

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

CASE Number: 7914/2020

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

15/2/2025

In the matters between:-

ROADSEAL (PTY) LTD

Plaintiff/Applicant

and

MADULUDI (PTY) LTD

1st Defendant/Respondent

MOKIRI MAMETJA MANGWALE

2nd Defendant/Respondent

JUDGMENT

JACOBS AJ:

[1] Default judgment was granted against the respondents in the sum of R2,943,395.15 on 11 May 2021 with ancillary relief. The order by the judge on that day reads as follows:

“1. That Default Judgment is granted against the Defendant, in favour of the Plaintiff, as follows:

1.1. Payment of the sum of R2 943 395.15;

- 1.2. *Interest on the sum of R4 743 395.15 at the rate of 10% per annum from 11th of February 2020 to date of final payment, as recalculated as per each payment made by the Defendants;*
- 1.3. *Costs of suit, and of this application.”*

[2] A writ of execution against movable goods was issued on 18 May 2021 and according to the return of the Sheriff the writ was not satisfied by 14 June 2021. The writ was reissued on 27 June 2022 and the Sheriff rendered returns of non-service on 5 July 2022 and 26 July 2022.

[3] Subsequently the plaintiff discovered that the applicant is the owner of immovable property which is described in the notice of motion and now seeks an order in terms of Rule 46(1) declaring that immovable property specially executable to satisfy the judgment. The application for doing so was served on the defendant on 9 September 2022. The applicant delivered a notice of intention to oppose but has failed to deliver heads of argument. The plaintiff brought an application to compel the defendant to deliver heads of argument but the order has also not been complied with.

[4] The defendant's attorney of record withdrew on 18 October 2024. The notice of set down of these proceedings was served at the chosen *domicilium citandi et executandi* of the defendant on 6 February 2025 (after the defendant's attorney of record withdrew). A notice of withdrawal as attorney of record, (at Caselines 05-1) record the last known address of the defendant as 1[...] S[...] Road, Midrand Commercial Park, Midrand, Johannesburg and records a mobile phone number and email address, probably that of the defendants. The address mentioned in the defendants' attorneys notice of withdrawal of attorney of record tallies with the addresses stated in the Sheriff's return of service of the notice of set down which I find at Caselines 03-6 opposite item 5 as proof of service.

[5] Under the circumstances I am satisfied that the plaintiff has taken all reasonable steps to notify the defendants of the set down of this application.

[6] The evidence shows that the defendants own many properties including urban and rural land. He has made payments to the plaintiff over the years and attempts have been made to dispose of some of the properties to settle his indebtedness towards the plaintiff, with no or very little success. The property concerned here of which a declaration of executability sought, is not the primary residence of the second defendant but might be of other persons who occupy the properties with the permission and/or consent of the defendant who has the right to challenge termination of their occupancy, should that eventuate.

[7] The judgment in this matter quoted above, is not against the two defendants jointly and severally as suggested in paragraph 4.1 of counsel's practice note. Why this is so might be the result of a typing error or it might be that the presiding judge only granted judgment against one of the defendants. Under the circumstances I am not inclined to grant the order sought. If the order contains an error, it must be rectified in terms of the rules of court. The shortcoming in the application cannot be attributed to the respondents or any of them and they should not be held liable for the costs of this application during the week of 12 May 2025.

[8] Under the circumstances I make the following order:

1. The application is removed from the roll; and
2. The plaintiff / applicant shall not recover any costs for the week of 12 May 2025 from the defendants.

H F JACOBS
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Heard on: 12 May 2025

For the applicant: Adv S L P Mulligan
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Instructed by: Nixon and Collins Attorneys

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For the respondent:

Date of Judgment: 15 May 2025