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**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

CASE NO.: 1735/2021

Date heard: 28-05-2024

Date delivered: 31-05-2024

In the matter between:

**ALBERTUS STEPHANUS VAN JAARSVELD
(ID NO: 7[...])**

1ST Applicant

ELIZABETH KATRINA VAN JAARSVELD N.O.

2ND Applicant

HENDRIK HERMANUS JACOBUS VAN JAARSVELD N.O.

3RD Applicant

ALBERTUS STEPHANUS VAN JAARSVELD N.O.

4TH Applicant

(Second to Fourth Respondents in their capacities as duly
authorized trustees of the **ALBERTUS STEPHANUS VAN
JAARSVELD TESTAMENTÊRE TRUST, MT1122/92)**

and

**THE STANDARD BANK OF SOUTH AFRICA LIMITED
(REG No: 1962/000738/06)**

Respondent

CORAM: WILLIAMS J:

JUDGMENT

WILLIAMS J:

1. This is an application for leave to appeal against part of the judgment and orders made on 1 September 2023.
2. In essence the applicants (the respondents in the main application) seek leave to appeal against the orders declaring the immovable properties of the 2nd to 4th applicants specially executable and that the Registrar be authorized to issue a Writ of Execution against the properties.
3. The only ground of appeal which was proceeded with during argument on behalf of the applicants was that I erred in not finding that the failure of the respondent to attach the power of attorney granted to the conveyancer to have the mortgage bond registered creates doubt as to whether the trustees authorized the registration of the mortgage bond in favour of the respondent.
4. I have dealt with this argument in paragraphs 12 and 13 of the main judgment. As mentioned therein the applicants did not dispute the validity of the mortgage bond in their answering affidavit. In response to the averments made by the respondent in its founding affidavit relating to the continuing covering mortgage bond the applicants answered in the following manner:

“3.9.1 The averments in the aforesaid paragraphs are admitted only to the extent that they correspond with the terms of the Covering Mortgage Bond.

3.9.2 The trustees of the Trust and I respectfully draw the Honourable Court’s attention to the fact that the trustees of the Trust did not in the Continuing Covering Mortgage Bond agree thereto that the immovable properties that were bonded in terms of the aforesaid Bond are specially executable.”

5. The above quoted paragraphs from the answering affidavit are contradictory to the extent that the Covering Mortgage Bond does specifically make provision therefore that the respondent may in the event of breach institute

proceedings for the recovery of all amounts secured by the bond and for an order declaring the property executable (Clause 9.2). Be that as it may, it is abundantly clear from the above extract from the answering affidavit that the validity of the mortgage bond has not been disputed in the application papers which served before me.

6. In addition, the introductory portion of the covering mortgage bond attached to the founding affidavit reads as follows:

“Be it hereby made known

That Richard Scheffer

(the appearer) a duly admitted conveyancer, appeared before me, the Registrar of Deeds at Kimberley,

Being duly authorised by a power of attorney granted to him at Jan Kempdorp

On 1 December 2017

By the Trustees of time being of the ALBERTUS STEPHANUS VAN JAARSVELD TESTAMENTÊRE TRUST

Registration Number MT 1122/92”

(own highlighting)

7. The applicants took no issue with the specific notation in the covering mortgage bond, that the conveyancer was duly authorised by a power of attorney granted by the trustees of the Trust. In these circumstances this last ditch attempt by the applicants to create doubt as to the validity of the mortgage bond is spurious and unmeritorious and would in my view have no prospect of success on appeal.
8. With regard to the issue of costs, Mr Zietsman SC who appeared for the respondent requested that the applicants be ordered to pay the costs of the application on the attorney and client scale since the applicants did nothing to pursue their application for leave to appeal since the filing of Notice of the application on 20 September 2023, thus causing an inordinate delay in the finalisation of this matter. I must mention in this regard that the Registrar of this court had contacted me during the course of this month, probably after

the respondent had applied for a date for the hearing of the application, to inform me that the file had somehow slipped through the cracks in the General Office and had thus not been brought to me earlier for the provision of suitable dates for the hearing of the application, as is the usual practice in this Division. The blame for the delay in the hearing of this application can therefore not be laid solely on the applicants. In the alternative, Mr Zietsman has argued that costs be paid on scale C in terms of Rule 67A which came into effect on 12 April 2024. In considering the scale on which to award costs a court may have regard to the complexity of the matter and the value of the claim or importance of the relief sought. This matter, in my view, falls somewhere in the middle of the road and an appropriate scale on which to award the costs would be that of Scale B.

The following order is made:

The application for leave to appeal is dismissed with costs on Scale B.

C C WILLIAMS
JUDGE

For Applicant: Adv. J Harmse
Haarhoffs Inc

For Respondents: Adv. P Zietsman SC
Phatsoane Henry Inc
c/o Van de Wall Inc