

REPUBLIC OF SOUTH AFRICA



SOUTH GAUTENG HIGH COURT  
(JOHANNESBURG)

CASE NO: 2012/7071

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

10 April 2013

  
FHD VAN OOSTEN

In the matter between

**FIRST NATIONAL BANK**

a division of **FIRST RAND BANK LTD**

and

**GODFREY WILFRED ABT**

**APPLICANT**

**RESPONDENT**

*Appeal - application for leave to appeal - orders sought to be appealed against not final in effect and therefore not appealable - contention that respondent by the order that was made deprived of a possible defence at the final hearing of the matter rejected - leave to appeal refused with costs.*

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**JUDGMENT  
(LEAVE TO APPEAL)**

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**VAN OOSTEN J:**

[1] The respondent now seeks leave to appeal against the whole of my judgment in terms of which the matter was postponed *sine die*, compliance with sections 129 and 130 of the National Credit Act 34 of 2005 ordered and costs reserved.

2. At the commencement of the argument before me I enquired from counsel for the respondent whether the orders made, were appealable, as they are not final in effect. Counsel readily and correctly conceded that paragraphs 1 and 3 of the order were not appealable. As for paragraph 2 of the order, counsel submitted that it was final in effect as it deprives the respondent of the only possible defence the respondent might raise at the final hearing of the matter. The contention it hardly needs to be stated, is fallacious and for the reasons that follow, falls to be rejected.

[2] The respondent specifically, in the alternative, sought an order postponing the matter. A postponement, albeit for other reasons, was ordered. The only defence raised and relied on concerned the applicant's alleged lack of compliance with the relevant provisions of the NCA. This was cured in ordering compliance in terms of the provisions of s 130(4) (b) of the NCA. The astounding complaint now advanced, that the respondent will no longer be able to raise the defence of non-compliance as a ground for rescission of the default judgment in terms of his counter application is so far-fetched and devoid of any substance, that it must be rejected out of hand. What the argument does show is that the defence was seemingly raised for no other purpose than delaying the matter. This Court would dismally fail in its duty if any recognition is afforded to the contention.

[3] The orders made are neither final in effect nor of negative impact on the respondent and for those reasons alone the application must fail. The application is ill-conceived and no reasonable prospects of a successful appeal exist. I seriously considered ordering a punitive costs order against the respondent but, in the absence of a request for such an order, decided against it.

[4] In the result the following order is made:

1. Leave to appeal is refused.
2. The respondent is ordered to pay the costs of this application.



FHD VAN OOSTEN  
JUDGE OF THE HIGH COURT

*COUNSEL FOR APPLICANT*

*APPLICANT'S ATTORNEYS*

*COUNSEL FOR RESPONDENT*

*RESPONDENT'S ATTORNEYS*

*DATE OF HEARING*  
*DATE OF JUDGMENT*

*ADV C DÉNICHAUD*

*GLOVER INC*

*ADV AP DEN HARTOG*

*HARVEY NOSSEL*

*10 APRIL 2013*  
*10 APRIL 2013*