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

Case Number: 2025/049787

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
DATE	SIGNATURE

In the matter between:

ABSA BANK LIMITED

Plaintiff/Applicant

and

SIFISO JACOB MASINA

Defendant/Respondent

JUDGMENT

WENTZEL -THOMPSON J

Introduction

[1] This is an application for summary judgment arising from a written instalment sale agreement concluded between the plaintiff, Absa Bank Limited ("Absa"), and the defendant, Mr Sifiso Jacob Masina ("Masina"), in respect of a 2020 Mercedes-Benz V250D Avantgarde motor vehicle. Absa seeks confirmation that the agreement has been cancelled, delivery of the vehicle, leave thereafter to pursue such damages as may arise after repossession and sale, and costs

on the attorney and client scale. These costs are costs to which Absa is entitled under the instalment sale agreement.

- [2] The respondent appeared in person. I had regard to his status as a non-represented litigant during the course of the hearing and have continued to do so in evaluating the defences raised by him in this judgment. I have also had regard to the statement reflecting the payments made by him sent to my secretary at my instance on 29 July 2026.
- [3] For convenience, I will refer to the applicant and the respondent in these proceedings as the plaintiff and the defendant respectively.

The legal requirements under Rule 32

- [4] Under the amended Rule 32, the plaintiff is entitled to apply for summary judgment after delivery of the plea should it be of the view that it does not disclose a defence. In its affidavit filed in support of its application, it is required to engage with the defence disclosed in the plea and establish why no bona fide defence has been disclosed.
- [5] Correspondingly, the defendant resisting summary judgment must disclose fully in his answering affidavit, the nature and grounds of the defence raised and the material facts upon which it rests.
- [6] The enquiry before the Court hearing the application is whether there is a *bona fide* defence which, if established at trial, would constitute an answer to the plaintiff's claim. *Tumileng Trading CC v National Security and Fire (Pty) Ltd; E and D Security Systems CC v National Security and Fire (Pty) Ltd*¹ explains that the amended rule did not alter that essential test, although the defendant is now required to engage meaningfully with the plaintiff's answer to the pleaded defence. The authorities cited by Absa in their heads of argument confirm this approach.
- [7] Ultimately, the question is whether the dispute is genuine and legally cognisable. As the Supreme Court of Appeal emphasised in *NPGS Protection*

¹ 2020 (6) SA 624 (WCC)

and Security Services CC v FirstRand Bank Ltd,² bald assertions which do not disclose facts capable of constituting a defence do not require a plaintiff with an otherwise established claim to proceed to trial.

The agreement and the common-cause facts

- [8] The instalment sale agreement of relevance in this case was concluded electronically on 22 June 2020. In terms of this agreement, Absa sold the vehicle to Masina and financed the transaction in respect of which the respondent incurred a principal debt in the amount of R1 469 458.92, after deduction of a deposit of R59 000. Ownership was expressly retained by Absa pending fulfilment by Masina of all of his contractual obligations.
- [9] Following the conclusion of the instalment sale agreement, Masina took delivery of the financed vehicle and remains in possession of it.
- [10] The agreement required Masina to pay the prescribed monthly instalments when due, without deduction, withholding or deferment. In the event of a failure to pay amounts due, Absa was contractually entitled, subject to the National Credit Act 34 of 2005 (“the NCA”), to cancel the agreement, recover possession of the vehicle, sell it and thereafter, recover any damages or shortfall between the amount then outstanding and the amount recovered pursuant to the sale of the vehicle.
- [11] Masina admits the agreement, its material terms, delivery, Absa’s ownership, the principal debt and the sending and delivery of the notice contemplated in s 129 of the NCA. His defence raised in his plea and his affidavit resisting summary judgment hinges upon his dispute of his default entitling Absa to cancel the instalment sale agreement, the failure by Absa to allocate the manual payments made by him, the correctness of the arrears and Absa’s entitlement to terminate the agreement. Ancillary to this, the respondent disputes the amount reflected as outstanding in the section 129 notice, his entitlement to insist upon a restructuring of his debt and Absa’s entitlement to

² 2020 (1) SA 494 (SCA)

act upon its alleged cancellation of the agreement after it accepted his further payments after its purported cancellation.

The quantification of the arrears owing by Absa

[12] Absa alleges that on 3 March 2025, Masina was in arrears in the amount of R98 204.30. It delivered a s 129 notice recording that sum and demanding that the default be remedied.

[13] Masina's central defence raised in his plea is that Absa itself stopped the debit-order mechanism during 2024, that he thereafter paid manually, and that those manual payments were not properly captured by Absa or appropriately allocated. On this basis, Masina disputes the amount contended to be in arrears by Absa.

[14] In his affidavit opposing summary judgment, Masina supported his defence by producing his own banking payment history, marked SJ-1 and, for comparative purposes, the monthly statements furnished to him by Absa. His criticism is that the contemporaneous customer statements do not appear to reflect his payments. However, in the detailed ledger produced by Absa in support of its application for summary judgment, these payments, according to Absa, are indeed reflected.

[15] Masina argues that the detailed ledger produced by Absa is retrospective reconstruction that does not accord with the monthly statements sent to him and this discrepancy in and of itself exposes a dispute as to the arrear amount owing by him worthy of trial.

[16] In this respect, Masina relies upon *Nedbank Ltd v Pitt*.³ There the Court was concerned with payment histories in which balances did not change in consequence of identifiable debits or payments, which counsel could not explain. The Court held that this cast doubt upon the credibility of the certified arrears.

³ [2025] ZAGPJHC 699

[17] The case before me is materially different. This is because a reconciliation of Absa's reconciliation and the manual payments Masina made have indeed been incorporated in the computation of the amount owing by Masina.

The payment reconciliation

[18] Masina's SJ-1 is a payment history generated from his banking records. It records the manual payments upon which his defence depends. Absa's detailed statement, in turn, records debit orders, rejected debit orders and payments received by means other than the debit-order mechanism. Absa specifically relies upon the columns recording "Payment-Debit Order" and "Payment Rejection", and states that the debit orders were not stopped by it but were presented and rejected. This refutes Masina's contention that Absa itself stopped the debit order process.

[19] The reconciliation establishes that, with one immaterial qualification concerning the payment made on the same date as the September 2025 ledger was generated, the manual payments have all been accounted for in Absa's accounting records. I must disclose that the reconciliation that follows was produced after my request from Chat GBT that it reconcile the payments said to be made by Masina. I have interrogated this reconciliation and am satisfied that it is accurate.

Schedule A: reconciliation of the manual payments and arrears

Date / period	Debit or contractual position	Manual payment appearing from Masina's records	Treatment apparent from Absa ledger	Effect on arrears
March 2024	Historical arrears substantially cleared following a large catch-up payment	—	Running overdue balance reduced to approximately R725.77	Account almost brought up to date
April 2024	Monthly debit approximately R23 481.95 ; debit order rejected	R758.00 on 29 April 2024	R758 reflected as a payment	Existing R725.77 plus substantially unpaid April instalment produces arrears of approximately

Date / period	Debit or contractual position	Manual payment appearing from Masina's records	Treatment apparent from Absa ledger	Effect on arrears
				R23 456.77
May 2024	Current instalment accrues	No separate instalment-sized payment in SJ-1	Ledger does not show the addition of another full unpaid instalment	Arrears remain at approximately one instalment, subject to interest/charges
11 June 2024	Debit order presented/rejected	R23 605.41	Corresponding manual payment identifiable	Current June obligation substantially serviced; prior arrears remain
July 2024	Monthly debit due	No corresponding manual payment	No compensating manual instalment identifiable	Arrears increase to approximately two monthly instalments
12 August 2024	Monthly debit due/rejected	R23 610.00	Corresponding payment identifiable	Current obligation serviced; accumulated arrears remain
11 September 2024	Monthly debit due/rejected	R23 607.00	Corresponding payment identifiable	Current obligation serviced; accumulated arrears remain
8 October 2024	Monthly debit due/rejected	R23 607.00	Corresponding payment identifiable	Current obligation serviced; accumulated arrears remain
8 November 2024	Monthly debit due/rejected	R23 440.00	Corresponding payment identifiable	Current obligation serviced; accumulated arrears remain
December 2024	Monthly debit due	No corresponding manual payment	No compensating instalment identifiable	Arrears increase to approximately three instalments

Date / period	Debit or contractual position	Manual payment appearing from Masina's records	Treatment apparent from Absa ledger	Effect on arrears
January 2025	Monthly debit due	No corresponding manual payment	No compensating instalment identifiable	Arrears increase to approximately four instalments; ledger reflects approximately R98 203.64 overdue
10 February 2025	Monthly debit approximately R23 274	R23 274.00	Corresponding payment identifiable	February current obligation substantially serviced; old arrears remain
3 March 2025	Date of s 129 arrears calculation	—	Arrears stated as R98 204.30	Difference from the preceding running figure is approximately 66 cents
12 March 2025	Post-s 129 current instalment	R24 000.00	Corresponding payment identifiable	Does not retrospectively eliminate the arrears existing on 3 March
8 April 2025	Further current payment	R23 500.00	Corresponding payment identifiable	Current payment; historic default remains
12 May 2025	Further current payment	R23 047.59	Corresponding payment identifiable	Current payment; historic default remains
21 July 2025	Summons served; cancellation at the latest communicated	—	—	Agreement terminated at latest on service
11 August 2025	Post-cancellation payment	R20 000.00	Payment identifiable in ledger	Falls to be credited against indebtedness; does not revive

Date / period	Debit or contractual position	Manual payment appearing from Masina's records	Treatment apparent from Absa ledger	Effect on arrears
10 September 2025	Post-cancellation payment, made on date of detailed statement	R20 000.00	Not independently legible in the statement generated that same day	agreement Timing explains why it cannot safely be treated as proof that earlier payments were unallocated; irrelevant to March default

[20] The schedule demonstrates several matters. First, Masina was correct in saying that he made substantial manual payments. He was incorrect, however, in asserting that Absa did not account for them. The supporting affidavit says that the payments are contained in the detailed statement and that the account remained in arrears notwithstanding them. Inspection of the underlying documents substantially bears out that assertion out.

[21] Second, the payments do not establish a pattern of uninterrupted compliance. Following the effective clearing of older arrears in March 2024, the account again fell materially behind in April 2024. The June 2024 payment made essentially only serviced the June 2024 instalment and did not account for the arrears already incurred. The July 2024 instalment was then missed. The payments from August 2024 to November 2024 maintained the current instalments but did not extinguish the existing arrears. The December 2024 and the January 2025 instalments were not paid.

[22] Accordingly, by January 2025, despite Masina substantially settling his arrears in March 2024, by January 2025, the account was again in arrears in an amount approximately equivalent to four months in arrears.

[23] Third, a debtor who owes an amount equivalent to four outstanding instalments does not cure that default by thereafter paying only each newly accruing instalment, without also paying towards the unpaid instalments. Those

payments prevented the arrears from increasing, but did not cure Masina's default.

[24] The strongest corroborative evidence against Masina's contentions that his payments were not accounted for appears from the fact that at the end of the reconciliation, the overdue balance of R98 203.64 is reflected. These are the arrears said to owing immediately before the section 129 notice was sent. The section 129 notice demands payment of the amount of R98 204.30. The difference is approximately 66 cents. Whatever minor accounting adjustments may have occurred between the entries, the reconciliation establishes incontrovertibly that the arrear amount of R98 204.30 recorded in the section 129 notice was substantially correct and that Masina has no bona fide basis to dispute it.

[25] Accordingly the authority relied upon by Masina decided in *Pitt* is distinguishable and of no assistance to him. In *Pitt* the court was faced with facts which in and of themselves failed to explain the arrears figure appearing in the ledger before the court. This is not the case in the matter before me. On the contrary, the detailed ledger and the s 129 notice before me are substantially reconcilable and serve to confirm the debt outstanding.

[26] I must, however, make one qualification. Absa's assertion that "11 out of the 11" manual payments had been allocated in the detailed statement is not entirely accurate. The final R20 000 payment made by Masina was made on 10 September 2025, the date upon which the statement itself was generated, is not reflected in the reconciliation before me. However, this does not materially affect the issues in dispute before me as the payment was made approximately seven months after the s 129 notice was issued and after cancellation by service of summons. It cannot cast doubt upon the correctness of the amount of R98 204.30 said to be in default on 3 March 2025.

[27] In the matter before me, Absa only seeks repossession of the vehicle provided to Masina pursuant to an instalment sale agreement that it has been established has been breached entitling Absa to repossession.

[28] As no money judgment is sought at this stage, Masina's disputes regarding the total accelerated outstanding balance of R1 121 356.02 and Masina's argument concerning the balloon payment, are defences that can be raised when Absa seeks a money judgment. Absa presently only seeks return of its vehicle consequent upon cancellation, not summary judgment for the entire accelerated balance. Its certificate dated 4 September 2025 records an outstanding balance of R1 121 356.02 and arrears then of R153 488.17. The precise damages claim is expressly reserved until after repossession and sale. A dispute about the ultimate shortfall does not answer an established default justifying cancellation.

The dispute regarding the cessation of the debit order for payment of the instalments

[29] Masina claims that Absa "stopped" his debit order, which forced him to pay manually. Absa denies doing so and points to the ledger reflecting the continued presentation and rejection of the debit orders set up for payment of the monthly instalments.

[30] It appears from Absa's reconciliation that the debit orders were duly presented but reversed due to non-payment. Even assuming in Masina's favour that he was required through no fault of his own to resort to manual payments, that does answer why he did not settle his arrears by means of these manual payments.

Absa's entitlement to cancellation of the instalment sale agreement

[31] Masina argues that Absa could not unilaterally cancel the instalment sale agreement and that its cancellation required judicial endorsement. This is not a proposition with any legal foundation. A cancellation of a contract for breach constitutes a unilateral act by a contractual party under the contract; it requires no court sanction. The fact of breach itself entitles the other party to cancel the contract. This right is prefaced by its election either to hold the defaulting party to the contract and claim specific performance or to seek cancellation and claim damages. Absa elected to exercise its rights to seek the second mentioned remedy for the breach of the contract by Masina.

[32] That this is so is now trite; cancellation for breach is an election belonging to the innocent contracting party once the right to cancel has accrued. The innocent party may elect either to uphold the agreement and insist upon performance, or to cancel. The Court need not endorse that election.⁴

The National Credit Act

[33] In terms of the National Credit Act (“NCA”), the innocent party exercises the right to cancel by words or conduct manifesting a clear election to do so, which election must be communicated to the defaulting party. Unless the agreement prescribes a formality, no special form is required.

[34] The NCA regulates the exercise of that contractual remedy but does not convert cancellation into a judicial act. Section 123 recognises contractual termination subject to the requirements of the Act. In the context of instalment sales, *Standard Bank of South Africa Ltd v Botes t/a JHLS Botes Vervoer*⁵ confirms that a *lex commissoria* remains permissible, although ss 129 and 130 must be complied with before the right is exercised.

[35] The agreement before me expressly confers the right to cancel. Clause 15 provides, in substance, that after the stipulated period of default and not less than ten business days after delivery of the default notice, Absa may cancel and issue proceedings to recover the debt, including repossession of the asset. Clause 28 provides that the agreement continues until Masina fulfils his obligations or Absa cancels because he is in default.

[36] The distinction between cancellation and repossession is important. While Absa may cancel by exercising and communicating its contractual election, it still cannot, however without a Court Order, forcibly repossess the vehicle through self-help. If Masina does not surrender it, Absa requires an order directing its return.

[37] That being said, the need for judicial enforcement of the consequence of cancellation does not mean that the unilateral act of cancellation itself requires

⁴*Datacolor International (Pty) Ltd v Intamarket (Pty) Ltd* 2001 (2) SA 284 (SCA)

⁵ *Standard Bank of South Africa Limited v Botes t/a JHLS Botes Vervoer* (M85/15) [2015] ZANWHC 49 (3 September 2015); [2015] ZANWHC 49

judicial confirmation; it does not and the case law has authoritatively decided this.

The date of cancellation

[38] The particulars of claim allege that Masina failed to make payment as demanded and that Absa “cancelled alternatively hereby cancels the agreement”. There is no satisfactory evidence identifying the precise date or mode of communication of an anterior cancellation. Had Absa relied exclusively on some pre-summons cancellation, that omission might have required closer consideration.

[39] However, the alternative pleaded election that it, in terms of the summons, “hereby cancels” the agreement is unequivocal and is not disputable by the respondent. There can be no doubt that service of the summons communicated Absa’s election to cancel to Masina. The summons was served on 21 July 2025. At the latest, therefore, cancellation became effective on 21 July 2025.

[40] A cancellation expressly pleaded in and communicated through summons is capable of constituting the required contractual election. The recent judgment in *Mushasha v Mercedes-Benz Financial Services South Africa (Pty) Ltd*⁶ dealt with particulars of claim in which cancellation was pleaded, but in which it was alternatively pleaded that by service of summons cancellation had been effected. It was held that, even if there were an anterior dispute regarding cancellation, it occurred at the latest when the summons was served on the defendant.

[41] It being demonstrated that Masina was in arrear at the date of the summons, Absa was entitled to cancel the instalment sale agreement and claim repossession.

[42] By that date the statutory periods afforded to the respondent to cure his defect under section 129 had long expired. The section 129 notice was dated 3 March 2025. The notice and its delivery are admitted. The default had not by that date

⁶ [2026] ZAGPJHC 614

been cured; nor had the arrears been paid by the date of the service of the summons.

[43] Thus, Absa had both a contractual right to cancel and had also complied with the statutory prerequisites for its cancellation stipulated in the NCA.

Masina's proposal to restructure the agreement

[44] Masina claims that he approached Absa seeking a restructuring of the arrears admittedly owing by him. His proposal was, in substance, that the existing arrears, once correctly determined, be spread over the remaining period of the agreement while he continued to pay his stipulated monthly instalments. Masina points out that the majority of the term of the agreement has run its course and that only approximately 21 months remain before the termination of the agreement; and he says he is willing and able to pay all the instalments owing for the remainder of the agreement.

[45] That proposal may have been commercially sensible from Masina's perspective. However, it did not create a legal right to compel Absa to accept it.

[46] Section 129(1)(a) of the Act seeks to facilitate non-litigious resolution of default. It contemplates referral to a debt counsellor, alternative dispute resolution agent, consumer court or ombud with the object, among other things, of developing and agreeing on a plan to bring the account up to date. But a proposal for consensual restructuring is precisely that: a proposal. Unless accepted, it does not amend the contract or suspend the creditor's accrued rights to cancellation and repossession.

[47] But this does not preclude Masina from exercising his rights under section 129(3) of the NCA. In *Nkata v FirstRand Bank Ltd*,⁷ the Constitutional Court held that a consumer may, before cancellation and subject to section 129(4), reinstate an agreement by paying all overdue amounts together with the applicable permitted default charges and reasonable enforcement costs. Reinstatement occurs by operation of law once the statutory requirements are satisfied; the consumer does not require the creditor's agreement.

⁷ 2016 (4) SA 257 (CC)

[48] Masina had not availed himself of this opportunity to keep his credit agreement alive. Masina did not pay the accumulated arrears of approximately R98 000 before cancellation. He largely paid the instalments falling due thereafter and proposed to amortise the historic default into the future. That is not statutory reinstatement.

[49] *Botes* is particularly instructive. It recognises the distinction between a payment-plan agreement and the remedial action contemplated by s 129(3). A consensual payment plan may regulate the parties if concluded, but the proposal of one does not itself cure the default or destroy an accrued right of cancellation.

[50] No binding restructuring agreement has been established by Masina; all he has done is allege that he requested this. He certainly has not established an “existing payment arrangement” as alleged.

Payments accepted after cancellation

[51] Summons was served on 21 July 2025. In the face of this summons, Masina continued to make payments. In his papers before me has shown that he made a payment of R20 000 on 11 August 2025 and another of R20 000 on 10 September 2025. Both of these payments were made after the issue of summons. Masina argues that Absa accepted these payments, and in so doing, revived the cancelled instalment sale agreement.

[52] However, the acceptance of those payments does not, without more, amount to an election by Absa to revive the cancelled agreement.

Waiver of the right to cancel the agreement

[53] Once a contract has been validly cancelled, the question is no longer whether conduct inconsistent with cancellation occurred before an election was made, but whether the parties thereafter concluded a new agreement or otherwise lawfully revived their relationship. Receipt of money which remains owing is not in itself such an agreement. The creditor may receive the payment and credit it against the debtor’s outstanding indebtedness, as Absa says it has done.

[54] This point was recently considered in this division in *Mushasha v Mercedes Benz Financial Services South Africa (Pty) Ltd and Another*.⁸

[55] The debtor there similarly relied on payments accepted after cancellation. The Court held that acceptance after cancellation did not, without more, revive or reinstate the agreement, and that such payments could be credited in reduction of the outstanding indebtedness. It further held that a court could not make a new agreement for the parties by restructuring their payment obligations after cancellation.

[56] That reasoning applies here. There is nothing in Masina's papers from which an agreement to revive the instalment sale agreement after acceptance of payments from Masina after cancellation. Absa has throughout the litigation persisted with its contention that the agreement was cancelled and the vehicle must consequently be returned to it. Its receipt of sums capable of reducing the eventual indebtedness is not irreconcilable with that position.

[57] Nor can the post-cancellation payments operate as statutory reinstatement. Section 129(3) makes reinstatement available only before cancellation. *Nkata* makes the temporal limitation clear; once cancellation had occurred, later payments can reduce the arrears owing, but cannot unilaterally restore the contractual entitlement to possession of the vehicle that is the subject of an instalment sale agreement.

The remaining defences

[58] Masina's assertion that Absa has suffered no prejudice is no answer to the claim. The right to return follows from valid contractual cancellation and Absa's retained ownership. It is not conditional upon proof that the vehicle has already depreciated by a particular amount.

⁸ (2025/040031) [2026] ZAGPJHC 614 (2 June 2026)

[59] Masina's willingness and apparent ability to continue paying are equally not defences. They are relevant to explaining why he sought indulgence, but contractual performance is measured by performance when due, not by a later willingness to perform on different terms selected by him.

[60] The contention that the total balance includes a balloon payment also does not defeat the return claim. The balloon forms part of the financing structure. Whether the eventual damages or shortfall is correctly calculated after resale remains open because Absa expressly asks that damages be determined only after possession and sale. The Court is not presently entering summary judgment for R1 121 356.02.

[61] I have also considered whether there is nevertheless some residual uncertainty in the accounts sufficient to justify an exercise of discretion against summary judgment. In my view there is not. The alleged accounting discrepancy was the central factual defence. Once the detailed ledger has been tested against Masina's own payment record, it does not reveal a genuine dispute requiring oral evidence.

Application of Rule 32

[62] A defendant is not required at this stage to prove his defence. But there must be facts which, if proved at trial, would answer the plaintiff's claim. The principle appearing in *Maharaj v Barclays National Bank Ltd*,⁹ and *Breitenbach v Fiat SA (Edms) Bpk*¹⁰, and the later authorities remains that the nature and grounds of the defence must be disclosed with sufficient completeness to demonstrate its *bona fides*.

[63] Masina has put up more than bald denials. He produced actual payment records and raised a specific accounting challenge. For that reason his defence required substantive examination rather than summary rejection. But examination of his evidence reveals that the premise upon which the defence rests is wrong: the payments are substantially reflected and the missed instalments owing explain the arrears.

⁹ 1976 (1) SA 418 (A)

¹⁰ 1976 (2) SA 226 (T)

- [64] The same is true of cancellation. Masina's pleaded proposition is not that Absa had waived an accrued right to cancel or that all arrears had been cured before the election; it is that Absa could not cancel without the Court doing so. That is not a defence recognised in our law as had been demonstrated above.
- [65] Masina's for a restructuring of his debt establishes a request for an indulgence, not an accepted variation, statutory rearrangement or reinstatement. The subsequent payments establish amounts to be credited, not a revival of the instalment sale agreement.
- [66] In these circumstances there is no factual issue which, if tried, could defeat Absa's present claim to confirm its cancellation of the instalment sale agreement and return of its vehicle.
- [67] But this is said acknowledging that Masina is not the typical recalcitrant debtor; he has tried as he might to settle his arrears and to enter into a payment arrangement. Although the law does not strictly afford him an indulgence, and notwithstanding the Order I will make in Absa's favour, I would like to impress upon them to engage with Masina to determine whether there is not a way forward in which he can be afforded an opportunity to pay off his arrears and thus stave off the repossession of the vehicle that I must inevitably order in my judgment.

Costs and consequential damages

- [68] The agreement provides for attorney and client costs in the event of enforcement consequent upon default. Masina has not advanced any basis upon which the contractual costs provision should not be enforced.
- [69] Absa does not at this stage seek an order for payment of the amount outstanding after sale of the vehicle it seeks to repossess. Absa accordingly seeks leave to approach the Court thereafter on the same papers, suitably supplemented, to seek the outstanding balance after the price for the sale of the vehicle has been determined. That relief preserves Masina's right to contest the quantification of any eventual shortfall owing by him.

Conclusion

- [70] Absa has established that Masina fell materially into arrears. His manual payments were not ignored by Absa; on the contrary, they were recorded and credited.
- [71] The history of the respondent's payments i demonstrates intermittent payment which serviced a number of current instalments without extinguishing arrears generated by substantially unpaid instalments in April and July 2024 and December 2024 and January 2025.
- [72] By the beginning of 2025 those arrears had accumulated to approximately R98 203.64. The section 129 notice reflected arrears of R98 204.30. The difference is negligible and the notified arrears were substantially, indeed almost exactly, corroborated by the accounts ledger attached to the applicant's founding papers.
- [73] Masina did not cure that default before cancellation. Instead, he sought an indulgence and requested that Absa agree to spread the arrears over the remaining term.
- [74] Moreover, Absa was not legally obliged to accept that proposal. Masina did not achieve statutory reinstatement under s 129(3), nor did he establish an agreed variation or restructuring.
- [75] Absa possessed an express contractual right to cancel the instalment sale agreement after default and compliance with the statutory notice requirements. Cancellation was its contractual election and did not require a court order. Whatever uncertainty may exist concerning an earlier communication of cancellation, the particulars of claim expressly cancelled in the alternative, and service of summons on 21 July 2025 communicated that election. The agreement was therefore terminated at the latest on that date.
- [76] Payments accepted thereafter did not restore the agreement. They fall to be credited to Masina's outstanding indebtedness. There is no evidence of any

new agreement or other juridical basis upon which the cancelled instalment-sale agreement revived.

[77] As such, the defences raised by Masina do not constitute *bona fide* triable issues that would justify my referring the matter to trial. Summary judgment must accordingly be granted and costs should follow that result.

Order

[64] The following order is made:

- (1) It is declared that the written instalment sale agreement concluded between the plaintiff and the defendant on 22 June 2020 in respect of the 2020 Mercedes-Benz V250D Avantgarde A/T motor vehicle has been validly cancelled.
- (2) The defendant, and any person in possession of the vehicle through him, is directed forthwith to deliver to the plaintiff the 2020 Mercedes-Benz V250D Avantgarde A/T motor vehicle with engine number 6[...] and chassis number W[...].
- (3) The plaintiff is granted leave, after repossession and sale of the vehicle, to approach this Court on the same papers, supplemented insofar as may be necessary, for judgment in respect of any damages, shortfall and reasonable expenses arising from the defendant's breach and the repossession and sale of the vehicle.
- (4) All payments received by the plaintiff from the defendant after cancellation are to be credited in the calculation of any indebtedness or damages ultimately claimed.
- (5) The defendant is ordered to pay the costs of the action and the application for summary judgment on the scale as between attorney and client, in accordance with the terms of the instalment sale agreement.

**JUDGE OF THE HIGH COURT
JOHANNESBURG**

For the Applicant:

Adv. M Arroyo instructed by Straus
Daly Inc

For the Respondent:

In person

Date of the hearing: 28 July 2026

Date of the judgment : 26 August 2026