

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 32115/21

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

E van der Schyff
Date: 22 January 2024 E van der Schyff

In the matter between:

NEDBANK LIMITED

APPLICANT

and

DENNIS SHOKO

RESPONDENT

REASONS

Van der Schyff J

Introduction

- [1] Summary judgment was granted against the respondent on 30 November 2023. Summary judgment was granted for the amount of R 1 645 745,76. The respondent's

immovable property was declared specially executable. The respondent was also ordered to return a motor vehicle, to wit, a New Ford Ranger, to the applicant. The respondent filed a notice in terms of rule 49(1)(c) of the Uniform Rules of Court requesting the reasons for the order on 6 December 2023.

- [2] There was no appearance on behalf of Mr. Shoko, despite the matter being postponed from 8 November 2023 for him to be present. I was informed that a legal representative who was not formally on record attended the proceedings. The application proceeded since the matter was postponed previously, and the date was specifically arranged with Mr. Shoko to accommodate him.

Background

- [3] The applicant (Nedbank) instituted an action consisting of three claims against the respondent (Mr. Shoko). The summary judgment dealt with two claims, wit, claims A and C. Claim A relates to monetary relief sought in terms of a mortgage bond and the authorization to execute against the immovable property. Claim C relates to the return of a motor vehicle purchased in terms of an instalment sale agreement.

Claim A

- [4] Claim A arises from a mortgage loan agreement concluded between the parties. The debt was secured by way of a mortgage bond registered over the immovable property concerned.
- [5] Mr. Shoko does not deny that he is in arrears in terms of the loan agreement. In his Plea, he explains that he lost his wife during COVID, as a result of which he was not able to meet his payments. Nedbank was not prepared to restructure the loan. He relies on s 81(2) of the National Credit Act 34 of 2005 (the NCA). He avers that the credit agreement is reckless because Nedbank failed to conduct a credit assessment despite him providing them with an income and expenditure account.

- [6] Mr. Shoko states that the house is his primary residence, where he resides with his three minor daughters. He claims that he has no other place to stay and that he will be rendered homeless in the event that the property is to be sold in execution.
- [7] In terms of s 80(1) of the NCA, the relevant time for determining affordability is at the time of the application. On his own evidence, Mr. Shoko provided Nedbank with a statement reflecting his income and expenditure. In the founding affidavit to the application for summary judgment, Nedbank refers to and provides the application documentation provided by Mr. Shoko. Nedbank contends that from the content thereof, it is evident that Mr. Shoko indicated a net average monthly income amount of R 36 663.00. The listed monthly liabilities amounted to R26 580.00, which included payment of R14 200,00 per month towards rent. The payment towards the mortgage would replace the rent. As a result, a surplus of R10 083.00 was reflected. If the rental that would become available once the property was bought is excluded, the surplus was R24 283.00. The income position of his wife was not considered because she did not hold a permit to work in South Africa at that stage.
- [8] In considering the defence of reckless credit, I have to consider that it is Mr. Shoko who provided Nedbank with the information on which they made a determination as to whether he qualified for credit or not. Mr. Shoko does not disclose any facts supporting the reckless lending allegation. Bald allegations of reckless credit have no merit and will not be considered to constitute a *bona fide* defence.¹ Nedbank is entitled to summary judgment for the amount claimed and proved.
- [9] In considering the Rule 46A application, Mr. Shoko does not provide sufficient information indicating that he will indeed be homeless if Nedbank is authorised to execute against the mortgaged property. Mr. Shoko earns an income. No case is moved that he could not afford rent in other suitable accommodation.² The arrears are substantial. Mr. Shoko does not indicate that he can satisfy the judgment debt by any other means. In the circumstances, and after considering all the papers filed of record, I am of the view that execution against the property is warranted.

¹ See *SA Taxi Securitisation (Pty) Ltd v Mbatha and Two Similar Cases* 2011 (1) SA 310 (GSJ) at para [26].

² See *NPGS Protection and Security Services CC and Another v FirstRand Bank Ltd* 2020 (1) SA 494 (SCA) at para [55].

Claim C

- [10] Claim C arises from an instalment sale agreement. The subject matter of the agreement is a New Ford Ranger, adequately described in the papers filed. Mr. Shoko denies the allegations made by Nedbank and avers that regular payments have been made on the account. He denies being aware of any arrears on the account and claims to be in a position to clear all the arrears if he is provided with proof of being in arrears.
- [11] Nedbank provided the necessary proof that Mr. Shoko is in arrears. Mr. Shoko admitted to being in arrears. Despite being provided with this calculation the papers do not reflect that Mr. Shoko endeavored to settle his instalment sale account with Nedbank before this matter was heard.

Conclusion

- [12] It is well-known that the rationale behind summary judgment applications is to afford a plaintiff who has an action against a defendant who does not have a defence, to obtain relief without resorting to a trial. A court will not grant summary judgment when a defendant raises triable issues or a sustainable defence.
- [13] *In casu*, no triable issues were raised, neither did Mr. Shoko disclose any *bona fide* defence that is good in law. As a result, the order sought by Nedbank was granted on 30 November 2023. A reserve price was included in relation to the sale of the immovable property to protect Mr. Shoko's interests.



E van der Schyff
Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. It will be emailed to the parties/their legal representatives as a courtesy gesture.

For the applicant:	Adv. H. Marais
Instructed by:	HACK STUPEL & ROSS ATTORNEYS
For the respondent:	No appearance
Date of the hearing and order:	30 November 2023
Date of reasons:	22 January 2024