

LESOTHO / JUDGMENT

Ideas In Action V Masechaba Sechaba (CCT/0415/2022) [2025] LSHC 234 (4 September 2025)

[2025] LSHC 234

COURT

High Court

CASE / FILE NUMBER

CCT/0415/2022

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IN THE HIGH COURT OF LESOTHO
(COMMERCIAL DIVISION)
HELD AT MASERU
CCT/0415/22

In the matter between:

IDEAS IN ACTION
PLAINTIFF
AND
MASECHABA SECHABA
DEFENDANT

Neutral Citation: Ideas in Action v `Masechaba Sechaba [2025] LSHC 234
COMM. (04 SEPTEMBER 2025)

CORAM:

MOKHESI

HEARD:

06 AUGUST 2025

DELIVERED: 04 SEPTEMBER 2025

SUMMARY

CIVIL PROCEDURE: Application for a summary judgment dismissed with costs after the defendant established that she has a bona fide defence to the claim.

ANOTATIONS

Legislation

High Court Civil Litigation Rules 2024

Cases

Breitenbach v Fiat SA (Edms) Bpk 1976 (2) SA 226 (T)

Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture 2009 (5) SA 1 (SCA)

Maharaj v Barclays National Bank Ltd 1976 (1) SA 418 (A)

Muller and Others v Botswana Development Corporation Ltd 2003 (1) SA 651 (SCA)

Owen v Miller 1928 CPD 61

Shackleton Credit Management (Pty) Ltd v Microzone Trading 88 CC and Another 2010 (5) SA 112 (KZP)

Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and others 199(2) SA 279
Venter v Cassimjee 1956 (2) SA 242(N)

JUDGMENT

[1]

Introduction

This is an application for a summary judgment brought by the plaintiff against the defendant. The plaintiff had sued out summons against the defendant claiming certain monies plus interest which it alleges was a loan advanced to the latter.

- [2] Factual Background The plaintiff is a licensed credit-only micro-finance institution. In December 2021 it advanced to the defendant an amount of M26,000.00 as a loan repayable with interest at the rate of 20% p.a. It would appear that the defendant ran into difficulties in making monthly repayments per the agreement. It then sued out summons against the defendant claiming an amount of M43,834.00 for the loan advanced together with interest. The defendant entered a notice of appearance to defend the matter and filed its plea on 26 October 2022. In her plea she denies owing the plaintiff any amount at all as she avers that she made repayments of M10,440 on 26 January 2022 to one Relekane Hopo who was the agent for 10 Talents, and on 07 February 2022 she made payment of M5000.00 through M-pesa to the same Hopo on his phone 57672170; on 08 February she paid M2,000.00 through M-pesa to the same Hopo; in April after being directed to do so by one Mokotjo James she paid the remaining balance of M14,000.00 to one Mokhoele Naha, she claims she paid M31,440.00.
- [3] On 07 June 2023 the plaintiff lodged an application for a summary judgment seeking payment of the amount claimed in the summons. Despite having the advantage of lodging the application having had a full sight of the defendant's plea, the plaintiff after swearing positively that the amount claimed falls within his knowledge, it verified the cause of action as set out in the summons and annexures thereto, in the amount of M43,834.00 (Forty Three Thousand, Eight Hundred and Thirty Four Maloti) and interest thereon at the rate of 18.5% from the date of issue of summons to the date of final payment. It went on to aver that: "4. I am of a genuine opinion that the defendant has no bona fide defence to the action, this premised on the facts that I am in possession of all the credit records of the plaintiff and I am aware of the credit situation of the plaintiff and the defendant.
5. I further believe that the Defendant has entered an appearance to defend and filed plea merely for purposes delay. The amount claimed by the Plaintiff is a liquidated amount of money. The defendant does not dispute liability and amount claimed." [4] It is not correct that the defendant does not dispute the liability and the amount claimed. The plaintiff impermissibly attached to its application a hoard of documents labelled as annexures, but

which were not referred to in the body of the application. (*Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and others* 199(2) SA 279(T). [5] In the affidavit opposing summary judgment, the defendant avers that she is not indebted to the plaintiff as she concluded a contract with a company by the name 10 Talents which was presented by one Mokotjo James. She avers that she paid the amount of M31,440.00 in total, in tranches as follows: M10,440.00 in cash to Relekane Hopo who was an agent of 10 Talents on 26 January 2022, on 07 February 2022 she paid M5000.00 at Marshal Café through M-pesa to Relekane Hopo on his phone number (57622170), and through M-pesa to Relekane Hopo she paid M2000.00. In April after being directed by Mokotjo James to settle the remaining balance she paid M14,000.00 to Mokhoele Naha in cash after they physically met. [6] Impermissibly the plaintiff filed a replying affidavit dealing with the averments in the defendant's affidavit opposing summary judgment (see *Venter v Cassimjee* 1956 (2) SA 242(N); *Owen v Miller* 1928 CPD 61). It is trite that in summary judgment applications the filing of the replying affidavits is not allowed.

[7] This application was lodged in terms of the now-repealed High Court Rules

1980. However, in terms of Rule 195 of the High Court Civil Litigation Rules 2024. "Despite the repeal of the rules listed under rule 196: (a) anything done under the repealed rules and which could have been done under a corresponding rule of these rules, is deemed to have been done under such corresponding rule;" [8] In alignment with Rule 195, this application is deemed to have been lodged in terms of rule 137 of the High Court Civil Litigation Rules 2024. This rule provides that: "(1) The applicant may, after the respondent has delivered an answer, apply to court for summary judgment on each of such claims in the originating application as is only:

- (a) on a liquid document;
 - (b) for a liquidated amount in money;
 - (c) for delivery of specified movable property; or
 - (d) for ejectment together with any claim for interest and costs.
- (2) The applicant shall:
- (a) within four-teen days after the date of delivery of an answer, deliver a notice of application for summary judgment, together with an affidavit made by the applicant or by any other person who can swear positively to the facts;
 - (b) the affidavit referred to in subrule (2)(a) shall verify the cause of action and the amount, if any, claimed, and identify any point of law relied upon and the facts upon which the applicant's claim is based, and explain briefly why the answer does not raise any issue for trial;

- (c) if the claim is founded on a liquid document a copy of the document shall be annexed to such affidavit and the notice of application for summary judgment shall state that the application will be set down for hearing on a stated day not being less than four-teen days from the date of the delivery thereof.
- (3) The respondent may:
 - (a) give security to the applicant to the satisfaction of the Registrar for any judgment including costs which may be given; or
 - (b) satisfy the court by affidavit (which shall be delivered five days before the day on which the application is to be heard), or with the leave of the court by oral evidence of such respondent or any other person who can swear positively to the facts that the respondent's answer discloses a bona fide defence to the action; such affidavit or evidence shall disclose fully the nature and grounds of the defence and the material facts relied upon therefor..."
- [9] The rationale for the summary judgment procedure was stated aptly in *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture* 2009
- (5) SA 1 (SCA) at paras. 31-33 as follows: "[31] So too in South Africa, the summary judgment procedure was not intended to 'shut (a defendant) out from defending', unless it was very clear indeed that he had no case in the action. It was intended to prevent sham defences from defeating the rights of parties by delay, and at the same time causing great loss to plaintiffs who were endeavouring to enforce their rights.
- [32] The rationale for summary judgment proceedings is impeccable. The procedure is not intended to deprive a defendant with a triable issue or a sustainable defence of her/his day in court. After almost a century of successful application in our courts, summary judgment proceedings can hardly continue to be described as extraordinary. Our courts, both of first instance and at appellate level, have during that time rightly been trusted to ensure that a defendant with a triable issue is not shut out. In the *Maharaj* case at 425G-426E, Corbett JA, was keen to ensure first, an examination of whether there has been sufficient disclosure by a defendant of the nature and grounds of his defence and the facts upon which it is founded. The second consideration is that the defence so disclosed must be both bona fide and good in law. A court which is satisfied that this threshold has been crossed is then bound to refuse summary judgment. Corbett JA also warned against requiring of a defendant the precision apposite to pleadings. However, the learned judge was equally astute to ensure that recalcitrant debtors pay what is due to a creditor.
- [33] Having regard to its purpose and its proper application, summary judgment proceedings only hold terrors and are 'drastic' for a defendant who has no defence. Perhaps the time has come to discard these labels and to concentrate rather on the proper application of the rule, as set out with customary clarity and elegance by Corbett JA in the *Maharaj* case at 425G-426E."

- [10] It is trite that the plaintiff in its affidavit is confined to doing only five things, viz; (i) Swear positively to the facts. (ii) Verify the cause of action and amount claimed. (iii) Identify any point of law relied upon. (iv) Identify the facts upon which the claim is based. (v) Provide a brief explanation why the answer does not disclose any issue for trial. The plaintiff is not allowed to go into the merits of the case or disclose any evidence (*Shackleton Credit Management (Pty) Ltd v Microzone Trading 88 CC and Another 2010 (5) SA 112 (KZP)*).
- [11] To oppose summary judgment the defendant need only swear positively to the facts that her answer discloses a bona fide defence to the action. Her affidavit – where she has chosen not to testify – shall disclose fully the nature and grounds of her defence and the material facts relied on for the defence (Rule 137 (3)(b)). In *Maharaj v Barclays National Bank Ltd 1976 (1) SA 418 (A)* at 426 B-C it was stated: “All that the court enquires into is: (a) whether the defendant has “fully” disclosed the nature and grounds of his defence and the material facts upon which it is founded, and (b) whether on the facts so disclosed the defendant appears to have, as to either the whole or part of the claim, a defence which is both bona fide and good in law. If satisfied on these matters the court must refuse summary judgment either wholly or in part, as the case may be.”
- [12] Even though the application was lodged in terms of the repealed rules, what is evident is that it was lodged after the plaintiff had had time to read and understand the defendant’s plea. There was, therefore, no need for the plaintiff to be speculative and simply content itself with merely saying the defendant’s plea was filed merely for the purpose of delaying the proceedings, without more. But as can be gleaned from the plaintiff’s founding affidavit it was tersely drafted.
- [13] In terms of the repealed rules what was required of the plaintiff was to swear positively to the facts, verify the cause of action and the amount claimed and to state that in the opinion of the deponent the defendant has no bona fide defence to the action and that the entry of appearance to defend has been delivered merely for the purpose of delay. In terms of the old rules the scale was heavily tilted in favour of the plaintiff because as can be seen it was required to do the bare minimum of verifying the cause of action and the amount claimed and to simply be speculative that the defendant’s defence does not disclose a bona fide defence without having seen her plea. On the other hand, the defendant was required, where she had chosen a route of filing an affidavit, to fully disclose the nature and grounds of the defence and the material facts relied upon for its defence. The new rules have sought to introduce a balance to what is required to be averred by each party. The present case is symptomatic of this problem as this application lodged after the plea was delivered, and yet the plaintiff contended itself with simply expressing its opinion that the defendant’s plea was filed merely for the purpose of delay and was therefore not bona fide. The plaintiff did not engage with the averments of the defendant in its plea despite having seen what is contained therein as is now required by rule 137, that is in terms of briefly explaining why it says the plea does not raise any issue for trial.

- [14] In terms of the new rules the plaintiff's founding affidavit would have been fatally defective if drafted in the manner articulated above, but in terms of the old rules it was perfectly entitled to plead its case in this manner. With this background in mind will it be fair to the plaintiff for the court to determine this application in terms of the new rules as enjoined by rule 195? In my view it would be unfair to judge the plaintiff's case in terms of the new rules considering that it did what was required of it by the repealed rules. I, therefore, invoke the provisions of rule 195(1)(b) which provides that: "a case that has been filed in the registry or has been allocated to a presiding Judge under the repealed rules continues under these rules, but if there is any uncertainty in this regard, the presiding Judge may direct the appropriate procedure to be followed after considering representations from the parties;"
- [15] It is in light of this that I made the decision to determine this application in terms of the rules under which it was lodged (rule 28 of the repealed rules). In terms of the old rules the plaintiff was required to swear positively to the facts, verify the cause of action and the amount claimed and to state that in the opinion of the deponent the defendant has no bona fide defence to the action and that the entry of appearance to defend has been delivered merely for the purpose of delay. In affidavits opposing summary judgment the defendant was required to fully the nature and grounds of defence and the material facts relied upon. The defendant need only depose to facts which if proved at trial would constitute a defence to the plaintiff's claim (*Breitenbach v Fiat SA (Edms) Bpk 1976 (2) SA 226 (T)* at 228B--C). The issue is not whether the defence raised is likely to succeed or fail, but rather whether it is bona fide (*Muller and Others v Botswana Development Corporation Ltd 2003 (1) SA 651 (SCA)* at para. 12). The nature of the defence raised by the defendant is that she has repaid the amount she borrowed and even provided the facts on which she bases her defence; that is dates on which she made payments and the individuals to which she made payments. In the light of this in my view the defendant has complied with the requirements of rule 28 for opposing the granting of summary judgment. She has disclosed the facts on which she bases her defence. In my view the defendant has disclosed a bona fide defence.
- [16] In the result the following order is made:
- (a) The application fails with costs.

MOKHESI J For the Plaintiff: Advocate Tsie For the Defendant: Advocate N. Mafaesa 12

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