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

CASE NO: 87458/2019

(1) REPORTABLE: YES / NO

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

(3) REVISED. YES

DATE 23 MAY 2025

SIGNATURE

In the application between:

EWOUT FREDERICK BOTES

APPLICANT

and

**S B GUARNATEE COMPANY (RF) PROPRIETARY
LIMITED**

FIRST RESPONDENT

(Registration number: 2006/021576/07)

STANDARD BANK OF SOUTH AFRICA LIMITED

SECOND RESPONDENT

(Registration number: 1962/000738/06)

CHANTELLE SCOTT

THIRD RESPONDENT

(Registration number: NCRBC 3858)

THE SHERIFF OF THE HIGH COURT, GEORGE

FOURTH RESPONDENT

JUDGMENT

Introduction:

1. On 15 February 2024, this court (*per* the honourable Van Wyk AJ) granted summary judgment against the applicant in favour of the first respondent in the following terms:
 - 1.1. *Payment in the amount of R1,606,163.34 (One million six hundred and sixth thousand one hundred and sixty-three rand and thirty-four cents);*
 - 1.2. *Interest on the aforementioned amount calculated at the rate of 10.45% per annum from 8 November 2019 to date of payment, both dates inclusive;*
 - 1.3. *An order declaring the immovable property, known as Erf 1[...] H[...], in the municipality and district of George, Province of Western Cape, (“**the immovable property**”) measuring 4.2686 (Four comma two six eight) hectares, held by Deed of Transfer number T72727/2016 – subject to the conditions contained therein, specially executable in terms of Uniform Rule 46A(a)(d), which immovable property is to be sold in execution by the sheriff with the reserve price;*
 - 1.4. *A reserve price was set in the amount of R1,498,200.00;*
 - 1.5. *The registrar is authorised to issue of writ of execution against the immovable property in terms of Uniform Rule 46A(1)(a)(ii) read with Uniform Rule 46A(2)(c);*
 - 1.6. *Costs on an attorney and client scale.*
2. The first respondent had a securitized claim against the applicant, based on a written indemnity agreement (read with the relevant provisions of the mortgage bond agreement), which agreement formed part of a suite of agreements between the applicant, the first respondent and the second respondent.
3. The main underlying agreement is a written home loan agreement (“the loan

agreement”) concluded on 17 October 2016 between the applicant and the second respondent.

4. Pursuant to the conclusion of the loan agreement, a first covering continuing mortgage bond was registered over the immovable property in favour of the first respondent.
5. The applicant did not appeal against the summary judgment granted on 15 February 2024.
6. During November 2024, some 9 months after the summary judgment was granted, the applicant consulted with the third respondent to apply for a debt rearrangement order per the provisions of the National Credit Act, 34 of 2005 (“the NCA”).
7. Why the applicant waited approximately 9 months before he approached a debt counsellor is not explained.
8. Significantly, as long ago as 31 October 2019, the second respondent caused a section 129 notice in terms of the NCA to be personally served on the applicant. In terms of this notice, the applicant was advised of his rights regarding the NCA.
9. Pursuant to the receipt of the section 129 notice, the applicant (until the summary judgment was granted on the 15th of February 2024) failed to approach a debt counsellor and failed to exercise any of the remedies that he may have had in terms of the NCA.
10. In the interim, the first respondent proceeded with execution steps against the applicant.
11. On 30 January 2025, the sheriff (fourth respondent) delivered a notice of sale in execution pertaining to the immovable property.

12. This jolted the applicant into action, and on the 19th of February 2025, the applicant instituted an urgent application, set down to be adjudicated on 25 February 2025.
13. In Part A of the urgent application, the applicant sought an order, *inter alia*, for the stay of the execution of the judgment granted against the applicant on 4 October 2023,¹ pending the outcome of Part B of the urgent application.
14. In Part B, the applicant seeks various declaratory orders to the effect that the applicant was not precluded from applying for debt review pursuant to the summary judgment being granted. Effectively, the applicant sought to obtain a declaratory order with the effect that the applicant would be permitted to rearrange his judgment debt and that the further execution steps pertaining to the immovable property, be stayed permanently.
15. Even though the applicant seeks an order in terms of Part A, pending the final determination of Part B of his notice of motion, the applicant's notice of motion makes it clear that both Part A and Part B are inexplicably set down on the same day.
16. On 25 February 2025, the urgent court, (per the honourable Yende AJ), granted an order in terms of which the application was removed from the roll and the applicant was ordered to pay the first and second respondent's wasted costs.
17. It is this application that currently serves before me.

The issue(s):

18. The crisp issue in this matter is whether a judgment debtor is entitled to apply for debt review, pursuant to a judgment being granted against such judgment debtor.

¹ This date is erroneous as the judgment was granted on 15 February 2024.

19. If not, the applicant is not entitled to the declaratory relief set out in Part B and self-evidently also not entitled to a stay of execution in terms of Part A to his notice of motion.

20. Section 86 of the NCA provides as follows:

“Application for debt review:

86. (1) *A consumer may apply to a debt counsellor in the prescribed manner and form to have the consumer declared over-indebted.*

(2) *An application in terms of this section may not be made in respect of, and does not apply to, a particular credit agreement if, at the time of that application, the credit provider under that credit agreement has proceeded to take the steps contemplated in section 130 to enforce that agreement.*”

(my emphasis)

21. Section 130 of the NCA provides as follows:

“Debt procedures in a Court

(1) *Subject to subsection (2), a credit provider may approach the court for an order to enforce a credit agreement only if, at that time, the consumer is in default and has been in default under that credit agreement for at least 20 business days and –*

(a) *at least 10 business days have elapsed since the credit provider delivered a notice to the consumer as contemplated in section 86(10), or section 129(1), as the case may be;*

(b) *in the case of a notice contemplated in section 129(1), the consumer has –*

(i) *not responded to that notice; or*

(ii) *responded to the notice by rejecting the credit provider’s proposals...”*

22. The delivery of a section 129 notice is an obligatory step a credit provider must take when enforcing that agreement.
23. It is common cause that the second respondent delivered a section 129 notice to the applicant and that the applicant failed to respond thereto. As such, and in accordance with section 86(2), the applicant may not apply to a debt counsellor in respect of a credit agreement if, at the time of that application, the credit provider under that agreement has proceeded to take the steps contemplated in section 130 to enforce that agreement.
24. Accordingly, the second respondent is excluded from any subsequent debt review application.
25. In ***Nedbank Limited v The National Credit Regulator***,² the Supreme Court of Appeal held that consumers can only approach a debt counsellor after they have received a section 129(1)(a) notice for the purposes as set out in section 129(1)(a) and not for the general debt review as contemplated by section 86(1). The bar against debt review in terms of section 86(2) of the Act was accordingly interpreted to commence once a section 129(1)(a) notice was delivered to a consumer in respect of a specific credit agreement.
26. In ***FirstRand Bank Limited v Barnard***,³ the court indicated that the object of debt review and restructuring is not to enable a consumer to continue in possession and use of the relevant property after the instalment sale agreement under which that property is held is cancelled. The court remarked that the same can be said in regard to a claim on a home loan.
27. This is fatal to the relief sought by the applicant for a stay of the execution proceedings.
28. In ***Nedbank Limited and Others v National Credit Regulator and***

² 2011 (3) SA 581 (SCA).

³ 2015 JDR 1614 (GP) at para 26.

another,⁴ the Supreme Court of Appeal indicated the following in this regard:⁵

“[14] ...The purpose of a s 129(1)(a) notice is the resolution of a dispute and the bringing up to date of payments under a specific credit agreement. While it is a ‘step’ prior to the commencement of legal proceedings it is also the first ‘step’ the credit provider ‘has proceeded to take ... to enforce that agreement’ (s 86(2)). It does not exclude a debt review save in so far as it relates to the particular credit agreement under consideration. Nor does it exclude a general debt review pursuant to ss 83 and 85. Key to the construction of s 86(2) are the words ‘has proceeded to take the steps’ used in s 86(2). A ‘step’, amongst its meanings, includes ‘an action or movement which leads to a result; one of a series of proceedings or measures’. To ‘proceed’ means ‘to go on with an action’ and also ‘with stress on the progress or continuance of the action’ to ‘go on or continue what one has begun; to advance from the point already reached’. By the use of the words ‘has proceeded’ and ‘steps’ an ongoing process is indicated of which the s 129(1)(a) notice is the first ‘step’. It is the only step expressly mentioned in s 129 although the other ‘steps’ or requirements referred to in s 130 are incorporated by reference. Section 129(1)(b)(i) makes it clear that the notice in terms of s 129(1)(a) is a necessary ‘step’ before legal proceedings may be commenced. It follows that by giving the notice envisaged by s 129(1)(a) the credit provider ‘has proceeded to take the steps contemplated in section 129 to enforce that agreement’: a debt review relating to that specific agreement is thereafter excluded.”

29. From the aforementioned, it is clear that a debt review relating to this specific loan agreement is excluded.

⁴ 2011 (2) SA 581 (SCA).

⁵ At para 14

30. Herein lies the difficulty for the applicant. The second respondent delivered a 129 notice to the applicant during 2019, and as such took steps to enforce the debt. As such the loan agreement cannot form part of any debt review process. As such, there is simply no merit in any of the declaratory orders sought by the applicant.
31. As the declaratory relief is plainly without merit, the applicant would not be entitled to an order for the stay of the execution proceedings.

The intervention application:

32. Prior to the hearing of the application, Mr Barend Haasbroek filed an application in which he seeks leave to be admitted as an intervening party *“in all proceedings under case number 87458/2019, in terms of Rule 12 of the Uniform Rules of Court”*.
33. Mr Haasbroek also seeks the following relief:
- 33.1. An order that the further execution of the judgment be suspended in accordance with Uniform Rule 45A;
 - 33.2. An order that the judgment granted in favour of the first respondent be set aside in accordance with Uniform Rule 42(1)(a);
 - 33.3. That the sale in execution of 21 February 2025 be cancelled and that the fourth respondent releases the immovable property from attachment;
 - 33.4. That the first, second and/or fourth respondents be interdicted and prohibited from continuing with the transfer of the property pursuant to the sale in execution of 21 February 2025 and that they be prohibited from transferring the property to the execution purchaser, or any other party.
34. Mr Haasbroek appeared during the hearing of the matter but indicated that he was not persisting with his intervention application, *at this stage*. Even if he did, in my view Mr Haasbroek does not have a direct and substantial interest in the subject matter of the action. I need not decide this issue as he

did not persist with his intervention application before me.

35. In the premises, the following order is made:

35.1. The application (both Part A and Part B) is dismissed with costs, such costs to include the cost of the first respondent's counsel on Scale B.

SG MARITZ AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Counsel for Applicant:	Adv H Marais
Attorneys for the applicant:	Vezi & De Beer Incorporated Attorneys
On behalf of First Respondent:	In person
Date of Hearing:	19 May 2025
Date of Judgment :	23 May 2025