

SOUTH AFRICA / JUDGMENT

Standard Bank of South Africa Ltd v Tafeni (835/2023) [2024] ZAECHBHC 30 (30 August 2024) [2024] ZAECHBHC 30

COURT

Eastern Cape High Court, Bhisho

BEFORE

B.B. Brody

CASE / FILE NUMBER

835/2023

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IN

THE HIGH COURT OF SOUTH AFRICA

(EASTERN

CAPE DIVISION – BHISHO)

Reportable/Not

Reportable

Case

no.: 835/2023

Matter

heard on: 27 August 2024

Judgment

delivered on: 30 August 2024

In

the matter between: THE
STANDARD BANK OF SOUTH AFRICA
LTD
Plaintiff
and
ANDA
TAFENI
(ID
NO: 7[...])
Defendant

JUDGMENT

BRODY AJ

1. This matter came before the court as an unopposed application for default judgment.
2. The plaintiff was represented by counsel and when the matter was originally called Mr Tafeni appeared on behalf of his wife, the Defendant, Ms Anda Tafeni.
3. I explained to Mr Tafeni that it was not competent for him to represent his wife as he was not an admitted legal practitioner, however, he could appoint a legal representative or his wife could appear in person to defend the application for default judgment.
4. The matter stood down and was then recalled at noon of the motion court day.
5. When the matter was recalled Ms Tafeni then appeared to represent herself.
6. Counsel for the plaintiff indicated that this matter had a long history and that although the plaintiff had previously obtained default judgment, this was abandoned on the 23rd of April 2024 to afford the defendant every opportunity to comply with her legal requirements and to pay the arrear amounts to the plaintiff.
7. The present arrears are substantial and indicate a total arrear amount of R81 443.73 together with a total debt of R125 390.56.
8. Ms Tafeni argued that the plaintiff had made a “mistake” in that they have failed to process the debit order in regard to her account on the 1st of the month, however, did this on the 15th of the month.
9. She also alleged that all arrears had been paid on the 15th of September 2023, and these were the arrears at that stage.
10. She did not dispute the present arrears, however, contended that there was a mistake on the part of the plaintiff as it operated its debit order on the 15th of the month, and by then, her monthly income had been spent.

11. She also indicated that she had appointed Mr van Rensburg, an attorney in East London, to represent her, however, he was not available for the default judgment and proposed that Ms Tafeni represent herself.
12. Ms Tafeni also handed in a letter that she had addressed to the plaintiff on the 20th of August 2024 and it is clear from this letter that the “error” contended for was the main subject of the letter. In the letter she expressed surprise that she had received a summons and that she wished to resolve the issue with the plaintiff. She also alleged in the letter that the arrears were “little over R73 000.00”.
13. Counsel for the plaintiff indicated that she had taken instructions and that the plaintiff was no longer prepared to grant any further indulgences and that the matter should proceed in terms of the draft order.
14. I am of the view that there is no defence raised by the defendant to the claim, and in particular, having regard to the terms of the agreement, and that the argument by Ms Tafeni was essentially that the plaintiff was at fault as it caused the debit order to operate from the 15th of each month and not the beginning of the month. Essentially, she was arguing that by the time the debit order operated, her monthly salary had been spent. This is clearly not a defence to the plaintiff’s claim.
15. In the result, the following order is granted:
 1. Confirmation of cancellation of the agreement;
 2. An order directing the defendant to restore to the plaintiff possession of the goods, being a 2022 Nissan Navara 2.5 DDTI SE D/CP/U
Chassis no: A[...]
Engine no: Y[...]
 3. Retention of all monies paid to the plaintiff by the defendant;
 4. Leave is granted to the plaintiff to apply for:
 - (a) Damages, if any, in an amount to be calculated by subtracting the current market value of the Goods (as well as a rebate on unearned finance charges from the balance outstanding if applicable);
 - (b) Interest on the said damage on the rate of 15% per annum from 11 October 2023 to date of payment;
 5. Costs of suit on an attorney and client scale.

B.B. BRODY

ACTING JUDGE OF THE HIGH COURT

APPEARANCES:

Counsel for the Plaintiff : Adv. Mashiya

Instructed by

: Drake Flemmer & Orsmond Attorneys

Unit 10B Sutton Square

8 Queens Road

KING WILLIAM'S TOWN

(Ref.: S Nel/MAT60629/VAF.T17)

The Defendant

: In Person

(Mrs Anda Tafeni)

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