IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE PROVINCIAL DIVISION

Reportable:	**YES/NO**
Of interest to other Judges:	**YES/NO**
Circulate to Magistrates:	**YES/NO**

Case No.: 4437/2021

In the matter between:

TRANSFLOW (RF) (PTY) LTD[1] Plaintiff

(Registration Number: 2018/631811/07)

and

MOSHELE SHADRAK CHABANE Defendant

(Identity Number: [….])

[1] "Transflow"

Case No.: 4051/2021

In the matter between:

POTPALE INVESTMENTS (RF) (PTY) LTD[2] Plaintiff

(Registration Number: 52011/118165/07)

and

MOSHELE SHADRAK CHABANE[3] Defendant

(Identity Number: [….])

Coram: Opperman, J

Date of hearing: 10 February 2022

Order Delivered: 22 March 2022

Reasons for Judgment: The reasons for judgment were handed down electronically by circulation to the parties' legal representatives by email and release to SAFLII on 22 March 2022. The date and time for hand-down is deemed to be 22 March 2022 at 15h00.

Summary: Summary Judgment – economic concerns and legal certainty

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JUDGMENT

INTRODUCTION

2 "Potpale".
3 "Mr. Chabane".

[1] This case concerns the management of credit agreements in the diverse social demographics of South Africa. It is the ever-present tug of war between economic concerns and legal certainty. Vessio[4] defined the impasse:

> Economic concerns are one of the most important considerations that the lawmaker must contemplate when deciding on legislative frameworks, especially in the credit market. The legislative and regulatory framework that is requisite to have a smoothly flowing economic market is largely dependent on economic and social factors being taken into consideration by the policy maker. The legislator must consider the type of population that makes up the country. Is it a largely educated and sophisticated consumer market, or an uneducated and unsophisticated market or, as with the South African market, he has to consider whether there is a large discrepancy between the wealthy and educated and the poor and uneducated? The rules that a state decides to implement and the extent of the intervention will be determined by such considerations. However, the counter balancing consideration is that legal certainty cannot be forsaken. World Bank policy has long recognised the importance of open and efficient courts to sustained and widely shared economic growth, the fact that contracts must be enforced, property rights must be protected and foreign and domestic investors must have confidence in the legal security of their investments. This evidences the importance placed on the enforcement procedures and protection of rights as relative to healthy economic growth.

[2] The plaintiffs seek Summary Judgment against the same defendant, Mr. Chabane, in two separate cases for the delivery of two motor vehicles. The vehicles are operated as taxis and are a major source of income for the defendant.

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[4] 2015: Vessio, L.M., *The National Credit Act 34 of 2005: Rationale and Background for its Enactment; With a Specific Study of The Remedies of The Credit Grantor in The Event of Breach of Contract,* University of Pretoria, https://repository.up.ac.za/handle/2263/32291/browse?value=Vessio%2C+Monica+Laura&type=postgraduate on 14 March 2022 at page 93.

[3] I will deal with the two matters in one judgement. The facts, law and issues are similar. The plaintiffs pray for:

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SUMMARY JUDGMENT TO BE GRANTED IN FAVOUR OF THE PLAINTIFF AGAINST THE DEFENDANT FOR: -

1. Confirmation of termination of the agreement;
2. Return of the 2019 TOYOTA QUANTUM 2.5D – 4D SESFIKILE 16S with engine number 2KDA986653 and chassis number AHTSS22P607049125 to the Plaintiff forthwith;
3. Attorney and client costs to be taxed.

and

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SUMMARY JUDGMENT TO BE GRANTED IN FAVOUR OF THE PLAINTIFF AGAINST THE DEFENDANT FOR: -

1. Confirmation of termination of the agreement;
2. Return of the 2018 TOYOTA QUANTUM 2.5D – 4D SESFIKILE 16S with engine number 2KDA974045 and chassis number AHTSS22P907044274 to the Plaintiff forthwith;
3. Attorney and client costs to be taxed.

THE LAW

[4] The current law on Summary Judgments has been deduced proficiently on 30 April 2020 by Binns-Ward, J in *Tumileng Trading CC v National Security and Fire (Pty) Ltd* 2020 (6) SA 624 (WCC). The National Credit

Act 34 of 2005 (NCA) is applicable in tandem with the law decreed on Summary Judgments in Rule 32[5] of the High Court Rules *in casu*.

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[5] 32. Summary judgment. —

(1) The plaintiff may, after the defendant has delivered a plea, apply to court for summary judgment on each of such claims in the summons as is only—

(a) on a liquid document;
(b) for a liquidated amount in money;
(c) for delivery of specified movable property; or
(d) for ejectment; together with any claim for interest and costs.
[Sub-r. (1) substituted by GNR.842 of 31 May 2019.]

(2) (a) Within 15 days after the date of delivery of the plea, the plaintiff shall deliver a notice of application for summary judgment, together with an affidavit made by the plaintiff or by any other person who can swear positively to the facts.

(b) The plaintiff shall, in the affidavit referred to in subrule (2) (a), verify the cause of action and the amount, if any, claimed, and identify any point of law relied upon and the facts upon which the plaintiff's claim is based, and explain briefly why the defence as pleaded does not raise any issue for trial.

(c) If the claim is founded on a liquid document a copy of the document shall be annexed to such affidavit and the notice of application for summary judgment shall state that the application will be set down for hearing on a stated day not being less than 15 days from the date of the delivery thereof.
[Sub-r. (2) substituted by GNR.1262 of 1991 and by GNR.842 of 31 May 2019.]

(3) The defendant may—

(a) give security to the plaintiff to the satisfaction of the court for any judgment including costs which may be given; or
(b) satisfy the court by affidavit (which shall be delivered five days before the day on which the application is to be heard), or with the leave of the court by oral evidence of such defendant or of any other person who can swear positively to the fact that the defendant has a *bona fide* defence to the action; such affidavit or evidence shall disclose fully the nature and grounds of the defence and the material facts relied upon therefor.
[Sub-r. (3) substituted by GNR.842 of 31 May 2019.]

(4) No evidence may be adduced by the plaintiff otherwise than by the affidavit referred to in subrule (2), nor may either party cross-examine any person who gives evidence orally or on affidavit: Provided that the court may put to any person who gives oral evidence such questions as it considers may elucidate the matter.
[Sub-r. (4) substituted by GNR.842 of 31 May 2019.]

(5) If the defendant does not find security or satisfy the court as provided in paragraph (b) of sub-rule (3), the court may enter summary judgment for the plaintiff.

(6) If on the hearing of an application made under this rule it appears—

(a) that any defendant is entitled to defend and any other defendant is not so entitled; or
(b) that the defendant is entitled to defend as to part of the claim, the court shall—

[5] The governing law to be the following as correctly reflected in the matter *supra*:

1. Rule 32(3), which regulated what was required of a defendant in its opposing affidavit, was left substantively unamended in the overhauled procedure.

(i) give leave to defend to a defendant so entitled thereto and give judgment against the defendant not so entitled; or

(ii) give leave to defend to the defendant as to part of the claim and enter judgment against such defendant as to the balance of the claim, unless such balance has been paid to the plaintiff; or
[Sub-para. (ii) substituted by GNR.1883 of 1992 and by GNR.842 of 31 May 2019.]

(iii) make both orders mentioned in sub-paragraphs (i) and (ii).

(7) If the defendant finds security or satisfies the court as provided in sub-rule (3), the court shall give leave to defend, and the action shall proceed as if no application for summary judgment had been made.

(8) Leave to defend may be given unconditionally or subject to such terms as to security, time for delivery of pleadings, or otherwise, as the court deems fit.

(8A) . . . . . .

[Sub-r. (8) bis amended by GNR.1262 of 1991 and renumbered as (8A) by GN R.2410 of 1991 and deleted by GNR.842 of 31 May 2019.]

(9) The court may at the hearing of such application make such order as to costs as to it may seem just: Provided that if—

(a) the plaintiff makes an application under this rule, where the case is not within the terms of subrule (1) or where the plaintiff, in the opinion of the court, knew that the defendant relied on a contention which would entitle such defendant to leave to defend, the court may order that the action be stayed until the plaintiff has paid the defendant's costs; and may further order that such costs be taxed as between attorney and client; and
[Para. (a) substituted by GNR.842 of 31 May 2019.]

(b) in any case in which summary judgment was refused and in which the court after trial gives judgment for the plaintiff substantially as prayed, and the court finds that summary judgment should have been granted had the defendant not raised a defence which in its opinion was unreasonable, the court may order the plaintiff's costs of the action to be taxed as between attorney and client.

2. That meant that the test remained what it always was: whether the defendant disclosed a *bona fide* (i.e., an apparently genuinely advanced, as distinct from sham) defence.
3. There was no indication in the amended rule that the method of determining the above had changed.
4. A defendant was not required to show that its defence was likely to prevail; only a legally cognisable defence on the face of it, that was genuine or *bona fide*. (See paragraph [13])
5. The effect of the amended requirements for a supporting affidavit was, however, to require the defendant to deal with the argumentative material in its opposing affidavit.
6. Defendants who failed to do that, did so at their peril.
7. However, the fact that the bones of a triable defence had been made out in the plea, did not mean that Summary Judgment must be refused.
8. The issue was whether the ostensible defence pleaded was *bona fide* or not. (See paragraphs [39] – [41])

[6] The eight golden rules in Summary Judgments remained intact and applicable:[6]

11.2 The eight golden rules

Without suggesting that they constitute a numerus clause, the case law has crystallized eight distinct guidelines which may conveniently be referred to as the eight golden rules of the adjudication of a Summary Judgment application. These rules are the following:

1. Resolution of a Summary Judgment application does not entail resolution of the entire action.
2. The adjudication of a Summary Judgment application does not include a decision on factual disputes.

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[6] Van Niekerk, AJ *et al*, *Summary Judgments - A Practical Guide*, Last Updated: March 2021 at 11.3, https://www.mylexisnexis.co.za/Index.aspx on 15 March 2022.

3. In determining a Summary Judgment application, the court is restricted to the manner in which the plaintiff has presented his case.
4. Conversely the court is not necessarily bound to the manner in which the defendant has presented his case.
5. The defendant is not subject to the strict considerations applicable to the plaintiff.
6. It is permissible for the defendant to attack the validity of the application on any proper grounds.
7. Summary Judgment must be refused in the face of any doubt whether or not to grant it.
8. The court is vested with a residual discretion to refuse Summary Judgment.

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[7] The vehicle was purchased on credit on 19 February 2019. Annexure YN2; the statement of the account supplied by the plaintiff, shows that the defendant made monthly payments and religiously so up until the 6th of December 2021. He started off with instalments of R15 000.00 and the last payment was R10 000.00. The statement of the account ends at 6 December 2021. The application was on 10 February 2022 and the most recent payment history, that is imperative in applications of this nature, was not submitted. It might be that the defendant still pays instalments.

[8] It must be noted that it is the case of the defendant that he was not provided with monthly statements as he has a right in law.[7] The statement of payment was also only attached to the papers in the application after the defendant

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[7] Page 67 of the Indexed Bundle at paragraph 2.3. See Van Niekerk *et al supra* at 6.5.9:
"The obligation to deliver statements of account
A credit provider must offer to deliver to each consumer periodic statements of account (Section 108(1)). A credit provider under a mortgage bond is obliged to deliver to the consumer a periodic statement at least every six months (Section 108(2)(c)). In the case of an instalment agreement, lease or secured loan, the statement of account must be supplied at least every two months (Section 108(2)(b)). In respect of all other credit agreements, the statement of account must be issued every month (Section 108 (2)(a))."

filed his statement. It was belatedly attached to the affidavit in support of the application for Summary Judgment dated 17 December 2021. The summons was issued on 27 September 2021.

[9] There is also no evidence on record as to how the instalment and arrears were calculated and if the instalments for the insurance and tracker formed part of the amount on which the interest was calculated.

[10] The total amount outstanding at the date of the termination of the agreement is purported to be R325 228.05 plus interest. This was at the date of the affidavit in support of the application for Summary Judgment on 17 December 2021. The arrears alleged to be R114 496.03. The initial deposit was R42 100.00.

[11] On 25 July 2019 Potpale, SA Taxi Development Finance (Pty) Ltd and Transflow concluded a written agreement in terms of which it was agreed that Potpale could from time to time sell and/or cede to the plaintiff the right, title and interest that Potpale held to credit agreements it had concluded with consumers.

[12] On 21 August 2019 Potpale sold and/or ceded to the plaintiff all of the above rights. On 27 November 2019 Transflow entered into an agreement with Mr. Chabane that he signed. He claims that it was not explained to him and he did not understand it.

[13] A defence of the defendant is that he is embroiled in an opposed action against the plaintiff of which no particulars were supplied to court. The

dispute arose from an accident the vehicle was involved in and the insurance thereon. The plaintiff was *ex contractu* responsible for the payment of the insurance instalments.

[14] The defendant also has a grudge with the fact that the interest is calculated on the whole of the instalment that includes the tracker fee, insurance on the vehicle and life insurance. The instalment is denied and the defendant claims that he is not in arrears.

10.3[8] It is not in dispute that the Applicant included premiums for short term insurance, life insurance and monthly tracking connection fees in the arrear amount. It is further not in dispute that the Applicant failed to provide a basis for the inclusion of these amounts in the cause of action as stated in the particulars of claim. There is not even an allegation by the applicant that they might (sic) payment of these amounts on behalf of the respondent indeed (sic) particulars of claim.

10.4 The Respondent further disputed that correct instalment amount was debited on the statement and stated that all instalment calculators would indicate that the instalment should be R11,240.00. If one looks at the terms of section 169[9] of the National Credit

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[8] The Heads of Argument of the defendant at page 5.

[9] 169. Proof of facts. —

(1) In any proceedings in any court for the recovery of debt in terms of a credit agreement, if the consumer—

(a) alleges that the cost of credit claimed by, or made to, the credit provider exceeds the maximum permitted in terms of this Act; and

(b) requests that the credit provider be called as a witness to prove the amount of debt claimed to be owing, the court must not give judgment until it has afforded an opportunity for the consumer to examine the credit provider in relation to the debt claimed to be owing, unless it appears to the court that the consumer's allegation is prima facie without foundation, or that examination of the credit provider is impracticable.

(2) In any criminal proceedings in terms of this Act—

(a) if it is proved that a false statement, entry or record or false information appears in or on a book, document, plan, drawing or computer storage medium, the person who kept that item must be presumed to have made the statement, entry, record or information unless the contrary is proved; and

(b) an order certified by the Chairperson of the Tribunal is conclusive proof of the contents of the order of the Tribunal.

(3) A statement, entry or record, or information, in or on any book, document, plan, drawing or computer storage medium is admissible in evidence as an admission of the facts in or on it by the person who appears to have made, entered, recorded or stored it unless it is proved that that person did not make, enter, record or store it.

Act, it is indeed a right of the Respondent to dispute the amounts included by the Applicant in the arrear amount, as well as how the instalment they claimed was calculated and arrived at.

10.5 The Respondent's right to challenge an arrear amount or outstanding debt is acknowledged by the terms of Section 169 and is therefore a *bona fide* defense that is good in law.

[15] The opposition of the application as a whole is, in summary, based on the following:

1. The *locus standi* of the plaintiff is disputed;
2. the defendant claims that the arrear amount "includes short term and life insurance premiums, as well as tracking connection fees, together with interest thereon and is therefore incorrect";
3. the third defence is that there has not been compliance with the section 129-notice of the National Credit Act 34 of 2005;
4. the last defence is that the plaintiff is not entitled to terminate the agreement because it lacks *locus standi*, alternatively he is not in breach of the agreement and the outstanding amount is incorrect.

[16] Counsel for the plaintiff dealt with the defences in detail and one by one.

I. The *locus standi* issue

1. Clause 20 of the agreement with the defendant states that the credit provider Potpale may cede its rights in contract without notice to the defendant;

2. The defendant was aware that the agreement had been ceded to the plaintiff. He signed an addendum to the agreement on 26 November 2019.
3. The defendant admits that he signed the addendum but state that he went to the SA Taxi for relief. He apparently did not understand the transaction but he signed it. The cession took place and the plaintiff has *locus standi.*
4. It is not clear from the evidence supplied by the plaintiff that the defendant understood the transaction but the fact remains that the cession took place and legally so and the plaintiff has *locus standi*. Counsel for the plaintiff is correct and this defense must fail.

II. The defense that "the arrear amount includes short term and life insurance premiums, as well as tracking connection fees, together with interest thereon and is therefore not correct."

The only answer the plaintiff has to this is that the contract stipulates these payments. Argument of counsel for the plaintiff is silent on whether interest is calculated on the instalment for the vehicle only or on the whole amount; payment for the vehicle, insurance and tracker. She deals in paragraphs 23 and 24 of her Heads of Argument with the issue. She is correct that the defendant agreed to the amounts being recovered in the instalment but she does not touch on the interest calculated. The onus is on the plaintiff to prove the correctness of their claim. This is vital and makes the defense of the defendant to have veracity.

III. The defence that "section 129 of the NCA was not complied with"

This defense by the defendant is mistaken. It is the case for the defendant that he had to allocate and choose an address specific to the 129 - notice. The defendant chose and contracted his *domicilium citandi et executandi* to be the address where the section 129 - notice was delivered. The plaintiff served according to the law and the argument of counsel for the defendant at paragraph 11 of his Heads of Argument that the *domicilium citandi et executandi* is not the address chosen in section 129(5), is desperate and bad in law. The Constitutional Court has settled the extent of the duty of the credit provider in complying with section 129 of the NCA in *Sebola and another v Standard Bank of South Africa Ltd and another* 2012 (5) SA 142 CC.[10]

IV. "The applicant is not entitled to terminate the agreement because it lacks locus standi, alternatively he is not in breach of contract of the agreement and the outstanding amount is incorrect"

As said above; this might be a defense that is good and valid. The defendant made monthly payments with the instalment being in dispute. He might have contracted to an instalment but it is clear that there is a dispute and that he has a right for this to be clarified.

CONCLUSION

[17] Both parties seem to miss the point. We have moved into an era wherein mediation and consultation are advocated by the courts. We just moved through the covid pandemic and our economy is in severe distress. Both parties will have to come to the table and discuss the dispute of the interest

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[10] Scholtz, JW *et al*, *Guide to The National Credit Act,* Last Updated: July 2021, https://www.mylexisnexis.co.za/Index.aspx on 14 March 2022 at 12.4.

and the instalment. A Summary Judgment in the prevailing circumstances of this case will be contra-constitutional values and the *Batho Pele* doctrine that is embedded in African law. The vehicle is the tool that provides for the income of the defendant. An order to return it is draconic and he has shown his *bona fides* by paying a regular instalment. If all else fail the matter will have to go to trial to insure legal certainty for the credit provider. Credit providers must be meticulous in their compliance to the National Credit Act.

[18] The defendant has discharged the onus required to avoid Summary Judgment and, on the facts so disclosed, the defendant appears to have a defense that is both *bona fide* and good in law on the instalment payable and the arrears.

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[19] The crux of the plaintiff's claim is that the defendant breached the terms of the credit agreement by failing to make the required instalments. He did pay regular instalments but not the instalments contracted.

[20] On 17 August 2018 the credit agreement was concluded between the parties. The deposit was R68 100.00. the arrears are alleged, and as on 1 September 2021, to be R83 706.59. The total amount outstanding alleged to be R387 169.87. The outstanding amount on page 17 of the Indexed Bundle shows it to be R286 255.50 on 1 November 2021. It is notable that this amount decreased.

[21] The verbatim defense of the defendant on the above is:[11]

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[11] Page 58 of the Indexed Bundle paragraphs 2, 6 and 7.

2.1 I have purchased the vehicle refer (sic) to in the Plaintiff's particulars of claim from Pat Hinde Toyota on the 8th of August 2018 and financed the remainder of the purchased price, after payment of a deposit of R68, 100.00, through a company known as SA Taxi Finance.

2.2 I have always paid my monthly instalments by way of debit order until October 2019, whereafter I have started making payments by way of cash deposits. The above mentioned was caused by the fact that one of my vehicles, which I also operate as taxi, was damaged in an accident and took a considerable time to repair.

2.3 I have not received any statements since I purchased the vehicle from either the Plaintiff or the SA Taxi Development Finance. I have denied in my plea that I were in arrears in terms of the credit agreement, since I've made monthly payments and further did not receive any statements which reflected any arrears. I have noted that the Plaintiff has only now provided a breakdown of how the arrears, claimed in the particulars of claim, is calculated, and arrived at, by way of an attachment to the founding affidavit of the application for Summary Judgment. I submit that if the Plaintiff had annexed the statement to the particulars of claim, I would have been able to plead and answer in much more detail.

2.4 The Plaintiff has alleged in the particulars of claim that I breached the agreement by failing to pay the instalments, referred to in paragraph 8.3 of the particulars of claim and furthermore that I was in arrears with my instalments in the sum of R61, 190.96 on 25 May 2021.

2.5 I have denied being in arrears in my plea and still deny being in arrears. It is evident from the statement annexed to the founding affidavit, that premiums for life insurance, short term insurance and cartrack warranty were included in the calculation of the arrear balance. I was advised that the Plaintiff has not made out a case in its particulars of claim in terms whereof they were allowed to include these premiums in the arrear amount.

2.6 I further deny that the correct instalment amount is debited on the statement, since according to all instalment calculators, I used, the instalment for the period from May 2020, at an interest rate of 23,5% should amount to R11, 240.00 per month. I also submit that all the instalments prior to May 2020 are incorrect on the statement.

2.7 In order to proof that I am not in arrears, I submit that the total amount of incorrect instalments debited to the statement from April 2020, when I started making cash payments, amounts to R232,670.69 and have I paid during this period a total amount of R237, 242.09, which includes my payment of 5 November 2021 in the amount of R12 000.00. I therefore submit that I am not in arrears and that the arrear amount, as alleged by the Plaintiff in the particulars of claim are incorrect based on the above mentioned.

[22] In paragraph 6 of the same document the defendant proceeds to state that the agreement annexed to the plaintiff's particulars of claim is unreadable, as well as the further copy that was emailed by the plaintiff's Bloemfontein attorneys to his attorneys prior to him filing his plea. He did not deny that he concluded an agreement when he purchased the vehicle from Pat Hinde but understood it to have been financed by SA Taxi Development Finance. He persisted that he bought the vehicle through the SA Taxi Development Finance.

[23] In paragraph 7 the defendant pointed to his detailed explanation of his case and denied a bald denial.

[24] Counsel for the plaintiff correctly identified six defenses by the defendant. She discusses it in detail in her Heads of Argument. They are:

1. That the plaintiff was not duly registered as a credit provider;

2. the defendant did not enter into an agreement with the plaintiff;
3. that the defendant has not breached the agreement and has paid his monthly instalment;
4. that the arrear amount includes short term and life insurance premiums as well as tracking connection fees together with the interest thereon and is not correct;
5. that the wrong instalment has been charged; and
6. that there has not been compliance with section 129 of the National Credit Act.

[25] Counsel for the plaintiff is correct that the evidence shows that the plaintiff was a credit provider at the time of the agreement and she is correct that the evidence shows that the plaintiff has *locus standi*.

[26] Her submissions in regard to the third, fourth and fifth defenses cannot be accepted in light of the evidence of the defendant and the fact that he has disclosed a *bona fide* and "an apparently genuinely advanced defence that cannot be defined as a sham – defence". He did not stop payments; he does not agree with the instalment and calculation of the interest. The plaintiff neglected to provide regular statements of account to the defendant and this contributed to the confusion. The plaintiff did not show how the calculations on the arrears were done.

[27] The sixth defense of the defendant is bad in law and rejected as I have explained above in the other case. The section 129 - notice was served properly.

CONCLUSION

[28] To reiterate and add; the application for Summary Judgment is premature. The parties should have compared notes on the evidence they adduced. Debatement on the instalment before litigation is imperative.

[29] The claims for Summary Judgment by the plaintiffs are defective because the defendant has a *bona fide* defense on the issue of the installment and arrears and possible lack of careful compliance by the plaintiffs to the National Credit Act.

[30] ORDERS

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1. Summary Judgment in favour of the plaintiff against the defendant for confirmation of termination of the agreement and return of the 2019 TOYOTA QUANTUM 2.5D – 4D SESFIKILE 16S with engine number 2KDA986653 and chassis number AHTSS22P607049125 to the plaintiff, are dismissed.
2. The defendant is granted unconditional leave to defend the claims.
3. The action thus to proceed and the normal rules to apply.
4. Costs to be in the cause.

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1. Summary Judgment to be granted in favour of the plaintiff against the defendant for confirmation of termination of the agreement and return of the 2018 TOYOTA QUANTUM 2.5D – 4D SESFIKILE 16S with engine number 2KDA974045 and chassis number AHTSS22P907044274 to the plaintiff, are dismissed.
2. The defendant is granted unconditional leave to defend the claims.

3. The action thus to proceed and the normal rules to apply.

4. Costs to be in the cause.

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M OPPERMAN, J

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