

SOUTH AFRICA / JUDGMENT

Nedbank Limited v George and Others (2441/2015) [2015] ZAECPEHC 51 (10 September 2015) [2015] ZAECPEHC 51

COURT

Eastern Cape High Court, Port Elizabeth

BEFORE

N G Beshe

CASE / FILE NUMBER

2441/2015

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN THE HIGH
COURT OF SOUTH AFRICA
(EASTERN
CAPE LOCAL DIVISION, PORT ELIZABETH)
CASE
NO.: 2441/2015
In

the matter between:

NEDBANK
LIMITED
Plaintiff
And
THEMBINKOSI
WELCOME GEORGE
1st
Defendant
NOZUKO
GLORIA
GEORGE
2nd
Defendant

JUDGMENT

BESHE J:

- [1] Plaintiff issued summons against the defendants for payment of R643 107.94 being the balance of the principal debt together with finance charges therein. This is in respect of monies lent and advanced by the plaintiff to the defendants. Plaintiff also sought the declaration of property which is subject to a mortgage bond passed in favour of the plaintiff specially executable.
- [2] Defendants having been served with the summons on the 30 June 2015 did not enter an appearance to defend. This prompted the plaintiff to apply for default judgment against them. The Registrar referred the application for hearing in open court on the 21 July 2015. To this end plaintiff issued a notice of set down of the default judgment application for hearing in open court on the 25 August 2015. For reasons that are not clear to me, the matter was postponed to 8 September 2015. When the matter served before me on the 8 September 2015 Ms Bands appeared for the plaintiff and first defendant appeared in person. It was intimated to me that the matter has been settled but that the plaintiff seeks order for costs against the defendants. The application for a costs order against the defendants was opposed by the first defendant. The basis upon which the application was opposed was that the summonses were not supposed to have been issued in the first place. This, so first defendant argued, in view of the fact that in June this year, an agreement was reached between the first defendant and plaintiff's representative that he should make three consecutive monthly payments in order for action not to be taken against him. That when summons was issued in June the three months had not expired.
- [3] First defendant cannot say when in June the agreement was entered into or how much or what amount he was required to pay, whether this was in respect of instalment or the arrears. It is unlikely though that this could have been in respect of instalments because there is a debit order by means of which instalments are made. It would appear that defendants fell into arrears due to the fact that the payments would sometimes not go through or be met. It transpired that payments for R7 213.97, R7 264.77 and R6 725.19 went through in June, July and August. In addition thereto a cash payment of R5 500 was made on the 22 June 2015. Defendants' current instalment is R7 264.77. The arrears as at 21 July 2015 stood at R34 482.89.
- [4] According to the plaintiff, it was after the receipt of the summons that defendants made contact with the plaintiff and promised to make arrangements to clear the arrears. But that no such arrangements were made. (See Rule 14A affidavit).

- [5] It is noteworthy that though defendants, as first defendant contends, were aware of this three months agreement, they did not do anything upon receipt of the Section 129 notice dated 1 June 2015. They did not draw plaintiff's attention to the alleged agreement when they were served with summons at the end of June 2015. They were apparently jerked into action upon receipt of notice of set down of application for default judgment in open court.
- [6] First defendant's version that there was an agreement that he makes "three consecutive payments" is also not borne out by the document detailing the history of payments made by him. Apart from the ordinary instalments only one additional cash payment of R5 500.00 was made in June. He has clearly not brought payments in respect of the agreement in question (the main agreement) up to date.
- [7] I am unable to find that there was a breakdown in communication between plaintiff and defendants as alleged by first defendant, or that summons were prematurely issued as contended by the first defendant. I am however satisfied that plaintiff was justified in issuing summons against the defendants. I have not been furnished with reasons why the matter was postponed on the 25 August 2015 or of what led to the settlement of the matter. I am unable therefore to determine which party should pay costs pertaining to postponement of the matter on the 25 August 2015.
- [8] On the facts before me, had the matter not been settled, I would in all probability, have given judgment in favour of the plaintiff and granted default judgment against the defendants. It is my finding that the plaintiff is entitled to costs of the application for default judgment.
- [9] In the circumstances the following order will issue:
1. The matter having been settled between the parties on the merits, it is hereby removed from the roll.
 2. The defendants are ordered to pay the costs of the application as between attorney and client, jointly and severally the one paying the other to be absolved.

N G BESHE

JUDGE OF THE HIGH COURT

APPEARANCES

For the Plaintiff : Adv: I Bands

Instructed by : BLC ATTORNEYS

4 Cape Road

Central

PORT ELIZABETH

Tel.: 041 – 506 3700

Ref.: L.S./Karen v.d. Watt/135826

For the Defendant : Thembinkosi Welcome George

First Defendant in person

Tel.: 073 717 3310 / 087 740 3310

Date Heard : 8 September 2015

Date Reserved : 8 September 2015

Date Delivered : 10 September 2015

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAECPEHC/2015/51.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/nedbank-limited-v-george-and-others-unknown-topic-aecpehc-2015>

Prepared on 11 October 2026 · Esheria