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**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

**CASE NO.: 131861/2025**

(1) REPORTABLE: N

(2) OF INTEREST TO OTHER JUDGES: N

(3) REVISED: Y

Signature:

Date: 22.8.2025

In the matter between:

**MARTIN DZVITI**

First Applicant

**RUTH DZVITI**

Second Applicant

and

**EHLERS FAKUDE INCORPORATED**

First Respondent

**SHERIFF OF THE COURT**

Second Respondent

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**JUDGMENT**

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**Kumalo J**

**INTRODUCTION**

[1]. In this matter, the Applicants approached this court on an urgent basis to interdict the Respondents from proceeding with the sale in execution by public auction of the Applicants' two immovable properties scheduled for the 26<sup>th</sup> of August 2025.

- [2]. The First Respondent opposes the application.
- [3]. The genesis of this matter dates as far back as 2015 and culminated in a full bench appeal in this Court. In 2017, the First Respondent demanded a payment of R246,390.71, which was based on a taxed bill of costs of 2017. Applicants failed to pay the amount, and the First Respondent issued Summons Commencing Action out of the Regional Court, Pretoria. Summary judgment was granted on 18 May 2018 for the above-stated amount plus interest at 10.5% *a tempore more*.
- [4]. The Applicants brought an application for the Rescission of Judgment, which was denied with costs. The taxed bill of costs for the rescission application amounted to R29,816.94.
- [5]. The Applicants were presented with the two bills of costs, and they failed to make payment to the First Respondent. Warrants of execution were issued, but the First Respondent received a *nulla bona*.
- [6]. The First Respondent obtained a Court Order in terms of section 66 of the Magistrate Courts Act 32 of 1944, which authorised the Clerk of the Court to issue a warrant of execution against the immovable property of the debtors.
- [7]. The Applicants decry the fact that the sale in execution of the immovable property, which they allege is their primary residence, is to proceed without a reserve price as required by law and sought to rely on the provisions of Rule 46A of the Uniform Rules of Court.
- [8]. Counsel for the Respondent counted the above by mentioning that the proposed sale in execution in this regard is in terms of section 66 of the Magistrate Courts Act, Act 32 of 1944.

- [9]. Simply applying section 66 has led to abuse by creditors, wherein the debtor's immovable property would be sold for a price that is substantially less than its market value. In the matter of *Jaftha v Schoeman and Others*<sup>1</sup> The Constitutional Court held that section 66(1)(a) was unconstitutional because it failed to provide judicial oversight over sales in execution against immovable property of the judgment debtor. The clerk of the court could issue a warrant of execution against immovable property upon being presented with a *nulla bona* return from the sheriff.
- [10]. Section 66(1)(a) was amended to introduce Rule 56A, which implemented an application process to declare immovable property specially executable in terms of section 66(1)(a) of the Act.
- [11]. In the application, the Court is enjoined to enquire into all relevant circumstances, which may include the amount and nature of the debt, the circumstances in which the debt arose, the financial situation of the debtors and family, any attempts made by the debtor to pay off the debt, the alternatives which might allow recovery of the debt without the sale in execution of the debtor's property, the hardship which will be caused to the debtor and family or other occupiers if the sale is permitted, whether the creditor's interest will be adequately protected and any other relevant factors.
- [12]. In this case, though it appears that an application was made in terms of section 66(1)(a) to declare the Applicants' immovable property specially executable, this Court is not satisfied that a proper consideration was done.
- [13]. The Applicants allege that the property is their primary residence. No reserve price was suggested or proposed. It is not clear from the conditions of sale what rates and taxes are owed, or if they ever were requested from the relevant municipality. There is no indication whether the banks were served with the

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<sup>1</sup> *Jaftha v Schoeman and Others*; *Scholtz and Others* 2005 (2) SA 140 (CC)

applications. All that the deponent to the affidavit of the First Respondent is that they have requested from the banks the balance outstanding on the bond.

[14]. The conditions of sale do not speak to any reserve price and do not indicate what is owed in terms of rates and taxes. It is also not clear if any of the creditors of the Applicants have been advised, for example, the Receiver or Revenue, etc.

[15]. Counsel for the Applicants also raised the issue of whether the First Respondent can claim fees in circumstances where it is self-represented. He based his argument on the fact that the First Respondent is the alter ego of Mr. Fakude, who argued the matter on behalf of the First Respondent. Whilst this may be a fascinating argument, this Court is unable to entertain the same since it was not pleaded in the Applicants' papers, particularly their founding affidavit.

[16]. Whilst technically the Applicants' counsel did not file a certificate confirming the urgency of the matter, this court is of the view that it would be unjust to punish the Applicants for their counsel's failures and/or shortcomings. I am further of the view that the matter was sufficiently urgent to be heard by this Court.

[17]. In the circumstances and based on the above, the following order is made:

1. That condonation for failure to comply with the ordinary rules of this court relating to timeframes and format of application be and is hereby condoned by reason that this application is urgent as envisaged in Uniform Rule 6 (12).
2. The Respondents are hereby interdicted and restrained from carrying out an auction sale in execution in respect of ERF 1[...], PORTION 2[...] H[...] G[...] EXTENSION 102, MIDRAND, JOHANNESBURG in GAUTENG held under Title Deed No 15/8/2025-3:04:33 PM Page 2 of 4 076-9 076-9 3 DT 93941 / 2004 as well as ERF 1[...], PORTION [...] H[...] G[...] EXTENSION

1[...], MIDRAND, JOHANNESBURG in GAUTENG held under Title Deed No  
DT 98113 / 2004 scheduled for the 16th day of AUGUST 2025 at 10h00.

3. Each party is to pay its own costs.

**MP Kumalo**  
**Judge of the High Court**

Delivered: This judgment is handed down electronically by uploading it to the electronic  
file of this matter on CaseLines.

For the applicant: Adv I Mereriwa

Instructed by: Chivizhe & Katiyo Attorneys

For the first respondent: Mr EZ Fakude

Instructed by: Ehlers Fakude Incorporated