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

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

[redacted]

SIGNATURE DATE: 17 June 2025

Case no: 2022-19070

In the matter between:

STANDARD BANK OF SOUTH AFRICA LIMITED Applicant

and

ZWELINZIMA JOSEPH VAVI First Respondent

NORAH NOLUTHANDO VAVI Second Respondent

JUDGMENT

WILSON J:

1 A court asked to authorise foreclosure against a debtor's primary residence must be satisfied that to do so would be proportionate. Foreclosure is generally proportionate when there is little meaningful prospect of the debt secured against the residence being recovered in some other way, and when the interest of the creditor in obtaining payment outweighs the interest of the

debtor in retaining ownership of their home (*Gundwana v Steko Development CC* 2011 (3) SA 608 (CC), paragraph 54).

2 The applicant, Standard Bank, seeks a money judgment and leave to execute it against the primary residence of the respondents, the Vavis. The Vavis' indebtedness arises from a mortgage bond passed over the property, which is an upmarket residence in the Sandton area. The fact that the property is, on the face of it, an expensive dwelling in a well-heeled suburb makes no difference to the fundamental inquiry, but cases in which it would be disproportionate to authorise execution of a proven mortgage debt against such a property are likely to be rare.

3 This is such a case. The Vavis owe around R1.68 million on their bond, and are in arrears to the tune of just over R85 000 – or around four months' worth of instalments. The arrears were accumulated around three years ago, and since then the Vavis appear to have serviced their bond punctiliously, while taking steps to reduce their arrears from just under R170 000 when the application was instituted to around R85 000 today. The latest home loan statement filed shows around 18 months of apparently perfect adherence to the Vavis' obligations to pay their monthly instalments.

4 Standard Bank has placed nothing before me that explains why execution against the Vavis' home is a proportionate means of recovering the arrears. Standard Bank claims over R160 000 in legal costs against the Vavis. It is apparent from the affidavits that Standard Bank has tied the resolution of this dispute to the settlement of those costs. It is at least possible that the Vavis have baulked at paying legal costs of twice the value of their current arrears.

It seems to me that the Vavis would be entitled to rehabilitate the loan agreement by paying their arrears and then debating the reasonableness of those costs with Standard Bank as a separate issue (see section 129 (3) of the National Credit Act 34 of 2005 and my decision in *Standard Bank of South Africa Limited v Koorbanally* [2024] ZAGPJHC 1199 (26 November 2024)), but I cannot say why the arrears have not been settled.

5 Nevertheless, in the absence of more information, I cannot presently conclude that foreclosure against the Vavis' home is a proportionate means of liquidating their arrears. The application will be postponed *sine die*. Standard Bank may renew the application if and when it adduces evidence that foreclosure would be proportionate.

6 The application is postponed *sine die*, with each party paying their own costs.

[redacted]

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 17 June 2025.

HEARD ON:	12 June 2025
DECIDED ON:	17 June 2025
For the Applicant:	T Thobela Instructed by Jason Michael Smith Attorneys Inc
For the Respondents:	No appearance