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

CASE NO: 2024-134542

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

9 July 2025

In the applications between:

NEDBANK LIMITED

Applicant

and

KAYLEEN TIFFANY PITT

Respondent

(ID #: 9[...])

CASE NO: 2024-082442

LENNETH ARNOLD SIMONS

First Respondent

(ID #: 8[...])

CACHIA ORELIA SIMONS

Second Respondent

(ID #: 8[...])

and

CASE NO: 2025-028874**LOUISA MASHUPIYANE MASHA**

Respondent

(ID #: 6[...])

and

CASE NO: 2025-028323**MAOTO JONAS MATHIBENG**

Respondent

(ID #: 8[...])

and

CASE NO: 2024-067596**MASILO MASESELLE ALDER MAWELA**

Respondent

(ID #: 8[...])

CASE NO: 2025-028322**MENGE REGINA MAKGATE**

Respondent

(ID #: 7[...])

CASE NO: 2025-036086**MORNE ELS**

First Respondent

(ID #: 8[...])

FRANCOIS ELS

Second Respondent

(ID #: 8[...])

and

CASE NO: 2025-047763

NOBUHLE VAPI

First Respondent

(ID #: 8[...])

**THE CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY**

Second Respondent

and

CASE NO: 2025-047757

PHUMELELE NTSHIQELA

First Respondent

(ID #: 5[...])

**THE CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY**

Second Respondent

and

CASE NO: 2024-124432

PICASSO JANGANO

Respondent

(ID #: 6[...])

and

CASE NO: 2023-116827

ROOKSANA ARABI

Respondent

(ID #: 7[...])

and

CASE NO: 2024-130896

TAKUDZWA MUTONGWIZO

Respondent

and

CASE NO: 2024-141685

WINKEY MAMAKALO MALUWA

Respondent

(ID #: 7[...])

JUDGMENT

SOUTHWOOD AJ:

INTRODUCTION

[1] On 18 June 2025, twenty-nine of the applicant's foreclosure applications served before me as part of this seat's Big Bang Week i.e. 15 unopposed motion courts hearing about 70 matters on each day from Tuesday to Thursday in each court.

[2] In each application, what was sought, *inter alia*, was leave to execute against the residential property of the relevant respondent in terms of Rule 46A of the Uniform Rules of Court. The applications were not opposed and were set down by the applicant on the unopposed motion roll.

[3] Each application exhibited one or more of the following instances of non-compliance:

[3.1] the papers were not uploaded in terms of paragraph 7 of this Court's 2024 Practice Directive in that the documents either were not uploaded individually and/or were not uploaded into the correct sections. This undermined my ability to prepare the applications quickly;

[3.2] the requisite Chapter 10.17. affidavit, as contemplated by Chapter 10.17 of this Court's Practice Manual, was not lodged and/or did not contain references to CaseLines pages and/or was incomplete;

[3.3] the application did not establish that the relevant s129 Notices in terms of the National Credit Act¹ had been sent in accordance with the agreements with the relevant respondent;

[3.4] the valuer used in every instance did not give a satisfactory basis for claiming expertise in valuations nor indicate her qualifications and it was uncertain that she was in fact employed by an independent third party as she alleged.

[4] It is worth noting that various attorneys' firms represented the applicant and various counsel appeared to move these applications. The instances of non-compliance could not be addressed by counsel in these matters.

[5] In some instances, the relevant respondent attended at court and an order was made by agreement between the parties. In other instances, given the failure to serve the applications personally on the relevant respondent, I was requested to determine belated applications for substituted service, which I did. None of these matters are dealt with in this judgment.

[6] Given the common instances of non-compliance in these applications, I address these in one judgment.

THE CONSTITUTIONAL IMPERATIVES OF SECTION RULE 46A

[7] Rule 46A provides *inter alia*:

'(1) This Rule applies whenever an execution creditor seeks to execute against the residential immovable property of a judgment debtor.

(2) (a) A court considering an application under this rule must –

(i) establish whether the immovable property which the execution creditor intends to execute against, is the primary residence of the judgment debtor; and

(ii) consider alternative means by the judgment debtor of satisfying the judgment debt, other than execution against the judgment debtor's primary residence.

(b) A court shall not authorise execution against immovable property, which is the primary residence of a judgment debtor, unless the court having considered all relevant factors, considers that execution against such property is warranted.

(c) The registrar shall not issue a writ of execution against the residential immovable property of any judgment debtor unless a court has ordered execution against such property.

(3) Every notice of application to declare residential immovable property executable shall be —

(a) substantially in accordance with Form 2A of Schedule 1;

(b) on notice to the judgment debtor and to any other party who may be affected by the sale in execution, including the entities referred to in rule 46(5)(a): Provided that the court may order service on any other party it considers necessary;

(c) supported by affidavit which shall set out the reasons for the application and the grounds on which it is based; and

(d) served by the sheriff on the judgment debtor personally: Provided that the court may order service in any other manner.

(4) (a) The applicant shall in the notice of application —

- (i) *state the date on which the application is to be heard;*
- (ii) *inform every respondent cited therein that if the respondent intends to oppose the application or make submissions to the court, the respondent shall do so on affidavit within 10 days of service of the application and appear in court on the date on which the application is to be heard;*
- (iii) *appoint a physical address within 25 kilometres of the office of the registrar and an electronic mail address, where available, at either of which addresses the applicant will accept service of all documents in these proceedings; and*
- (iv) *state the applicant's postal or facsimile addresses where available.*

(b) The application shall not be set down for hearing on a date less than five days after expiry of the period referred to in paragraph (a)(ii).

(5) Every application shall be supported by the following documents, where applicable, evidencing:

- (a) the market value of the immovable property;*
- (b) the local authority valuation of the immovable property;*
- (c) the amounts owing on mortgage bonds registered over the immovable property;*
- (d) the amount owing to the local authority as rates and other dues;*
- (e) the amounts owing to a body corporate as levies; and*
- (f) any other factor which may be necessary to enable the court to give effect to subrule (8):*

Provided that the court may call for any other document which it considers necessary...

(8) A court considering an application under this rule may —

(a) of its own accord or on the application of any affected party, order the inclusion in the conditions of sale, of any condition which it may consider appropriate;

(b) order the furnishing by —

- (i) a municipality of rates due to it by the judgment debtor; or*
- (ii) a body corporate of levies due to it by the judgment debtor;*

(c) on good cause shown, condone —

(i) failure to provide any document referred to in subrule (5); or

(ii) delivery of an affidavit outside the period prescribed in subrule

(6)(d);

(d) order execution against the primary residence of a judgment debtor if there is no other satisfactory means of satisfying the judgment debt;

(e) set a reserve price;

(f) postpone the application on such terms as it may consider appropriate;

(g) refuse the application if it has no merit;

(h) make an appropriate order as to costs, including a punitive order against a party who delays the finalisation of an application under this rule; or

(i) make any other appropriate order.

(9) (a) In an application under this rule, or upon submissions made by a respondent, the court must consider whether a reserve price is to be set.

(b) In deciding whether to set a reserve price and the amount at which the reserve is to be set, the court shall take into account—

(i) the market value of the immovable property;

(ii) the amounts owing as rates or levies;

(iii) the amounts owing on registered mortgage bonds;

(iv) any equity which may be realised between the reserve price and the market value of the property;

(v) reduction of the judgment debtor's indebtedness on the judgment debt and as contemplated in subrule (5)(a) to (e), whether or not equity may be found in the immovable property, as referred to in subparagraph (iv);

(vi) whether the immovable property is occupied, the persons occupying the property and the circumstances of such occupation;

(vii) the likelihood of the reserve price not being realised and the likelihood of the immovable property not being sold;

(viii) any prejudice which any party may suffer if the reserve price is not achieved; and

(ix) *any other factor which in the opinion of the court is necessary for the protection of the interests of the execution creditor and the judgment debtor.*'

[8] The origins of Rule 46A may be traced to *Jaftha*.²

[9] In *Jaftha*, the Constitutional Court said:

*'s26 must be seen as making that decisive break from the past. It emphasises the importance of adequate housing and in particular, security of tenure in our new constitutional democracy. The indignity suffered as a result of evictions from homes, forced removals, and the relocation to land often wholly inadequate for housing needs has to be replaced with a system in which the state must strive to provide access to adequate housing for all and, where that exists, refrain from permitting people to be removed unless it can be justified.'*³

[10] *Jaftha* held further that, where leave to execute against immovable property is concerned, judicial oversight is constitutionally required so that the judicial officer can engage in a balancing process and consider all the relevant circumstances of a case to determine whether there is good cause to order execution against the immovable property concerned.⁴

[11] In *Gundwana*,⁵ the Constitutional Court reaffirmed *Jaftha* and extended its purview to cases where the creditor is seeking to execute against a property put up as security in the form of a mortgage bond. *Gundwana* found that the declaration of executability of a debtor's residence was a judicial, as opposed to merely an administrative function of the Registrar.⁶

2 *Jaftha v Schoeman & Others; Van Rooyen v Stoltz & Others* 2005 (2) SA 140 (CC)

3 At [29]

4 At [42] – [45], [55]

5 *Gundwana v Steko Development and Others* 2011 (3) SA 608 (CC)

6 At [49]

[12] In *Bestbier*,⁷ the Supreme Court of Appeal highlighted the rationale behind Rule 46A:

'[8] It is trite that the Constitution of South Africa provides for justiciable socio-economic rights and this includes the right to have access to adequate housing, which is enshrined in section 26 of the Constitution. The underlying rationale of Rule 46A is to impose procedural rules to give effect to that fundamental right. Rule 46A must therefore be interpreted purposively against the backdrop of s26 of the Constitution, which grants access to housing.'

[9] In 2010, the rules were amended to introduce the express requirement in Rule 46(1)(a)(ii) that residential property may only be sold in execution, if so authorised by a court having considered all the relevant factors. Rule 46A was added to the Rules on 22 December 2017 in response to divergent approaches adopted by the South African courts regarding the nature of the inquiry and factors to be considered when exercising judicial oversight over orders of execution against residential immovable property.'

[13] *Bestbier* went on to state the following:

'[20] The aim of Rule 46A is to assist the court in considering whether the s26 rights of the judgment debtor would be violated if his/her house is sold in execution. Rule 46A contains procedural prescripts, not substantive law. The requirement of judicial oversight in s26 of the Constitution must be viewed in light of South Africa's history of forced removals and racist evictions during apartheid, and the need to protect security of tenure of all South Africans.'

[14] In this regard, *Bestbier* held:

'[22] Rule 46A requires judicial oversight and consideration by a court of various factors when a creditor seeks to execute against the residential immovable property of a judgment debtor. There is considerable force in Du Plessis & Penhold's argument in their discussion of Jaftha and Saunderson, that the only way to determine whether the right to adequate housing has been compromised is to require judicial oversight in all cases of execution against

⁷ *Bestbier & Others NNO v Nedbank Limited* 2023 (4) SA 25 (SCA)

the immovable property on a case by case basis. The sole purpose of judicial oversight in all cases of execution against movable property is to ensure that the orders being granted did not violate s26(1) of the Constitution, and that the judgment debtor is not likely to be left homeless as a result of the execution.'

CHAPTER 10.17. AFFIDAVIT

[15] Chapter 10.17. of the Practice Manual of the Johannesburg seat of this Division sets out a number of requirements which must be complied with in foreclosure matters.

[16] In *ABSA Bank*⁸, the Full Court described these requirements as follows:

'[7] The Practice Directive on foreclosures in this Division was developed to give substance to its judicial oversight role in foreclosure matters as intended by the Constitutional Court.'

[17] One of these requirements is that in every matter where a judgment is sought for execution against immovable property, which might be the defendant's primary residence or home, an affidavit is required. A proforma affidavit dealing with the requirements forms part of the Practice Manual.

[18] The proforma affidavit indicates that the applicant's attorney must confirm *inter alia* as follows:

'I have inspected the original documents pertaining to the matter as well as the security documents on which the matter is based and the copies attached to the summons or application, are true copies of the originals. Alternatively; An affidavit from the judgment creditor has been filed setting out the whereabouts of the original documents, which affidavit also sets out the grounds of the deponent's belief that the documents attached are indeed copies of the originals as appears at page ____ para _____. (Delete paragraph if 2.1 is applicable).'

(‘the original documents requirement’)

CASE NUMBERS 2024-134542, 2025-047763, 2025-047757

[19] In case number 2024-134542, the Chapter 10.17. affidavit dealing with the original documents requirement states:

‘An affidavit from the judgment creditor has been filed setting out the whereabouts of the original documents, which affidavit also sets out the grounds of the deponent’s belief that documents attached are indeed copies of the originals as appears at page 005-8, paragraph 3 of the Applicant/Plaintiff’s affidavit.’

[20] The reference is to a paragraph in the applicant’s founding affidavit in support of its Rule 31 and 46A application. The deponent is employed by the applicant as a Manager Home Loans Legal Recoveries.

[21] The relevant paragraph reads as follows:

‘I positively confirm that the attached security documents are copies of the originals and that the originals are stored in a safe storage facility.’

[22] The deponent does not set out the grounds for her belief that the documents attached are copies of the originals.

[23] In case numbers 2025-047763 and 2025-047757, the applicant’s attorney states:

‘I have inspected the original documents pertaining to the case but have not been privy to the original security documents on which the cause of action is founded. I have been instructed by my client (the Applicant), which instructions I accept, that the copies of the security documents attached to the application, are true copies of the originals.’

[24] All that the applicant’s deponent states in the founding affidavit is:

‘This Court is supplied with true copies of all the documents to which I refer.’

[25] These allegations do not constitute compliance with Chapter 10.17 in regard to the original documents requirement.

VALUATION

[26] Rule 46A(9)(b) provides that in setting a reserve price, the court must take into account the market value of the immovable property.

[27] In *Mokebe*,⁹ the Full Court of this Division found that in relation to the setting of a reserve price, that it was incumbent upon the applicant, as part of its obligation under the Rule, *'to place all relevant circumstances before the court, including a proper valuation of the property under oath.'*¹⁰

[28] In *Mzizi*,¹¹ this Court held that establishing the true market value of the property is essential to the court's determination of an application for foreclosure and would have to be the starting point from which the court's evaluation proceeds in each case.¹²

[29] The Court went on to state that in setting a reserve price, the Court considers a reserve price which ensures the chance of a sale and a reserve price which does justice to the rights of the debtor to obtain a fair value for its security.¹³

[30] In *SB Guarantee*,¹⁴ this Court held as follows:

'[13] Whilst it is, rightly, an expectation of a delinquent debtor that he should muster his resources to state his case, he should also be allowed to accept the veracity of the case put up by the applicant. If the debtor has the comfort of an

9 *ABSA Bank Limited v Mokebe and related cases* 2018 (6) SA 492 (GJ)

10 At [57]

11 *Nedbank Limited V Mzizi and related cases* 2021 (4) SA 297 (GJ)

12 At [12]

13 At [14]

14 *SB Guarantee Co (Pty) Ltd v De Sousa and Two Similar cases* 2024 (6) SA 625 (GJ)

independent valuation by an expert whose credentials are acceptable, he is able to rely on such valuation in order to administer his affairs, including his approach to the application to declare. It is, after all, unlikely that a distressed debtor would be in a position to challenge a proper expert valuation.

[14]A court should be placed in a position where it can feel similarly comforted by a reliable valuation.

[15]The evidence under oath of a person who is shown to be expertly qualified to determine value is a commercial forensic standard. In application proceedings expert valuations are routinely presented as attachments to the application in the form of an affidavit attested to by a valuer whose independence and expertise are disclosed.

[16]There appears, without more, in any given case, to be no reason why this standard should be departed from in the normal course in applications for foreclosure. Provided the sworn valuation is reliable, it serves a chastening purpose: the defendant would be entitled to rely on the valuation and a court would, likewise, be confident in its assessment of the application.'

[31] The Court held, further, that:

[31.1] The Property Valuers Profession Act, 47 of 2000 (the Valuers Act) provides for the establishment of the South African Council for the Property Valuers Profession (the Council) to oversee and administer a profession which is recognised, controlled and administered under the Valuers Act and known as the Property Valuers Profession;¹⁵

[31.2] the Valuers Act, the regulations and the Code of Conduct form a legislative scheme which provides for educational norms and standards for the Property Valuers Profession and for a national registration of certified valuers and candidate valuers. The Valuers Act closely regulates the activities and conduct of those involved in the valuation of property';¹⁶

[31.3] the Valuers Act also empowers the Council to register appropriately qualified persons on a national database of professional valuers upon their

15 At [67]

16 At [68]-[69]

application. Such registration entails the process of assessment of competency of applicants for registration. It requires that the Council be satisfied that the applicant meets certain criteria as to age, residency, the passing of certain examinations and the acquisition of practical experience in the field;¹⁷

[31.4] all registered persons must comply with the Code of Conduct drawn up and imposed under the Valuers Act, and failure to do so constitutes improper conduct;¹⁸

[31.5] the scheme facilitates the involvement of candidate valuers in the valuation process under the supervision of registered professionals. A candidate valuer is precluded from taking instructions other than from a professional valuer. The valuation process is intended to benefit the candidate on the basis that he or she is allowed to gain experience. A candidate cannot herself produce a sworn valuation under the scheme. The system of candidacy and mentorship is important. It serves in the transfer of professional skills where more experienced valuers mentor and teach those with less experience. The professionals are expected to adhere to the standards espoused under the legislative scheme and convey, by example and training, the skills necessary to facilitate the coming into being of a new generation of professional valuers.¹⁹

[32] In short, held the Court, *'the scheme creates an accountable profession which is statutorily regulated and committed to achieving professional standards so that the valuations of these accepted experts can be relied on'*.²⁰

[33] The Court concluded as follows:

17 At [70]-[71]

18 At [72]

19 At [74] – [76]

20 At [77]

'If an expert report is a collaboration between two people, only one of whom has the necessary expertise, qualification, or credentials, this should be expressly brought to the court's attention.

All parties involved in the valuation process, must set out clearly, on affidavit under oath, the source of their knowledge of the facts related to their involvement in the valuation.

The valuations should, in the absence of other evidence which may satisfy a court as to expertise of the person who has determined that value, be those of accredited professional valuers registered in terms of the Valuers Act.

*The valuations must be confirmed under oath, taken in terms of Regulation 3(1) of the Oaths Act.'*²¹

[34] In addition, section 19(1) of the Valuers Act provides for categories of registration, namely a professional valuer, a professional associate valuer, a candidate valuer, or specified categories as prescribed by the Council. Section 19(2) of the Valuers Act provides that a person may not practice in any of the categories contemplated by subsection (1) unless he or she is registered in that category.

[35] In all these matters save for case number 2024-124432 where no valuation affidavit forms part of the application, a valuation affidavit has been deposed to by Ronel Janse van Rensburg/Ronel van Rensburg.²² She states that she is an adult female property assessor employed as a valuer at or that she is a valuer for Independent Valuers SA or Independent Valuers SA CC, with registered business address at 3 Impala Court, Palm Avenue, Kempton Park or at 6[...] D[...] Road, G[...] M[...] [...] I[...] Court, P[...] Avenue, K[...] P[...].

21 At [82] – [85]

22 I have assumed these are the same people as the affidavit deposed to by Ronel van Rensburg is in virtually the same terms as the affidavits deposed to by Ronel Janse van Rensburg. In addition, affidavits have been uploaded in matters where Ronel Janse van Rensburg makes the sworn valuation and where Ronel van Rensburg makes the valuation, by the sole member of Independent Valuers CC indicating that Ronel Janse van Rensburg earns an income from Independent Valuers on a commission basis only as a freelance valuer and gets paid per successful task completed. All the valuation reports indicate the valuer as R van Rensburg with similar registration numbers.

[36] She contends that she has expertise in property valuations as she has been valuing properties for a period exceeding 20 years. She does not state that she is an accredited professional valuer registered in terms of the Valuers Act.

[37] However, attached to her affidavit in case numbers 2024-134542, 2024-082422 and 2023-116827²³ is a registration certificate issued by the South African Council for the Property Valuers Profession which certifies that Ronel Janse van Rensburg is registered as a Professional Associated Valuer in terms of s22(a) of the Property Valuers Profession Act, 2000, subject to the following conditions:

'PERMITTED TO PERFORMING WORK IN PROPERTY VALUATION FOR PURPOSES OF MUNICIPAL RATING FOR A LOCAL GOVERNMENT AS DEFINED IN THE LOCAL GOVERNMENT: MUNICIPAL PROPERTY RATES ACT, 2004 (ACT NO. 6 OF 2004).

WORK IN PROPERTY VALUATION OTHER THAN THAT REFERRED TO IN PARAGRAPH 1 MUST BE PERFORMED UNDER SUPERVISION AND CONTROL OF A PROFESSIONAL PERMITTED TO PERFORMING ALL TYPES AND PURPOSES OF PROPERTY VALUATION (SUPERVISOR).

THE WORK REFERRED TO IN PARAGRAPH 2 MUST BE SIGNED BY THE REGISTERED PERSON CONCERNED AND MUST BE COUNTERSIGNED BY THE SUPERVISOR TO CERTIFY THAT THE WORK HAS BEEN PERFORMED UNDER HIS OR HER SUPERVISION BEFORE SUBMISSION THEREOF TO THE CLIENT. A COMPLETE RECORD OF THE DETAILS OF SUCH OTHER WORK IN PROPERTY VALUATION MUST BE KEPT.'

(My emphasis)

[38] The certificate indicates the registration number as 7889.

[39] In her respective affidavits, Ms van Janse van Rensburg indicates that she conducted a valuation of the property on a particular date. Save for case numbers 2025-028322 and 2024-141685 where no report is attached to her affidavit (albeit that one is attached to the applicant's deponent's affidavit which is not referred to by

23 In case number 2025-028323, the certificate was simply uploaded.

Ms Janse van Rensburg), Ms Janse van Rensburg's affidavits also refer to and attach a valuation report and confirm the contents thereof.

[40] The respective reports which are headed 'Independent Valuer' conclude with one of the following statements:

'I DECLARE THAT I HAVE INSPECTED, ASSESSED, AND IDENTIFIED THE PROPERTY AND HAVE NO PECUNIARY INTERESTS IN THE PROPERTY. I HAVE ASSESSED THE PROPERTY BASED ON THE RELEVANT MARKET INDICATORS AND CONSIDER THE ABOVE VALUATION TO BE A TRUE REFLECTION AND FAIR ASSESSMENT OF THE SUBJECT PROPERTY'S CURRENT MARKET VALUE, WHERE ACCESS TO THE INTERIOR OF THE PROPERTY WAS GRANTED. WHERE INTERNAL ACCESS WAS NOT GRANTED, THE VALUATION WILL REFLECT A BEST ESTIMATE AS AT THE DATE OF THE VALUATION'

or

'I/WE DECLARE THAT I/WE HAVE INSPECTED AND IDENTIFIED THE PROPERTY HAVE NO PECUNIARY INTERESTS IN THE GRANTING OF THIS LOAN'.

[41] The reports are dated and indicate that the valuer is R van Rensburg with the number '7889/6' or '7889' or '7889 6' and a signature, which I assume to be that of Ms Janse Van Rensburg.

[42] In case numbers 2024-067596, 2025-028322, 2025-036086, 2025-047763²⁴, the report indicates an additional valuer, Barend Spies, with the number 8541/0 and a signature, which I assume to be that of Mr Spies.

[43] In case numbers 2024-067596 and 2025-036086, Mr Spies has deposed to an affidavit. He states that he is an adult property assessor employed at Independent Valuers. He states that he is an expert because he has been doing property valuations for a number of years. He does not indicate that he is a

24 Despite the fact that the declaration refers to the first person singular

professional property valuer registered with the Council. He does not state that he conducted the valuation with Ms Janse van Rensburg nor that he supervised and controlled her valuation.

[44] In case number 2025-047757, the report indicates an additional valuer whose name is illegible. No affidavit is deposited to by the second valuer.

[45] In case number 2023-116827, the reports indicate an additional valuer by the name of L Janse van Rensburg with number 8572/4. No affidavit is deposited to by L Janse van Rensburg.

[46] None of the affidavits nor the reports indicate that Ms Janse van Rensburg's valuation was performed under the supervision and control of a person who is permitted to do all types of property valuation.

[47] Simply on this basis, I am not satisfied that the valuation is valid and reliable.

[48] Furthermore, other difficulties are associated with this valuation.

[49] The respective reports contains one of the following statements:

'No phone answer. No access gained, no internal inspection done. No comments as to the quality and condition of the internal finishes can be made as no access was possible. Room count and size are estimated and may differ from the actual. It is assumed that the unit is not vandalised and in average condition. The following maintenance is required and defects noted: No comments due to no access'

or

'No access gained to subject property – no internal inspection was done. No phone answer. The property appears to be in need of general maintenance and repair. No comments as to the quality and condition of the internal finishes can be made as no access was possible. Room count and size are estimated

and may differ from the actual. The following maintenance is required and defects noticed: No comment due to no access'

or

'No phone answer. No access gained, no internal inspection done. It is assumed that the property is not vandalised. No comments as to the quality and condition of the internal finishes can be made as no access was possible. Room count and size are estimated and may differ from the actual. The following maintenance is required and defects noticed: No comment due to no access'

or

'PLEASE NOTE: EXTERNAL INSPECTION DONE AS PER AGREED PROCESS. OWNER NOT AWARE OF VALUATION AND REFUSED ACCESS'.

[50] The reports do not indicate if Ms Janse van Rensburg or, where relevant, Mr Spies, L Janse van Rensburg or the unknown second valuer, were given the respondent's phone number nor do they give particulars of her or his attempts to gain access to the property.

[51] Accordingly, save for case numbers 2024-067596 and 2025-047763, a public note on CaseLines requested that an affidavit be filed deposed to by the valuer confirming that she attended at the property and indicating what attempts she made to obtain access to the property.

[52] No affidavit in this regard was lodged before the hearing of these matters.

[53] In addition, in case numbers 2024-067596, 2024-124432 and 2024-130896, the applicant's deponent, referring to a valuation report which looks exactly like the

reports referred to above, described the report as '*an assessment report compiled internally by the Applicant*' (sic).

[54] The report itself appears to bear an email address and a telephone number but not an address.

[55] Accordingly, I requested, in a public note on CaseLines, prior to the hearing, that the applicant was to file an affidavit deposed to by the person in charge at Independent Valuers indicating its corporate registration details with documentary proof from the CIPC (not windeed) and confirming that Ronel Janse van Rensburg and, where relevant, Barend Spies, were its employees at the time when they made the report referred to in the relevant matter, with supporting employees' tax documentation and payslips.

[56] In case numbers 2024-082442, 2025-047763, 2025-047757 and 2023-116827, an affidavit was uploaded onto CaseLines deposed to by Ms Ronel Nicolene Jacobs who indicated that she was the sole member of Independent Valuers CC with registration number 2009/226395/23 situated at '6[...] D[...] Road, G[...] M[...]: [...] I[...] Court, P[...] Avenue, K[...] P[...]' which appears to be two different addresses.

[57] Ms Jacobs did not confirm that she employed Ms Janse van Rensburg nor Mr Spies. Instead, she alleged that Ms Janse van Rensburg '*earns an income from Independent Valuers on a commission basis only as a freelance valuer and gets paid per successful task completed. Payments take place sporadically alternatively are bulked and paid in a lump sum.*'

[58] Ms Jacob's affidavit which contradicts Ms Janse van Rensburg's affidavits results in more questions than answers and renders Ms Janse van Rensburg's affidavits of doubtful veracity.

[59] For all the reasons indicated above, I am not satisfied that the applicant has complied with the requirements indicated in *SB Guarantee* or that the sworn valuations in these matters are credible independent valuations.

[60] Given that Ms Janse van Rensburg appears to have conducted valuations in conflict with the terms of her registration with the South African Council for the Property Valuers Profession, she was invited to make submissions by Monday, 30 June 2025, as to why the judgment should not be referred to the Council.

[61] Ms Janse van Rensburg submitted an affidavit in which she indicated the following:

[61.1] her certificate incorrectly indicates that she is only permitted to perform valuations for municipal rating on her own but must otherwise be supervised and controlled by a professional permitted to perform all types of property valuation;

[61.2] in June 2022, she had requested the Council to extend her registration to mortgage security valuations for residential dwellings and light commercial properties;

[61.3] also in June 2022, the Council acknowledged receipt of the request and indicated that they would inform her when the registration documents were ready for collection;

[61.4] she has not yet received her amended registration certificate;

[61.5] on 30 June 2025, she received a letter from the Council confirming that she is registered as a professional associated valuer from 7 June 2022 and is permitted to performing work in property valuations for mortgage bonds and security for all types of valuation.

[62] The letter referred to indicates that Ms Janse van Rensburg is registered as a Professional Associated Valuer from 7 June 2022 and is permitted to work in property valuation for Mortgage Bonds & Security for all types of valuation but that the registration is subject to various conditions which are indicated in *inter alia* the registration certificate.

[63] At face value, Ms Janse van Rensburg's registration does not appear to cover the valuations in these applications which is for the purposes of declaring mortgaged property executable in terms of Rule 46A. Furthermore, the amended certificate has not been disclosed.

[64] In the premises, there is still uncertainty as to whether Ms Janse van Rensburg was permitted to perform the valuations in these matters.

[65] The South African Council for the Property Valuers Profession is best able to assess this given that it is likely in possession of more relevant evidence than this Court.

[66] Accordingly, this judgment will be forwarded to the Council to investigate Ms Janse van Rensburg's conduct.

PAYMENT HISTORY

[67] In case numbers 2025-028874, 2024-067596, 2025-036086, 2023-116827 and 2024-130896, the document indicating the respondent's payment history indicates a balance which does always change as a consequence of a payment or debit. This raises a concern that the amount certified as being in arrears is not credible.

[68] Applicant's counsel could not address my concern.

[69] It is advisable that the applicant lodge an affidavit to explain why the balance does not change.

S 129 NOTICE NOT SERVED IN TERMS OF THE AGREEMENT

[70] In case number 2024-134542, the s 129 notice was sent via registered email to 'k[...]'.

[71] When questioned on what basis the court should accept that this was the respondent's email address, Counsel indicated that the correct address was [k\[...\]](#) and that the letter had not been sent to the correct address.

[72] In addition, the relevant agreements make provision for notice to be delivered at chosen addresses or to be sent by registered post to the respondent's last known address.

[73] When questioned as to whether the S129 notice has been sent in accordance with the agreements, Counsel's response was that this had been raised with the applicant and its attorneys and the use of this process has been stopped. I understood this submission to be a concession that this manner of notifying the respondent was not in terms of the agreements.

SERVICE OF THE APPLICATION

[74] In case number 2024-067596, an order was granted on 11 March 2025 directing that service of the application was to be effected by affixing at the mortgaged property, sending the application via email **and** via sms or WhatsApp.

[75] A notice of motion dated 13 June 2024 with a hearing date of 18 September 2024 appears as the first document in the application. Further in the application bundle, a notice of motion dated 13 June 2024, indicates a hearing date of 18 June 2025.

[76] It is unclear which notice of motion was served. The sheriff's return does contain a hearing date, something which the returns generally state if the document served indicates a hearing date.

[77] Although the messages in the email and WhatsApp indicated the hearing date, I am not satisfied that the application served by affixing at the mortgaged

property indicated the date of the hearing with the result that I am not satisfied that there has been compliance with the order for substituted service.

[78] In case numbers 2025-047763 and 2024-141685, there has not been personal service of the application on the respondent.

[79] In case number 2024-124432, an order for substituted service was granted on 4 March 2025. The order directs that notice of the proceedings is to be served by affixing at the mortgaged property, service via email and service by SMS or WhatsApp.

[80] Proof of service by affixing at the mortgaged property is established by the relevant sheriff's return. Service via email and SMS/WhatsApp is not established by admissible evidence. Instead, email and phone printouts have simply been uploaded as stand-alone documents in the record.

[81] In the circumstances, the applicant has failed to establish that the application was served in terms of the order permitting substituted service.

CONDUCT OF THE LEGAL PRACTITIONERS UNDER CASE NO. 2024-134542

[82] The Code of Conduct for all Legal Practitioners, Candidate Legal Practitioners and Juristic Entities provides *inter alia*:

[82.1] at paragraph 3.1, '*that legal practitioners shall maintain the highest standards of honesty and integrity*';

[82.2] at paragraph 3.2, '*that legal practitioners shall treat the interests of their clients as paramount, provided that their conduct shall be subject always to their duty to the court; the interests of justice; observance of the law; and the maintenance of the ethical standards prescribed by this code, and any ethical standards generally recognised by the profession*';

[82.3] at paragraph 18.3, '*that an attorney shall exercise proper control and supervision over his or her staff and offices*';

[82.4] at paragraph 57.1, *'that a legal practitioner shall take all reasonable steps to avoid, directly or indirectly, misleading a court ... on any matter of fact or question of law. In particular, a legal practitioner shall not mislead a court ... in respect of what is in papers before the court ... including any transcript of evidence'*.

[83] In *Van der Berg*,²⁵ the Supreme Court of Appeal held:

'But it is a different matter altogether if an advocate knows (as a fact and not merely as a matter of belief) that evidence is false or misleading. For the role of advocacy in furthering the proper administration of justice also gives rise to duties that are owed to the court, primarily a duty upon an advocate not to deceive or mislead a court himself.' ²⁶

[84] In *Ulde*,²⁷ this court stated:

'In my view it is the obligation of counsel to never mislead a court. Care must be taken that this does not occur through ignorance or negligence. It is self-evident that to mislead a court deliberately is a very serious breach of that obligation. A judge is entitled to take counsel at their word.' ²⁸

[85] It is a material fact in foreclosure applications whether or not the mortgaged property is the respondent's home or primary residence.

[86] The applicant's deponent alleged that the mortgaged property is occupied by the respondent and is utilised as her primary residence.

[87] In his practice note, under a section headed 'Primary Residence', the applicant's Counsel had indicated 'no'. I made a public note on CaseLines querying the basis for this submission. Counsel's response in a note on CaseLines was:

25 *Van der Berg v General Council of the Bar* [2007] 2 All SA 499 (SCA)

26 At [16]

27 *Ulde v Minister of Home Affairs and Another* 2008 (6) SA 483 (W)

28 At [37]

'the Respondent was traced to the address where personal service was affected (granted the Trace Report is not attached to the papers before Court. We will attend to upload same with a supplementary affidavit' (sic).

[88] Further in his practice note, Counsel submitted that:

'The Notice of Set Down and Application for Default Judgment for 18 JUNE 2025 was served on the Respondent/Defendant personally at 4[...] E[...] C[...], E[...], 1830, GAUTENG, as appears on the return of service and which address is the traced/home address of the Respondent/Defendant. See under Section 004 of Caselines.'

[89] In response to a query raised in my public note on CaseLines as to the basis for the submission that the address where service took place is the traced/home address of the respondent, Counsel's replying note stated:

'As mentioned above, and admitted, the trace report was not submitted as part of the papers, but the fact remains that personal service was obtained as is required in terms of Rule 46A.'

[90] In a supplementary affidavit, deposed to on 6 June 2025, and uploaded onto CaseLines on the same date, and thus not served on the respondent, and made for the purpose of updating the Court on the various arrears pertaining to the respondent, the applicant's attorney states:

'It is evident from the Sheriff's return of service that the Application for Default Judgment was served on the Respondent/Defendant, personally, at the traced/home address of the Respondent/Defendant.'

[91] The relevant sheriff's return indicates that on 21 May 2025, the sheriff served a 'Notice of Set Down Application for Default Judgment and an order in terms of Rules 46A' upon the respondent personally at 4[...] E[...] C[...], E[...].

[92] Aside from the fact that it is unclear exactly what was served on the respondent, what is clear is that there is no reference in the sheriff's return that this address is a traced/home address.

[93] Given that the attorney's allegation was clearly incorrect, I indicated in a public note on CaseLines that this constituted a misrepresentation. In response to my note, applicant's Counsel in a replying note on CaseLines responded as follows:

'The actual return of service will not indicate that service was a traced address - the Sheriff only receives instruction as to the address where service is to be effected -not how it was obtained (again, I have to note that the trace report in not included in the papers.) However, personal service was effected as is required in terms of Rule 46A. The supplementary affidavit at 3.1 does indicate that it is a traced/home address. There is no misrepresentation by the attorney in this regard.' (sic)

[94] There is no evidence in the record that the address at which personal service occurred is the home of the respondent.

[95] At face value, the submissions in Counsel's practice note constitute misrepresentations to the court.

[96] Furthermore, the attorney's incorrect allegation as to what appeared in the sheriff's return also constitutes, at face value, a misrepresentation to the court.

[97] Given that it was not specifically raised with Counsel at the hearing that I was considering referring both Counsel and his instructing attorney to their relevant governing bodies, both applicant's Counsel and attorney were invited, after the hearing, to provide submissions by close of business on 27 June 2025 as to why this judgment should not be referred to the Legal Practice Council and the Pretoria Society of Advocates for further investigation.

[98] Given the response to the invitation, I quote the invitation in full:

'The Judge is considering referring (the attorney, ... and counsel ...) to the LPC and, in the case of [counsel] also to the Pretoria Society of Advocates, because

of the perceived failure to uphold their duty to the court and not to mislead the court regarding the facts and the law.

In paragraph 3.1 (006-2) of a supplementary affidavit deposed to by [the applicant's attorney] on 6 June 2025 [he] alleges that "It is evident from the Sheriff's return of service that the Application for Default Judgment was served on the Respondent/Defendant personally, at the traced/home address of the Respondent/Defendant". The sheriff's return (004-3) does not state this.

In his practice note, [applicant's counsel] indicates at 007-2/4 that the relevant property is not the primary residence of the respondent. At 007-3/6.1, [applicant's counsel] contends that the address at which service took place is the traced/home address of the respondent. There is no admissible evidence in the record which establishes this address as either a traced address or a home address.

Both submissions are at odds with the allegation by the applicant that the mortgaged property is occupied by the respondent and is utilised as her primary residence (005-11/7.1).

Given the authorities e.g FirstRand Bank Ltd v Folscher and Another, and Similar Matters 2011 (4) SA 314 (GNP) at [28], there were no facts on the record from which it could be established that the address at which personal service was effected was the respondent's home.

In a public note on CaseLines, the Court questioned the basis for these allegations and submissions. It was further queried why the attorney should not be reported to the LPC.

[Applicant's counsel] replied in a public note on CaseLines as follows:

"1. The submission in this regard is that the Respondent was traced to the address where personal service was effected (granted, the Trace Report is not attached to the papers before Court. We will attend to upload same with a supplementary affidavit.)

2. The actual return of service will not indicate that service was a traced address - the Sheriff only receives instruction as to the address where service is to be effected -not how it was obtained (again, I have to note that the trace report is not included in the papers.) However, personal service was effected

as is required in terms of Rule 16A. The supplementary affidavit at 3.1 does indicate that it is a traced/home address. There is no misrepresentation by the attorney in this regard.

5. *As mentioned above, and admitted, the trace report was not submitted as part of the papers, but the fact remains that personal service was obtained as is required in terms of Rule 46A.” (sic)*

What is apparent from this response is that the attorney’s allegation was not correct and that counsel’s submissions were not based on facts in the record read with relevant law.

[The applicant’s attorney and counsel] are invited to furnish submissions on or before CoB on Friday 27 June 2025 indicating why the judgment should not be referred to the LPC and the Pretoria Society of Advocates. Such submissions should be uploaded onto CaseLines.” (sic)

[99] The applicant’s attorney furnished an affidavit which submitted that Rule 4 does not provide what should be in a sheriff’s return. Thus, he contends, one could draw the conclusion that it was a *bona fide* omission by the sheriff not to state that service took place at the trace/home address of the respondent. He also refers to the purpose of service.

[100] Not only does the conclusion not follow from the premise (there being no admissible evidence that the sheriff would have a basis for stating that the address was the traced/home address of the respondent), it does not explain why he misstated what was in the sheriff’s return.

[101] The applicant’s attorney speculates that the allegation by the applicant’s deponent regarding the residence of the respondent was made at the time when the summons was served. However, service at the respondent’s *domicilium citandi* and at the hypothecated address could only be effected by affixing.

[102] Accordingly, the applicant’s attorney engaged a tracer and the sheriff was instructed to serve at the address obtained by the tracer. It was an oversight not to

attach the tracing report to his supplementary affidavit. A tracing report is attached to this affidavit. This is hearsay evidence and thus, inadmissible.

[103] None of these responses indicate why the attorney misstated what was in the sheriff's return.

[104] Given both the misstatement and the failure to appreciate his conduct, this judgment will be referred to the Legal Practice Council to investigate this attorney's conduct.

[105] Counsel also furnished submissions in response to the invitation.

[106] In response to my finding that there is no admissible evidence in the record which establishes that the address at which service took place is either a traced address or a home address, Counsel refers to the tracing report which should have been uploaded onto CaseLines. He then submits that his instructions are that a tracer was appointed who traced the respondent to the traced address where personal service was effected (her parental home as later allegedly conveyed to the attorney and Counsel at court). He stated further that the respondent had informed him and his attorney that she now resides with her parents at the traced address as the electricity and water to her apartment have been terminated. The question of primary residency could have been addressed in Court, on the record.

[107] Counsel contends further that there is no requirement in Rule 4 to state that personal service was obtained at the person's primary residence or home. He then indicated that a return of service will not indicate that service was obtained at a traced address.

[108] In response to the finding that the attorney's allegation was not correct and that counsel's submissions were not based on facts in the record read with the relevant law, Counsel submitted that he did not see the relevance of this. He goes

on to state that he and the attorney *'had knowledge and have seen the trace report and trace address and from there our submissions in this regard'*.

[109] He concludes that he did not intend to mislead the court and that he has an unblemished record.

[110] Essentially, Counsel's justification is that his submissions were based on his instructions and his sight of a trace report which was not properly before court.

[111] Counsel fails to appreciate that he cannot make factual submissions (whether in his practice note or otherwise) if such facts are not to be found in the record. Neither his instructions nor his personal knowledge are acceptable sources for these.

[112] Furthermore, Counsel fails to appreciate that whether or not a particular residence is someone's primary residence is a conclusion to be drawn from other facts.

[113] In *Folscher*,²⁹ the full court of this Division held:

'A "primary residence"

[28.1] A person's primary residence is the dwelling where they usually live, typically a house or an apartment. A person can only have one primary residence at any given time, though they may share the residence with other people. A primary residence is considered as a legal residence for the purpose of income tax and/or acquiring a mortgage.' (Wikipedia Dictionary.)

[28.2] A 'home' means 'the place where one lives; the fixed residence of a family or household; a dwelling house' (Concise Oxford Dictionary). 'A place where one lives; a residence' (Free Dictionary by Fairfax); 'The physical structure within which one lives, such as a house or apartment'.

[28.3] 'Housing' means 'shelter' or 'lodging' (Concise Oxford Dictionary).

29 *FirstRand Bank Ltd v Folscher and Another, and Similar Matters* 2011 (4) SA 314 (GNP)

[29] A 'primary residence' is, in the light of the above, the same concept as 'the home of a person' as formulated in the Gundwana judgment. There is therefore no conflict between the amended rule and this decision.

[30] The judicial oversight that must be exercised is therefore limited to those instances where the execution order relates to the debtor's principal or — usually — the only dwelling the judgment debtor owns. Execution against a holiday home or a second house that is not usually occupied by the debtor does not trigger the application of the rule.' (my emphasis)

[114] The respondent's alleged statement to Counsel that she resides at her 'parental home' because the electricity and water at the mortgaged property have been cut off suggests that this residence might be a temporary one and not fixed. I make no finding in this regard but merely wish to illustrate the point.

[115] Given that the submissions in Counsel's practice note were not based on evidence in the record nor a conclusion which could properly be drawn and that Counsel fails to appreciate his duty in this regard, the judgment will be referred to the Legal Practice Council and the Pretoria Society of Advocates for further investigation.

CONDUCT OF THE LEGAL PRACTITIONERS UNDER CASE NO. 2025-028322

[116] The respondent in this matter is Menge Regina Makgate.

[117] Prior to the hearing date, I made a public note on CaseLines indicating that the agreements relied upon are not agreements concluded with the respondent. The Certificate of Balance refers to the same person as in the agreements uploaded, one WM Maluwa.

[118] On the morning of the hearing, the relevant annexures were removed from CaseLines and replaced with annexures referring to the respondent.

[119] I made a further public note on CaseLines recording this conduct and indicating that the person who had effected this substitution should attend at court to explain.

[120] The relevant person did not appear.

[121] The applicant's counsel indicated that the person was a legal secretary. I indicated that the applicant's attorney should attend at court to explain.

[122] Counsel indicated that the attorney was not in Johannesburg and proposed that the explanation be given by way of affidavit which she would hand up in court on 20 June 2025, The matter stood down for these purposes.

[123] On 20 June 2025, an affidavit deposed to by the legal secretary and an affidavit deposed to by the applicant's attorney were furnished to me. These affidavits have been upload onto CaseLines.

[124] Essentially, the legal secretary indicates that in consequence of my directive that the various documents in the application were to be uploaded separately, she uploaded the wrong documents.

[125] On 18 June 2025, the applicant's Counsel sent her an email indicating that the documents in another application (Nedbank v Maluwa) had been uploaded. Presumably, this was after Counsel had read my note.

[126] To rectify her error, she removed the incorrect annexures and uploaded the correct annexures. She referred me to section 53 (entitled Index and Pagination) where the entire application had been uploaded and the audit trail to indicate that only the annexures in the bundle entitled Annexures to Affidavit had been substituted but that section 53 was untouched.

[127] It is of concern that until I had considered this affidavit, no-one had referred me to section 53. I have considered section 53 and accept the legal secretary's explanation.

[128] I am therefore satisfied that the application with the correct annexures is the application referred to in the sheriff's return.

[129] However, it is of concern that the legal secretary, it appears on her own volition, substituted documents in the court file, which the court had already considered, without drawing this to the court's attention, without intending to explain such substitution and without seeking leave of the Court to do so.

[130] The applicant's attorney deposed to an affidavit in which he states that he believes her intention was not to mislead the court. There appears to be no appreciation that a member of his staff has substituted documents in the court file without seeking leave of the Court.

[131] This appears to constitute a failure by the applicant's attorney to properly oversee and control his staff as contemplated by the Code.

[132] The applicant's attorney was invited to make submissions on CaseLines before close of business on 9 July 2025 as to why the matter should not be referred to the Legal Practice Council.

[133] The applicant's attorney uploaded a letter onto CaseLines in response to the invitation.

[134] The applicant's attorney refers to my directive in two matters to upload the annexures to the founding affidavit as separate documents and then explains that his legal secretary made a mistake in doing so and then attempted to correct the mistake once it had been pointed out to her. He contends that the documents uploaded were the same documents already contained in the '*main paginated*

bundle'. Both the applicant's attorney and his employee made affidavits to explain this.

[135] The applicant's attorney denies that he does not adequately supervise his staff or that the events in this matter support such an inference. He states that he peruses and signs each court document to ensure its correctness and, in his absence, an admitted attorney does so.

[136] He states, further, that there are a number of administrative functions which are not practical to oversee – such as the uploading of documents to the Court systems – these are done by the secretary dealing with the matter '*and it is not possible to deal with this on another basis*'.

[137] He indicates further that the relevant legal secretary is experienced, diligent and accurate and her work seldom needs correction.

[138] The applicant's attorney states further, '*The events of 17 and 18 June 2025 were the result of an honest mistake that was rectified when discovered without any harm or injustice to anybody.*'

[139] The applicant's attorney has failed to appreciate my concerns. He has conceded that he does not oversee what is uploaded onto the '*Court systems*'. Not only are there directives to adhere to e.g. Chapter 7 of the Revised Consolidated Practice Directive 1 of 2024 Court Operations in the Gauteng Division but there are ethical duties imposed on legal practitioners in relation to the management of the court file.

[140] Paragraph 7.1 of the Practice Directive provides that upon case creation, practitioners must create sections in a format that makes it reader friendly. It must be possible to use the automatic index to identify every document uploaded. This was not done in this matter.

[141] The '*main paginated bundle*' referred to by the applicant's attorney, appears, confusingly, in section number 53 entitled Index and Pagination. The section contains one document consisting of the index and the application including the annexures to the founding affidavit. This is not what I originally considered because it was not apparent that this was where the application was to be found. Counsel's practice note did not refer to this section either.

[142] Instead, I considered a section referring to the application.

[143] Paragraph 7.2 provides that parties must not create separate sections for each document but should upload the documents in the appropriate section. This was not done in this matter.

[144] Paragraph 7.6 provides that an where an annexure to an affidavit or other document is uploaded, it should be individually uploaded and described. It is insufficient to merely describe it as FA1 or R13. This was not initially done in this matter.

[145] In response to my directive, the notice of motion and founding affidavit appear as separate documents in section 001 entitled Notice of Motion with Founding Affidavit. The annexures appear in section 077 entitled Annexures to Affidavit. All the documents constituting the application should have been uploaded in one section as separate documents.

[146] Given the examples of non-compliance with the Directive, it appears that the relevant legal secretary has not been instructed as to how to upload documents onto CaseLines in accordance with the Directive.

[147] However, more importantly, the applicant's attorney has failed to appreciate the ethical duties of attorneys in relation to the management of the case file.

[148] Paragraph 13.9 of the Directive provides that, *'Attorneys and litigants may not alter or delete endorsements or remove documents from any case on CaseLines. Where an attorney or litigant is found to have tampered with endorsements or removed documents, such attorney will be reported to the Legal Practice Council for investigation for unprofessional conduct or unethical conduct as the case may be'*.

[149] My directive did not instruct the attorney to remove any documents in the court file but merely to upload the annexures separately.

[150] The failure of the applicant's attorney to oversee his staff in relation to what appears on CaseLines resulted in his employee substituting documents in the court file without the leave of the Court.

[151] Accordingly, the judgment will be referred to the Legal Practice Council to investigate this attorney's conduct.

ORDER

Case Numbers 2024-082442, 2025-028874, 2025-028323, 2024-067596, 2025-036086, 2025-047763, 2025-047757, 2024-124432, 2023-116827, 2024-130896, 2024-141685

1. These applications are removed from the roll.
2. The applicant is given leave to file a fresh independent valuation under oath and the applications may not be set down again without such valuation.
3. Save for case numbers 2024-067596, 2025-047763 and 2024-141685, the respondent in each matter is to be given notice of set-down of the next hearing of the application, a copy of the fresh independent valuation under oath and a copy of this judgment, which service shall be personal or in terms of any order which already provides for substituted service or save as directed otherwise by a court.

4. In case numbers 2024-067596, 2025-047763 and 2024-141685, the respondent in each matter is to be furnished with the application, a notice of set-down of the next hearing of the application, a copy of the fresh valuation under oath and a copy of this judgment, which service shall be personal or in terms of any order which already provides for substituted service or save as directed otherwise by a court.

5. There is no order as to costs, and the wasted costs of removing these matters from the roll in all these matters are not to be charged to the relevant respondent's account with the applicant. In addition, the additional costs of complying with this order and otherwise ensuring that the application is ripe for hearing is also not to be charged to the relevant respondent's account with the applicant.

Case Number 2024-134542

1. The application is postponed *sine die*.
2. The applicant is given leave to file a fresh independent valuation under oath and the application may not be set down again without such valuation.
3. Prior to re-enrolling the application, the applicant must serve on the respondent personally through the sheriff, the following documents:
 - 3.1. a revised section 129(1) Notice which, in addition to meeting the requirements of section 129(1)(a) of the National Credit Act 2005, also indicates that it is a revised notice and reflecting the respondent's current arrears;
 - 3.2. a notice of set down which must state that:
 - 3.2.1. the application set down for hearing on 18 June 2025 was postponed *sine die*;
 - 3.2.2. the respondent's rights in terms of the National Credit Act, and in particular those contemplated by section 129(1)(a) of the Act, are unaffected by the fact that an action and consequent application for default judgment have already been instituted;
 - 3.2.3. the respondent is invited to respond to the revised notice within ten days of service of that notice;

3.2.4. the respondent is given ten days, from the date of service of the revised notice to explore those non-litigious ways of purging the respondent's default as set out in the revised notice;

3.2.5. in the event of the respondent failing to respond to the revised notice within ten days of service of that notice, then application will be made for an order in terms of the notice of motion which was set down for hearing on 18 June 2025;

3.2.6. the date on which application will be made which date must be more than ten days from the date of service of the revised notice;

3.3. the fresh valuation under oath;

3.4. a copy of this judgment.

4. The Registrar is directed to send a copy of this judgment to the Legal Practice Council to investigate the submissions of the applicant's Counsel and attorney and to draw their attention to paragraphs [82] to [89], [95], [97] to [98], [105] - [115] of the judgment in the case of Counsel and paragraphs [82] to [94], [96] to [104] of the judgment in the case of the attorney.

5. The Registrar is directed to send a copy of this judgment to the Pretoria Society of Advocates to investigate the submissions of the applicant's counsel and to draw its attention to paragraphs [82] to [89], [95], [97] to [98], [105] - [115] of the judgment.

6. There is no order as to costs, and the wasted costs of postponing the matter is not to be charged to the respondent's account with the applicant. In addition, the additional costs of complying with this order and otherwise ensuring that the application is ripe for hearing is also not to be charged to the respondent's account with the applicant.

Case Number 2025-028322

1. This application is removed from the roll.

2. The applicant is given leave to file a fresh independent valuation under oath and the applications may not be set down again without such valuation.

3. The respondent in this matter is to be given notice of set-down of the next hearing of the application, a copy of the fresh valuation under oath and a

copy of this judgment, which service shall be personal or in terms of any order which already provides for substituted service or save as directed otherwise by a court.

7. There is no order as to costs, and the wasted costs of removing this matter from the roll are not to be charged to the respondent's account with the applicant. In addition, the additional costs of complying with this order and otherwise ensuring that the application is ripe for hearing is also not to be charged to the respondent's account with the applicant.

4. The Registrar is directed to send a copy of this judgment to the Legal Practice Council to investigate the conduct the applicant's attorney and to draw their attention to paragraphs [116] to [151] of the judgment.

In all matters:

1. The Registrar is directed to deliver a copy of this judgment to the South African Council for the Property Valuers Profession established under the Property Valuers Profession Act, 47 of 2000 and to draw their attention to paragraphs [26] to [66] of the judgment.

F SOUTHWOOD

ACTING JUDGE OF

THE HIGH COURT OF SOUTH AFRICA,

GAUTENG DIVISION, JOHANNESBURG

Date of hearing: 8 and 20 June 2025

Date of judgment: 9 July 2025

This judgment was handed down electronically by circulation to the parties' representatives by email and by uploading the judgment onto CaseLines. The date of delivery of the judgment is deemed to be 9 July 2025.

Appearances:

Case No.: 2024-134542

For the Applicant:

Counsel: name withheld

Instructed by: name withheld

Case No.: 2024-082442

For the Applicant:

Counsel: L Makhoba

Instructed by: Molefe Dlepu Inc

Case No.: 2025-028874

For the Applicant:

Counsel: R Carvalheira

Instructed by: Enderstein Malumbete Inc

Case No.: 2025-028323

For the Applicant:

Counsel: V Fine

Instructed by: Rossouws Leslie Inc

Case No.: 2024-067596

For the Applicant:

Counsel: R Carvalheira

Instructed by: Enderstein Malumbete Inc

Case No.: 2025-028322

For the Applicant:

Counsel: V Fine

Instructed by: name withheld

Case No.: 2025-036086

For the Applicant:

Counsel: R Carvalheira

Instructed by: Enderstein Malumbete Inc

Case No.: 2025-047763

For the Applicant:

Counsel: M Msomi

Instructed by: Lowndes Dlamini

Case No.: 2025-047757

For the Applicant:

Counsel: M Msomi

Instructed by: Lowndes Dlamini

Case No.: 2024-124432

For the Applicant:

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Case No.: 2024-116827

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Case No.: 2024-130896

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Case No.: 2024-141685

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