

SOUTH AFRICA / JUDGMENT

Van Wyk v Regional Magistrate Mbululu and Another (CA115/2022) [2024] ZAECKMKHC 16 (30 January 2024) [2024] ZAECKMKHC 16

COURT

Eastern Cape High Court, Makhandla

BEFORE

N G Beshe, D O Potgieter

CASE / FILE NUMBER

CA115/2022

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IN THE HIGH COURT OF
SOUTH AFRICA
(EASTERN CAPE
DIVISION, MAKHANDA)

Case

No: CA115/2022

In

the matter between:

NOEL
VAN WYK
Appellant
And
REGIONAL
MAGISTRATE MBULULU
First
Respondent
FIRSTRAND
BANK LTD
Second
Respondent

JUDGMENT

Beshe J

[1] Second respondent instituted action against the appellant out of the Regional Court, East London for inter alia the cancellation of an instalment agreement entered into between the appellant and the second respondent. Also sought was the return of the motor vehicle in respect of which the instalment agreement was concluded. Judgment was granted in favour of the second respondent. This, after the Magistrate dismissed appellant's special plea that the summons had been issued prematurely in view of the fact, so appellant contended, that the second respondent had not issued him with a notice as provided for in section 129(1) of the National Credit Act.[1]

[2] Save for the special plea raised, the pleadings reveal that the appellant made the following admissions:

He has breached the provisions of the agreement by failing to make regular payments in terms of the agreement and has fallen into

arrears. That the second respondent is entitled to cancel the agreement and take possession of the motor vehicle.

[3] It is common cause that the second respondent initially instituted the action against the appellant in the Makhanda High Court. Before the institution of the action in the High Court, there is evidence that second defendant sent the section 129 notice by registered mail to appellant's domicilium address and same was delivered at the relevant post office and a notification was sent to the appellant's address. In the court a quo appellant submitted that "the plaintiff did not issue a Section 129 notice prior to issuing summons. Now the summons I am making reference to is the one which is before the court with case number 5855/2019". [2]

[4] The second point raised by the appellant in the court a quo relates to the provisions of Section 130 of the National Credit Act. Namely that he was in the process of debt review at the time the action was instituted against him.

[5] Appellant persisted with these points as grounds of appeal. However, in argument before us the appellant

correctly conceded that second respondent was not required to issue another Section 129 notice for purposes of the summons issued out of the Magistrates Court. It is indeed so. The Section 129 notice that was issued by the second respondent before action was instituted in the High Court related to the same agreement, to the same debt, the same cause of action.

[6] Appellant also conceded, rightly so once again, that at the time of the issuing of the summons in the

Magistrate Court, he was not under a debt review process. He confirmed that according to Annexure L which was annexed to his special plea, his application for debt review was rejected in terms of Section 86(7)(a) of the National Credit Act in July 2019. The summons in turn was issued against him in August 2019.[3]

[7] In light of appellant's grounds of appeal having been conceded, correctly so by him, the appeal falls to be dismissed.

[8] Accordingly, the appeal is dismissed with costs.

N G BESHE

JUDGE OF THE HIGH COURT

POTGIETER J

I agree.

D O POTGIETER

APPEARANCES For the Appellant Mr N. Van Wyk Instructed by Appellant in Person 6 Zenith Street Buffalo Flats EAST LONDON Ref: Mr. Van Wyk Tel.: 071 600 9607 For the 2nd Respondent Adv: J Barker Instructed by JOUBERT GALPIN SEARLE C/o CARINUS JAGGA INCORPORATED 67 African Street MAKHANDA Ref: Ms J Jagga Tel.: 046 – 940 0086

Date Heard : 26 January 2024

Date Reserved : 26 January 2024

Date Delivered : 30 January 2024

[1] Act 34 of 2005.

[2] Page 54 of the paginated papers. 5855/2019 is the Magistrates Court Case Number.

[3] Section 86(7) provides that: "(7) If, as a result of an assessment conducted in terms of subsection (6), a debt counsellor reasonably concludes that – (a) the consumer is not over-indebted, the debt counsellor must reject the application, even if the debt counsellor has concluded that a particular credit agreement was reckless at the time it was entered into."

[3] Section 86(7) provides that: "(7) If, as a result of an assessment conducted in terms of subsection (6), a debt counsellor reasonably concludes that –

(a) the consumer is not over-indebted, the debt counsellor must reject the application, even if the debt counsellor has concluded that a particular credit agreement was reckless at the time it was entered into."

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Prepared on 12 October 2026 · Esheria