THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case No: 568/2024

In the matter between:

ANDRIES JOHANNES DREYER N O	**FIRST APPELLANT**
ERICA MARCIA DREYER N O	**SECOND APPELLANT**

and

STANDARD OF SOUTH AFRICA LIMITED	**RESPONDENT**

And

Case No: 387/2024

In the matter between:

NEDBANK LIMITED	**FIRST APPELLANT**
BANKING ASSOCIATION OF SOUTH AFRICA	**SECOND APPELLANT**

and

CELEST FELICIA ABRAHAMS	**FIRST RESPONDENT**
ZIBUSENI MALINGA	**SECOND RESPONDENT**
KGOMOTSO NKUNA	**THIRD RESPONDENT**
PULE ELIAS MOSHANE	**FOURTH RESPONDENT**
NOBUNTU ROSE NDZONDA	**FIFTH RESPONDENT**
ANDREW CHOUNYANE	**SIXTH RESPONDENT**

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

Coram: MAKGOKA, WEINER and MOLEFE JJA

Heard: 28 August 2025 and 18 August 2025

Delivered: 22 May 2026

Summary: National Credit Act 34 of 2005 – whether s 127(8) confers exclusive jurisdiction on the Magistrates' Court and ousts the High Court's jurisdiction – Magistrates' Court Act 32 of 1944.

ORDER

In case number 568/2024 (*Dreyer N O and Another v Standard Bank*):

On appeal from: North West Division of the High Court, Mahikeng (Mfenyana J sitting as court of first instance):

1 The appeal is dismissed with costs, including costs of two counsel.

In case number 387/2024 (*Nedbank and Another v Abrahams and Others*):

On appeal from: Gauteng Division of the High Court, Pretoria (Gilbert AJ sitting as court of first instance): judgment reported *sub nom*: *Nedbank Limited v Abrahams* [2024] ZAGPJHC 31; 2025 (2) SA 545 (GJ):

1 The appeal is upheld with no order as to costs.
2 The order of the Gauteng Division of the High Court, Pretoria, is set aside.
3 The six applications are referred back to the Gauteng Division of the High Court, Pretoria, for adjudication on the merits.

JUDGMENT

Makgoka JA (Weiner and Molefe JJA concurring):

[1] This judgment concerns 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 provision applies where a credit provider repossesses and sells goods subject to a credit agreement, and the proceeds of sale are insufficient to discharge the consumer's debt to the credit

provider. The provision allows the credit provider to claim payment of the shortfall.

[2] The issue on appeal arises from two 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 Mahikeng High Court held that it had concurrent jurisdiction to consider such applications. It consequently ordered payment of the shortfall in favour of Standard Bank of South Africa Ltd (Standard Bank), the respondent in this Court, against the first and second appellants, Mr Andries Dreyer and Mrs Erica Dreyer, in their capacities as trustees of the Doornfontein Trust (the Trust). The appellants appeal against that order, with the leave of this Court.

[3] The Gauteng High Court reached the opposite conclusion, holding that its jurisdiction was ousted and that the magistrates' court had exclusive jurisdiction to consider applications for payment of the shortfall. Accordingly, it dismissed the application by Nedbank Limited (Nedbank), the first appellant in this Court, against the first to sixth respondents, none of whom oppose this appeal. The second appellant, the Bank Association of South Africa (BASA), supports Nedbank's appeal. The appeal is with the leave of the Gauteng High Court.

Factual background: Standard Bank

[4] On 14 August 2017, Standard Bank entered into three instalment sale agreements with the Doornfontein Trust. The Trust defaulted on its obligations under those agreements. Consequently, on 23 August 2019, Standard Bank obtained an order from the High Court pursuant to s 130 of the NCA, requiring the appellants to return various assets to Standard Bank. The order also provided that if the assets were sold and the proceeds were insufficient to cover the Trust's

debt, Standard Bank was entitled to apply to the court again for an order requiring the Trust to pay the shortfall. The Trust did not appeal that order.

[5] Standard Bank repossessed the assets and sold them at an auction, but a shortfall remained. It returned to the High Court seeking an order for payment of the shortfall. The Trust opposed the application on various technical grounds relating to the service of a supplementary affidavit and notices in terms of the NCA. The Trust never denied its indebtedness to Standard Bank in the amounts claimed. At the hearing of the matter, the appellants, for the first time, challenged the High Court's jurisdiction to order payment of the shortfall. It contended that, based on s 127(8) of the NCA, only a magistrate's court was competent to grant such an order. The High Court rejected this contention and ordered the Trust to pay the shortfall to Standard Bank.

Factual background: Nedbank

[6] Nedbank entered into instalment sale agreements with each respondent, under which it sold motor vehicles to them. The respondents subsequently surrendered the vehicles voluntarily. Nedbank sold the vehicles in accordance with s 127 of the NCA. Each sale resulted in a shortfall. Nedbank initiated applications in the Gauteng High Court seeking payment of the shortfall (the outstanding balance), interest, and costs in each case. None of the respondents opposed the applications, and Nedbank accordingly enrolled the applications for hearing.

[7] At the hearing, the Gauteng High Court, of its own accord, raised the question of whether it had concurrent jurisdiction with the magistrates' court to decide the s 127(8) shortfall applications, in light of this Court's obiter remarks

in *Standard Bank v Mpongo* (*Mpongo*).[1] The matter was adjourned for Nedbank to file heads of argument on the point of law raised by the court. Given the issue's importance to the banking industry, BASA subsequently sought and obtained leave to be admitted as an *amicus curiae* (friend of the court) in the proceedings and to make submissions.

[8] In its judgment, the court accepted that s 127(8)*(a)* contains no express ouster of the High Court's jurisdiction. However, it inferred an ouster 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. It held that this was because the magistrates' court already had jurisdiction to determine legal proceedings instituted under s 127(8). Such proceedings, the court said, constituted claims for the recovery of a sum of money, and there is no monetary limit on the magistrates' court's jurisdiction in causes of action under the NCA.

[9] As a result, the court struck each of the applications from the roll on the basis that it lacked jurisdiction to hear applications for payment of shortfalls under s 127(8), as only the magistrates' court had jurisdiction to hear such applications.

Legislative provisions

[10] Section 127 falls under Chapter 6, which is headed '*Collection, Repayment, Surrender and Debt Enforcement*'. Part B of Chapter 6, under which s 127(8) falls, is titled '*Surrender of Goods'*. Section 127(1) provides that a consumer may surrender goods subject to an instalment agreement by giving the credit provider written notice of termination. Section 127 also sets out the procedure for such

[1] *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).

surrender. Once notice is given, the consumer returns the goods to the credit provider. Upon receipt of the goods, the credit provider must issue the consumer with a written notice setting out the estimated value of the goods and then sell them 'for the best price reasonably obtainable.'

[11] Section 127(5) provides that after selling the goods, a credit provider must: (a) credit or debit the consumer's account with a payment or charge equal to the sale proceeds, less any reasonably incurred expenses by the credit provider related to the sale; and (b) give the consumer written notice that must include: (i) the settlement value of the agreement immediately before the sale; (ii) the total amount received from the sale; (iii) the net proceeds after deducting any permitted default charges and reasonable costs as specified in paragraph (a); and (iv) the amount credited or debited to the consumer's account.

[12] Section 127(6) provides that if the amount credited to the consumer's account exceeds the settlement value immediately before the sale, the credit provider must pay that amount to the consumer, as set out in the notice required under subsection (5)(*b*). The agreement terminates once that amount is paid. If there is a shortfall, the consumer must pay it; failing which, the credit provider may commence legal proceedings in the magistrate's court for payment under s 127(8)*(a).*

[13] There are two pathways to recover a shortfall under s 127(8). The first applies where a consumer voluntarily surrenders the goods under a credit agreement to the credit provider, and all the provisions of s 127(1) to (7) apply. This was the basis of Nedbank's application. The second applies where a credit provider obtains judgment against a consumer in terms of s 131 and repossesses the goods under the agreement. Standard Bank's application followed this pathway. In each case, the credit provider repossesses the goods and may sell

them. If a shortfall remains after the sale, the credit provider may seek judgment for payment of the shortfall.

[14] Section 127(8) must be read with s 127(7). The provisions read:

'(7) If an amount is credited to the consumer's account and it is less than the settlement value immediately before the sale, or an amount is debited to the consumer's account, the credit provider may demand payment from the consumer of the remaining settlement value, when issuing the notice required by subsection (5)(*b*).

(8) If a consumer –

(*a*) fails to pay an amount demanded in terms of subsection (7) within 10 business days after receiving a demand notice, the credit provider may commence proceedings in terms of the Magistrates' Courts Act for judgment enforcing the credit agreement . . .'.

[15] The starting point in interpreting s 127(8) is the enduring principle that in the absence of an express or clear implication to the contrary, the curtailment of the court's power is not to be easily presumed.[2] In the absence of express words in a statute ousting the jurisdiction of the High Court, any inference that the court's jurisdiction is ousted must be clear from the language of the statute.[3] This was recently affirmed by this Court in *Mpongo*, which emphasised that the threshold for concluding that there is an ouster of the High Court's jurisdiction is 'very high'. Thus, there is a strong presumption against the ouster of the High Court's jurisdiction. As explained in *Mpongo*, the mere fact that a statute vests jurisdiction in one court is insufficient to imply that the jurisdiction of another court is thereby ousted.[4]

[16] It is common cause that s 127(8) does not expressly oust the High Court's jurisdiction. The Gauteng High Court in the Nedbank matter held that it does so

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[2] *Lenz Township Co (Pty) Ltd v Lorentz NO en Andere* 1961 (2) SA 450 (AD) at 455B; see also *Minister of Law and Order and Others v Hurley and Another* 1986 (3) SA 568 (A) at 584A-B.
[3] *Welkom Village Management Board v Leteno* 1958 (1) SA 490 (A) at 503.
[4] *Mpongo* para 68.

by implication. The appellants in the Standard Bank matter support this conclusion. Below, I first consider the merits of the Standard Bank matter, followed by Nedbank's.

Merits: Standard Bank

[17] The Mahikeng High Court devoted a brief passage in its judgment to the jurisdiction issue. It held that the NCA recognises the concurrent jurisdiction of the High Court and the magistrates' courts to adjudicate on an application for payment of a shortfall. Accordingly, it concluded that s 127(8) does not exclude the High Court's jurisdiction. Consequently, the High Court dismissed the appellant's jurisdictional argument and ordered the Trust to pay the shortfall to Standard Bank.

The appellants' contentions

[18] 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 contend that these provisions afford litigants protection not available under either the Uniform Rules of Court (the Uniform Rules) or the Superior Courts Act 10 of 2013. The first is s 48 Magistrates' Court Act, which empowers the court to suspend further proceedings on a judgment pending arrangements for its satisfaction, or to order payment of a judgment debt in instalments. The second is s 73, which provides for the suspension of execution of a debt on certain conditions. The third is s 57, which obliges the court to act in terms of the NCA, dealing with over-indebtedness, reckless credit and affordability assessment, when considering a request for judgment in terms of this section.

[19] The fourth is rule 12(6A), which provides that where a plaintiff applies for default judgment on a claim founded on any cause of action arising or regulated

by legislation, such as the NCA, the plaintiff shall file evidence confirming compliance with that legislation. The fifth is rule 12(5), in terms of which an application for default judgment on a cause of action based on the NCA must be adjudicated by a court, whereas in the High Court, rule 31(5)*(b)* of the Uniform Rules, the registrar is empowered to grant default judgment without referring the matter to court.

Discussion

[20] In limited instances, the NCA confers exclusive jurisdiction on either the High Court or the magistrates' court, it does so expressly or implicitly. For example, s 59(3) provides that a decision of the National Consumer Tribunal is subject to appeal to or review by the High Court. This is the only instance in which the High Court is granted exclusive jurisdiction.

[21] The exclusive jurisdiction of the magistrates' court is conferred in two sections of the NCA. First, in s 86, which concerns debt review proceedings. In particular, s 86(7)*(c)*, (8)*(b)*, and (9) make it plain that the magistrates' court has exclusive jurisdiction to determine all aspects of debt review proceedings, except for enforcement proceedings following the termination of debt review, as mentioned above. Second, in s 87, regarding the re-arrangement of consumer obligations. The provision is self-explanatory and is titled 'Magistrate's Court may re-arrange consumer's obligations'.

[22] Section 127(8) is not part of the provisions conferring exclusive jurisdiction on the magistrates' court. Had the lawmaker's intention been to confer such jurisdiction, it would have been expressly worded accordingly, as are these provisions. I therefore do not agree that any of the provisions relied upon by the appellants serve as textual or contextual indications that s 127(8) confers exclusive jurisdiction on the magistrates' court. The architecture of the NCA

makes it clear that the lawmaker consciously used the term 'court' in most sections.

[23] The word 'court' is not defined in the NCA. Therefore, it can only be understood to refer to any court with competent jurisdiction and therefore includes both the High Court and the magistrates' court. Put differently, that usage was intended to give 'court' a broader meaning, rather than to confer exclusive jurisdiction on a specific court. I illustrate some of those provisions. For example, s 16(1)*(b)*(ii) empowers the National Credit Regulator to apply to 'a court' for a declaratory order on the interpretation or application of any provision of the NCA.

[24] Section 83 provides that a 'court' may suspend a reckless credit agreement, whereas s 85 empowers a 'court' to declare and relieve over-indebtedness. Section 86(11), which concerns the enforcement of a credit agreement by a credit provider who has terminated debt review in terms of s 86(10), provides that a 'court' hearing the enforcement proceedings may order that the debt review resume on any condition it considers just.

[25] Originally, s 86(11) referred only to 'the Magistrates' Court'. This was amended by the National Credit Amendment Act 19 of 2014, which replaced 'the Magistrates' *Court'* with 'court'. The amendment followed this Court's judgment in *Collett v Firstrand Bank* (*Collett*).[5] There, it was held that because proceedings to enforce a credit agreement may be commenced in either the High Court or the magistrates' court, the words 'magistrates' court' in s 86(11) must be interpreted to mean 'the court' hearing the enforcement proceedings. This, the Court reasoned, would avoid issues that might arise if two courts considered related matters. The effect of the amendment is that s 86(11) is now aligned with the rest

[5] *Collett v Firstrand Bank Ltd and Another* [2011] ZASCA 78; (2011) (4) SA 508 (SCA); [2011] 3 All SA 585 (SCA).

of the credit enforcement provisions in the NCA, which may be brought in either the High Court or the magistrates' court.

[26] This brings one to ss 129, 130, and 131. These sections fall under part C of the NCA, headed 'Debt enforcement by repossession or judgment'. They set out the required procedures before debt enforcement occurs, when a credit provider has repossessed goods under a credit agreement or obtained a judgment against a consumer. Section 129 provides that a credit provider may not commence any legal proceedings to enforce the agreement before, among other things, providing the consumer with a notice of their default. Section 130, in turn, provides that the credit provider may approach *a court* for an order to enforce a credit agreement only if the consumer has been in default for at least 20 business days and at least 10 business days have elapsed since the credit provider delivered a notice to the consumer as contemplated in s 129.

[27] Section 131 provides that if *a court* makes an attachment order for goods subject to a credit agreement, s 127(2) to (9) and s 128 apply to those goods. This means that goods attached pursuant to s 130 and 131 can be sold, and if there is a shortfall, a credit provider may, among other things, claim the shortfall from a consumer.

[28] As mentioned, this is the pathway Standard Bank followed to enforce the credit agreements against the Trust. Consistent with the holding in *Collett*, that proceedings to enforce a credit agreement may be commenced in either the High Court or the magistrates' court, Standard Bank was entitled to bring the shortfall claim in the High Court. The effect of the interpretation of s 127(8) preferred by the appellants would be this: after obtaining an attachment order in the High Court and selling goods, Standard Bank cannot claim the shortfall, if any, in that court. It would have to do so in the magistrates' court.

[29] This is self-evidently absurd. It is the very anomaly that impelled this Court in *Collett* to interpret the words 'magistrates' court' as 'court', so as to 'avoid the issues that may arise from two different courts considering related matters.'[6] It is now settled that, in its interpretive exercise, a court must prefer a sensible meaning to one that leads to insensible or unbusinesslike results.[7] The interpretation preferred by the appellants runs counter to this principle.

[30] It follows that the Mahikeng High Court was correct in concluding that its jurisdiction was not ousted. The appeal must be dismissed with costs. Standard Bank employed three counsel. Although important, the matter does not warrant costs of three counsel. Costs of two counsel will be ordered.

Merits: Nedbank

The judgment of the Gauteng High Court

Mateman

[31] The court rejected Nedbank and BASA's contention that it was bound by the Full Court's decision in *Nedbank v Mateman* (*Mateman*),[8] which, it was argued, had already decided that the High Court has concurrent jurisdiction with the magistrates' court in relation to claims in terms of s 127(8)*(a).* In that case, the registrar of the High Court had declined to grant default judgment under rule 31(5)*(a)* for claims that could otherwise have been brought in the magistrates' court. The registrar referred the cases to the court, among other things, on the basis that s 127(8) of the NCA ousted the High Court's jurisdiction and conferred exclusive jurisdiction on the magistrates' court.

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[6] *Collett* para 17.
[7] *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA) para 18.
[8] *Nedbank Ltd v Mateman and Others; Nedbank Ltd v Stringer and Another* [2007] ZAGPHC 295; 2008 (4) SA 276 (T); [2008] 1 All SA 593 (T).

[32] The Full Court held that s 127 does not deal, and was not intended to deal, with the jurisdiction of the High Court or the ousting thereof. The Full Court also referred to an earlier judgment in which the court had implicitly accepted that the High Court had concurrent jurisdiction, but transferred the matter to the magistrates' court. The Full Court considered this to be indicative of the fact that the court had accepted that it had jurisdiction to deal with the matter, because otherwise it would have struck the matter from the roll. The Full Court held that the registrar was wrong to have declined to grant default judgments on the basis that the High Court's jurisdiction was ousted. Consequently, the Full Court granted the default judgments as requested.

[33] The Gauteng High Court distinguished *Mateman* on the basis that the matters considered by the Full Court did not relate to shortfalls under credit agreements falling within the ambit of s 127(8), where goods had been voluntarily surrendered. The matters were for judgment on credit agreements, in which orders were sought declaring immovable property executable. Those were not claims that fall within the ambit of s 127(8). It was unnecessary for the Full Court to make any findings in relation to s 127(8) in order to reach its decision that the High Court had concurrent jurisdiction in relation to the matters before it.

[34] The High Court, therefore, considered the Full Court's statements in relation to s 127(8) as *obiter*. Although it considered the *obiter* remarks persuasive, the court relied on the *obiter* remarks of this Court in *Mpongo*, to the effect that s 127(8) conferred exclusive jurisdiction of the High Court. In my judgment, the court was correct in its conclusion that *Mateman* did not authoritatively decide the question whether s 127(8) ousted the High Court's jurisdiction, as its remarks about s 128 were *obiter* and not binding on it. But as I demonstrate below, the court's reliance on the *Mpongo* dictum was unavailing.

The High Court's interpretation of s 127(8)

[35] The court's reasoning rested on three grounds. First, the use of the word *'may'* in s 127(8) should be interpreted as 'must' in light of the interpretation of that word in *South African Human Rights Commission v Standard Bank* (*SAHRC*),[9] where the Constitutional Court's construed s 169(1)(*a*)(i) of the Constitution to mean 'must'. Second, 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. Third, the *obiter dicta* of this Court in *Mpongo* suggested that s 127(8) is among the provisions conferring exclusive jurisdiction on the magistrates' court. I deal with each of these grounds in turn.

The word 'may' in s 169(1)(a)(i) of the Constitution

[36] In *SAHRC*, the Constitutional Court considered the word 'may' in s 169(1)*(a)*(i) of the Constitution in the context of whether a court may decline to hear a matter within its jurisdiction because another court has concurrent jurisdiction. *SAHRC* was a sequel to *Mpongo*, in which the South African Human Rights Commission sought leave to appeal against this Court's orders in *Mpongo*.

[37] The application turned on the interpretation of s 169(1)*(a)*(i) of the Constitution, which provides that the High Court 'may' decide any constitutional matter, except where, among other things, the Constitutional Court has agreed to hear the matter directly in terms of s 167(6)*(a).* The issue was whether 'may' in the provision meant that the High Court was entitled to decline to hear a constitutional issue.

[9] *South African Human Rights Commission v Standard Bank of South Africa Ltd and Others* [2022] ZACC 43; 2023 (3) BCLR 296 (CC); 2023 (3) SA 36 (CC).

[38] The Constitutional Court considered s 169(1) together with ss 168(3) and 170 of the Constitution, where the word 'may' is used in relation to jurisdiction. The Court reasoned that interpreting 'may' as permissive would mean that all superior courts were at liberty to refuse to hear matters despite having jurisdiction to do so. To avoid this anomaly, the Court interpreted the word 'may' as implying that the High Court is obliged to decide a constitutional issue before it.

[39] The Constitutional Court held that the only exceptions are where: (a) it has agreed to hear a matter directly in terms of s 167(6)*(a)*; and (b) the matter is legislatively assigned to another court of a similar status to the High Court. The Court also reasoned that a contrary interpretation would be inconsistent with this Court's holding in *Agri Wire (Pty) Ltd v Commissioner of the Competition Commission*[10] that courts are not entitled to decline to hear cases properly before them.

[40] The High Court relied on *SAHRC* to conclude that the word 'may' in s 127(8)*(a)* must be read as 'must', which, in turn, would confer exclusive jurisdiction on the magistrates' court. With respect to the learned Judge, this reliance on *SAHRC* was inapposite. The Constitutional Court's reasoning was confined to the specific context of the constitutional provisions granting jurisdiction to superior courts. It concerned whether a court may refuse to hear a matter properly before it because another court also has jurisdiction over the matter, not whether any court's jurisdiction is ousted.

[41] The Constitutional Court did not establish a general rule that whenever the word 'may' appears, it must be interpreted as 'must'. In the context of s 127(8),

[10] *Agri Wire (Pty) Ltd v Commissioner of the Competition Commission* [2012] ZASCA 134; [2012] 4 All SA 365 (SCA); 2013 (5) SA 484 (SCA) para 19.

the use of 'may' in that section 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). It does not impose an obligation to do so.

The effect of the words 'in terms of the Magistrates Court Act'

[42] It is common cause that s 127(8) does not explicitly remove the High Court's jurisdiction. The question is whether it does so by implication. The High Court considered the words 'in terms of the Magistrates Court Act' and concluded that they ousted the High Court's jurisdiction by implication. It held that a contrary interpretation would render those words superfluous, thereby offending the interpretive canon against superfluity.

[43] I disagree. As correctly contended by Nedbank and BASA, these words were not intended to be restrictive. Instead, they expand the magistrates' court's jurisdiction without conferring exclusive jurisdiction on it or ousting the High Court's jurisdiction. They must be understood in this context: a magistrates' court is a creature of statute and can consider only matters expressly mentioned in its empowering statute, the Magistrates Court Act.

[44] In this regard, it is necessary to note that a magistrates' court is not empowered to adjudicate a claim for specific performance without an alternative claim for damages.[11] Section 127(8) effectively constitutes such a claim because it expressly refers to the 'enforcement of the instalment sale agreement'. In the

[11] Section 46 is headed: '**Matters beyond the jurisdiction**'. Subsection (2) thereof reads:
'(2) a court shall have no jurisdiction in matters—
(a) . . .
(b) . . .
(c) in which is sought specific performance without an alternative of payment of damages, except in—
(i) the rendering of an account in respect of which the claim does not exceed the amount determined by the Minister from time to time by notice in the *Gazette* . . .'.

absence of the words *'in terms of the Magistrates Court Act'*, s 46(2)*(c)* of the Magistrates' Court Act could well mean that the magistrates' court lacks jurisdiction to adjudicate a claim for a shortfall in terms of s 127(8).

[45] Seen in this light, the phrase is intended to confer jurisdiction on that court if it would otherwise lack it. It does not exclude the High Court. Had the lawmaker intended to exclude the High Court's jurisdiction, it would have expressly stated so. This is especially so, given that the lawmaker is presumed to be aware of the state of the law at the time the legislation was passed. In this case, the relevant principle is that there is a strong presumption against ousting the court's jurisdiction. To sum up, the words 'in terms of the Magistrates Court Act' in s 127(8) do not satisfy the test for an implied ousting of the High Court's jurisdiction.

The Mpongo dictum

[46] In *Mpongo*, this Court considered the judgments of Full Courts in two Divisions of the High Court. Those courts held, respectively, that in the context of the NCA: (a) the High Court may decline to adjudicate a matter over which it and the magistrates' court have concurrent jurisdiction; and (b) the main and local seats of a Division of a High Court may each refuse to hear a matter in respect of which the other has concurrent jurisdiction. The majority in the second Full Court judgment went further, holding that the NCA excluded the High Court's jurisdiction in all respects, and that all matters in terms of the NCA had to be brought in the magistrates' court.

[47] This Court rejected all of these conclusions. Regarding the last-mentioned finding, this Court held that the NCA ousts the High Court's jurisdiction only where it expressly confers exclusive jurisdiction on the magistrates' court. It

cited examples of such instances in the NCA. The relevant passage in this Court's judgment reads:

'Sometimes, however, the NCA is specific about the Magistrates' Court being the exclusive forum to make certain decisions. In those instances, the NCA expressly stipulates the Magistrates' Court to the exclusion of any other court. *For example: . . . s 127(8)(a) provides that if a debtor 'fails to pay an amount demanded in terms of subsection (7) within 10 business days after receiving a demand notice, the credit provider may commence proceedings in terms of the Magistrates' Courts Act for judgment enforcing the credit agreement . . .'.*[12] (Emphasis added.)

[48] The High Court treated the italicised remarks as indicating that this Court had held that s 127(8) was among the provisions of the NCA conferring exclusive jurisdiction on the magistrates' court. It clearly considered itself bound by those remarks. It is necessary to explain what is binding in a judgment. This Court, in *Pretoria City Council v Levinson*,[13] explained that what is binding in a judgment is the *ratio decidendi*, which consists of the principle to be drawn from the case.[14] That was reiterated in *True Motives 84 (Pty) Ltd v Mahdi*,[15] where it was held that only the *ratio* binds courts, not what might have been said in passing.

[49] I have explained the issues that this Court faced in *Mpongo*. Viewed in this light, the *obiter* remarks in that decision 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. The remarks were not necessary to the Court's decision on the issues in that case. Furthermore, they were neither the product of any analysis of s 127(8)*(a)*

[12] *Mpongo* para 81.
[13] *Pretoria City Council v Levinson* 1949 (3) SA 305 (A) at 317; see also *Makhanya v University of Zululand* [2009] ZASCA 69; 2010 (1) SA 62 (SCA); [2009] 8 BLLR 721 (SCA); [2009] 4 All SA 146 (SCA); (2009) 30 ILJ 1539 (SCA) para 81.
[14] *Collect v Priest* 1931 AD 290.
[15] *True Motives 84 (Pty) Ltd v Mahdi and Another* [2009] ZASCA 4; 2009 (4) SA 153 (SCA); 2009 (7) BCLR 712 (SCA); [2009] 2 All SA 548 (SCA).

nor a considered judgment on the matter. For these reasons, the remarks were made in passing and do not constitute binding authority.

[50] In any event, as I have demonstrated, the NCA carefully delineated, with clarity and unambiguity, the provisions conferring jurisdiction on the magistrates' court. Section 127(8) is not among those provisions. That provision confers jurisdiction on the magistrates' court for legal proceedings instituted under it, without excluding the High Court's inherent jurisdiction. Thus, to the extent that the *obiter* remarks in *Mpongo* suggest otherwise, the Gauteng High Court was clearly wrong, and we are obliged to correct that error. This Court has, in the past, done so where necessary.[16] It follows that the High Court's reliance on the remarks was misconceived.

[51] The upshot of the above findings is that, on each of the premises it relied on to conclude that s 127(8) ousts the High Court's jurisdiction, the High Court erred. As demonstrated in the Standard Bank matter, other provisions of the NCA negate the ouster of the High Court's jurisdiction, including ss 129, 130 and 131. The result is that Nedbank and BASA's appeal should succeed. As regards costs, both parties fairly accepted that, because the appeal arises from a point raised by the court of its own accord, there should be no order as to costs.

Conclusion

[52] The appeal in the Standard Bank matter fails, whereas the appeal in the Nedbank matter succeeds.

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[16] See, for example, *Premier of the Western Cape Provincial Government NO v Lakay* [2011] ZASCA 224; 2012 (2) SA 1 (SCA); [2012] 1 All SA 465 (SCA) para 14; *Coface South Africa Insurance Co Ltd v East London Own Haven t/a Own Haven Housing Association* [2013] ZASCA 202; [2014] 1 All SA 536 (SCA); 2014 (2) SA 382 (SCA) para 25; *MEC for Health, Gauteng Provincial Government v CMMS obo AAS* [2025] ZASCA 91; 2025 (6) SA 152 (SCA) paras 129-134.

Orders

[53] The following orders are made:

In case number 568/2024 (*Dreyer N O and Another v Standard Bank*):

The appeal is dismissed with costs, including costs of two counsel.

In case number 387/2024 (*Nedbank and Another v Abrahams and Others*):

1 The appeal is upheld with no order as to costs.

2 The order of the Gauteng Division of the High Court, Pretoria, is set aside.

3 The six applications are referred back to the Gauteng Division of the High Court, Pretoria, for adjudication on the merits.

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JUDGE OF APPEAL

Appearances:

In the Standard Bank appeal

For appellants	V Snellenburg SC (with him R van der Merwe)
Instructed by:	HSL du Plessis Attorneys, Kroonstad Blair Attorneys, Bloemfontein.
For respondent	K Hofmeyr SC (with her A J Venter and K Kheswa)
Instructed by:	Martins Weir-Smith Inc., Johannesburg Maree & Partners, Bloemfontein.

In the Nedbank appeal

For first appellant	M Chohan SC (with him M Reineke)
Instructed by:	Hainsworth Koopman Attorneys, Pietermaritzburg McIntyre Van der Post, Bloemfontein
For second appellant	I Green SC (with him P Ngcongo and I Hayath)
Instructed by:	Edward Nathan Sonnenbergs Inc., Johannesburg Mayet and Associates, Bloemfontein.