

**IN THE HIGH COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)**

CAPE TOWN: Wednesday 17 December 2008

Before the Honourable Mr Justice Moosa

In the matter between:

FIRSTRAND BANK LIMITED



Plaintiff

And

AHDILL ABRAHAMS
ZULFA SAMSODIEN

**First Defendant
Second Defendant**

**Having heard the Legal Representative for the Plaintiff
and having read the documents filed of record;**

IT IS ORDERED:

That Summary Judgment against Second Defendant is refused.

BY ORDER OF THE COURT

COURT REGISTRAR
93 Minde Schapiro & Smith
BELLVILLE



/avz

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**IN THE HIGH COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)**

Case Number: 6429/2008

In the matter between:

IKHAYA RMBS 2 LIMITED

Plaintiff

and

**AHDILL ABRAHAMS
ZULFA SAMSODIEN**

**1ST Defendant
2ND Defendant**

JUDGMENT: DELIVERED ON DECEMBER 2008

MOOSA J

This is an application for Summary Judgment. The Summons was served on the Defendants on 21 April 2008. The Defendants served their Notice of Appearance to Defend on the Plaintiff's Attorneys on 5 May 2008. The Defendants' were not legally represented. They filed their Plea on 15 May 2008. The Plaintiff applied for Summary Judgment which was set down for hearing on 12 June 2008.

The application for Summary Judgment is characterised by a number of shortcomings and defects. They are the following:

1. There is no Affidavit of Service or Return of Service of the Summary Judgment Application. On the Notice of the Application for Summary Judgment next to the name of the Defendants, there are certain scrawls what appears to be someone's signature Both scrawls appears to be similar. There is also a date appearing next to such scrawls. There is no explanation what these scrawls or date represent.
2. From the file the conduct of the Application can be distilled as follows:
 - 2.1 On 12 June 2008 when the Application came before the court for the first time, it was postponed by agreement to 24 June 2008;
 - 2.2 On 24 June 2008, the matter was postponed sine die. No reason was given for the postponement. However, there is a letter, dated 10 June 2008, in the file from a Debt Counsellor, to the effect that he has been approached by First Defendant for debt review but that he is unable to assist unless he is referred to him by the court in terms of section 85 of the National Credit Act, 34 of 2005 ("the Act");
 - 2.3 On 26 November, 2008 the matter is re-enrolled for 10 December 2008.

3. On 10 December 2008, the Defendants appear in person. First Defendant informs the Court that his estate has been sequestrated. The Plaintiff does not proceed against him in respect of the Summary Judgment Application. Second Defendant produces a similar letter from the same Debt Counsellor as the one given to First Defendant and referred to earlier and she requests that the matter against her be referred for debt review in terms section 85 of the Act;

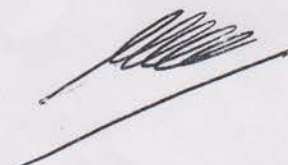
4. Counsel for Plaintiff opposes such application on the grounds that there are no facts or evidence, before the Court, to justify such an order. In support of his opposition, Counsel refers to an unreported judgment of **AR Erasmus J** in the matter of **Firststrand Bank Limited v Shane David Olivier (E) Case No 2369/07**, which was delivered on 8 May 2008;

5. Oral evidence was led in support of Second Defendant's application. For reasons that will come clear later, it is not necessary for the court to determine this issue in the present application for Summary Judgment;

6. In my view the Plaintiff has not set out a cause of action in the Summons. The Plaintiff is Ikhaya RMBS 2 Ltd. The Mortgage Bond on which the action is founded, was registered in favour of Firststrand Bank Limited. The Mortgage Bond attached to the original Application for Summary Judgment dated 8 May 2008, contains an endorsement that the Bond has been ceded to the Plaintiff. The endorsement is dated 14 December 2007. The Mortgage Bond attached to the present Application does not contain such an endorsement. The Certificate of Balance attached to the Application of Summary Judgment was issued by an official of First National Bank (FNB). She does not appear to be the Manager of Plaintiff as alleged in the Summons;

7. The Summons does not set out the nexus between Plaintiff, Firststrand Bank and FNB. The Summons merely alleges that that Plaintiff carries on business as bankers through its duly appointed agents, Firststrand Bank Ltd. What that in effect means is not clear. Before, Plaintiff can bring a Summary Judgment Application, it must set out a proper cause of action in the Summons. In my opinion, the Summons is fatally defective. In view thereof it is unnecessary for me to determine whether Second Defendant has made out a bona fide defence or not.

In the circumstances, Summary Judgment against Second Defendant is refused.

 Moosa J