



**IN THE HIGH COURT OF SOUTH AFRICA**

**(NORTH GAUTENG HIGH COURT)**

Case number: 30057/2012

Date: 16 November 2012

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO	
(2) OF INTEREST TO OTHERS JUDGES: YES/NO	
(3) REVISED	✓
16/11/2012	<i>Pretorius</i>
DATE	SIGNATURE

In the matter between:

**THE STANDARD BANK OF SOUTH AFRICA**

Plaintiff

And

**ELIZAPHANSON MWAURA NIJIRI**

Defendant

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**JUDGMENT**

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PRETORIUS J.

- [1] The defendant opposes this application for summary judgment. He is unrepresented and has been appearing as such from 30 August 2012. On 30 August 2012 the defendant applied for a postponement to

enable him to file a supplementary affidavit. On 17 October 2012 the defendant filed a further affidavit. In the supplementary affidavit he set out that he had not received the notice in terms of section 129 of the National Credit Act.

- [2] The plaintiff lent and advanced monies to the defendant on an overdraft facility. The defendant acknowledges that the address that the notice in terms of section 129 of the National Credit Act was sent to is correct. The plaintiff proved that the notice was sent to the designated post office. In **Sebola v Standard Bank 2012 (5) SA 142 (CC)** the Constitutional Court held at paragraph 87:

*“The requirement that a credit provider provide notice in terms of s 129(1)(a) to the consumer must be understood in conjunction with s 130, which requires delivery of the notice. The statute, though giving no clear meaning to ‘deliver’, requires that the credit provider seeking to enforce a credit agreement aver and prove that the notice was delivered to the consumer. Where the credit provider posts the notice, proof of registered despatch to the address of the consumer, together with proof that the notice reached the appropriate post office for delivery to the consumer, will in the absence of contrary indication constitute sufficient proof of delivery.”*

- [3] In this instance the “track and trace” report shows that the item had not been collected at the Bryanston Post Office by the defendant. The

court finds that the plaintiff had complied with the directive by the Constitutional Court as set out in the Sebola decision.

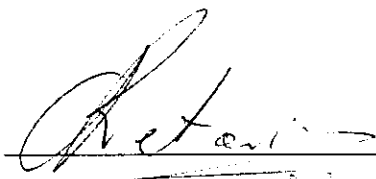
- [4] The complaint by the defendant that the plaintiff had recklessly granted credit to him cannot be entertained as he had indicated during argument that he had a property which sale would have enabled him to pay off his overdraft. His further contention that the amount is not correct is not set out in sufficient detail as he only indicates it is wrong with no details.
- [5] The defendant admitted during argument that he does not have the means presently to pay the plaintiff the amount owing. The summons had already been served on 23 June 2012 and the defendant entered his notice of intention to defend the matter on 27 July 2012. The application for summary judgment was delivered on 7 August 2012. The application was in court on 30 August 2012 where the defendant applied for a postponement to deliver a supplementary affidavit. The court granted the request and the defendant delivered a supplementary affidavit, although he did not rely on the fact that he had applied for debt counselling in the first supplementary affidavit.
- [6] The first time the defendant mentions debt counselling is in the third affidavit and the letter of confirmation by the debt counsellor is dated 16 October 2012 – 6 weeks after the defendant had initially appeared

in court and after the defendant had served his second supplementary affidavit. Therefore no legal proceedings were commenced in this matter whilst the claims were pending before a debt counsellor. It seems as if the defendant is desperate to avoid summary judgment in this matter, although he has no *bona fide* defence.

[7] The court has considered all the arguments, and read all the affidavits, but can come to no other conclusion than that the defendant owes the money to the plaintiff, that he has no *bona fide* defence and he has admitted that he is trying to delay the matter to enable him to pay the amount in the future.

[8] In these circumstances the court grants summary judgment as follows:

1. Payment of the sum of R430 814.81;
2. Interest on the sum of R430 814.81 at the rate 15% per annum as from 26<sup>th</sup> March 2012 to date of final payment;
3. Costs on an attorney and client scale;

A handwritten signature in black ink, appearing to read 'Pretorius', is written over a horizontal line.

Judge Pretorius

Case number : 30057/2012  
Heard on : 14 November 2012  
For the Applicant / Plaintiff : Adv Mollentze  
Instructed by : Blakes Maphanga Inc  
For the Respondent : In Person  
Date of Judgment : 16 November 2012