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REPUBLIC OF SOUTH AFRICA

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

CASE NO: 2021/55084

REPORTABLE: YES
OF INTEREST TO OTHER JUDGES: YES
REVISED YES
22 April 2022

In the matter between:

NEDBANK LIMITED

Plaintiff

and

**DUBE, BENNITA PINKY
(IDENTITY NUMBER: [...])**

Defendant

Judgment: 22 February 2022

Reasons: 22 April 2022

REASONS FOR JUDGMENT

MOVSHOVICH AJ:

1. On 22 February 2022, I handed down an order dismissing the plaintiff's default judgment application dated 26 January 2022. The plaintiff subsequently requested reasons for the order. These are they.

2. On 23 November 2021, the plaintiff issued a combined summons out of this Court against the defendant, claiming damages, interest and costs pursuant to an alleged contractual breach on the part of the defendant. The application for default judgment alleged that the combined summons was served on the defendant on 9 December 2021 and that the *dies induciae* for the notice of intention to defend expired on 26 January 2022 without anything having been filed by the defendant in response to the action. The plaintiff thus sought judgment against the defendant by default in the principal sum of R114,431.25 plus interest thereon at the rate claimed in the summons and costs on an attorney and client scale.

3. At the onset, I note that the summons prays for costs of suit on "*the magistrates court scale*". That relief having been sought in the summons, it is not open to the plaintiff to seek expanded costs relief in the default judgment application. That is an independent ground upon which its costs-related relief as formulated in the default judgment application must fail.

4. But its application suffers from a more fundamental defect. It is foundational to an application for default judgment for the plaintiff to establish on a balance of probabilities that the combined summons was served on the defendant by one of the recognised modes of services. In this regard, the default judgment application relies squarely on the sheriff's return of service dated 13 December 2021 which states that the combined summons was served on the defendant by affixing it to the principal gate of 25 Hibiscus Lane Complex, 7 Jacaranda Avenue, Craigavon AH, Fourways ("**the service address**") which the sheriff's return states is the defendant's "*domicilium citandi et executandi*".

5. It is unclear whence the sheriff sourced that description of the service address. In the combined summons, the service address is simply stated to be the address where the defendant was "*residing*". There is no allegation pertaining to any chosen *domicilium* either there or in the default judgment application itself. As such,

the service address, on the pleadings, is simply the alleged residential address of the defendant.

6. Rule 4 delineates, in the absence of a Court direction to the contrary, the acceptable methods of service of court process. In relevant part, rule 4 provides that service may be effected at a defendant's place of residence by leaving a copy of the process "*with the person apparently in charge of the premises at the time of delivery, being a person apparently not less than sixteen years of age*" (rule 4(1)(a)(ii)). The Rules do not consider simply affixing process to the front door of the residence to be effective service. The circumstance in which such delivery of process constitutes effective service is where the defendant has "*chosen a domicilium citandi*" and delivery is effected to such a *domicilium* (rule 4(1)(a)(iv)). The combined summons does not make any allegation pertaining to a chosen *domicilium* and thus the delivery of the combined summons by affixing it to the door does not amount to proper or effective service under the Uniform Rules.

7. The plaintiff has thus failed to establish the first requirement for the grant of default judgment. In fact, on the basis of the pleaded case and the sheriff's return, it is clear that service has not been effected on the defendant.

8. The default judgment application thus fell to be, and was, dismissed. 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: Bennita Pinky Dube

Date of Order: 22 February 2022

Date of Reasons: 22 April 2022