

SOUTH AFRICA / JUDGMENT

SB Guarantee Company (RF) (Pty) Ltd v Manzini (2023/034419) [2025] ZAGPPHC 599 (5 June 2025) [2025] ZAGPPHC 599

COURT

North Gauteng High Court, Pretoria

BEFORE

S Van Aswegen

CASE / FILE NUMBER

2023/034419

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

Case

Number: 2023/034419

(1)

REPORTABLE: YES / NO

(2)

OF INTEREST TO OTHER JUDGES: YES/NO

(3)

REVISED: YES/NO

DATE

05 JUNE 2025

SIGNATURE

In

the matter between: SB
 GUARANTEE COMPANY (RF) (PTY) LTD
 (Registration
 Number: 2006/021576/07)
 Plaintiff
 and
 KHENSANI
 GAYLE MANZINI
 (Identity
 Number: 8[...])
 Defendant

JUDGMENT

Van Aswegen AJ

INTRODUCTION:

- [1] In this application, SG Guarantee company (RF) (Pty) Ltd (the applicant) pursues a securitized claim.
- [2] The applicant seeks judgment against KHENSANI GAYLE MANZINI (the respondent) in the following terms: -

[2.1] Payment of the amount of R3 188 865.94 (THREE MILLION ONE HUNDRED AND EIGHTY-EIGHT THOUSAND EIGHT HUNDRED AND SIXTY-FIVE RAND AND NINETY-FOUR CENTS);

[2.2] Interest on the amount referred to immediately above at the rate of 11.200% per annum from 04 MARCH 2023 to date of payment both dates inclusive;

[2.3] That the immovable property described as:

ERF 6[...] THE HILLS EXTENSION 5 TOWNSHIP

REGISTRATION DIVISION J.R., PROVINCE OF GAUTENG

MEASURING 786 (SEVEN HUNDRED AND EIGHTY-SIX) SQUARE METRES HELD BY DEED OF TRANSFER T44594/2020

SUBJECT TO THE CONDITIONS THEREIN CONTAINED AND

MORE ESPECIALLY SUBJECT TO THE CONDITIONS IMPOSED

IN FAVOUR OF THE HILLS HOMEOWNERS' ASSOCIATION, NPC

REGISTRATION NUMBER 2007/016285/08 ("the Property");

be declared executable for the aforesaid amounts;

[2.4] An order authorising the issuing of a writ of execution in terms of Rule 46 as read with rule 46A for the attachment of the Property;

[2.5] That a reserve price be set for the sale of the Property, at a sale in execution, at a value to be determined by the Honourable Court;

[2.6] Costs on the party and party scale;

CHRONOLOGICAL SEQUENCE OF EVENTS:

[3] The summons in this matter was served on the 21st of April 2023 at Unit 1[...] D[...] H[...], 1[...] S[...] Street, Halfway House, 1[...] being the chosen domicilium citandi et executandi of the defendant a copy of the Combined Summons was duly served by affixing copies to the outer or principal door at the given

address.[1]

[3.1] Counsel for the Plaintiff referred me to the return of service which reflected that Mr. Baaitjies

- the present occupier - indicated that the defendant was unknown.

[4] Yet, subsequent thereto a Notice of Intention to Oppose was served on 3 May 2024 with the address of NG DLAMINI ATTORNEYS INC for acceptance of notices and documents and their e-mail address namely i[...] for electronic service by consent.[2] The defendant had clearly become aware of the summons.

[5] The respondent thereafter delivered an answering affidavit dated 24 May 2024.

[6] No replying affidavit was provided, possibly because the plea is a simple denial.

[7] The matter was then set down on the opposed roll of 19 May 2025 and allocated for hearing on 20 May 2025.

[8] The Notice of Set-down of 19 May 2025[3] was served as agreed to via electronic mail on the defendant's attorneys on 10 January 2025 at 09:21.[4]

[9] On 20 May 2025, no representative appeared on behalf of the Defendant. I adjourned the matter temporarily to enable the plaintiff's attorney to contact the defendant's attorneys. Despite this adjournment, the defendant's attorney could not be reached. Plaintiff's counsel, Adv K Reddy, informed me that her instructing attorney had spoken with the defendant's attorney the previous afternoon. The defendant's attorney had confirmed his intention to appear in court the following day.

[10] The defendant's attorneys were aware of the court date but chose not to attend.

[11] In assessing the evidence, I will first address the salient facts that form the basis of the applicant's claim.

CONTRACTUAL MATRIX:

[12] The contractual matrix in this case is as follows:

[12.1] On or about 25 MAY 2020, the Respondent and the Standard Bank of South Africa Limited (“SBSA”) entered into a home loan agreement (“loan agreement”).

[12.2] Pursuant to the conclusion of the loan agreement[5], the Respondent caused to be registered over the property in favour of the Applicant a continuing covering mortgage bond registered under bond number B[...] (“the mortgage bond”).[6]

[12.3] The Applicant as security for the loan on or about 1 March 2015 concluded a written guarantee (the Common Terms Agreement) in favour of SBSA, in terms of which, inter alia, the Applicant guaranteed the due and punctual payment of all sums now and subsequently due by a debtor (who has borrowed money from SBSA pursuant to a home loan agreement) to SBSA (“Guarantee”).[7]

[12.4] The Respondent was required by the Applicant, and also as security for the loan to conclude a written indemnity agreement on or about 25 May 2020 in terms of which, inter alia, the Respondent (as borrower) indemnified and held the Applicant harmless from and against all loss, costs, expenses and liabilities

which the Applicant may suffer in connection with SBSA and the Guarantee (“Indemnity Agreement”).[8]

[13] The applicant relies on the provisions of a written indemnity agreement, combined with the provisions of a mortgage bond, granted by the Respondent. These agreements are part of a set of agreements between the Applicant, the Respondent, and SBSA.

[14] The Respondent has breached the loan agreement in that she has failed to pay the monthly amounts due in terms thereof and as at 26 January 2023 the arrear amount owing was R126 160.17.

[15] On 7 March 2023, the Plaintiff sent a written demand to the Defendant stating that an amount was due, owing and payable under the Home Loan Agreement to the Bank. Therefore, in terms of the Indemnity Agreement the Defendant would immediately be required to pay such amount without any deduction to the Plaintiff.[9]

[16] On 14 March 2023, due to the Defendant's breach, the Bank made a claim against the Plaintiff where the Plaintiff became liable to pay to the Bank in terms of the guarantee.[10] This had the effect of the Defendant becoming immediately liable to the Plaintiff in terms of the Indemnity for the amount for which the Plaintiff was liable under the guarantee given to the Bank.

[17] The Defendant did not fulfil the payment obligation upon demand.

PROOF OF DEFENDANT’S INDEBTEDNESS:

[18] The Plaintiff's indebtedness is evidenced by a certificate of balance, establishing prima facie proof.

[19] Clause 6 of the mortgage bond states the following:

“Certificate of Amount Owing

A certificate signed by any director or administrator of the Mortgagee, whose appointment need not be proved, will on its mere production be sufficient proof of any amount due and/or owing by the Mortgagor to the Mortgagee and secured by or in terms of this bond, unless the contrary is proven.” (my underlining)

[20] The Certificate of Balance[11] in this matter is signed by a manager and therefore prima facie proof of the indebtedness.

[21] A certificate-clause, it has been held in a number of cases, is designed to facilitate proof of the amount of liability (See Nedbank Ltd v Abstein Distributors (Pty) Ltd and Others 1989

(3) SA 750 (T); Bank of Lisbon International Ltd v Venter en ‘n Ander 1990 (4) SA 463 (A) at 478 E).

[22] Certificate of balance clauses are valid and enforceable and are part of established banking practice in South Africa. Its effect is that unless the Defendant's evidence disturbs the prima facie proof the Certificate of Balance provided, it becomes conclusive proof.

[23] I will now evaluate the Defendant’s opposition to the Plaintiff’s claim.

DEFENDANT’S OPPOSITION:

[24] The Defendant in her answering affidavit denies:

[24.1] the indebtedness,

[24.2] compliance with section 129 of the National Credit Act, Act 34 of 2005 (‘the Act’) and

[24.3] any assistance by the Plaintiff to regularise the payments.

[25] In assessing the bare denials, as outlined in paragraph 24 here in above,

I will sequentially deal with the denials.

ASSESSMENT OF DENIALS:

INDEBTEDNESS

[26] The Defendant in her answering affidavit denies the arrears and indebtedness of the amount claimed by the Plaintiff.

[27] Despite the denial, the Defendant has failed to identify any error in the calculation of the indebtedness or provide evidence indicating what the correct amount should be. The allegations have been made without any supporting evidence.

NON-COMPLIANCE WITH THE NATIONAL CREDIT ACT

- [28] Section 129 of the National Credit Act mandates that credit providers issue a written notice of default to consumers and present them with a list of possible remedies for addressing the default. Section 130(1) of the Act specifies that credit providers are prohibited from initiating legal proceedings to enforce credit agreements until the notice outlined in section 129 has been delivered.
- [29] Section 129(5) of the Act stipulates that the default notice must be delivered to the consumer either by registered mail or in person to an adult at the address specified by the consumer, and in accordance with the manner specified in writing by the consumer.
- [30] The Constitutional Court in *Kubiyana v Standard Bank of South Africa Ltd* 2014 3 SA 56 (CC) at paragraph 53 held:

“Once a credit provider has produced the track and trace report indicating that the section 129 notice was sent to the correct branch of the Post Office and has shown that a notification was sent to the consumer by the Post Office, that credit provider will generally have shown that it has discharged its obligations under the Act to effect delivery. The credit provider is at that stage entitled to aver that it has done what is necessary to ensure that the notice reached the consumer. It then falls to the consumer to explain why it is not reasonable to expect the notice to have reached her attention if she wishes to escape the consequences of that notice. And it makes sense for the consumer to bear this burden of rebutting the inference of delivery, for the information regarding the reasonableness of her conduct generally lies solely within her knowledge. In the absence of such an explanation the credit provider's averment will stand. Put differently, even if there is evidence indicating that the section 129 notice did not reach the consumer's attention, that will not amount to an indication disproving delivery if the reason for non-receipt is the consumer's unreasonable behaviour.”

- [31] When the section 129 notice is delivered via postal service, the credit provider must demonstrate that it has fulfilled its statutory obligations by providing evidence that:
- (a) the section 129 notice was sent via registered mail and was sent to the correct branch of the Post Office, in accordance with the postal address nominated by the consumer. This may be deduced from a track and trace report and the terms of the relevant credit agreement;
 - (b) the Post Office issued a notification to the consumer that a registered item was available for her collection;
 - (c) the Post Office's notification reached the consumer. This may be inferred from the fact that the Post Office sent the notification to the consumer's correct postal address, which inference may be rebutted by an indication to the contrary; and
 - (d) a reasonable consumer would have collected the section 129 notice and engaged with its contents. This may be inferred if the credit provider has proven (a)-(c), which inference may, again, be rebutted by a contrary indication: an explanation of why, in the circumstances, the notice would not have come to the attention of a reasonable consumer.

[32] In the Kubyana case, the court found that the credit provider had fulfilled the required conditions. Consequently, it could be reasonably assumed that the notifications from the Post Office had been delivered to the consumer.

[33] In the matter before me the requisite section 129(1) notice[12] was dispatched on 31 January 2023 by registered mail to the Defendant to her chosen domicilium citandi et executandi address namely UNIT 1[...] D[...] H[...], 1[...] S[...] STREET, HALFWAY HOUSE.[13] The track and trace report from the South African Postal Service indicates that the first notification was sent by the Halfway House Postal Office to the Defendant on 22 February 2023.[14]

[34] In accordance with section 129 of the Act, the Plaintiff duly notified the Defendant, who subsequently failed to respond or rectify the breach.

ASSISTANCE RENDERED TO REGULATE ACCOUNT

[35] The Defendant fell in arrears round about February 2022.

[36] The Plaintiff stated in its founding affidavit, that the Bank had made multiple attempts to help the Defendant regularize her account under the Loan Agreement, as evidenced by the following, inter alia:

[36.1] The Bank had placed 2 (two) telephone calls to the Defendant to discuss bringing the Defendant's arrears under the Loan Agreement up to date.

[36.2] The Plaintiff transmitted 41 (forty-one) text messages to the Defendant, requesting the Defendant to bring her arrears up to date, alternatively to contact the Plaintiff to conclude a payment arrangement;

[36.3] The Plaintiff's attorneys of record transmitted an email to the Defendant's last known email address on 25 October 2023 requesting the Defendant to contact their office to enter a re-payment arrangement.[15]

[36.4] The Plaintiff's attorneys of record transmitted a SMS message to the Defendant's last known telephone number on 25 October 2023 requesting the Defendant to contact their office to enter a re-payment arrangement.[16]

[37] The Plaintiff asserts that despite multiple efforts, the Defendant did not finalize a payment arrangement with the Plaintiff or alternatively, failed to comply with the agreed-upon payment arrangements. Consequently, legal action was initiated against the Defendant.

[38] Excluding the denial of the aforesaid attempts, the Defendant has not provided any facts to contradict the Plaintiff's claims. Therefore, I accept the facts as pleaded by the Plaintiff.

CONCLUSION:

[39] In *Bragan Chemicals (Pty) Ltd v Devland Cash and Carry (Pty) Ltd and Another* (11096/20) [2020] ZAGPP 387, 5 August 2020 it was held that:

“The role of pleadings in litigation is well-known and need not be restated in detail. The object of the pleadings is to define the issues upon which a court will be called upon to adjudicate and to enable the parties to prepare for trial on the issues as defined. Pleas are answers by the defendant to the claims made against it by the plaintiff and in which its defence is set out. Rule 22(2) stipulates:

A defendant shall in its plea either admit or deny or confess and avoid all material facts alleged in the combined summons or declaration or state which of the stated facts are not admitted and to what extent and shall clearly and concisely state all material facts upon which it relies.” (my underlining)

[40] The golden rule of a pleading is that the opposite party must be fairly appraised of the case which is to be raised against him, and denials much accordingly be pleaded with such certainty that he may be able to know what the issues in dispute are.[17]

[41] Unless the facts are peculiarly within the knowledge of the Plaintiff, a bare denial to allegations is insufficient to raise a valid defence in law. This qualification is however not applicable in this matter. The Defendant should have substantiated any defences raised.

[42] In Tumileng Trading CC v National Security and Fire (Pty) Ltd, the court held that:

“The assessment of whether a defence is bona fide is made with regard to the

manner in which it has been substantiated in the opposing affidavit, viz upon a consideration of the extent to which 'the nature and grounds of the defence and the material facts relied upon therefor' have been canvassed by the deponent. That was the method by which the court traditionally tested, insofar as it was

possible on paper, whether the defence described by the defendant was 'contrived', in other words, not bona fide.”[18] (my underlining)

[43] The Defendant has chosen not to provide detailed explanations or further support for her denials, which is inadequate. Without clearly and concisely stated facts from the Defendant, the Plaintiff is unable to formulate a response.

[44] I therefore conclude that the Plaintiff has established a valid case for the relief requested.

[45] Lastly, in granting executability of the immovable property I have to consider is the determination of a reserve price.

RESERVE PRICE:

[46] To determine a reserve price, the Plaintiff provided the following information in accordance with Uniform Rule 46A (5), as factors to be considered for determining a reserve price for the sale of the immovable property:

[46.1] Market value - Rule 46A (5)(a)

the current market value of the immovable property is R3 800 000.00 (THREE MILLION EIGHT HUNDRED THOUSAND RAND);

[46.2] Forced sale value of the immovable property is R2 500 000.00 (TWO MILLION FIVE HUNDRED THOUSAND RAND);

[46.3] Local authority valuation - Rule 46A (5)(b)

the local authority valuation of the immovable property is

R900 000.00 (NINE HUNDRED THOUSAND RAND);

[46.4] Amounts owing to the local authority as rates and other dues –

Rule 46A (5)(d)

R103 138.57 (ONE HUNDRED AND THREE THOUSAND ONE HUNDRED AND THIRTY-EIGHT RAND AND FIFTY-SEVEN CENTS);

[47] The Defendant in her plea noted the aforesaid values and did not deny them.

[48] Taking into consideration the values mentioned above, I have established a reasonable reserve price for the sale of the property at R2 397 000.00 (Two Million Three Hundred Ninety-Seven Thousand Rands).

Order

Judgment is granted against the Defendant in the following terms:

1 Payment in the amount of R3 188 865.94;

2 Interest on the aforesaid amount at a rate of 11,200% per annum calculated from 4 March 2023 until date of final payment, both dates inclusive;

3 The immovable property described as:

REGISTRATION DIVISION J.R.

PROVINCE OF GAUTENG

MEASURING 786 (SEVEN HUNDRED AND EIGHTY-SIX) SQUARE

METRES HELD BY DEED OF TRANSFER T44594/2020

SUBJECT TO THE CONDITIONS THEREIN CONTAINED AND MORE ESPECIALLY SUBJECT TO THE CONDITIONS IMPOSED IN FAVOUR OF THE HILLS HOME-OWNERS' ASSOCIATION, NPC REGISTRATION NUMBER 2007/016285/08 ("THE PROPERTY") is declared specially executable;

4. The Registrar is authorised to issue a writ of execution in terms of Uniform Rule 46 read with Uniform Rule 46A for the attachment of the immovable property;

5. A reserve price of R2 397 000.00 is set for the sale of the property at a sale in execution;

6. The Defendant's attention is drawn to Section 129(3) of the National Credit Act No. 34 of 2005 that she may pay to the Plaintiff all amounts that are overdue together with the Plaintiff permitted default charges and reasonable taxed or agreed costs of enforcing the agreement prior to the sale in execution and transfer of the property, in order to revive the credit agreement, where the loan agreement has not been cancelled, as provided for in Section 129(4) of the National Credit Act; and
7. Attorney and client costs inclusive of counsel's fees on Scale A.

S VAN ASWEGEN

ACTING JUDGE OF THE HIGH COURT

PRETORIA

For the Applicant: Adv K Reddy instructed by Vezi de Beer Inc For the Respondent: No appearance

- [1] A111
- [2] C5
- [3] G1
- [4] G3
- [5] Annexure PoC1 at A44
- [6] Annexure PoC2 at A65
- [7] Annexure PoC4 at A101
- [8] Annexure PoC3 at A72
- [9] A103 to A104
- [10] A102
- [11] A105
- [12] A108
- [13] POC1 at A44
- [14] A110
- [15] Annexure CO3 at B27
- [16] Annexure CO4 at CO4
- [17] Modipane v MM Dada Bk h/a Dada Motors Lichtenburg (1559/2010) [2011] ZANWHC 43 (30 June 2011)

[18] Tumileng Trading CC v National Security and Fire (Pty) Ltd; E and D Security Systems CC v National Security and Fire (Pty) Ltd 2020 (6) SA 624 (WCC) [2020] ZAWCHC 28, 2020 (6) SA 624 (WCC) para 25.

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