



**IN THE HIGH COURT OF SOUTH AFRICA  
(TRANSVAAL PROVINCIAL DIVISION)**

**NOT REPORTABLE  
In the matter between**

**CASE NO.: 2160/08  
DATE: 28/1/2009**

**PLUMBTASTIC PLUMBING CC**

**1<sup>st</sup> Applicant**

**IAN ROBERT SWINGTON**

**2<sup>nd</sup> Applicant**

**and**

**CENTURION HOME CENTRE (PTY) LTD t.a  
HOME CENTRE TIMBERCITY**

**Respondent**

**In re:**

**CENTURION HOME CENTRE (PTY) LTD t/a**

**HOME CENTRE**

**Plaintiff**

**And**

**PLUMBTASTIC PLUMBING CC**

**1<sup>st</sup> Defendant**

**IAN ROBERT SWINTON**

**2<sup>nd</sup> Defendant**

**CORAM: EBERSOHN AJ**

**DATE HEARD: 20th August 2008**

**JUDGMENT HANDED DOWN ON: 28<sup>th</sup> January 2009**

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## JUDGMENT

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### **EBERSOHN AJ.**

- [1.] This is an opposed application to set aside a default judgment.
- [2.] It appears that the plaintiff obtained a default judgment on the 14<sup>th</sup> February 2008 under Case no. 2160/2008 against both applicants. This application then followed.
- [3.] As reason for the delay to timeously file an appearance to defend the second applicant stated that there was an agreement between the defendant's attorney and the plaintiff's attorney that the appearance to defend could be faxed, which was done.
- [4.] The plaintiff's attorney disregarded the faxed appearance to defend, he denies the said agreement, and then applied for default judgment which the applicant regard as an irregularity.
- [5.] I find the reason advanced by the defendants as credible.
- [6.] The defence raised in the application is that the provisions of the National Credit Act, No 34 of 2005, apply and that the plaintiff did not comply with the peremptory provisions thereof. This was denied by the plaintiff.
- [7.] It is not possible on the papers, to decide on the merits against the defendants

regarding the defence raised and the matter will have to go on trail.

[8.] The judgment was written on the 28<sup>th</sup> of August 2008 but the file went missing and that delayed the handing down of this judgement.

[9.] I accordingly make the following order.:

1. The default judgement granted against both defendants on the 14<sup>th</sup> February 2008 in case no. 2160/08 is set aside and leave is granted to the two defendants to defend the case on the merits.
2. The costs of this application will be costs in case 2160/08.

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**P.Z. EBERSOHN**

**ACTING JUDGE OF THE HIGH COURT**

Counsel for 1<sup>st</sup> and 2<sup>nd</sup> Applicant

Adv. A.J. Swanepoel

1<sup>st</sup> and 2<sup>nd</sup> Applicant's attorneys

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