liberty to refer the matter, and once that is done, litigation may not be commenced.

³ *FFS Finance t/a Ford Credit v Van Der Merwe* [2025] ZAWCHC 230.

⁴ *Ibid* at para 8.

⁵ *Ibid* at para 10.

[40] In my view, the dictum in *FFS Finance t/a Ford Credit* may result in courts having to investigate the fairness of every offer to settle arrears made by a consumer by, amongst others, having to consider the consumer's financial position. This investigation will only be done after litigation has been commenced, thereby leaving the parties uncertain as to whether the section 129(1) response was indeed a response. In my view, such an exercise would be impractical and not be sanctioned by the NCA.

[41] I have also read my sister Leso's judgment in *Firststrand Bank Limited v Ligcabho Property Trust and Others*.⁶ She found, amongst others, that the credit provider's refusal to engage in mediation in terms of Uniform Rule 41A was at odds with the purpose of the NCA. In the current matter, the credit provider had engaged with the consumer and complied with the terms of the payment arrangement. The current matter is thus distinguishable on the facts from the matter that served before my sister.

[42] Section 129(1) requires the credit provider to inform the consumer, and nothing more. To respond to the section 129(1)(a) notice is to settle the arrears or to refer the notice to a debt counsellor, an alternative dispute resolution agent, the consumer court or the ombud. Anything short of that is a non-response to the notice. The respondents' response to the bank's section 129(1) notice was thus not a response as envisaged in section 129(1). It follows that the respondents' first special plea does not constitute a defence to the bank's claim.

The second special plea: Non-compliance with loan agreement

[43] In their second special plea, the respondents argue that the bank was not authorised to commence litigation because of clause 4.25.19 of the loan agreement, which states as follows:

⁶ *Firststrand Bank Limited v Ligcabho Property Trust and Others* (121975/2025) [2026] ZAMPMBHC 93 (20 August 2026).

“4.25.19. If the Act applies and the Customer is in default under this agreement, then the Lender will draw the default to the Customer’s notice in writing, and will propose that the Customer refers this agreement to a Debt Counsellor with the intent to develop and agree on a plan to bring the payments under this agreement up to date. The Customer further has the right to approach an Alternative Dispute Resolution Agent, Consumer Court or Ombud with jurisdiction in order to resolve any dispute under this agreement. If the Customer is in default under the agreement which is being reviewed in terms of Section 86 of the Act and the review has not been finalised within 60 (sixty) business days after the date on which the Customer applied for the debt review, the Lender may give notice to terminate such review in the prescribed manner to the Customer, the Debt Counsellor and the National Credit Regulator. If the Customer is in default and has been in default under this agreement for at least 20 (twenty) business days and at least 10 (ten) business days have elapsed since the Lender delivered a notice to the Customer as stipulated in Section 86(10) or Section 129(1) of the Act, as the case may be, and if in the case of a notice as stipulated in Section 129(1), the Customer has not responded to that notice or responded to the notice by rejecting the Lender’s proposal, the Lender may then approach the Court for an Order to enforce or terminate this agreement.”

[44] Clause 4.25.19 aligns with sections 129(1)(a) and 130(1). What I have said about the respondents’ first special plea equally applies to their second special plea. The second special plea is also no defence to the bank’s claim.

The third special plea: Non-compliance with section 130(3)

[45] In their third special plea, the respondents say that they have paid R353 500 towards the arrears for the period between November 2022 and September 2024. The respondents say they then applied for debt review and informed the bank of their debt review applications on 6 December 2024.

[46] The respondents argue that because of their payments towards the arrears and their debt review applications, the court may in terms of section 130(3) only determine the matter if the court is satisfied that the bank has complied with section 129, which the respondents say the bank has not.

[47] I have already found that the bank has complied with section 129. The third special plea is thus also without substance and no defence to the bank's claim.

The fourth special plea: Non-compliance with sections 130(3)(b) and 130(3)(c)(ii)(cc)

[48] The respondents say that their debt review application was served on the bank on 6 March 2025 and that they had complied with the November 2022 payment arrangement. The respondents argue that they have responded to the section 129(1) notice, thereby precluding the bank from commencing litigation. I have already found that the respondents' response to the section 129(1) notice was not a response as envisaged in section 129(1). It follows that the fourth special plea is also without merit.

The fifth special plea: Non-compliance with sections 130(4) and 86(2)

[49] The respondents argue that the bank was supposed to issue a new section 129(1)(a) notice and because the bank did not do so, the respondents were entitled to apply for debt review, which effectively suspended the bank's litigation in terms of section 88(3).

[50] Section 129(1) regulates a pre-litigation procedure. It does not regulate the procedure after issuing of summons. Here, the bank has issued summons and then pending the litigation once the respondents had paid part of the arrears. A few years later, when it became clear that the respondents could not rectify the default, the bank proceeded with litigation. The bank did this after serving the application for default judgment on the respondents, prompting the respondents to enter an appearance to defend.

[51] I deviate. The obligation to serve subsequently on a party in matters where the summons had been served more than 6 months before the next step is undertaken is set out in our division's practice directives. In this matter, our practice directives have

alerted the respondents to the bank's intention to proceed with litigation. Our practice directives have secured fairness to the respondents.

[52] I have already found that the respondents have not responded to the section 129(1) notice. The bank was thus entitled to proceed with litigation, whilst the respondents' debt review application had no impact on the bank's pending litigation. The respondents' fifth special plea is thus also without substance.

The respondents' defence to the bank's claim

[53] The respondents have not mounted any defence to the claim by the bank. It follows that the respondents failed to show a *bona fide* defence or any triable issue. I accordingly grant summary judgment against the respondents as per the order hereunder.

[54] In conclusion. The NCA comes to the assistance of those consumers who adhere to its provisions. The respondents had an opportunity to refer the matter to, amongst others, a debt counsellor but failed to do so, thereby losing the protection offered by the NCA.

The bank's rule 46 application

[55] The property in question is the respondents' primary residence. Whilst it is always difficult to declare a person's property specially executable, such an order must be made once an applicant has made out a case therefor, and no basis exists for the court to exercise its discretion in favour of the respondent(s).

[56] The respondents have, in their opposing papers, not seriously engaged any issue relating to the executability of the property. Their opposing papers are mostly a repeat of their special pleas.

[57] The parties agreed that the current market value of the property is R1 800 000, whilst the current municipal value is R1 050 000. The outstanding municipal rates and taxes are R4000, whilst the outstanding bond is R1 755 879.53. It would be fair to set the reserve price as high as possible to hopefully secure a purchase price favourable to the respondents. In my view, R1 700 000 represents a reserve price fair to all the parties.

[58] To allow the respondents the opportunity to sell the property in the open market, I will suspend the issuing of a writ of execution for a period of six months.

Costs

[59] It is trite that, in these types of matters, costs follow the result. The bank's counsel urged me to award costs on an attorney scale because the respondents have agreed to such a cost order in the loan agreement. I disagree. In *FFS Finance South Africa (RF) (Pty) t/a Ford Credit*,⁷ the court reminded that punitive cost orders in commercial contracts should not be rubberstamped by courts. Our courts have held that costs are within the discretion of the court and not subject to the parties' agreement.⁸ Nothing in the respondents' litigation behaviour is indicative of any ulterior motive.

[60] Whilst it is so that I have rejected the respondents' special pleas, the delay in finalisation cannot be blamed on the respondents alone. The bank has enrolled this matter on the opposed motion roll, instead of the unopposed motion roll, as directed by our division's practice directives. Had the bank done so, this matter would have been dealt with months ago.

[61] I see no reason to deviate from the principle that costs follow the result. The appropriate cost order is party and party costs on scale A. In my view, scale B would

⁷ *FFS Finance South Africa (RF) (Pty) t/a Ford Credit v Lamola* [2023] ZAGPPHC 1891; 2024 (2) SA 427 (GP) at para 36.

⁸ *Intercontinental Exports (Pty) Ltd v Fowles* 1999 (2) SA 1045 at para 25.

appropriately address the value of the bank's claim and the technical nature of the respondents' defences.

Order

[62] I therefore make the following order:

1. Summary judgment is granted against the defendants/respondents, the one paying the other to be absolved, as follows:

1.1. Payment of the amount of R1 718 249.23.

1.2. Interest on the amount of R1 718 249.23 calculated at a rate of 11.10% per annum, calculated daily and compounded monthly in arrears from 1 DECEMBER 2022 to date of payment (both days inclusive);

1.3. An order specially declaring the undermentioned immovable property executable in favour of the plaintiff:

ERF 9[...] K[...] EXTENSION 2 TOWNSHIP

REGISTRATION DIVISION I.S., PROVINCE OF MPUMALANGA

MEASURING 1950 (ONE THOUSAND NINE HUNDRED AND FIFTY) SQUARE METRES

HELD BY DEED OF TRANSFER T9674/2015

SUBJECT TO THE TERMS AND CONDITIONS CONTAINED THEREIN

(Better known as 1[...] K[...] AVENUE, K[...] EXTENSION 2,2271 and hereinafter referred to as "the mortgaged property").

1.4. Authorising the registrar to issue a writ of execution, after 28 February 2027, against the mortgaged property.

1.5. Setting a reserve price at R1 700 000 (One million seven hundred thousand Rand).

1.6. Costs of the suit on a party and party scale, scale B.

SCHUTTE AJ

ACTING JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MIDDELBURG

Appearances

On behalf of the applicant:	Advocate Ellis
On behalf of the respondents:	Advocate le Roux
Date heard:	13 August 2026
Judgment delivered:	26 August 2026