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REPUBLIC OF SOUTH AFRICA



**SOUTH GAUTENG HIGH COURT
JOHANNESBURG**

CASE NO: 2013/9165

- (1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

.....
DATE

.....
SIGNATURE

In the matter between:

STANDARD BANK OF SOUTH AFRICA

Plaintiff /Applicant

and

LUUS WILHELMINA FREDERIKA

Defendant /Respondent

JUDGMENT

RATSHIBVUMO AJ:

1. This is an application for summary judgment by the applicant (plaintiff in the main case) which is opposed by the respondent (defendant in the main action).
2. **Background:** The application is based on an agreement allegedly signed between the applicant and the respondent. One of the prayers in the summons by the applicant is to have the said agreement rectified in that it contains a bona common mistake between the parties. No such request was repeated for purposes of this application. The respondent disputes that there is such common mistake between her and the applicant.
3. Upon close inspection of the said agreement it appears it was signed on 31 July 2006 between the applicant and Isabella Luus with ID number The agreement contains inter alia, the description of goods as a motor vehicle with chasis number 1F0S82000054. The names of the respondent reflected in the particulars of claim are however Wilhemina Frederika Luus (this is still different from the names reflected in the notice of motion and the summons), with ID no. The chasis number of the motor vehicle which is the subject of the action is reflected in the particulars of claim as 1F0SH220054. This does not appear to be a typing error as the applicant alleges, where one could expect spelling mistakes. It appears as if wrong information was entered altogether. If that is not the case, the contract could be valid, with proper details of the parties, just that it may not be the contract that was signed between the applicant and the respondent. The major confusion on this is the respondent who seems determined to simply highlight the problem without coming with any clear explanation,

obviously with the hopes that it would boost her claim that she has a valid defence to the claim.

4. Reading through the respondent affidavit and the heads of argument prepared for her, I can find no particular defence which could stand against the applicant's claim. All of the defences she raised are technical and cannot take the defence far. Weak as the defences appear to be, the court sits with a predicament on whether there is indeed a mistake in the agreement referred to above or not. I am of a view that the explanation of the wrong details in the agreement cannot be rectified through summary judgment application especially when the alleged common mistake is disputed. There is therefore no agreement (rectified) before the court upon which summary judgment can be based.
5. In light of the above, it appears to me the proper way through which the agreement could be rectified in light of the mistakes or wrong information contained therein, would be by way of a trial. In that event, I make the following order.
 1. That the application for summary judgment is dismissed.
 2. That the costs of this application shall be the costs in cause.

T.V. RATSHIBVUMO
ACTING JUDGE OF THE HIGH COURT

Date Heard: 20 May 2013

Judgment Delivered: **12 June 2013**

For the Applicant: **Adv. JC Viljoen**
Instructed by: **Stupel & Berman Incorporated**
 Germiston

For the Respondent: **Adv. C Van der Merwe**
Instructed by: **Biccari, Bollo & Mariano Inc**
 Norwood