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

CASE NO: 52390/2023

(1) REPORTABLE: YES/**NO**

(2) OF INTEREST TO OTHER JUDGES: YES/**NO**

(3) REVISED: **YES**

DATE: 22/1/25

SIGNATURE

In the matter between:

THE STANDARD BANK OF SOUTH AFRICA LTD

Applicant

and

ARMAND DE LANGE

First Respondent

MELANI DE LANGE

First Respondent

JUDGMENT DELIVERED ON 22 JANUARY 2025

CP WESLEY AJ

1. This is an application for default judgment, which is made in circumstances where the respondent's plea and defence was struck out on 20 May 2022.
2. On 19 February 2014 the respondents concluded a loan agreement with the applicant in terms of which the applicant lent and advanced an amount of R685 700.00 to the respondents, for purposes of purchasing an immovable property described as a unit consisting of-

- (a) Section No. 1 as shown and more fully described on Sectional Plan No. SS9/1982, in the scheme known as GELRIA in respect of the land and building situate at THE REMAINING EXTENT OF ERF 8[...] K[...] EXTENSION 1 TOWNSHIP, LOCAL AUTHORITY: CITY OF TSHWANE METROPOLITAN MUNICIPALITY of which section the floor area, according to the said sectional plan, is 98 (NINETY-EIGHT) SQUARE METRES in extent; and
- (b) An undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan.

("the property")

3. As security for the loan a continuing covering mortgage bond was registered over the property in favour of the applicant, for the due and proper performance by the respondents of their duty to repay the loan.
4. The mortgage bond provided, *inter alia*, that if respondents failed to pay any sum which was legally claimable from them by the applicant, then all amount secured by the bond would become due and payable in full on demand, and the bank would retain the right to institute proceedings for the recovery thereof and for an order declaring the property executable.

5. The respondents have defaulted on their payments towards the applicant. As at 6 November 2023, the respondents were in arrears in the amount of R638 964.26, which amounted to 39.42 months of missed monthly instalments. The arrears amount had increased considerably by the time that the application was heard.
6. The applicants seek default judgment for payment of the amount of R1 048 416.05; interest on that amount; that the property be declared executable; that a writ of execution is authorised in terms of Rule 46 as read with 46A for the attachment of the property and the sale thereof in execution, subject to a reserve price set by the court, and for payment of the costs of suit.
7. Notwithstanding that their plea and defence were struck out, the respondents filed an opposing affidavit. In opposition to the application the raised two purported defences, namely, first, that the court's jurisdiction to hear the matter is ousted by clause 13.1 of the mortgage bond, and second, that the Terms and Conditions of the loan agreement were not attached to the particulars of claim.
8. Clause 13.1 of the mortgage bond provides that if the Magistrates' Court has concurrent jurisdiction with the High Court over any dispute in terms of the mortgage bond, then the mortgagors consent to the jurisdiction of the Magistrate's Court having jurisdiction. Contrary to what the respondent's assert, clause 13.1 does not oust this court's jurisdiction. What the clause does is to give the applicant an election to institute proceedings in the Magistrates' Court as opposed to the High Court.
9. Apart from the fact that the respondents' plea and defence were struck out, the fact that the Terms and Conditions of the loan agreement may not have been attached to the particulars of claim is not a defence to the applicant's

claims as they stand. It is a procedural issue that could have should have been raised at an earlier point in time.

10. At the hearing of the matter the court specifically invited the first respondent, who appeared in person for himself and on behalf of the second respondent, to make any other submissions that he wished to make. The first respondent had no other submissions to make.
11. Having regard to all of the facts and circumstances, default judgment falls to be granted in favour of the applicant.
12. The forced sale value of the property is R650 000.00. The applicant has proposed that a reserve price of R700 000.00 would be appropriate. The court agrees.
13. Costs should follow the cause, on the party and party scale and on Scale A in terms of Rule 69.
14. In the result I make an order in terms of the draft which is annexed hereto marked "X", which is dated and signed by me.
15. I must unfortunately record the following. On 22 January 2025 I received an email from my erstwhile Registrar who informed me that she had not received my judgment in this matter, which had been reserved. After I searched my records I found the judgment that I had prepared on 18 June 2024, but I could find no evidence that I had in fact forwarded it to my Registrar on that date or any other date. This was my oversight for which I must tender my apologies to the parties. The present judgment and the order attached constitute my judgment and order in this matter.

CP WESLEY
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances

For applicant: Adv C Barreiro
 instructed by Strauss Daly Attorneys

For the respondents: In person

Date heard: 24 May 2024

Date of Judgment: 22 January 2025