

**SAFLII Note:** Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#).

**REPUBLIC OF SOUTH AFRICA**

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

**CASE NO: 2020/14903**

REPORTABLE: NO  
OF INTEREST TO OTHER JUDGES: YES  
REVISED YES  
22 April 2022

In the matter between:

**NEDBANK LIMITED**

**Plaintiff**

and

**NAIDOO, PHELAN  
(IDENTITY NUMBER: [....])**

**Defendant**

Order: 23 February 2022

Reasons: 22 April 2022

**REASONS FOR JUDGMENT**

**MOVSHOVICH AJ:**

1. On 23 February 2022, I made an order striking from the roll a default judgment application by the plaintiff dated 26 October 2021 ("**the application**") which sought the award of damages in the amount of R130,387.39 plus interest against the defendant. The matter arises out of an instalment sale transaction between the plaintiff and the defendant dated 24 August 2018, whereby the plaintiff financed the purchase by the defendant of a Hyundai Elantra vehicle ("**the vehicle**").

2. Pursuant to an alleged breach of the instalment sale agreement ("**the agreement**") on the part of the defendant, the plaintiff – on 5 May 2020 – instituted action proceedings against the defendant for cancellation of the agreement, delivery to the plaintiff of the vehicle, liquidated damages, costs, interest and further and/or alternative relief.

3. The application stated that this Court granted "judgment" against the defendant on 19 November 2020 and that the "*quantum portion of the plaintiff's claim was postponed sine die*".

4. It appears from the electronic court file in this matter that an order was made by this Court (it is unclear whether this was by a Judge or the Registrar) on 19 November 2020 ("**the November 2020 Order**"), confirming cancellation of the agreement, ordering the delivery of the vehicle to the plaintiff, and awarding costs in favour of the plaintiff. The order does not, however, say anything about the damages claim being postponed. This is despite the fact that the plaintiff's first default judgment application (pursuant to which the November 2020 order was made) expressly sought an order that "*[o]ther prayers to be postponed sine die*". As such, there is insufficient evidence before me to conclude that the damages claim was indeed postponed *sine die* or at all.

5. In any event, I did not have evidence before me that the original summons and particulars of claim were served on the defendant. And while I appreciate that the plaintiff has previously obtained an order in this matter, that in itself is not proof of proper service. No proof of service of the original summons and particulars of claim was presented in the electronic court file.

6. Moreover, in the summons and particulars of claim, damages were not quantified. The plaintiff averred that it could not at that juncture "*liquidate its damages*". On 29 October 2021, however, the plaintiff's Manager C & R Recoveries deposed to what is termed as a "damages affidavit" averring that the vehicle was delivered to the plaintiff pursuant to the November 2020 Order and subsequently sold for R225,300.00. No details of the sale were provided in the damages affidavit, except that the deponent averred that the vehicle was valued at R150,000.00 excluding VAT, even though the trade value of the vehicle was R256,200.00 and the retail value was R287,400.00. The damages affidavit also averred that the sale price was deducted from the amount the plaintiff has certified the defendant owes the plaintiff, leaving a balance of R130,387.39.

7. It appears that the "damages affidavit" was served on the defendant by affixing it to the front door of that is termed in the sheriff's return as the defendant's "*domicilium citandi et executandi*", being an address in Broadacres, Bryanston, on 17 November 2021. The application was served on the defendant in the same fashion and on the same date. I leave to one side for the present purposes whether this constitutes proper service, as it is unnecessary for me to decide this in light of the other conclusions which I reach.

8. It is unclear to me in terms of what rule of court or provision of the practice manual the "damages affidavit" was deposed or was sought to be served or filed. There was no amendment or supplementation of the plaintiff's pleadings in any of the recognised ways under the Uniform Rules of Court. If the plaintiff sought to update its claim, there is no reason why it could not invoke one of the mechanisms provided in the Rules for doing so, including an amendment pursuant to rule 28. If it believed that it had a basis to deviate from the requirements of the Rules, then it had to bring a formal application to this Court to explain the non-compliance and have it condoned. In the absence of this material, the application for default judgment cannot be further considered in an informed fashion, in my view.

9. I do not rule out the possibility that the plaintiff may be able to succeed in the application in future, but until the above matters are addressed, there is insufficient information before the Court to consider the application and it fell to be struck from

the roll. As there was no opposition or representation on the part of the defendant, no order as to costs was made.

10. These reasons are handed down electronically by circulation to the parties or their legal representatives by email and by uploading the reasons for judgment onto Caselines. The date and time for hand down of these reasons for judgment are deemed to be 10:00 on 22 April 2022.

**VM MOVSHOVICH**  
**ACTING JUDGE OF THE HIGH COURT**

Plaintiff's Attorneys: Uys Matyeka Schwartz Attorneys

Defendant: Phelan Naidoo

Date of Order: 23 February 2022

Date of Reasons: 22 April 2022