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REPUBLIC OF SOUTH AFRICA

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

CASE NO: 2019/38392

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

In the matter between:

NEDBANK LIMITED

Plaintiff

and

**PESTANA, CLAUDETTE NADINE
(IDENTITY NUMBER: [....])**

Defendant

Order: 22 February 2022

Reasons: 22 April 2022

REASONS FOR JUDGMENT

MOVSHOVICH AJ:

1. On 22 February 2022, I made an order striking from the roll a default judgment application of the plaintiff dated 29 November 2021 which sought the award of damages in the amount of R99,593.85 plus interest against the defendant. The matter arises out of an instalment sale transaction between the plaintiff and the defendant dated 28 April 2017, whereby the plaintiff financed the purchase by the defendant of a Fiat 500 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 24 October 2019 – 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 6 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 6 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. Moreover, in the summons and particulars of claim, the damages were not quantified. The plaintiff averred that it could not at that juncture "*liquidate its damages*". At some point, however, it filed an undated "*damages affidavit*" by the plaintiff's Manager C & R Recoveries. That affidavit was apparently signed, but not commissioned by a Commissioner of Oaths. The affidavit averred that the vehicle was delivered to the plaintiff pursuant to the November 2020 order and subsequently

sold for R39,675.00. No details of the sale were provided in the damages affidavit, except that the signatory averred that the vehicle was valued at R18,000.00 (excluding VAT), even though the trade value of the vehicle was R85,000.00 and the retail value was R95,000.00. The damages affidavit also averred that the sale price was deducted from the amount the plaintiff had certified the defendant owes the plaintiff, leaving a balance of R99,593.85.

6. The damages affidavit and the application for default judgment dated 29 November 2021 were served on the defendant on 11 January 2022.

7. It is unclear to me, however, in terms of what rule of court or provision of the practice manual the "damages affidavit" was deposited, or 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. Of course, and in any event, the "damages affidavit" is not commissioned before a Commissioner of Oaths and cannot properly form the basis of a decision by this Court in any event.

8. I do not rule out the possibility that the plaintiff may be able to succeed in its default judgment 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.

9. 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: Claudette Nadine Pestana
Date of Order: 22 February 2022
Date of Reasons: 22 April 2022