

SUMMARY – S A TAXI V RINGANI

1. Summary judgment for return of a vehicle – non-compliance with the provisions of section 129 of the NCA argued - notification was sent to respondent by registered post to the Moroka Post Office and was never collected - this was the situation envisaged in Sebola v Standard Bank 2012 (5) SA 142 (CC) - whether or not the respondent is a defaulting consumer who elected not to collect the registered item suspecting that it would bring unwelcome legal proceedings, the factual situation is that the registered letter was not collected and remains at the post.
2. That is not the end of the matter - when the particulars of claim were served by the sheriff upon wife of the respondent, a copy of the section 129 letter/notice was also served - there can be no doubt that the respondent, received both the summons and the section 129 notice. – he has therefore been fully apprised of his rights since that date and at least ten business days has elapsed since this notice was delivered to him - respondent has had the opportunity to do that which the section 129 notice invited him to do - this he has not done - the respondent has not indicated to this court any prejudice he has suffered or any actions which he would have wished to take had he received this notice prior to service of the summons - the respondent has not asked the court for any direction in terms of section 130(4)(b) - indeed, the only direction which I can envisage being given by this court where a registered item goes uncollected from the post office would be that a section 129 notice be served by the sheriff upon the respondent - this has already been done.
3. In such circumstances, there cannot be any fatal bar to these proceedings -every reasonable step was taken by the credit provider to ensure delivery of the section 129 notice prior to issue of summons - the section 129 notice was served at the time of service of the summons - the defendant/respondent has suffered no prejudice by reason of the contemporaneous service of both the section 129 notice and the summons and has given no indication that he would have had or has had any desire to taken any action in response to the section 129 notice which he has been precluded from taking - there is no suggestion that any order or direction would be sought from this court in terms of section 130(4).
4. Argued that there was no proper demand as required in terms of the lease agreement - I have been referred to certain conflicting judgments handed down in this Division - I am in agreement with the approach that right to recover possession of its vehicle was restored to the plaintiff upon delivery of the section 129 notice - this notice was delivered through service by the sheriff and the agreement was cancelled on issue of the summons.
5. Accordingly I take the view that these defences raised argued on behalf of the respondent must fail.