IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 13604/2022

(1) REPORTABLE: YES / NO.

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

(3) REVISED.

DATE: 11/07/2025

SIGNATURE

In the matter between:

THE SHERIFF OF THE HIGH COURT, HALFWAY – ALEXENDRA **APPLICANT**

And

KGOSI MAEPA **PURCHASER / RESPONDENT**

In Re:

NEDBANK LIMITED

(Reg No. 1951,000009/06 **PLAINTIFF/ JUDGMENT CREDITOR**

And

THONDA KISHAN CHAND

(Born: 10 June 1963) **DEFENDANT**

JUDGMENT

INTRODUCTION

1. The applicant brought an application for the following orders:

   1.1. The sale in execution held on 27 June 2023, in respect of the property known as Section 5[...] L[...] M[...], Vorna Valley is set aside.

   1.2. That the above Honourable Court authorise that the immovable property as described as Section 5[...] L[...] M[...], Vorna Valley be put up for sale by public auction, without a reserve price.

   1.3. The deposit paid shall be retained by the applicant, in trust, pending the quantification of loss sustained and the granting of judgment in relation thereto in terms of Rule 46(11)(b), provided that if no claim for loss sustained has been lodged within a period of 120 (hundred and twenty) days from the date of cancellation of the sale such deposit shall be refunded to the purchaser.[1]

BACKGROUND

2. On 27 June 2023, the sale in execution of the property took place for R230 000.00. The property was purchased by the respondent in accordance with the terms of the sale agreement. At the time of the sale, he did not produce any mandate authorising the purchase on behalf of the said three companies he purported to be representing.

3. The respondent paid a 10% deposit towards the purchase price in the amount of R23 000.00 including an amount of R12 132.47 being the auctioneer's commission in terms of clauses 7(a) and 9(a) of the agreement.

4. According to clause 7(b) of the agreement, the respondent was required to pay the balance of the purchase price and/or secure same by guarantee within twenty one (21) days after the sale in execution. However, the respondent failed to comply with the aforesaid condition within the timeframe, and within an additional five (5) day extension period.[2]

5. Despite repeated demands for payment, the respondent secured the balance of the purchase price, by a guarantee issued on 24 October 2023, which is

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[1] Notice of application in terms of Rule 46(11)(a) and Rule 46(12)(a) and (b), caseline 03-1 to 03-3

[2] Condition of sale in execution of immovable property caseline 04-5 to 04-16

three (3) months after the lapse of the twenty one (21) days in terms of the agreement and the sale in execution.

6. The said guarantees were valid for a period of six (6) months and have since lapsed. No further payments have been received in terms of the remainder of the monies due in terms of the statement provided to the respondent on 7 March 2024. It is imperative to note that the respondent would need to comply with the conditions of sale, in full and anew.[3]

7. There was still non-compliance with the agreement, in particular, clause 9(b)(i)-(iii) of the agreement. He failed to pay amounts due to the municipalities and all levies due to the body corporate. At the time, the outstanding amount was R425 296.84 as per the copy of the statement of account dated 7 March 2024 after partial payment of R20 100.56 was received.[4]

8. Seeing that the respondent is unable to settle the outstanding balance of R444 956,48, the applicant proceeded with the Rule 46(11) for the cancellation of the sale, which was opposed on 26 October 2023, but no answering affidavit was filed. The application was suspended after receipt of the guarantees for the balance of the purchase price and part payment of the transfer costs.

9. Upon realisation that the respondent seems to be employing delaying tactics, at the cost of the applicant and the judgment creditor, Rule 46(11) application was resuscitated and an order in favour of the applicant was granted in chambers on 6 February 2024.

10. With an understanding between the parties, the applicant abandoned the order dated 6 February 2024 by serving a Rule 41(2) notice dated 28 February 2024. This was done on condition that the respondent will pay the outstanding full rates, taxes and levies by close of business on 8 March 2024. Then pay the reduced levies (if obtained) by not later than 15 March 2024 as communicated by email dated 02 March 2024. Failure thereto, a fresh Rule 46(11) application was to be initiated.

[3] Replying affidavit caseline 08-8 para 19
[4] Replying affidavit caseline 08-8 para 18

11. Again, no payment was forthcoming. Notwithstanding the demand to remedy the breach dated 11 March 2024.

12. A "fresh" Rule 46(11) application was served on the respondent on 6 June 2024. Subsequently, the respondent delivered his intention to oppose on 19 June 2024. However, he did not file his answering affidavit on time despite a courtesy email to do so.

13. In line with Rule 6(5)(f) of the Uniform Court Rules, the application was set down on an unopposed roll for hearing on 17 September 2024. It was removed from an unopposed roll as it has become opposed. The respondent, who to date has not fulfilled his obligations, filed an answering affidavit in opposition of the application, on the eve of the hearing (16 September 2024) and his legal representative was in court on the hearing date.

14. The applicant filed his replying affidavit on 1 October 2024.

RESPONDENT'S ANSWERING AFFIDAVIT

15. The respondent has stated that he has purchased the property on behalf of one of three companies, namely, Bemdi Financial Solutions CC in a representative capacity.[5]

16. At the time of the Sale in Execution, the respondent did not have, nor produce any resolution authorising him to act on behalf of the said entities.

17. Over and above that, he has failed to attach the proof of the same entity he alleges has direct and substantial interest in this matter, as the purchaser of the property.

LEGAL PRINCIPLES

18. Rule 46(11)(a) of the Uniform Court Rules provides that: -

"(i) If the purchaser fails to carry out any obligations due by the purchaser under the conditions of sale, the sale may be cancelled by a Judge summarily on the report of the sheriff conducting the sale, after due

[5] Answering affidavit caseline 07-4 para 11

notice to the purchaser, and the attached immovable property may be put up for sale again.

(ii) the report shall be accompanied by a notice corresponding substantially with Form 21A of the First Schedule.

(iii) if the sale is cancelled, the sheriff shall inform the judgment debtor of the cancellation.

(b) Any loss sustained by reason of the purchaser's default may, on the application of any aggrieved creditor whose name appears on sheriff's distribution account, be recovered from him or her under judgment of the Judge given on a written report by the sheriff, after notice in writing has been given to the purchaser that the report will be laid before the judge for the aforesaid purpose."

19. Rule 46(13) provides that the Sheriff shall give transfer to the purchaser against payment of the purchase money and upon performance of the provisions of the Conditions of Sale and for that purpose do anything necessary to effect registration of transfer.

20. In **Sheriff of the High Court, Johannesburg East vs Chetty and Others, in re: FirstRand Bank Limited T/A FNB Home loans**,[6] the court held that *"the purpose and intention of the provisions of Rule 46(11) …are to expedite the sale of attached immovable property primarily for the benefit of the judgment creditor and other interested parties."*

21. In **Sheriff of the High Court, Witbank vs Wessels; in re: First National Bank, a Division of FirstRand Bank Ltd v Small and Another**,[7] the court stated that: "*the respondent breached the conditions of sale by failure to provide the guarantee as required of her in terms of clause 4.4. She had taken the risk of the property after the fall of the hammer, the signing of the conditions of sale and payment of the initial deposit…"*

22. In Sheriff of the high Court Roodepoort vs Amien, In re: First Rand Bank Limited vs Majeke and Another[8] the court held that: *"the issue for determination is whether or not the applicants are entitled to cancellation of the sale based on*

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[6] (2009/3673) [2014] ZAGP JHC 352 (27 March 2014) para 3
[7] (49144/2010) [2016 ZAGPPHC 189 (5 April 2016)
[8] [2015] JOL 33055 (GJ) at paras 11-12

the facts advanced. There was a series of factual and counter factual points raised by each of the parties against each other spanning a period of approximately two years. Nevertheless, this matter must be adjudicated based on the interpretation of the conditions of sale, the respective parties conduct thereto as well as the rules and statutory obligations governing such matters".

23. It is trite that the legal consequences of a contract concluded as a result of a sale in execution is that it can only be cancelled by a court order upon application by the Sheriff.

APPLYING LAW TO FACTS

24. The respondent cannot dispute that he has not paid the outstanding balance despite demand, and therefore, in breach of the agreement. The breach arose solely as a result of respondent's failure to secure guarantees within the stipulated time frames. Had the respondent timeously provided the bank guarantees, the sale agreement would have been finalised.

25. The respondent has also not complied with clause 9(b)(i) to (iii) of the agreement and is liable for the outstanding amount of R425 296.84 as at 7 March 2024.

26. Instead of finalising the agreement, the respondent employed delaying tactics, making promises to settle the balance and missed all the agreed dates, and opposing any application instituted to cancel the sale with no intention to file an answering affidavit.

27. The guarantees that were provided were valid for a period of six (6) months and have since lapsed. No further payments have been received in terms of the remainder of the balance due as at 7 March 2024.

28. In *casu*, despite being in breach and not having made any payment towards the settling of the balance, he has opposed the application, notwithstanding that for a period of 15 months since the property was sold to him on 27 June 2023, he has failed to demonstrate full compliance with the agreement nor attached any supporting documents thereof.

29. The respondent did not challenge the terms of the agreement and remains in breach. As stated in the case above, he has taken the risk of the property after purchasing and signing the agreement. Furthermore, his non-performance in terms of the agreement entitles the applicant to bring an application to cancel the agreement.

30. The cancellation of the sale agreement will be to the advantage of the judgment creditor as it will enable the reselling of the property to avoid further losses. The applicant submitted evidence to prove that the respondent has not paid the outstanding balance and as a result, he is in breach. The respondent would need to comply with the conditions of sale, in full and anew as there are no guarantees in place currently.

The order:

I make the order in terms of the draft order which is uploaded on Caseline B54 to B56.

TD SENEKE AJ

Acting Judge of the High Court

Gauteng Division, Pretoria

Appearances

For Applicant	:	Advocate PJA Griesel
Instructed by	:	Weavind & Weavind Inc
For Respondent	:	In person