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

- 1) REPORTABLE: YES/NO  
2) OF INTEREST TO OTHER JUDGES: YES/NO  
3) REVISED: YES/NO

|           |                |
|-----------|----------------|
| _____     | 19 AUGUST 2024 |
| SIGNATURE | DATE           |

CASE NO : 27275/2022

In the matter between :

**THE STANDARD BANK OF SOUTH AFRICA LTD** Applicant  
(Registration Number: 1962/000738/06)

and

**PEMELO SHARLOTTE BOGATSU** Respondent

This Judgment was handed down electronically by circulation to the parties and or parties' representatives by email and by being uploaded to CaseLines. The date and time for the hand down is deemed to be 19 August 2024.

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## JUDGMENT

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M SNYMAN, AJ

- [1] Before me is an application in terms of Rule 46A(9)(d) set down for 25 June 2024 for a reduction of the reserve price of the property to be sold in execution.
- [2] A judgment and order declaring the property executable was granted on 30 September 2022 and a reserve price was set at R490 865.79.
- [3] An attempt to sell the property was seemingly made but no affidavit in support of the application in terms of Rule 46A(9)(d), a reduction of the reserve price, is referred to in the notice of motion uploaded to CaseLines.
- [4] No proof of service of this application dated 21 December 2023 is uploaded and no documentation in respect of any previous sale is included in the documents before this court.
- [5] No practice note, draft order or other documents in respect of this application in terms of rule 46A(9)(d) was uploaded or filed on Caselines in terms of any directive of this court. The matter was clearly not ripe for hearing.
- [6] In a practice note and draft order belatedly uploaded to CaseLines on 24 June 2024, the day before the hearing, the following is requested:

*“2.1 On 26 MAY 2022 the summons was served on the Defendant by way of affixing at the domicile address (Subservice Affidavit, paragraph 5.4, annexure “XN3”).*

*2.2 On 30 SEPTEMBER 2022 full judgment was granted wherein the property was declared executable (Subservice Affidavit, paragraph 5.7, annexure “XN4”).*

*2.3 The Plaintiff proceeded with a warrant and a sale of the property in execution. On the sale the property was not sold due to no interested bidders (Subservice Affidavit, para 5.8 – 5.9 annexure “XN5” – “XN7)*

*2.4 As a result, the Plaintiff proceeded with a Lower Reserve Price application which is correctly set down for 25 JUNE 2024. But due to the fact the personal service was not obtained, the application for substituted service is brought (para 5.11, annexure “XN8”)”*

[spelling mistakes are not corrected]

[7] The draft order uploaded on 24 June 2024 requests that substituted service of the application in terms of Rule 46A(9)(d), be granted. The application for substituted service have not been properly enrolled and it is a clear attempt to circumvent the difficulties in the matter. I would have been entitled to remove the application simply for that reason, however the practice seems to be quite prevalent and needs to be addressed.

[8] It was, in preparing the matter, not clear what order would be sought because the application for substituted service was only uploaded on CaseLines on 21 June 2024 a notice of motion, supported by an affidavit and annexures uploaded to Caselines, seeking substituted service. I will deal with this application as well as the application in terms of Rule 46A(9)(d) below.

[9] However, before dealing with the applications, the general principles applicable to applications and evidence needs again be summarised.

### ***Nature of applications***

[10] In *Molusi and Others v Voges NO and Others*<sup>1</sup> the Constitutional Court held that:

“[27] *It is trite law that in application proceedings the notice of motion and affidavits define the issues between the parties and the affidavits embody evidence. As correctly stated by the Supreme Court of Appeal in Sunker:*

*“If an issue is not cognisable or derivable from these sources, there is little or no scope for reliance on it. It is a fundamental rule of fair civil proceedings that parties . . . should be apprised of the case which they are required to meet; one of the manifestations of the rule is that he who [asserts] . . . must . . . formulate his case sufficiently clearly so as to indicate what he is relying on.”*

[28] *The purpose of pleadings is to define the issues for the other party and the Court. And it is for the Court to adjudicate upon the disputes and those disputes alone. Of course, there are instances where the court may, of its own accord (mero motu), raise a question of law that emerges fully from the evidence and is necessary for the decision of the case as long as its consideration on appeal involves no unfairness to the other party against whom it is directed. In Slabbert the Supreme Court of Appeal held:*

*“A party has a duty to allege in the pleadings the material facts upon which it relies. It is impermissible for a plaintiff to plead a particular case and seek to establish a different case at the trial. It is*

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<sup>1</sup> 2016 (3) SA 370 (CC) at para [27] and [28]

*equally not permissible for the trial court to have recourse to issues falling outside the pleadings when deciding a case.”*

[Emphasis added]

[11] The affidavits in motion proceedings fulfil a dual purpose namely, to place the essential evidence in support of or in opposition to the granting of the relief claimed before the court and to define the issues between the parties.<sup>2</sup>

[12] In respect of annexures to affidavits the normal rules of admitting evidence is applicable. This includes hearsay and the production of evidence in support of a document such as authenticity, whether it is a private or public document, etc.

[13] Furthermore, the court in *Swissborough Diamond Mines*<sup>3</sup> dealt with the legal principles applicable and in respect of referring to annexures it said that:

***“Regard being had to the function of affidavits, it is not open to an applicant or a respondent to merely annexe to its affidavit documentation and to request the Court to have regard to it. What is required is the identification of the portions thereof on which reliance is placed and an indication of the case which is sought to be made out on the strength thereof. If this were not so the essence of our established practice would be destroyed. A party would not know what case must be met.”***

[Emphasis added]

[14] The foregoing principles are clear and is applicable to opposed and unopposed applications alike. Evidence must be placed before court

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<sup>2</sup> *Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and Others* 1999 (2) SA 279 (W) at 323G

<sup>3</sup> *Supra* at 324 at F – G

properly and in compliance with the normal rules.

- [15] Just because an application is brought Ex Parte or is seeking permission from the court, does not entitle a party to deviate from the applicable legal principles in respect of the admissibility of evidence.

### ***Background***

- [16] On 26 May 2022 the applicant issued a summons as a result of an averred breach of the terms of a loan agreement and mortgage bond.
- [17] Service of the summons and particulars of claim was effected on 26 May 2022 at the address chosen as the Domicillium Citandi et Executandi in the loan agreement and mortgage bond on a person in occupation thereof at the time.
- [18] The action was not opposed and an application for default judgment and in terms of Rules 46 as read with 46A declaring the property executable and to set a reserve price, was personally served on the defendant on 29 September 2022 at his offices a day before the hearing of the default application. On 28 September service was attempted at the chosen domicillium, and a note left by the sheriff.
- [19] An order for default judgment and declaring the property specifically executable was granted on 30 September 2022 but the execution was suspended for 6 months.
- [20] The court granted an order that a reserve price be set at R 490 864,79.
- [21] A sale in execution was arranged but no details is given and no founding affidavit was filed in respect of the application to reduce the reserve price. Included under the heading "Application for lower reserve price" is only a notice of motion, dated 21 December 2023 and uploaded to CaseLines on 9

January 2024 as well as a Compliance Directive affidavit filed in terms of the practice directive and a date application form used to obtain a date of hearing.

[22] The attorney for the applicant in the compliance affidavit indicate only that the defendant had been invited to case lines, providing a mobile phone number and email address claimed to belong to the defendant. No indication is given where this comes from and is not supported by any documents.

[23] It is important to note that no affidavit is attached to the application to have the reserve price reduced and there seems to have been no attempt to serve this application except the references in the belated application for substituted service.

[24] The application for reduction of the reserve price was set down for 25 June 2024 in the unopposed court. On 21 June 2024 the plaintiff uploaded to CaseLines an application for substituted service to be heard on 25 June 2024 seeking an order in the following terms:

1. *“That the Plaintiff/Applicant must serve the Rule 46A Application and in future, where need be, any documentation arising from the matter under the aforementioned Case Number on the Respondents by way of substituted service in Directing:*

1.1. *That the Plaintiff/Applicant’s Attorney must serve by Registered mail via registered electronic transmittance, in accordance with section 19(4) of the Electronic Communications and Transactions Act 25 of 2002, a copy of the Application in terms of Rule 46A, the Notice of Set Down for the next enrolment of such Application and any documents, notices, pleadings or orders that might become*

*necessary in the future bearing the aforementioned case number to the following email address being*

*Email: phXXXXXXXX@gmail.com*

*Telephone: 07XXXXXX*

*1.2. That the Plaintiff/Applicant's Attorney must serve at the Respondent/Defendant at mortgaged address via affixing being:*

*1[...] I[...] E[...], L[...] STREET, WEST VILLAGE,  
KRUGERSDORP*

- 2. That service in terms of prayers 1.1 shall be proven by way of a Certificate of Registered E-mail in compliance with Section 19(4) of the Electronic Communications and Transactions Act 25 of 2002 by Registered Communication (Pty) Ltd proving that the service of these documents transpired by Registered Mail in terms of Section 19(4) of the Electronic Communications and Transactions Act 25 of 2002, supported by an affidavit deposed to by the person who attended to such transmittance of the registered e-mail.*
- 3. An order that the Defendant/Respondent files his Notice of Intention to Defend the Action/Notice of Intention to Oppose the Application, if any, within 1 (ONE) month after date of substituted service in terms of this court order.*
- 4. A copy of this order shall be served as set out supra, on the Respondents/Defendants.*
- 5. Cost shall be costs in the cause;*
- 6. Granting the Application/Plaintiff such further, other or alternative relief as this Honourable Court deems appropriate."*

- [25] In support of the application for substituted service the attorney deposes to an affidavit in which he sets out the above history. He goes into the detail in respect of the sale, attaches the writ of execution and some of the documents listed above.
- [26] It is for the first time in this affidavit set out that after the period of suspension of the original court order ran out, a sale in execution was arranged. These facts, to say the least are largely irrelevant to an application for substituted service, except to the extent that the ways in which service was done, may be relevant.
- [27] The annexures referred to states that the warrant of execution was served personally on the defendant of 5 May 2023 after expiration of the 6 month suspension period. The sale in execution was arranged for 8 September 2023.
- [28] In the return of service of an application to reduce the reserve price, a return of service dated 1 February 2024 is attached. It states that the defendant has left the given address and that the property is occupied by a tenant. Despite the foregoing, the return states that service was effected by attaching the document to the outer gate of the property as it was found locked. The return further states that the property has high walls, the gate is always locked and there is no intercom. What the basis is for the statement that the property is always locked, is unknown.
- [29] Attached to the affidavit is a trail of emails seemingly between the attorneys' office and the defendant. The email used by the defendant is not that stated above. The emails are dated between 31 August 2023 and 16 January 2024. No service on the email stated in these emails are sought in the application for substituted service.

***Application in terms of Rule 46A(9)(d)***

[30] An application in terms of rule 46A(9)(g) should be properly supported by affidavit.

[31] In such application it is not adequate to simply refer to a writ from the sheriff indicating that there was no bid or no sale. The purpose of the rule 46A is to stop the exploitation of debtors, protect their rights to housing and further to obtain a realistic price at auction. As such, the applicant for a reduction on the reserve price is in my view obliged to state at least the following and provide copies of the supporting documents:

- A copy of the judgment or order;
- That a sale was validly arranged, i.e. compliance with the order granting judgment if the execution was suspended;
- Proper and valid service of all documents in respect of the warrant/s issued and attempted sale in execution;
- How the property was advertised to obtain a market related price;
- Where and when the sale was held;
- Who attended the sale, if any;
- How many properties were on sale at the same time;
- What the current outstanding balance is;
- What has been paid in respect of the arrears since judgment, if anything;
- The current value of the property as well as the outstanding balances in

respect of services, taxes and levies;

- Whether the property is occupied by the defendant, tenants or standing vacant;
- Whether attempts have been made to obtain permission or authority to sell the property by private treaty on behalf of the defendant and what the outcome thereof was;
- Whether the defendant has been in communication with the plaintiff, and if so what the communication was and when; and
- Any other relevant information that may be relevant to the court in coming to the conclusion what the reduced reserve price should be.

[32] The application cannot be dealt with in isolation. How the property was advertised or the sale brought to the attention of the public is crucial. If only a notice is put on a notice board at court and the sale advertised in the Government Gazette, the purpose of the rule is in my view defeated.

[33] The object of setting a reserve price in respect of a sale of a person's home or residential property, is to obtain the market related price or at least relieve the defendant from the burden of the bigger portion of the debt. In my view the information listed above is not only relevant to deciding whether to reduce the reserve price, but to explain to court why the previous reserve price was not met or no bids made. There may have been some valid reason why the property did not sell, but the factual situation changed.

[34] A reduction of the reserve price is not to be granted merely because a property was not sold and the applicant is now seeking such an order.

[35] In this matter some of the information, as indicated above, is to be found in the application for substituted service. No affidavit has been filed in support

of the application in terms of Rule 46A(9)(d). There are simply no facts before court in support thereof.

[36] The application should as a result be dismissed.

***Application for substituted service***

[37] As stated above, the application for substituted service dated 21 June 2024 was supported by the affidavit analysed above.

[38] Rule 4(2) provide for substituted service. It reads as follows:

***“4(2) If it is not possible to effect service in any manner aforesaid, the court may, upon the application of the person wishing to cause service to be effected, give directions in regard thereto. Where such directions are sought in regard to service upon a person known or believed to be within the Republic, but whose whereabouts therein cannot be ascertained, the provisions of subrule (2) of rule 5 shall, mutatis mutandis, apply.”***

[Emphasis added]

[39] From a simple reading of the Rule it is clear that the applicant must first of all set out that it was not possible to serve in terms of the provisions of Rule 4(1). Secondly, it must be stated that the rule is only applicable when the person's whereabouts cannot a be ascertained. I am of the view that these two requirements of the threshold for making use of the provisions of Rule 4(2).

[40] It must also be remembered that the court has a discretion to be exercised judicially when granting an order in terms of Rule 4(2), however it cannot grant an order if these two requirements are not met.

[41] In *Civil Procedure in the Superior Courts*,<sup>4</sup> Harms states that:

*“It is trite that an application for substituted service should only succeed if the applicant has set out:*

*(a) the nature of and extent of the claim;*

*(b) the grounds upon which the court has jurisdiction to entertain the claim;*

*(c) the manner of service of which the court is asked to authorise;*

*(d) the last known whereabouts of the person to be served;*

*(e) the inquiries which have been made to ascertain the present whereabouts; and*

*(f) any information which may assist the court in deciding whether leave should be granted and, if so, on what terms.”*

[42] I can add to this list a number of requirements or issues that needs be addressed in such application. These are:

1. That service cannot be affected in terms of any of the provisions of Rule 4(1);
2. That the person's whereabouts cannot be ascertained;
3. That the person is in all probability within the Republic;
4. That the proposed method of service would probably come to the knowledge of the person and reasons therefore;

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<sup>4</sup> See D Harms 'Civil Procedure in the Superior Courts', *Service Issue 44* (2011) at B-20

5. How the service is to be proven;
6. What enquiries have been made in respect of the person's whereabouts, by whom and from whom;
7. What the person's occupation or work history is as well as enquiries made at such workplace;
8. What other information is available to the applicant such as in respect of family and friends of the person; and
9. That despite the enquiries the applicant was unable to trace the person to be served. This should include at least a tracing report and a supporting affidavit in that respect.

[43] I am also of the view that an applicant needs to set out, especially if no person is found at the address where service is to be effected, why service outside of the prescribed time periods for service will not assist in effecting service. A number of the returns of service list times of service during the middle of the day when a normal working person will not be at home.

[44] If these requirements cannot be met and fact in support thereof cannot be placed before court the application for substituted service cannot succeed.

[45] In the notice of motion the following relief is sought:

*"TAKE NOTE THAT application will be made on behalf of the above-mentioned Applicant/Plaintiff on 25 JUNE 2024 at 10h00 or as soon thereafter as Counsel may be heard for an order in the following terms:*

*1. That the Plaintiff/Applicant must serve the Rule 46A Application*

*and in future, where need be, any documentation arising from the matter under the aforementioned Case Number on the Respondents by way of substituted service in Directing:*

*1.1 That the Plaintiff/Applicant's Attorney must serve by Registered mail via registered electronic transmittance, in accordance with section 19(4) of the Electronic Communications and Transactions Act 25 of 2002, a copy of the Application in terms of Rule 46A, the Notice of Set Down for the next enrolment of such Application and any documents, notices, pleadings or orders that might become necessary in the future bearing the aforementioned case number to the following e-mail address being phXXXXXXXX@gmail.com*

*1.2 That the Plaintiff/Applicant's Attorney must serve at the Respondent/Defendant at mortgaged address via affixing being:  
1[...] G[...] STREET, BRAM FISHERVILLE EXTENSION 14*

- 2 That service in terms of prayers 1.1 shall be proven by way of a Certificate of Registered E-mail in compliance with Section 19(4) of the Electronic Communications and Transactions Act 25 of 2002 by Registered Communication (Pty) Ltd proving that the service of these documents transpired by Registered Mail in terms of Section 19(4) of the Electronic Communications and Transactions Act 25 of 2002, supported by an affidavit deposed to by the person who attended to such transmittance of the registered e-mail.*
- 3 An order that the Defendant/Respondent files his Notice of Intention to Defend the Action/Notice of Intention to Oppose the Application, if any, within 1 (ONE) month after date of substituted*

*service in terms of this court order.*

*4 A copy of this order shall be served as set out supra, on the Respondents/Defendants.*

*5 Cost shall be costs in the cause;*

*6 Granting the Application/Plaintiff such further, other or alternative relief as this Honourable Court deems appropriate.”*

[46] The supporting affidavit from the attorney states a background. Therein it is set out that judgment was obtained referring to a copy of the summons and mortgage bond. It sets out that the summons was served and refers to the return of service.

[47] The deponent claims that the property is not the residence of the defendant and refers to a return of service. That return of service refers thereto that the summons was served on a tenant at the domicillium address. That statement does not support the conclusion that the property is not her home or primary residence. If a person rents out a room or part of the property, it still remains that persons home or primary residence.

[48] A copy of the judgment and warrant of execution issued and served during May 2023 is attached as well as the returns of service thereof indicating personal service on the defendant.

[49] It is then stated that the property when on sale on 8 September 2023 and refers to the sheriff's report without dealing with the content thereof, not that it is relevant to the application for substituted service. It further without more states that the property was not sold because the reserve price was too high. That statement is clearly not correct and without any foundation as the report from the sheriff states that there was no bid on the property. If there were bids on the property that might indicate that the reserve price was too

high, I could have expected that it be stated by the sheriff in his report. His report only stated that no bids were received. To claim that this was so because the reserve price was too high is not only wrong, but in my view misleading. This is compounded by the fact that the affidavit did not properly refer to the annexure and dealt with the content thereof.

[50] In one single paragraph the attorney who deposed to the affidavit stated that service of the application to reduce the reserve price was attempted on 1 February 2024. Again, it is stated that it was served on a tenant by affixing it at the domicillium address. That is also misleading. The document was affixed to a gate. As stated above, the return states that the property has high wall, was locked and has no bell or intercom. If there was a person upon whom service could be effected, even under the provisions of rule 4(1)(a)(ii) and (iv) as it read before 8 April 2024, there is no reason why service could not be effected on that person. In any event at the time service was technically still valid in terms of the rule as it allowed for leaving a copy at the chosen address.

[51] The same tenant referred to is the person who was served with the original summons. Thereafter the writ of execution was personally served on defendant. It can as a result not at face value be accepted that the defendant no longer resides at the address.

[52] Attached further to the affidavit is a trail of emails sent by the attorney to the email address mentioned in the notice of motion dated between 7 November 2023 and June 2024. The emails sent to the email address referred to above was unanswered. The statement in the founding affidavit is simply that during the period 7 November 2023 to 16 January 2024 the attorneys corresponded with the defendant via email and that she responded to some of the mails, referring to the emails attached as a bundle and not dealing with the content thereof.

[53] There is an email attached from the defendant bearing a different email

address and dated 23 August 2023. The email reads as follows:

*“Morning  
please receive those documents.  
regards  
PS Bogatsu”*

[54] In response the attorneys responded as follows on 31 August 2023:

*“Good day Ma’am,  
We confirm receipt of your email.  
Please note our office will proceed to submit the easy sell, and  
provide you with feedback.  
Kind regards.”*

[55] No reference is made to this communication and no explanation is given what happened to the easy sell instruction. It is important to note that despite this it was still attempted to sell the property at auction on 8 September 2023, mere days later.

[56] What is further clear is the logo of the Gauteng Provincial Government appearing at the end of the emails for the defendant and dated November 2023. Nothing is said about the defendant’s place of work, work address or occupation, let alone any enquires made thereat.

[57] A method of service is then proposed with extensive quotations from the Electronic Communications and Transactions Act 25 of 2002 (“ECTA”). In essence permission is sought to serve on the email address where no proof is attached that it is the email of the defendant.

[58] It is then sought that service be effected by “Registered Email Service”.

[59] Reference is made to section 19(4) of the ECTA. On the unnumbered

pages of the affidavit there is then reference to without explaining what the service is, why it is claimed to be reliable and what

*“(4) Where any law requires or permits a person to send a document or information by registered or certified post or similar service, that requirement is met if an electronic copy of the document or information is sent to the South African Post Office Limited, is registered by the said Post Office and sent by that Post Office to the electronic address provided by the sender.”*

[emphasis as added by deponent]

[60] It is clear that the section is only applicable to documents that are permitted to be sent by registered or certified post. As such, reference to the section is misplaced.

[61] The deponent continues with a new paragraph starting with new numbers. It is impossible to see if the affidavit was complete as there is no page numbers on the affidavit.

[62] I will produce the copy of that part of the affidavit below:

7.3.9 Section 19(4) of the Act clearly states – “Where any law requires or permits a person to send a document or information by registered or certified post or similar service, that requirement is met if an electronic copy of the document or information is sent to the South African Post Office Limited, is registered by the said Post Office and sent by that Post Office to the electronic address provided by the sender.”

(Own Emphasis Added)



**H -10**

1. 4 Copies of the electronic transmittance together with proof of delivery and the registered communication certificates as received by the Trust Centre, (a wholly-owned affiliate of the South African Post Office, and accredited by the South

**H -11**

[63] The application was clearly a last minute attempt to avoid a postponement and done without the care and diligence that is to be expected of an attorney.

[64] What the foregoing conveys is simply that an email or sms sent through the proposed verification process, can be reliably verified. That does not however take the matter any further as the requirements of substituted service needs be complied with.

### ***Service generally***

[65] Service is the cornerstone of our legal system that to which a defendant is entitled as it invites the other party to partake in the legal process to be. Instituted. This is the constitutionally protected right of a party.<sup>5</sup> This applies equally to applications and summonses.

[66] In the matter of *Scott v Hough*<sup>6</sup> the court found at paragraph [12] that:-

*“This basic tenet of our law requires a court approached by the one party for a certain relief to hear the other party as well before granting the relief sought. **In general, a court will decline to grant a relief sought unless the party against whom such relief is sought has been fully and timeously apprised that relief in a particular form would be sought and that he has had the maximum benefit of the diés induciae in other words the fullest opportunity permissible in law of considering his defensive options and practically dealing with the claim for the relief being pressed.**”*

[Emphasis added]

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<sup>5</sup> *First National Bank of SA Ltd v Schweizer Drankwinkel (Pty) Ltd* 1998 (4) SA 565 (NCD) at 568 C - D

<sup>6</sup> 2007 (3) SA 425 (O) at [12]

[67] This statement is especially applicable to proceedings where the constitutionally protected rights such as the right to housing of litigants are at stake.

[68] It seems as if attorneys sometimes forget the fundamental principles. Service at a chosen domicillium is not compulsory. When dealing with a financial institution who provided a loan to purchase an immovable property or a vehicle must at the time of entering into such loan agreement verify the particulars of a client. It requires not only residential details, but also work contact numbers, payslips and details of persons not residing with the client. As a matter of fact the financial institution is obliged to verify at least the affordability of the repayment and it must verify regularly, after the loan was approved the details of the client via a FICA process. It has all the client's details, including work addresses, contact numbers, email addresses and the like.

[69] In none of the applications before this court during the week of 24 June 2024 were any reference made to these details. An attorney merely belatedly made application and signed an affidavit that service could not be effected at the domicillium address. This was probably brought about by the change in rule 4(1)(a), which I will deal with below. In some cases, instead of proposing a method of service that might come to the knowledge of the defendant, service is proposed by attaching it to the outer door or gate. This is exactly what the change in the rule sought to stop.

[70] There is no reason why service cannot be effected at the work place of the defendant or outside of the normal times for service. Those details should be known to the plaintiff, except if it changed without its knowledge. If the person's contact details changed, the person is more often than not traced by a tracing agent, who will provide a report and charge no fee if the person could not be traced.

[71] In *Pretoria City Council v Ismail*,<sup>7</sup> Schreiner J stated the following:

*“Substituted service is a way of achieving in law the same result as if the proceedings, notice or order, or whatever the matter may be, had been brought to the notice of the persons affected. It is not a way of establishing that such notice or other matter was actually brought to the notice or knowledge of the person affected; it takes the place of bringing such notice or other matter to his knowledge. So, in ordinary litigation, the summons may with the Court’s leave be served by posting or by publication or in some other manner; and when that is done, there is no doubt that the service is just as operative and has the same legal results as if the party who had to be served was presented with a copy of the document to be served.”*<sup>8</sup>

[72] The application for substituted service does not properly refer to the annexures. No reason is provided why the application was not brought timeously.

### **Conclusion and order**

[73] As a result, the following order is granted:

1. The application for substituted service is dismissed;
2. The plaintiff may not claim any costs in respect of the application or substituted service from the defendant;
3. The application to reduce the reserve price is dismissed;
4. The plaintiff may not claim any costs including costs in respect of the

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<sup>7</sup> 1938 TPD 246

<sup>8</sup> at 252

sale in execution arranged for 24 October 2023 or the service or attempts thereto by the sheriff to serve the application to have the reserve price reduced from the defendant;

5. The plaintiff may not arrange a new sale of execution until plaintiff has attempted to sell the property through the “easy sell” option as referred to in the emails of 31 August 2023 for a period of at least 6 months from date of this order;
6. Should it not be possible to sell the property through private treaty the plaintiff must apply to court to set a new reserve price before plaintiff may proceed to issue a new writ of execution and conditions of sale as required in terms of the Uniform Rules.
7. Such application must be served personally on the defendant.

**M SNYMAN, AJ**  
**ACTING JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, PRETORIA**

|                        |                |
|------------------------|----------------|
| DATE HEARD:            | 25 June 2024   |
| DATE OF JUDGMENT:      | 19 August 2024 |
| Counsel for Applicant: | Adv S Mfeka    |
| Applicants' Attorneys: | Bokwa Law Inc  |