**REPUBLIC OF SOUTH AFRICA**

**IN THE HIGH COURT OF SOUTH AFRICA**
**GAUTENG DIVISION PRETORIA**

**Case number: 2020/34021**

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO THE JUDGES: ~~YES~~/NO

(3) REVISED.

SIGNATURE:

DATE: 20/08/2025

In the matter between:

| | |
|---|---|
| **THE STANDARD BANK OF SOUTH AFRICA LTD** | **Plaintiff** |
| **(Registration number: 1962/000738/06)** | |

and

| | |
|---|---|
| **B[...] H[...] Z[...]** | **First Defendant** |
| **(ID Number: 7[...])** | |
| **E[...] N[...] M[...]** | **Second Defendant** |
| **(ID Number: 8[...])** | |

This Judgment was handed down electronically and by circulation to the parties' legal representatives by way of email and shall be uploaded on caselines. The date for hand down is deemed to be on 20/08/2025

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**JUDGMENT**

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**MODISA AJ:**

[1] This is an opposed application for summary judgment whereby the Plaintiff seeks an order in the following terms:

1.1 Summary judgment for payment in the amount of R1 023 221.31 together with interest in the amount at the rate of 12.540% per annum and monthly insurance premiums in the amount of R 253.47 from 07 February 2020 to date of payment, both dates inclusive;

1.2 An order declaring the bonded immovable property specially executable, to this end, that a writ of execution be issued as envisaged in terms of Rule 46 of the Uniform Rules of Court;

Service

[2] The combined summons was personally served on the Defendants on 5 August 2020.

[3] The Defendants served their notice of intention to defend on 18 August 2020.

[4] The Defendants served their plea on 17 September 2020.

[5] The summary judgement application was personally served on the Defendants on 9 October 2020.

[6] The Defendants served their notice to oppose on 6 November 2020.

[7] No answering affidavit was filed by the Defendants.

[8] The supplementary affidavit in terms of Rule 46A was personally served on the Defendants on 16 August 2021.

[9] The notice of set down bearing hearing date as 28 July 2025 was served on the Defendants on 18 March 2025.

Nature of the main issue

[10] The Plaintiff's claim is founded on a home loan agreement in the amount of **R640 000.00**, concluded on 15 February 2012, between the Plaintiff and the Defendants. The Defendants were to repay the loan amount in monthly instalments of initially R 6 479.85.

[11] On 19 March 2012, pursuant to the loan agreement, the Defendants caused a covering mortgage bond to be registered in favour of the Bank over the property known as Erf 7[...] Roodekop Extension 11 Township, held by Deed of Transfer Number: T[...].

[12] On 5 April 2014, the First Defendant applied to have himself declared over-indebted as contemplated in section 86 of the National Credit Ac, 34 of 2005 ("NCA").

[13] The First Defendant subsequently defaulted under the payment arrangement and loan agreement that was being reviewed in terms of section 86(5) of the NCA.

[14] On 14 November 2014, the Plaintiff removed the credit agreement from the First Defendant's debt review proceedings under section 86 of the NCA, and gave the First Defendant notice of termination of the debt review process. The Notice was also served on the First Defendant's debt counsellor and on the Credit Regulator.

[15] Subsequently thereto, the Defendants defaulted in repaying the loan amount in the agreed monthly instalment.

[16] As a result, as at 7 February 2020, the Defendants account was in arrears in the amounted to R231 802.52 and the monthly instalment being R11 614,19.

[17] And as at 7 February 2020, the Defendants were indebted to the Plaintiff under the loan agreement in the amount of R 1 023 221.31, together with interest on the amount at the rate of 12.540% p.a.

[18] On 24 February 2020, the Plaintiff addressed a letter of default and notice in terms of Section 129(1), as read with Section 130, of the NCA notifying the Defendants of their default and calling them to remedy same; failing which the Plaintiff would terminate the agreement and demand payment of the full balance outstanding under the loan agreement.

[19] The Defendants failed and/or neglected to remedy their default in accordance with the Plaintiff's demand.

Execution of property

[20] The property is, to the knowledge of the Plaintiff, the Defendants' primary residence.

[21] The Defendants are, to the knowledge of the Plaintiff, the owners of the property.

[22] The immovable Property was not, to the knowledge of the Plaintiff, acquired by means or with the assistance of a State subsidy.

[23] On 16 August 2021, a supplementary affidavit in terms of Rule 46(1) read with Rule 46A, notifying the Defendants of the rights in terms of Section 26(1) of the Constitution, was served on the Defendants.

[24] Despite receipt of the affidavit, the Defendants have not filed an answering affidavit setting out their current personal circumstances.

[25] Be that as it may, the Plaintiff contends that the Defendants can no longer afford the property. However, they can afford an alternative accommodation.

[26] Therefore, granting an order declaring the bonded property specially executable will not result in depriving the Defendants of their Constitutional right in terms of section 26(1).

Plaintiff's attempts to assist Defendants regularise loan arrears

[27] In addition to the debt review process stated above, the Plaintiff attempted to reach a payment arrangement with Defendants.

[28] On 17 December 2019, the Plaintiff proposed a payment arrangement to the Defendants, together with an option to monitor monthly repayments through the Plaintiff's credit customer assist (CCA), in terms of which the Plaintiff would afford the Defendants an opportunity to pay reduced monthly instalments for a period of six months. The Plaintiff also proposed selling the property through its Easy sell program.

[29] On 22 February 2019, in response thereto, the Defendants notified the Plaintiff of their election to refer the account to CCA for assistance. The Defendants undertook to pay R 3000.00 per month, whilst looking for alternative employment.

[30] The Defendants failed to meet the requirements for a referral to CCA, as they could not furnish the Plaintiff with their individual 3 months Bank statements.

[31] Consequently, on or about April 2019, the Defendants were served with a letter of demand, informing the Defendants that as at 25 March 2019, their account was in arrears in respect of the monthly instalments in the amount of R 146 478.59, with the total balance outstanding under the loan agreement in the amount of R 946 500.31.

[32] Despite the Defendants continuous monthly repayment in the amount of R 3 000.00 towards the loan amount, they have failed to regularise their loan account.

[33] As a result, as at 7 February 2020, the Defendants account was in arrears in the amount of R 231 802.52 and the monthly instalment being R11 614,19. The total balance outstanding under the loan agreement having increased to the amount of R 1 023 221.31,

[34] On 24 February 2020, the Plaintiff addressed a letter of default and notice in terms of section 129(1), as read with section 130, of the NCA notifying the Defendants of their default and calling them to remedy same; failing which the Plaintiff would terminate the agreement and demand payment of the full balance outstanding under the loan agreement.

[35] The Defendants' persisted in repaying R 3 000.00 towards the loan amount, thus failing to regularise their loan account.

[36] The Defendants averred to have remained unemployed from 2017 to 2020. Their present employment status is unknown to the Plaintiff.

[37] As at 23 May 2025, the arrears outstanding in the Defendant's loan account, as a result of their failure to repay the full agreed monthly instalment, accumulated to the amount of R835 733.49.

[38] Given the amount of arrears and the numerous attempts made by the Plaintiff to reach a resolution with the Defendants, it is highly improbable that the Defendants will be in a position to settle the amounts owing under the loan agreement.

The issues to be determined

[39] Whether the Defendants' plea in the action raises a trial defence to the Plaintiff's claim.

[40] Whether the Plaintiff has made out a case for the relief sought in its notice of motion.

Summary of Plaintiff's submissions

[41] The Defendants plea does not raise a triable defence to the Plaintiff's claim. Accordingly, summary judgement should be granted in its favour.

[42] The Plaintiff contends that the Defendants have breached the loan agreement by failing to make full payment of the monthly instalment, which has resulted in the arrears owed increasing to the amount of R835 733.49 .

[43] The Plaintiff contends that in terms of clause 8.3 of the loan agreement, the Defendants agreed to pay all amounts that are due and payable in terms of the Agreement, on or before the payment date, without any reduction or demand.

[44] Further, that in terms of clause 18 of the loan agreement, the Defendants would be in default if-

1. They fail to pay any amount payable to the Plaintiff under the agreement on the due date;
2. There is a material deterioration in their financial position. For purposes of this clause, material deterioration means material deterioration in the Plaintiff's reasonable opinion; and/or
3. The interest and/or costs and/or fees and/or charges are debited to an account, other than their loan account and there are insufficient funds available in the account to be debited to meet these amounts when they become due and payable.

[45] In addition to advancing the loan amount, the Plaintiff has complied with the terms of the loan agreement in that,

i. It has given the Defendants notice of their default requesting them to rectify the default (clause 18.2.1);

ii. It has participated in the First Defendant's debt review process in terms of the section 86 of the NCA (clause 18.2.2); and

iii. Thus, it has commenced legal proceedings to enforce the loan agreement in terms of clause 18.2.7 of the agreement.

<u>Summary of submissions by Defendants</u>

[46] The Defendants deny having breached/ defaulted the loan agreement as alleged by the Plaintiff.

[47] The Defendants contend that they have been paying the monthly instalment in the amount of R 3 000.00 from 10 October 2017 to October 2020.

[48] They contend further that declaring the property specially executable will result in their family's, which includes 4 children, homelessness.

[49] Consequently, the summary judgement application should be refused.

<u>*Ratio decidendi*</u>

[50] In terms of Rule 32(3)(b) of the Uniform Rules of Court the Defendant is obliged to put his or her defence before Court on affidavit and not merely orally from the bar with reference to the plea. In circumstances where all conditions haven been fulfilled by the Plaintiff entitling him or her to summary judgment, a mere statement from the bar that the Defendant has a defence on the merits is demonstrated by the plea, is insufficient to stay judgment[1]

[51] In the premises, summary judgment ought to be granted.

[52] No leave of Court was sought to lead oral evidence. There is no bona fide defence which was disclosed to the Court.

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[1] See: Cf Stofberg v Lochner 1946 OPD 333 and Loots v Van Staden 1962 (1) SA 152 (O); and see Nedbank Ltd v Peterson (unreported, GP case no 61659/2020 dated 20 August 2021) at paragraph [46].

[53] Counsel for the Plaintiff suggested the reserve price to an amount of R 634 693.00 (Six Hundred and Thirty-Four Thousand Six Hundred and Ninety-Three Rand). I am of the view that the suggested reserve price is fair and reasonable.

[54] The certificate of balance is congruent with the amounts indicated as the judgment debt by the Plaintiff in the relief sought.

[55] In the premises, the following order is made:

1. Payment of the amount of R1 023 221.31 (One million Twenty -Three Thousand Two Hundred and Twenty One Rand and Thirty One Cents) towards Plaintiff by the Defendants;

2. Payment of interest on the amount of R 1 023 221.31 at the rate of 12.540% per annum from 7 February 2020 to date of payment both dates inclusive towards Plaintiff by the Defendants;

3. Payment of monthly insurance premiums in the amount of R253.47 from 7 February 2020 to date of payment both dates inclusive towards Plaintiff by the Defendants;

4. That the immovable property described as:

**ERF 7[...] ROODEKOP EXTENSION 11 TOWNSHIP**
**REGISTRATION DIVISION I.R.,**
**PROVINCE OF GAUTENG,**
**MEASURING 271 (TWO HUNDRED AND SEVENTY-ONE) SQUARE METRES HELD BY DEED OF TRANSFER NO. T[…]**
**SUBJECT TO THE CONDITIONS THEREIN CONTAINED**
**("the property")**
be declared executable for the aforesaid amounts;

5. An order authorising the issuing of a writ of execution in terms of Rule 46 read with 46A for the attachment of the Property;

6. That a reserve price to the amount of R 634 693.00 (Six Hundred and Thirty-Four Thousand Six Hundred and Ninety-Three Rand) be set for the sale of the Property, at a sale in execution.

7. Costs of suit on the attorney and client scale.

**MODISA AJ**

**ACTING JUDGE OF THE HIGH COURT**

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|---|---|
| DATE OF HEARING: | 28 JULY 2025 |
| DATE OF JUDGMENT: | 11 AUGUST 2025 |

**APPEARANCES**

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|---|---|
| ON BEHALF OF THE PLAINTIFF: | T NDABA |
| INSTRUCTED BY: | VAN HULSTEYNS ATTORNEYS |
| ON BEHALF OF THE DEFENDANTS: | MJ MOGOTSI |
| INSTRUCTED BY: | CARRIM ATTORNEYS |