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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 17048/2021

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

Date: 19 June 2023

In the matter between:

SB GUARANTEE COMPANY RF PROPRIETARY LTD APPLICANT
[Reg No. 20[....]07]

And

HLONGWANE: SIBUSISO ANTHONY RESPONDENT

JUDGEMENT

ALLY AJ

[1] This is an opposed application for default judgement in terms of Rule 31(2) of the Uniform Rules of Court read with Rule 46A wherein the Applicant applies for the property to be specially executed.

[2] The Applicant was represented by Adv. J Van der Merwe and the Respondent by Adv. I. Krüger.

[3] At the outset the Court had to deal with the issue of a supplementary affidavit uploaded on Caselines without the leave of the Court. There was no objection from the Respondent and the supplementary affidavit, dealing with updated information was allowed.

[4] Counsel for the Applicant submitted that the amount owed by the Respondent was common cause. The formal procedures, in respect of notifications in terms of Section 129 of the national Credit Act had also been complied with.

[5] Counsel for the Applicant also emphasised that the Respondent owns property in Limpopo and therefore the Court should take into account that this property is not the Respondent's only property.

[6] The Respondent submits that he had tried from the beginning to obtain a relaxation or repayment plan from the Applicant but the Applicant insisted on payment of 50% [fifty percent] of the arrears before any such plan could be considered. Furthermore, the Applicant insisted on going forward with legal proceedings unless the said 50% [fifty percent] of the arrears was paid.

[7] Respondent's main opposition to the case of the Applicant is that he fell on bad times as a result of COVID 19. Counsel for the Respondent submitted that the circumstances of this case were exceptional and the Court should come to the assistance of the Respondent.

[8] This Court has given due consideration to the principle set out in **Gundwana v Steko Development CC & Others**¹ wherein the Constitutional Court, referred with approval to the judgement of **Jafta**²:

¹ 2011 (3) SA 608 CC

² 2004 CC 140

“Another factor of great importance will be the circumstances in which the debt arose. If the judgment debtor willingly put his or her house up in some manner as security for the debt, a sale in execution should ordinarily be permitted where there has not been an abuse of court procedure.”

[9] The facts of this case do not bear out a situation that can be stated to be an abuse of process on behalf of the Applicant.

[10] This Court aligns itself with the following statement in the **Gundwana** matter:

*“In Jaftha, Mokgoro J, before listing some relevant factors that needed to be considered in judicial oversight of the execution process, warned that “it would be unwise to set out all the facts that would be relevant to the exercise of judicial oversight.” Mindful of that warning, I would merely add the following. It must be accepted that execution in itself is not an odious thing. **It is part and parcel of normal economic life.** [my emphasis] It is only when there is disproportionality between the means used in the execution process to exact payment of the judgment debt, compared to other available means to attain the same purpose, that alarm bells should start ringing. If there are no other proportionate means to attain the same end, execution may not be avoided.*

[12] The issue of Covid 19 raised by the Respondent, in my view, cannot be regarded as a defence to the application. A creditor is entitled to seek relief from the Court where the debtor owes a large amount to the creditor as in this case and where a creditor has shown that the application is not an abuse of Court process. In my view, the Respondent has not raised a defence in law to the claim by the Applicant.

[13] Accordingly, it is my view that the Applicant is entitled to the relief set out in the draft order.

[14] As a result the Draft Order marked "X" as amended is made an order of Court.

ALLY AJ

ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION OF THE HIGH COURT, PRETORIA
Electronically submitted therefore unsigned

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be **19 June 2023**.

Date of virtual hearing: 24 October 2022

Date of judgment: 19 June 2023

Appearances:

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