



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)**

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

SIGNATURE

DATE: 5 May 2025

Case no: 45914/2021

In the matter between:

STANDARD BANK OF SOUTH AFRICA LIMITED

Applicant

and

GIDEON PETRUS BRITZ

First Respondent

GEORGE ANTONIO GONSALVES SEQUEIRA

Second Respondent

GERTBRECHT ELIZABETH SEQUEIRA

Third Respondent

JUDGMENT

WILSON J:

- 1 The first and second respondents purchased and held as co-owners a section of the River Lodge sectional title scheme in Parys ("the property"). In 2007 they borrowed R1.5 million from the applicant, Standard Bank. The loan,

including interest due on it, was secured by a mortgaged bond registered against the property.

2 The first and second respondents fell into arrears on their repayments. Standard Bank now seeks judgment for the full amount outstanding on the loan agreement (just under R950 000 at the time this application was instituted, but now in excess of R1.2 million), and an order declaring the property specially executable. The first respondent, Mr. Britz, does not oppose the application, but the second respondent, Mr. Sequeira, does. The third respondent, Mrs. Sequeira, is Mr. Sequeira's wife, to whom he is married in community of property. She too opposes the application. The Sequeiras married in 2017, a decade after the loan agreement was struck between Standard Bank, Mr. Britz and Mr. Sequeira.

3 It was originally contended that this application should have been brought in the Free State, because that is where the property is. However, in light of the fact that the loan agreement was concluded in Gauteng, and the fact that all the parties to the loan agreement are domiciled in Gauteng, the objection to jurisdiction was not persisted with.

4 The Sequeiras instead oppose Standard Bank's application on four grounds. First, they say that Standard Bank's allegation, at paragraph 20 of its founding affidavit, that the principal sum lent under the loan agreement was advanced in "2002", renders the entire application fatally defective. Second, they say that Uniform Rule 46A, which helps regulate the procedure for executing against residential property in this court, is unconstitutional because it breaches their right to privacy. Third, they say that, even if Rule 46A is constitutional, the Rule

requires that a money judgment be obtained before an application to execute on that judgment can be brought. Fourth, they say that Standard Bank has not complied with section 129 of the National Credit Act 34 of 2005, in that the notice required under its terms was not delivered to Mr. Sequeira in the manner required by section 130 of the Act, and in that no attempt was made to deliver the notice to Mrs. Sequeira at all.

- 5 None of these arguments sustains a defence to Standard Bank's claim. Some are more brazenly opportunistic than others, but they are all frivolous. I address each in turn.

The allegation that the loan was advanced in 2002

- 6 It is common cause that the loan agreement was struck and the mortgage bond was registered in 2007. That being so, the Sequeiras argue, Standard Bank's allegation that the loan amount was advanced in 2002 cannot be correct. Standard Bank agrees, and explains in its replying affidavit that the reference to 2002 in the founding affidavit was a typographical error. Although it does not expressly say that the loan was advanced in 2007, that is plainly Standard Bank's case.

- 7 Any sensible litigant would have left matters there. But not the Sequeiras. They claim that the typographical error is fatal to Standard Bank's claim. They do not dispute that the error was no more than a typographical error. Nor do they say that the loan amount was never advanced. Nor do they take issue with any of the documents annexed to Standard Bank's papers in which the balance owing on the loan agreement is set out and accounted for. They rely merely on the hyper-formalistic contention that the failure to allege the correct

date on which the loan amount was advanced in the founding affidavit is fatal to the claim. The result, they say, is that, on Standard Bank's founding affidavit, there is no cause of action made out, and that Standard Bank's application must fail as a result.

- 8 In this they are mistaken. The question is not whether the affidavits are perfect in every respect, but whether, on a conspectus of all the facts set out in the application papers, there is a dispute material to the relief sought. Here there is none. There is no serious dispute that the loan amount was advanced in 2007, and that the allegation that it was advanced in 2002 rather than 2007 was a typographical error. There the matter ends.

The Rule 46A arguments

- 9 The challenge to Rule 46A is stillborn. This is not just because none of the responsible state organs or any of the major banks who would clearly be interested in such a challenge have been joined. Nor is it merely because the constitutional validity of the Rule has not been placed in issue by means of a formal application. The fundamental defect in the challenge is that it is misdirected.
- 10 The Sequeiras say that the power conferred by Rule 46A (8) (b) – that a court may order that information be provided quantifying the rates or levies due on residential property in peril of execution – breaches their right to privacy. Even if I were to overlook the fact that no order under Rule 46A (8) (b) is sought or has been granted in this case, the challenge would have to fail because section 6 (1) (e) of Protection of Personal Information Act 4 of 2013, which regulates and gives effect to the right to privacy in section 14 of the

Constitution, 1996, exempts personal information disclosed in proceedings before a court from the protections otherwise afforded by the Act. The source of the Sequeiras' complaint is that exemption, not Rule 46A (8) (b). The failure to challenge the Act precludes any successful challenge to the Rule.

- 11 The Sequeiras' second argument based on Rule 46A is based on the use of the words "execution creditor" and "judgment debtor" in Rule 46A (1). Rule 46A (1) states that the Rule applies "whenever an execution creditor seeks to execute against the residential immovable property of a judgment debtor". The Sequeiras argue that Standard Bank cannot be an "execution creditor", nor can they be "judgment debtors", in the absence of a money judgment actually having been obtained on the loan agreement. It follows, they say, that Standard Bank is precluded from seeking the judgment for the amount outstanding on the loan agreement and execution against the property at the same time.
- 12 Mr. Meyer, who appeared for the Sequeiras, accepted that the Full Court's decision in *Absa Bank v Mokebe* 2018 (6) SA 492 (GJ) presents an insuperable obstacle to the success of this argument before me. In that case, the Full Court decided that the application for a money judgment on a mortgage bond and the application for leave to execute against mortgaged property being used as a primary residence should generally be heard and determined simultaneously. This is in part because the grant of a money judgment separately from an order for special execution risks ruling out the possibility of avoiding execution by finding other means to pay the debt due (see *Mokebe*, paragraph 22).

- 13 *Mokebe* is, of course, binding on me, and the Sequeiras have made out no case for being excepted from the general rule that it imposes. Mr. Meyer nonetheless asked that I refer the Sequeiras' case to the Judge President of this Division, so that he can establish another Full Court to reconsider the correctness of *Mokebe*.
- 14 Assuming that I have such a power (I do not), the Sequeiras have not shown that there is any prospect that *Mokebe* is wrong. Much like their argument based on Standard Bank's typographical error, the contention depends on my isolating a particular word or phrase while ignoring the context in which the word or phrase appears. Assessed in context, Rule 46A (1) uses the words "creditor" and "debtor" to refer to parties who would be entitled to specially execute, or be subject to special execution, against residential property to satisfy the judgment once it is granted. There is nothing in the Rule 46A (1) that suggests that its purpose is to create a two stage process, in which the proportionality of execution is only considered once a money judgment is granted. As the court in *Mokebe* found, the Rule generally has the opposite purpose: to ensure that, unless execution can be justified, a money judgment is not granted.

The section 129 arguments

- 15 Mr. Sequeira accepts that a notice in terms of section 129 of the National Credit Act was dispatched to him by email, and by registered mail to the Post Office Box he nominated in the mortgage bond. He does not suggest that these modes of delivery were insufficient to comply with section 130 of the Act. Nor does he actually say that he did not receive the notice. His argument

boils down to this: an additional section 129 notice was sent to the post office covering the physical address he nominated in the mortgage bond, but the document tracing the delivery of the notice does not specifically reflect that the post office sent out a notification to his physical address alerting him to the fact that a notice from Standard Bank was awaiting his collection. It reflects merely that the notice was returned to Standard Bank, and was not collected.

16 It seems to me that the delivery requirement set out in sections 129 and 130 of the Act was clearly fulfilled in these circumstances: on a balance of probabilities, the section 129 notice clearly reached Mr. Sequeira (see *Sebola v Standard Bank* 2012 (5) SA 142 (CC), paragraph 74). Mr. Sequeira does not suggest otherwise. His reliance on a potential defect in the delivery of one of the three notices directed to him is precisely the kind of gamesmanship of which the Constitutional Court ruled out in *Kubanya v Standard Bank* 2014 (3) SA 56 (CC), especially at paragraphs 20, 52 and 53.

17 The Sequeiras finally relied on the common cause fact that Standard Bank did not deliver a section 129 notice to Mrs. Sequeira. Mr. Meyer argued that Mrs. Sequeira was entitled to the benefit of such a notice because she is married in community of property to Mr. Sequeira, and is as a result entitled to be treated as if she was party to the loan agreement. In advancing his case, Mr. Meyer relied upon the decision in *Subramanian v Standard Bank Ltd* [2012] ZAKZPHC 12 (13 March 2012). In that case, Lopes J found that a husband and wife who had jointly initiated a debt review process under section 86 of the Act are each separately entitled to notice of the termination of that process, even if only one of them entered into the credit agreement being reviewed.

- 18 The facts in this case are different. Here, there is no debt review process. In addition, Lopes J set great emphasis on the fact that Standard Bank knew that the debt review process had been initiated by both spouses. It was accordingly a straightforward matter for notice of the termination of the review to be given to both of them. In this case, the loan agreement was entered into by Mr. Sequeira ten years before he married Mrs. Sequeira. There is no indication on the papers that either of the Sequeiras told Standard Bank that, by virtue of their marriage in community of property, they were now co-principal debtors on the loan agreement. I am at a loss to understand how Standard Bank was expected to come by this information otherwise. That, it seems to me, is enough to distinguish this case from *Subramanian*.
- 19 *Subramanian* was later criticised in *Motor Finance Corporation v Herbert* [2012] ZAWCHC 35 (24 April 2012), on the basis that a spouse married in community of property to a “consumer” under section 1 of the National Credit Act does not thereby become a “consumer” in their own right. Accordingly, the rights of a “consumer” under the Act cannot accrue to them. I do not think I need resolve that controversy. The trigger for any obligation Standard Bank had to deliver a section 129 notice to Mrs. Sequeira is that it knew, or could reasonably be expected to find out, that she had married Mr. Sequeira in community of property. That case is not made out, and the point can go no further.

Order

- 20 None of the defences raised to Standard Bank’s application can succeed. In addition, though, I should point out that there is nothing on the papers to

suggest that execution against the mortgaged property in this case would be in any way disproportionate in the sense meant in *Gundwana v Steko Development* 2011 (3) SA 608 (CC) at paragraph 54. A money judgment and an order for special execution must follow.

- 21 For all these reasons, I will grant judgment for the full amount outstanding under the loan agreement, and an order declaring the property specially executable. There will be a costs order on the attorney and client scale because, in requiring that the mortgagors pay “all” the costs arising from any steps Standard Bank must take to enforce its rights, that is what clause 20 of the loan agreement provides for in respect of Mr. Sequeira. The wholly frivolous nature of the Sequeiras’ defences to this application means that Mrs. Sequeira must also attract such an order, and that Mr. Sequeira would be liable for attorney and client costs even if the agreement did not provide for them. Given that Mr. Britz did not oppose the application, I do not think that he should be mulcted in punitive costs on an opposed basis, and I shall exclude him from the costs order I intend to make. An order on these terms will be uploaded to this court’s electronic registry simultaneously with this judgment.



S D J WILSON
Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 5 May 2025.

HEARD ON: 29 April 2025

DECIDED ON: 5 May 2025

For the Applicant: S Jacobs
Stupel and Berman Inc

For the Second and Third
Respondents: A Meyer
Anton Meyer Attorneys