REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO.: 82184/16

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

Date: 13 September 2024

E van der Schyff

In the matter between:

ABSA BANK	APPLICANT
and	
A W C SCHUURMAN	FIRST RESPONDENT
M SCHUURMAN	SECOND RESPONDENT
B SCHOEMAN	INTERESTED PARTY
M N BRUMMER	INTERESTED PARTY
OTHER OCCUPIERS	INTERESTED PARTY

JUDGMENT

Van der Schyff J

Introduction and background

[1] This is an opposed application in terms of Rules 46(1) and 46A of the Uniform Rules of Court. The applicant seeks to have the respondents' immovable property situated at Erf 4[...] G[...] declared specially executable. The first and second respondents, the opposing respondents, act in person, despite having been provided the opportunity to apply for *pro bono* legal representation.

[2] This matter has a protracted history. Default judgment was granted in this matter on 5 December 2016. The first rule 46(1) application was brought in December 2016, but it was opposed. In October 2017, the application was postponed to provide the respondents with an opportunity to obtain legal representation. In December 2018, the application was postponed to join the tenants occupying the property. A joinder application was brought and an order for joinder was granted in November 2019. In the same month, the parties entered into an agreement that the respondents would pay R12 000.00 per month to settle the arrears. In September 2020, the respondents defaulted on the payment arrangement, and the applicant elected to proceed with the application to have the bonded property declared executable.

[3] Mr. Schuurman, the first respondent, filed what he titled the 'Defendant's reply to the Plaintiff's statement of the case'. This document is filed in answer to the applicant's founding affidavit and will be dealt with as if it is an answering affidavit, although it is not signed or commissioned. In this affidavit, Mr. Schuurman explains that he and the second respondent, his wife, is unemployed. He claims that it is not due to any fault on his side that his employment was terminated and that he did not miss any payment on the house before then. He claims that he applied for the 'discontinuing of interest during the beginning of 2022', and that the bank verbally agreed not to charge any interest on his bond. The communication with ABSA, which he attached to his affidavit, indicates that ABSA informed Mr. Schuurman that it 'unfortunately' does not have any programs that can cater to his request.

[4] The applicant, in reply, explains that the lack of interest debits on the relevant statement of account is because the respondents' account has reached the stage

of *in duplum* as of January 2022 since the accrued interest debited to this date equaled the respondents' outstanding capital debt.

Discussion

[5] The property under consideration was mortgaged in the applicant's favour was security for any indebtedness on the part of the respondents. A monetary judgment was already obtained in December 2016. The respondents were not in the financial position to settle the debt for an extended period. They remain unemployable and are not able to use the opportunities provided by the applicant to settle the debt. The respondents were granted numerous postponements, which eventually only increased their indebtedness. The amount due and payable as at 30 July 2024 was R2 061 253,42.

[6] There is no merit in Mr. Schuurman's contention that the applicant's attorney should withdraw from this application.

[7] Although one is empathetic towards anyone who lost their employment and is, due to circumstances beyond their control, unable to meet their financial obligations, it is trite that the court's function in applications of this nature is to safeguard against abuse of the execution process.

[8] I have regard to the fact that the respondents are advanced in years. They previously lived with family while their property was leased out. Their only income is a SASSA pension. The respondents do not have any other satisfactory means of satisfying the judgment debt. The applicant is not abusing the execution process in seeking an order for the property to be declared executable. Circumstances require the respondents to have ample opportunity to get their affairs in order.

ORDER

In the result, the following order is granted:

1. **The Draft Order, marked 'X', dated and signed by me, is made an order of court;**

2. The execution of prayer 3 of the draft order is suspended until January 2025.

E van der Schyff

Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be emailed to the parties/their legal representatives.

For the applicant:	Adv. K. Kollapen
Instructed by:	Haasbroek & Boezaart Inc.
For the respondent:	In person.
Date of the hearing:	29 July 2024
Date of judgment:	13 September 2024