

11/02/2016  
~~31/1/16~~  
IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES/NO. ☒ NO.

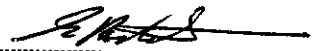
(2) OF INTEREST TO OTHER JUDGES: YES/NO. ☒ YES.

(3) REVISED. ☒ YES.

Case no: 62128/2015

31/1/2016

DATE



SIGNATURE

In the matter between:

THE STANDARD BANK OF SOUTH AFRICA

Plaintiff

and

KHULISO KENNEDY MAIMELA

Defendant

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JUDGMENT

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1. The plaintiff issued a simple summons against the defendant in which the defendant was informed that he had an opportunity to enter an appearance to defend the action within two weeks from date of service of the summons.
2. At first blush this determination of the period available to the defendant to enter an appearance to defend appeared to be at variance with the provisions of Rule 19 (1) of the Uniform Rules, which sub-rule reads:

***'19 Notice of Intention to Defend***

- (1) *Subject to the provisions of section 27 of the Act, the defendant in every civil action shall be allowed ten days after service of summons on him within which to deliver a notice of intention to defend, either personally or through his attorney: Provided that the days between 16 December and 15 January, both inclusive, shall not be counted in the time allowed within which to deliver a notice of intention to defend.'*
3. The question therefore arose whether the summons was invalid in this form, even though the defendant had entered an appearance to defend,

consequent upon which plaintiff had applied for summary judgment. No opposing affidavit was filed. If the summons was a nullity, summary judgment could not be granted.

4. Counsel was requested to address the issue and did so in helpful short heads of argument, for which the Court is indebted to Mr Riley. He pointed out that, while the Rule determines that appearance to defend should be delivered within ten days, excluding the *dies non*, section 24 of the Superior Courts Act 10 of 2013 ('the Act'), decrees that a notice of intention to defend must be delivered within two weeks.
5. A 'day' is defined in the Rules as a business day. Weekends and public holidays are excluded when days are calculated for purposes of the Rules.. Section 24 contains no reference to public holidays or weekends and does not include a determination of the *dies non*. The issues of how a public holiday or *dies non* are to be dealt with in any future calculation do not arise in the present matter and are best left for later determination if such should be required.
6. It is, however, clear that there is an apparent conflict between the Rule and section 24 of the Act. As Mr Riley has pointed out such conflict must be resolved as laid down in section 51 of the Act, which provides that the Rules in existence at the commencement of the Act will remain applicable unless they are inconsistent with the Act; until amended or repealed. Summons was issued in this matter after the commencement date of the Act. In the light of the conflict the Act's determination that appearance must be entered within two weeks from date of service must be applied.

7. The summons is therefore valid, which means that plaintiff is entitled to the summary judgment it seeks.

The following order is made:

Summary judgment is granted as prayed for.

Signed at Pretoria on this ~~3rd~~ 4th day of January 2016.



E BERELSMANN

Judge of the High Court