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**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, EAST LONDON CIRCUIT COURT)**

NOT REPORTABLE
CASE NO. EL 780/2024

In the matter between:

**ABSA BANK HOME LOANS GUARANTEE
COMPANY (RF) (PROPRIETARY LIMITED)**
(Registration Number : 2003/029628/07)

First Applicant (Plaintiff)

ABSA BANK LIMITED
(Registration Number : 1986/004794/06)

Second Applicant (Plaintiff)

and

KONDWANI TITUS KAMANGA
Identity Number : 7[...]

Respondent/Defendant

**JUDGMENT IN RESPECT OF APPLICATION
FOR SUMMARY JUDGMENT**

HARTLE J

[1] In this application for summary judgment the plaintiffs seek only a monetary judgment against the defendant in favour of the first plaintiff.

[2] The defendant appeared in person.

[3] He filed a “*notice of intention to plea*” in which he in essence puts forward reasons for his default and pleads with the plaintiffs not to execute against the mortgaged property because it is his primary residence. He also notes that he made an offer to pay reduced instalments to bring his arrears up to date.

[4] It is abundantly plain from the plea that he has raises no real defence to his indebtedness. As for the contention that he made an offer, the principal deponent on behalf of the first plaintiff states that his offer was not acceptable to the bank because the monthly instalment tendered would not even cover his interest on the mortgage loan. The plaintiffs fairly point out that the defendant is asking the court unilaterally to rewrite his contract and impose new contractual obligations on them for him to pay his monthly bond payments according to what he can afford as opposed to what he is contractually obligated to pay.

[5] The offer, ostensibly engaged with by the plaintiffs, is not acceptable to them. I am further satisfied that the plaintiffs have not merely paid lip service to the defendant’s section 129 rights. They have actually considered his proposal to bring the payments under the agreement up to date.¹

[6] The defendant conceded that he is in arrears and can offer no retort to the particulars of claim regarding the alleged breach of contract and/or the fact of his indebtedness in the extent claimed.

[7] The plaintiffs are certainly entitled to their judgment, which I hereby grant.

¹ Section 129 (1)(a) of the National Credit Act, No. 34 of 2005.

[8] The matter appeared before me on a busy motion court day. I reserved my ruling but due to a fortunate stroke of serendipity for the defendant I took ill and was absent from the bench for a lengthy period.

[9] The defendant has hopefully in this intervening period had an appropriate opportunity to bring up the arrears on his instalments which would entitle him to have the agreement reinstated within the meaning contemplated in section 129 (3) and (4) of the National Credit Act, this notwithstanding the plaintiffs' success in the application.

[10] In the premises, I make the following order:

1. The defendant is to pay the sum of R5 590 996.40 to the first plaintiff.
2. The defendant is to pay interest on the amount of R5 590 996.40 at the prime lending rate plus 1.25% per annum from 22 December 2023, calculated daily and capitalized monthly, to date of final payment, both dates inclusive.
3. The defendant is to pay the costs of suit on the agreed attorney and own client scale.

B HARTLE
JUDGE OF THE HIGH COURT

DATE OF HEARING : 17 SEPTEMBER 2024
DATE OF JUDGMENT : 4 FEBRUARY 2025

Appearances:

For the Plaintiffs : Mr. D Kotze instructed by McWilliams & Elliot Inc,. c/o Bax Kaplan, East London (ref. Mr. J de Klerk).

For the Defendant : In person.