

**IN THE HIGH COURT OF LESOTHO**

**(Commercial Division)**

**CCT 12/11**

**In the matter between:-**

**STANDARD LESOTHO BANK LIMITED**

**PLAINTIFF**

**VS**

**TLALANE MABEL MAKAPE**

**DEFENDANT**

Date of Hearing : 14<sup>th</sup> April & 2<sup>nd</sup> May 2011  
Date of Ruling : 2<sup>nd</sup> May 2011

**CORAM : MR. ACTING JUSTICE L.A. MOLETE**

**Counsel :**

**Mr. Mpaka for Plaintiff  
Mr. Mojela for Defendant**

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**JUDGEMENT**

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This is an application for summary judgment.

Plaintiff's claim against the defendant is for payment of the amount of M38,946.57 in respect of an amount advanced to defendant as a personal loan. Plaintiff also claims interest at

the rate of 10.25% per annum from date of summons and costs on the attorney and client scale as stipulated in the loan agreement.

The defendant opposed the application and raised a number of objections about lack authority of the deponent to the affidavit; a dispute on the amount claimed; and further submitted that there was insurance in place which protected her in the event of non-payment of the outstanding balance in the event of death or permanent disability or retrenchment.

The matter came before court on three different dates in March and April, and was finalized on the 2<sup>nd</sup> May 2011.

It was initially agreed that the point relating to authority of the plaintiff's official and the fact that there was no resolution evidencing the authority of the Head of Credit of plaintiff be discarded as that objection was without merit on the authority of the two leading cases on the subject namely;

**CENTRAL BANK OF LESOTHO v PHOOFOLO 1985 –  
1989 LAC 253**

and **NATIONAL UNIVERSITY OF LESOTHO AND  
ANOTHER v MOTLATSİ THABANE C of A (CIV) 3/2008**  
(unreported).

The remaining grounds therefore were whether the balance outstanding was correctly calculated and the effect of the Loan Protection Benefit Clause. These two turned out to be connected and could be disposed of at once, because it was then up to defendant to show that at least one or some payment was made to reduce the loan. This would mean that the insurance would have been put into place because the premium was payable from the defendant's instalments. This would also then justify a further inquiry into the balance outstanding. It would effectively support the contention of defendant that the amount claimed was disputable.

The defendant was given an opportunity to produce some proof of payment in any form to disprove the claim by plaintiff that no instalment was ever paid. The matter was adjourned on two occasions for this purpose, but nothing was ever forthcoming.

In the result the plaintiff became entitled to a summary judgment. The courts then had to conclude that there was no triable issue and that plaintiff's claim was unimpeachable because defendant had no defence. The summary judgment procedure is intended to prevent delays where there is no fairly arguable defence to be brought forward.

**FIRST NATIONAL BANK OF SOUTH AFRICA LTD v  
MYBURGH 2002(4) SA 176 at 180.**

**PAUL v PETER 1985(4) SA 227(N) at 230E.**

On the 2<sup>nd</sup> May 2011 Mr. Mojela for the defendant conceded that in the absence of the necessary documents as agreed, his clients defence could not be sustained. He accordingly informed the court he would not pursue his opposition to the summary judgment.

The court grants summary judgment in favour of the plaintiff as prayed for:

- a) Payment of the amount of M38,946.57.
- b) Interest thereon at the rate of 10.25% from 21<sup>st</sup> January 2011 to date of full payment.
- c) Costs of suit on the attorney and client scale.

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**L. A. MOLETE  
ACTING JUDGE**