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

Case No: 2023-073022

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

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

(3) REVISED: YES / ~~NO~~

20 MAY 2025

In the matter between:

NEDBANK LIMITED

Plaintiff / Applicant

and

NTOMBIFUTHI PORTIA NGCOBO

Defendant / Respondent

JUDGMENT

WINDELL J

INTRODUCTION

[1] This matter concerns an opposed application for summary judgment. The applicant seeks an order against the respondent for the following relief:

1.1 Payment of the sum of R2 201 567.77 (two million two hundred and one

thousand five hundred and sixty-seven Rand and seventy-seven cents);

1.2 Interest on the amount at the rate of 11.50% per annum, calculated daily compounded monthly, from 1 April 2023 to date of payment;

1.3 Declaring the immovable property described as Section 82, Willow Creek,

Little Falls, Extension 17, situated at Section 8[...], Door Number 8[...], W[...] C[...], S[...] Street, Little Falls, Extension 17, Roodepoort (“the property”) specifically executable, and that a writ of execution be issued in terms of Rule 46(1)(a) of the Uniform Rules of Court.

1.4 Setting a reserve price for the sale of the Property in execution;

1.5 Costs of the application on a scale as between attorney and own client.

[2] The cause of action arises from the respondent’s failure to comply with her payment obligations under a home loan agreement concluded with the applicant. The respondent admits that she has not made the monthly payments as required in terms of the loan agreement, and that no payments have been made since February 2023. At the time the summons was issued, the arrears stood at approximately R388 000. The arrears have since increased to R788 000. The respondent’s current monthly repayment obligation is R23 000, and the total outstanding balance on the loan is approximately R2.4 million.

[3] Following the launch of the summary judgment application, the respondent made an offer to pay an amount of R25 000 per month—comprising R23 000 in respect of the monthly instalment due under the loan agreement, and an additional R2 000 towards the arrears. The applicant, however, has declined the offer and is not prepared to accept it.

[4] The respondent has filed an affidavit in terms of Rule 32(3)(b) of the Uniform Rules of Court, which provides that a defendant may resist summary judgment by affidavit or, with leave, oral evidence, demonstrating a bona fide defence to the claim.

The affidavit must disclose fully the nature and grounds of the defence and the material facts relied upon. In *Maharaj v Barclays National Bank Ltd*,¹ the court held that the essential inquiry is whether the defendant has disclosed facts which, if proved at trial, would constitute a valid defence in law, either in whole or in part.

[5] In her plea and opposing affidavit, the respondent raises several grounds in opposition to the application for summary judgment. She contends that her failure to make the required loan payments was due to unforeseen circumstances, including the necessity to perform traditional rituals. She further alleges that her failure to respond to the section 129 notice² was not wilful and that foreclosure would infringe her constitutional right to housing, particularly as she resides at the property with her two minor children. She also seeks a transfer of the matter to the Magistrates' Court, citing affordability and access to justice, and argues that the application is premature as there are prospects of settlement.

[6] It is not disputed that the respondent has been in default since February 2023 and that the arrears have grown substantially. The respondent admits her default and does not dispute her liability. She has made no payments for over two years and has not proposed any meaningful arrangement to settle the outstanding debt. Her belated offer, namely to pay R25 000 per month, is plainly inadequate to address the extent of her default, particularly in the face of compounding interest. Moreover, this offer undermines her claim of indigence and financial incapacity. A party capable of sustaining a monthly commitment of R25 000 cannot credibly claim to face destitution or lack the means to secure alternative accommodation should execution proceed. Her constitutional right to housing, while important, does not entitle her to indefinite occupation of a mortgaged property in the face of prolonged non-compliance with her repayment obligations.

¹ 1976 (1) SA 418 (A).

² The National Credit Act 34 of 2005.

[7] The respondent's reliance on section 26 of the Constitution and on *Jafta v Schoeman and Others*³) is therefore misplaced. The constitutional protection of the right to housing does not confer an absolute bar to execution. As the Constitutional Court stated in *Gundwana v Steko Development*⁴ execution may be authorised where it is just and equitable in the circumstances. The respondent has not demonstrated any viable path to remedy her default or to protect the integrity of the loan agreement. Her defence failed to raise any genuine or triable issue.

[8] The section 129 notice was properly served by affixing it to the respondent's domicilium address, in accordance with the National Credit Act. The Constitutional Court in *Kubyana v Standard Bank of South Africa Ltd* ⁵ confirmed that actual knowledge of the notice is not required; proper delivery suffices. The respondent admits receipt of the notice and offers no legally sustainable basis for her failure to act upon it.

[9] Lastly, the respondent's submission that the matter should be transferred to the Magistrates' Court lacks merit. Clause 25 of the loan agreement vests the applicant with the discretion to elect the forum. The amount claimed far exceeds the jurisdictional limit of the Magistrates' Court, and requiring the applicant to proceed there would be prejudicial. The Court in *Thobejane*⁶ declared that:

'(1) The High Court must entertain matters within its territorial jurisdiction that fall within the jurisdiction of a Magistrates' Courts, if brought before it, because it has concurrent jurisdiction with the Magistrates' Court.

(2) The High Court is obliged to entertain matters that fall within the jurisdiction of a Magistrates' Court because the High Court has concurrent jurisdiction.

(3)'

There is thus no legal basis upon which the respondent can compel a transfer.

³ 2005 (2) SA 140 (CC).

⁴ 2011 (3) SA 608 (CC).

⁵ 2014 (3) SA 56 (CC).

⁶ *Standard Bank of SA Ltd and Others v Thobejane and Others; Standard Bank of SA Ltd v Gqirana N O and Another* 2021 (6) SA 403 (SCA).

[10] Rule 46A of the Uniform Rules of Court requires judicial oversight before authorising execution against a primary residence. The applicant has complied with Rule 46A by filing all required documents, including the market, municipal and automated⁷ valuation of the property, municipal and levies arrears, and the respondent's payment history. The property is confirmed to be the respondent's primary residence. The court must nonetheless consider whether there are alternative means to satisfy the judgment debt and whether execution is warranted. The respondent has failed to present any credible or feasible alternative. In any event, the order granted will not result in immediate execution: the respondent will still be afforded an opportunity to remedy the arrears before the property is ultimately sold in execution.

[11] In the premises, the court is satisfied that the respondent has failed to raise a bona fide defence to the applicant's claim. The opposing affidavit is vague, speculative, and lacking in material detail. It is clear that the respondent does not dispute her indebtedness and has no realistic proposal to discharge it. The opposition is without merit and appears to have been brought solely for the purpose of delay.

[12] In the result, the following order is made:

1. Summary judgment is granted in favour of the applicant as follows:
 - 1.1 The respondent is ordered to pay the sum of R2 201 567.77;
 - 1.2 Interest on the aforesaid amount at the rate of 11.50% per annum, calculated daily and compounded monthly, from 1 April 2023 to the date of payment;
 - 1.3 The immoveable property described as Section 82. Willow Creek, Little Falls, Extension 17, situated at Door Number 8[...], S[...] Street, R[...], is declared specifically executable.
 - 1.4 The reserve price is set at R1 800 000.00
 - 1.5 The respondent is ordered to pay the costs of this application on the scale as between attorney and own client.

⁷ Automated Valuation Models (AVMs) make use of computer programs that estimate the market value of immovable properties using statistical analysis of real estate data like comparable sales, property characteristics, and market trends.

1.6 The order in paragraph 1.3 is suspended for 6 months from date of judgment.

1.7 The draft order marked “X” is made an order of court.

L. WINDELL
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 20 May 2025.

APPEARANCES

For the applicant:	Mr E. Strydom
Instructed by:	Biccari Bollo Mariano Inc
For the respondent:	In person
Date of hearing:	5 May 2025
Date of judgment:	20 May 2025