



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

Case No: CA115/2022

In the matter between:

NOEL VAN WYK

Appellant

And

REGIONAL MAGISTRATE MBULULU

First Respondent

FIRSTRAND BANK LTD

Second Respondent

JUDGMENT

Beshe J

[1] Second respondent instituted action against the appellant out of the Regional Court, East London for inter alia the cancellation of an instalment agreement entered into between the appellant and the second respondent. Also sought was the return of the motor vehicle in respect of which the instalment agreement was concluded. Judgment was granted in favour of the second respondent. This, after the Magistrate dismissed appellant's special plea that the summons had been issued prematurely in view of the fact, so appellant contended, that the second respondent had not issued him with a notice as provided for in section 129(1) of the National Credit Act.¹

¹ Act 34 of 2005.

[2] Save for the special plea raised, the pleadings reveal that the appellant made the following admissions:

He has breached the provisions of the agreement by failing to make regular payments in terms of the agreement and has fallen into arrears. That the second respondent is entitled to cancel the agreement and take possession of the motor vehicle.

[3] It is common cause that the second respondent initially instituted the action against the appellant in the Makhanda High Court. Before the institution of the action in the High Court, there is evidence that second defendant sent the section 129 notice by registered mail to appellant's domicilium address and same was delivered at the relevant post office and a notification was sent to the appellant's address. In the court *a quo* appellant submitted that "the plaintiff did not issue a Section 129 notice prior to issuing summons. Now the summons I am making reference to is the one which is before the court with case number 5855/2019".²

[4] The second point raised by the appellant in the court *a quo* relates to the provisions of Section 130 of the National Credit Act. Namely that he was in the process of debt review at the time the action was instituted against him.

[5] Appellant persisted with these points as grounds of appeal. However, in argument before us the appellant correctly conceded that second respondent was not required to issue another Section 129 notice for purposes of the summons issued out of the Magistrates Court. It is indeed so. The Section 129 notice that was issued by the second respondent before action was instituted in the High Court related to the same agreement, to the same debt, the same cause of action.

² Page 54 of the paginated papers. 5855/2019 is the Magistrates Court Case Number.

[6] Appellant also conceded, rightly so once again, that at the time of the issuing of the summons in the Magistrate Court, he was not under a debt review process. He confirmed that according to Annexure L which was annexed to his special plea, his application for debt review was rejected in terms of Section 86(7)(a) of the National Credit Act in July 2019. The summons in turn was issued against him in August 2019.³

[7] In light of appellant's grounds of appeal having been conceded, correctly so by him, the appeal falls to be dismissed.

[8] Accordingly, the appeal is dismissed with costs.

N G BESHE
JUDGE OF THE HIGH COURT

POTGIETER J

I agree.

D O POTGIETER
JUDGE OF THE HIGH COURT

³ Section 86(7) provides that: "(7) If, as a result of an assessment conducted in terms of subsection (6), a debt counsellor reasonably concludes that –

(a) the consumer is not over-indebted, the debt counsellor must reject the application, even if the debt counsellor has concluded that a particular credit agreement was reckless at the time it was entered into."

APPEARANCES

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Date Heard : 26 January 2024
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