

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 003406 /2023

DATE: 27 October 2023

DELETE WHICHEVER IS NOT APPLICABLE

1. Reportable: Yes / No
2. Of Interest to Other Judges: Yes / No
3. Revised

DATE:

SIGNATURE:

In the matter between:

SA Taxi Impact Fund (RF) (Pty) Ltd

Applicant/Plaintiff

and

Kgasi, Lucas Joshua

Respondent/Defendant

JUDGMENT

Johann Gautschi AJ

1. The plaintiff, a registered credit provider, seeks summary judgment for the return of a taxi motor vehicle, 2022 Toyota Quantum/HiAce 2.5 D-4D Sesfikile 16S with engine number 2KDB111318 and chassis number AHTSS22P707134605, following cancellation of a written credit agreement (the agreement) between the plaintiff and the defendant as result of defendant's alleged breach of the agreement by reason of the defendant failing to pay the instalments due in terms of the agreement.
2. The defence pleaded by the defendant is a denial that there ever was an agreement because he did not understand what he was signing, that he was induced into signing the agreement through a misrepresentation, that he was coerced into signing the agreement and that in any event the agreement was void *ab initio* because the credit granted to him by the plaintiff constituted reckless lending as provided in the National Credit Act, 34 of 2005 (the Act). The defendant also denies having received the letter required by section 129 of the Act.
3. The difficulty facing the defendant is that, whilst claiming that the agreement is void *ab initio*, he also claims to be entitled to retain the vehicle and has retained the vehicle for over a year since conclusion of the credit agreement in April 2022.
4. The heads of argument filed by the defendant's own counsel draws attention to the judgment in Standard Bank Of South Africa Ltd v Panayiotts 2009 (3) SA 363 (W) in which it is held that the Act does not envisage that a consumer may claim that the credit agreement is reckless whilst at the same time retaining possession of the goods which form the subject matter of the agreement.
5. The judgment in SA Taxi Securitisation (Pty) Ltd v Mbatha and Two Similar Cases 2011 (1) SA 310 (GSJ) is to similar effect in pointing out that the Act does not contemplate the consumer retaining "*the money and the box*".

6. The defendant's reliance on his alleged failure to receive the section 129 notice in terms of the Act is also to no avail for reasons set out in the heads of argument of the plaintiff's counsel.
7. Firstly, the Track and Trace report from the Post Office attached to the particulars of claim shows that a notification to collect the letter was sent from the post office. This is in compliance with the Constitutional Court judgment in Standard Bank v Kubyana CCT 65/13 which decided that the letter need only reach the defendant's post office and does not need to be collected for the plaintiff to comply with the Act.
8. Secondly, as decided in ABSA Bank Ltd v Petersen 2013 (1) SA 481 (WCC), mere non-receipt of the section 129 letter is not by itself a defence as the respondent must explain how he would have availed himself of the rights afforded by the Act and to put up evidence to demonstrate the prospect of a debt-review application being successful. The defendant made no attempt to do so in the present case.
9. In the result, I am of the view that the application for summary judgment for return of the vehicle should be granted.
10. As regards costs of the view that an order for costs on the attorney and client scale is warranted given the clear absence of any basis for resisting the claim for return of the vehicle and the defendant's persistence in refusing to return the vehicle contrary to clear legal authority recognised by the defendant's counsel. I specifically refrain from ordering such costs in terms of the explicit provisions of the agreement so as to avoid pre-empting such disputes relating to the agreement as may still have to be adjudicated on in future litigation.
11. Accordingly, I make the following order:

ORDER:

1. The application for summary judgment is granted for immediate return by the defendant to the plaintiff of the vehicle, 2022 Toyota Quantum/HiAce 2.5 D-4D Sesfikile 16S with engine number 2KDB111318 and chassis number AHTSS22P707134605.
2. The defendant is ordered to pay the costs of the summary judgment application on the scale as between attorney and client.

Johann Gautschi AJ

27 October 2023