



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Dreyer N O and Another v Standard Bank (568/2024); Nedbank Limited and Another v Abrahams (387/2024) [2026] ZASCA 74 (22 May 2026)

Today, the Supreme Court of Appeal (SCA) handed down judgment in two consolidated matters concerning whether s 127(8) of the National Credit Act 34 of 2005 (the NCA) ousts the High Court's jurisdiction and confers exclusive jurisdiction on the magistrates' court. The issue on appeal arises from two separate applications. One was decided by the North West Division of the High Court, Mahikeng (the Mahikeng High Court), and the other by the Gauteng Division of the High Court, Pretoria (the Gauteng High Court). The appeal in the Mahikeng High Court matter was dismissed with costs, including costs of two counsel. The appeal in the Gauteng High Court matter was upheld with no order as to costs.

In the Mahikeng High Court matter, Standard Bank of South Africa Ltd (Standard Bank) entered into three instalment sale agreements with the first and second appellants, Mr Andries Dreyer and Mrs Erica Dreyer, in their capacities as trustees of the Doornfontein Trust (the Trust). The Trust defaulted on its obligations under those agreements, and Standard Bank subsequently obtained an order from the High Court for the appellants to return various assets. These assets were sold at auction, but a shortfall remained, and Standard Bank returned to the High Court seeking an order for the payment of the shortfall. The appellants challenged the jurisdiction of the High Court, arguing that s 127(8) of the NCA only clothed the magistrates' court with jurisdiction to grant an order pursuant to that section. The High Court rejected this contention and ordered the Trust to pay the shortfall to Standard Bank.

In the Gauteng High Court matter, Nedbank Limited (Nedbank) entered into instalment sale agreements with six respondents, to whom it sold motor vehicles. The respondents surrendered the vehicles to Nedbank, which in turn sold them in accordance with s 127 of the NCA, and each sale resulted in a shortfall. Nedbank approached the Gauteng High Court for an order directing the respondents to pay the shortfall. On its own accord, the Gauteng High Court questioned whether it had jurisdiction to decide the s 127(8) applications. The High Court struck each of the applications from the roll, having concluded that under s 127(8), as only the magistrates' court had jurisdiction to hear such applications.

Before the SCA, in the Standard Bank matter, the appellants relied on certain provisions of the Magistrates' Court Act 32 of 1944 and its rules to support the conclusion that s 127(8) confers exclusive jurisdiction on the magistrates' court. They contended that those provisions afford litigants protection not available under either the Uniform Rules of Court (the Uniform Rules) or the Superior Courts Act

10 of 2013. In the Nedbank matter, Nedbank challenged, with no opposition from any of the respondents, the findings of the Gauteng High Court, wherein it concluded that even though s 127(8)(a) contains no express ouster of the High Court's jurisdiction and as such an ouster can be inferred from the words 'in terms of the Magistrates Court Act' in s 127(8)(a). The court reasoned that these words could serve no other purpose than to confer exclusive jurisdiction on the magistrates' court.

Having evaluated the contentions advanced in each matter, the SCA concluded as follows. In the Standard Bank matter, the SCA held that exclusive jurisdiction of the magistrates' court is conferred in two sections of the NCA. First, in s 86, which concerns debt review proceedings, and in s 87, which addresses re-arrangement of consumer obligations and is titled 'Magistrate's Court may re-arrange consumer's obligations'. The SCA was of the view that s 127(8) is not part of the provisions conferring exclusive jurisdiction on the magistrates' court and that had the lawmaker intended to confer such jurisdiction, it would have been expressly worded. In the Nedbank matter, the SCA found that the Gauteng High Court erred on each of the premises it relied on to conclude that s 127(8) ousts the High Court's jurisdiction.

On the premise that the use of the word 'may' in s 127(8) should be interpreted as 'must', the SCA held that the Mahikeng High Court's reliance on case law from the Constitutional Court for the proposition that, as a general rule, whenever the word 'may' appears, it must be interpreted as 'must' was incorrect. The SCA found that in the context of s 127(8), the use of 'may' must be construed according to its ordinary meaning. Thus, it merely gives credit providers an option to initiate legal proceedings in the magistrates' court to recover the shortfall under s 127(8) and does not impose an obligation to do so.

Regarding the second premise that the words 'in terms of the Magistrates Court Act' in s 127(8) would be superfluous and offend the canon of construction were they not interpreted as conferring exclusive jurisdiction on the magistrates' court, the SCA found that such an interpretation does not satisfy the test for an implied ouster of the High Court's jurisdiction. In relation to the third premise, namely that the *obiter dicta* of this Court in *Standard Bank of South Africa Ltd and Others v Mpongo and Others* [2021] ZASCA 92; [2021] 3 All SA 812 (SCA); 2021 (6) SA 403 (SCA) (*Mpongo*) suggested that s 127(8) is among the provisions conferring exclusive jurisdiction on the magistrates' court, the SCA concluded that the *obiter* remarks in *Mpongo* do not form part of the *ratio decidendi*, as the question of whether s 127(8) ousts the High Court's jurisdiction was not at issue.

Therefore, the SCA held that the NCA's precisely defined provisions granting the magistrates' court exclusive jurisdiction were unambiguous, and that s 127(8) was not one of such provisions. The SCA subsequently concluded that the provision confers jurisdiction on the magistrates' court for legal proceedings instituted under it, without excluding the High Court's inherent jurisdiction.

As a result, the SCA dismissed the Mahikeng High Court matter with costs, including costs of two counsel, and upheld the appeal in the Gauteng High Court matter with no order as to costs.

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