

**IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG
(REPUBLIC OF SOUTH AFRICA)**

CASE NUMBER: 18240/2013



DELETE WHICHEVER IS NOT APPLICABLE

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

A handwritten signature in black ink, appearing to be 'M. M. M.' or similar, written over the text 'REVISED:'.

In the matter between:

SA TAXI FINANCE SOLUTIONS (PTY) LTD

Plaintiff

And

RINGANI, MSISINYANI SAMSON

Defendant

JUDGMENT

SATCHWELL J:

1. Plaintiff seeks summary judgment for return of a vehicle. Respondent has filed an affidavit resisting summary judgment raising defences both substantive and technical in nature.
2. I note that, although respondent maintains at paragraph [10] that he has “*been effecting payment continuously*” and is not in arrears, the document to which he refers as showing the details of full payments is not attached to any one of the three of his affidavits contained in the court file.
3. At the hearing of this application, two defences were argued.
4. It was first argued that there had not been compliance with the provisions of section 129 of the NCA. Annexure C to plaintiff’s particulars of claim records that the post office at Moroka sent a “*first notification*” to the respondent of the registered item waiting for collection by him at the post office but that the item remains at the post office. Respondent confirms that he never collected the registered item stating that “*I deny receipt of such a notice. I did not receive any notice from the Moroka post office that a registered slip or this letter was awaiting me at the post office...*”.
5. This, no doubt, was the situation envisaged in Sebola v Standard Bank 2012 (5) SA 142 (CC) where the court said “*if...the consumer asserts that the notice was not collected, or not attended to once collected, the court must make a finding whether, despite the credit provider’s proven efforts, the consumer’s allegations are true, and, if so, adjourn the proceedings in terms of section 130(4)(b)*”. In the present case, whether or not the respondent is a defaulting consumer who elected not to collect the registered item suspecting that it would bring unwelcome legal proceedings, the factual situation is that the registered letter was not collected. It remains at the post office.
6. Notwithstanding, every possible step being taken by the plaintiff (and apparently the Moroka post office) to comply with the provisions of section 129(1) to effect delivery, there can be no doubt that the registered letter still remains uncollected and therefore undelivered at the post office.
7. However, that is not the end of the matter. On the 3rd of June 2013, when the particulars of claim were served by the sheriff upon Mrs Hazel Ringani, wife of the respondent, a copy of the section 129 letter/notice was also served. There can be no doubt that Mr Ringani, the respondent, received both the summons and the section 129 notice. He has therefore been fully apprised of his rights since that date and at

least ten business days has elapsed since this notice was delivered to him. Since June of 2013, the respondent has had the opportunity to do that which the section 129 notice invited him to do. This he has not done.

8. The respondent has not indicated to this court any prejudice he has suffered or any actions which he would have wished to take had he received this notice prior to service of the summons. The respondent has not asked the court for any direction in terms of section 130(4)(b). Indeed, the only direction which I can envisage being given by this court where a registered item goes uncollected from the post office would be that a section 129 notice be served by the sheriff upon the respondent. This has already been done – on 3rd June 2013.
9. In such circumstances, there cannot be any fatal bar to these proceedings. Every reasonable step was taken by the credit provider to ensure delivery of the section 129 notice prior to issue of summons. The section 129 notice was served at the time of service of the summons. The defendant/respondent has suffered no prejudice by reason of the contemporaneous service of both the section 129 notice and the summons and has given no indication that he would have had or has had any desire to taken any action in response to the section 129 notice which he has been precluded from taking. There is no suggestion that any order or direction would be sought from this court in terms of section 130(4).¹
10. Accordingly I find that non-receipt of the section 129 notice prior to receiving the summons is not a defence, dilatory or otherwise, to the plaintiff's claim in this matter.
11. It was secondly argued that there was no proper demand as required in terms of the lease agreement. I have been referred to certain conflicting judgments handed down in this Division². I am in agreement with the approach that right to recover possession of it's vehicle was restored to the plaintiff upon delivery of the section 129 notice. This notice was delivered through service by the sheriff and the agreement was cancelled on issue of the summons.
12. Accordingly I take the view that these defences raised argued on behalf of the respondent must fail.
13. The lease agreement between the parties provides that the plaintiff would be entitled to costs on the High Court scale as between an attorney and own client in the event of legal proceedings being successfully instituted.

¹ I am in agreement with the approaches taken in Absa Bank Ltd v Petersen 2013(1) SA 481 (WCC), SA Taxi Development Finance (Pty) Ltd v Phalafala 2013 JDR 0688 (GSJ) and very recently in SA Taxi Finance Solutions (Pty) Ltd v Mthembu 39291/2013 (GSJ).

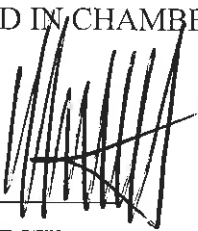
² SA Taxi Securitisation (Pty) Ltd v Mbatha and two similar cases 2011 (1) SA 310 GSJ, SA Taxi Securitisation (Pty) Ltd v Mthethwa and others (2012/1101, 2012,17723, 2013,12927) [2013] ZAGPJHC 191, SA Taxi Finance Solutionis (Pty) Ltd v Mthembu 39291/20132 (4 October 2013).

14. In the circumstances I grant summary judgment in favour of the plaintiff against the defendant for:

- a. Return of the 2012 Toyota Quantum Sesfikile 15 seater (roof hatch) (petrol) engine number 2TR8390761 and chassis number JTFSX22P906118773 to the plaintiff.
- b. Costs on the attorney and client scale.

DATED AT JOHANNESBURG ON THIS DAY THE 15TH OF OCTOBER 2013.

HEARD IN CHAMBERS

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K. SATCHWELL

Attorneys for plaintiff: Marie- Lou Bester Inc

Counsel for plaintiff: Adv. R. Stevenson

Attorneys for defendant: Larry Marks Attorneys

Counsel for respondent: Adv. K. Lavine

Date of hearing: 10th October 2013

Date of judgment: 15TH October 2013