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REPUBLIC OF SOUTH AFRICA

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

CASE NO: 2019/19258

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED YES

22 April 2022

In the matter between:

NEDBANK LIMITED

Plaintiff

and

**MAKUME, LETEBELE DANIEL
(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 19 October 2021 which sought the award of damages in the amount of R116,416.70 plus interest against the defendant. The matter arises out of an instalment sale transaction between the plaintiff and the defendant dated 17 October 2017, whereby the plaintiff financed the purchase by the defendant of a Toyota Corolla 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 30 May 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 23 January 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 (per Mia J) on 23 January 2020 ("**the January 2020 Order**"), confirming cancellation of the agreement, ordering the delivery of the vehicle to the plaintiff, awarding costs and postponing the balance of the prayers *sine die*.

5. On 19 November 2021, 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 January 2020 Order and subsequently sold for R97,750.00. No details of the sale were provided in the damages affidavit, except that the deponent averred that the vehicle was valued at R78,000.00 excluding VAT, even though the trade value of the vehicle was R135,400.00 and the retail value was R153,400.00. 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 R116,416.70.

6. It appears that the "damages affidavit" was served on the defendant by placing a copy of it in the defendant's post box, at the address the combined

summons alleges the defendant selected as his *domicilium citandi et executandi*. I leave to one side for present purposes whether this kind of action would constitute proper service, as it is unnecessary to decide the point at this stage.

7. It is unclear to me, however, in terms of what rule of court or provision of the practice manual the "damages affidavit" was deposed 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.

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: Letebele Daniel Makume
Date of Order: 22 February 2022

Date of Reasons: 22 April 2022