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

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

.....3/9/2025.....
DATE

.....
SIGNATURE

CASE NO. 27169/2020

In the matter between:

ABSA BANK LIMITED

Applicant

and

CORNELIUS DE HEUS

Respondent

JUDGMENT

H G A SNYMAN AJ

BACKGROUND

- [1] The respondent (“*Mr de Heus*”) is the owner of the fixed property known as Erf 5[...], Benoni Township, registration division I.R., province of Gauteng, measuring 595 (five hundred and ninety five) square metres, held by deed of transfer number T[...]. This is Mr de Heus’ primary residence. It is situated at 1[...] K[...] Avenue, Benoni, central (“*the property*”).
- [2] Mr de Heus purchased the property by obtaining a home loan from the applicant (“*ABSA Bank*”) on 10 October 2006 in the amount of R715,000. As security for the loan, ABSA Bank registered a mortgage bond of over the property in the combined sum of R858,000.
- [3] Mr de Heus fell in arrears with his bond payments and ABSA Bank instituted action against him in June 2020.
- [4] On 1 August 2022, ABSA Bank obtained judgment against Mr de Heus in this court per order of Makhoba J. In terms of the order:
- [4.1] The judgment amount was R624,934.21 plus interest at the rate of 6.25% per annum as from 19 May 2020 to date of final payment, such interest to be capitalised monthly in arrears;
- [4.2] The property was declared to be specifically executable;
- [4.3] The property had to be sold in execution by the Sherriff subject to a reserve price of R750,000.

- [5] The Sherriff proceeded with the sale in execution on 20 July 2023. It is common cause that before that, the sale in execution was “*properly advertised*” in the Government Gazette and *Citizen* newspaper on 30 June 2023.
- [6] According to the Sherriff’s report in terms of rule 46A(9)(c) and (d) (and this is also common cause), although the auction was attended by eight “*bidders*”, no bid was received.
- [7] This is an application in terms of rule 46A(9)(c) of the Uniform Rules of Court (“*the rules*”). This is for this court to reconsider the reserve price of R750,000 set by the court in granting the order on 1 August 2022.

THE PARTIES’ CONTENTIONS

- [8] ABSA Bank contends in its founding affidavit that the relevant factors this court is required to take into consideration are as follow:
- [8.1] Default judgment was granted in favour of ABSA Bank for a substantial amount, being R624,934.21;
- [8.2] The current outstanding balance on the home loan account, as at 20 September 2023, amounted to R944,326.42 (by now, two years later, it is obviously higher than that);
- [8.3] The outstanding balance is ever escalating, to the detriment of ABSA Bank;

- [8.4] The current monthly instalment amounts to R26,476.91 per month;
- [8.5] The last payment that Mr de Heus made was on 2 May 2018 in the amount of R10,500. The position regarding any payments has not changed since then;
- [8.6] The total current arrears on the amount is R854,503.91 as on 20 September 2023;
- [8.7] The current market value of the property is estimated to be R1,100,000 as per a valuation dated 29 May 2023. The municipal valuation is R870,000;
- [8.8] The outstanding rates and taxes due to the local authority, as at 2 November 2023, amounted to R12,594;
- [8.9] There are, to the best of ABSA Bank's knowledge, no reasons other than the reserve price being too high, taking the outstanding rates and taxes owed to the municipality into account, for the failure to achieve a bid at the sale in execution;
- [9] ABSA Bank contends in addition that both ABSA Bank and Mr de Heus would be prejudiced by any further delay in the matter in that interest, charges and service fees will continue to accrue to the outstanding balance. This will result in the equity in the property being diminished.
- [10] Moreover, ABSA Bank contends in the founding affidavit that both it and Mr de Heus would benefit if the property is sold at a sale in execution "*without*

a reserve price” as expeditiously as possible. This is to guard against the deterioration of the property. In doing so, it would secure a reasonable selling price for the immovable property. I point out that it was also in the heads of argument on behalf of ABSA Bank submitted that no reserve price ought to be fixed. However, this submission was not persisted with before me. Before me, the relief sought was in accordance with the notice of motion, namely that the reserve price be reduced from R750,000 to R600,000.

[11] In his answering affidavit, Mr de Heus admitted that the sale in execution was properly advertised. What transpired at the sale in execution was also admitted.

[12] In so far as ABSA Bank’s relevant factors as set out above are concerned, Mr de Heus merely noted what is stated in subparagraphs [8.1] to [8.6] and [8.8] above. For the remainder:

[12.1] He denied that the property is worth only R1,100,000. According to him, based on a Lightstone erf valuation of the property dated 6 December 2024 that he obtained, the estimated high value of the property is R1,520,000 and the expected value is R1,160,000;

[12.2] He denied that the only reason for a bid not being received was the reserve price.

[13] Regarding the latter, he stated that it is well known fact that the Sheriff’s auctions are flooded with property speculators looking for a bargain and will

therefore not make a reasonable bid or offer. He alleged that this is supported by the fact that no bid at all was received for the property at the Sheriff's auction. He said that if there were serious buyers then at least one bid would have been received. He also referred thereto that the prime interest rate has substantially been reduced since the property was auctioned by the Sheriff, which will make a present sale much more enticing to serious property buyers. Mr de Heus says that this is but one factor that should be considered when determining the reserve price.

[14] He says that the way the auction process is designed, in that the auction is not effectively advertised and managed is to the detriment of respondents such as himself in that a realistic price for the property will not be fixed at these auctions. He said that this court should follow a more practical and creative approach in auctioning a property, thereby realising a realistic market value for the sale of the property. He argued that this will be to the benefit of respondents such as himself as well as others in a similar situation as they would not be burdened with a huge debt after the sale of the property.

[15] He alleged that currently most auctions are still performed at the Sheriff's offices at the sole oversight of the Sheriff. He argued that there is no judicial oversight or governance over these proceedings and it gives room for the abuse of the process, fraud and corruption at these sales. (Mr de Heus provided no support for this contention. This, of course, also does not take into account that if the reserve price fixed by the court is not achieved, the Sheriff must within five days of the auction submit a report to court,

addressing the issues listed in rule 46A(9)(d)(i) to (iv). Judicial oversight is therefore expressly provided for in the rules.)

[16] Mr de Heus also argued that the current sale in execution process is unfavourable. He requests that this court makes an order that the sale in execution should be performed at the court of execution (in this case this court) as opposed to at the Sheriff's office. He also submitted that the sale should occur by the Sheriff, with the Registrar of this court being present. He stated in this regard that the Sheriff should be the auctioneer and the Registrar should be the administrator of the auction proceedings. Moreover, that the sale in execution should be listed on the court roll. (Again, Mr de Heus cited no authority for this).

[17] He argued that the introduction of judicial oversight over a sale in execution process will eradicate the potential of fraud and corruption. He asks that this court increase the reserve price to R812,000.

[18] He merely noted ABSA Bank's contention that both it and Mr de Heus would be prejudiced by any further delay in the matter in that interest, charges and service fees will continue to accrue to the outstanding balance, with the result that the equity in the property will diminish. He argued that a reasonable selling price will only be achieved should this court make an order as proposed by him.

[19] In addition to the above, Mr de Heus denied in the answering affidavit that ABSA Bank's deponent, Ms Thea Louise Williams ("*Ms Williams*") had the necessary authority "*to depose to the founding affidavit*", stating that her

signing authority expired on 31 December 2023. (It is correct that this is actually what appears from the resolution that ABSA Bank attached to the founding affidavit.)

[20] In the replying affidavit deposed to on 27 January 2025, Ms Williams acknowledged that by the time she deposed to the founding affidavit, the signing authority had already expired. She said, however, that nothing turns on this because Mr de Heus did not evoke the provisions of rule 7 of the rules.

[21] Be that as it may, Ms Williams annexed to the replying affidavit what she referred to as *“the correct resolution which ought to have been attached to the initial Founding Affidavit and which resolution was of full operation, force and effect as at 26 February 2024 when I deposed to the initial Founding Affidavit”*. In addition, she said that Mr de Heus’ opposition was ill-founded because she was advised that in law no authority is needed to testify in court proceedings. Any person of sound and competent mind is a competent witness to testify in court proceedings. She therefore contended that there is simply no merit in the ill-founded point made and raised by Mr de Heus.

[22] However, it appears from the resolution attached to the replying affidavit, that it was still not the *“correct resolution”*. It was only passed on 1 August 2024 and it would expire by 31 December 2025. Based on the two resolutions before court, there is therefore a gap between 1 January 2024 to 31 July 2024, i.e. the period during which the founding affidavit was signed. Mr Eastes on behalf of ABSA Bank readily conceded this during

argument before me. He tendered a further resolution.

[23] In the result, when Ms Williams deposed to the founding affidavit, she did not have “*signing authority*” in terms of the signing resolutions before court. Only by when she deposed to the replying affidavit, she had the necessary authority in terms of the resolution.

[24] During argument Mr Eastes reiterated the point that a deponent to an affidavit does not need authority to depose to the affidavit and that lacking signing authority does not make the affidavit a nullity. Moreover, that Mr de Heus’ failure to challenge Ms Williams’ authority to institute the proceedings on behalf of ABSA Bank in terms of rule 7, was fatal to his case.

[25] Mr de Heus persisted with his argument regarding a lack of authority before me. He raised an emotional plea that it does not feel good to get the feeling one is being “*stepped*” on and being thrown the book at.

[26] In so far as the remainder of Mr de Heus’ opposition is concerned, ABSA Bank in its reply noted the points or issues Mr de Heus raised. It argued that Mr de Heus made various secondary conclusions, without any primary facts upon which those conclusions are based. ABSA Bank argued that the resultant effect of this is that the bulk of Mr de Heus’ answering affidavit is inadmissible opinion evidence. It is simply the inadmissible opinion of Mr de Heus. ABSA Bank further argued that the auction process is proper and regulated by the rules. Throughout this whole process, there has been proper compliance with the rules.

[27] ABSA Bank further challenged the correctness of the Lightstone erf valuation. It pointed out that in any event, the Lightstone property valuation indicates that the expected value of the property is R1,160,000, with a high, being the best possible price it would obtain in open market, of R1,520,000. It denied that the values would be achieved in a forced sale, where it is common knowledge that properties sell for lower prices than their market value.

DISCUSSION

(i) Rule 46A

[28] In terms of rule 46A(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.

[29] In terms of rule 46A(9)(b), in deciding whether to set a reserve price and the amount at which the reserve price 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.”*

[30] In terms of rule 46A(9)(c), if the reserve price is not achieved at a sale in execution, the court “*must*”, on reconsideration of the factors in paragraph (b) and its powers under this rule, order how execution is to proceed. The court has a wide discretion in this regard.

[31] In the matter of *ABSA Bank Limited v Mokebe and related cases* 2018 (6) SA 492 (GJ), the Full Court held as follows regarding the court’s duty in a case of a primary residence to consider and, if appropriate, impose a reserve price for the sale in execution:

“[53] The determination of a reserve price is an issue which is provided for in the Uniform Rules of Court. The sale of a property, and in particular of a primary residence, for nominal amounts of money occurs to the detriment of the defaulting homeowner. Such a person, whether the poorest of the poor or otherwise, not only loses his or her home but remains indebted to a mortgagee for a substantial amount — even in cases where the on-sale of the property occurs to buyers at substantially higher prices than the prices realised during the sale in execution.

.....

[57] The courts' power and duty to impose a reserve price is founded, inter alia, in s 26(3) of the Constitution. The process of granting judgment against the homeowner is the first step that may lead to his or her eviction from the property. Thus a court is to consider all the relevant factors when declaring a property specially executable at the behest of a bondholder. It is thus incumbent upon the bank or bondholder to place 'all relevant circumstances' before the court when it seeks an order for execution. This, in our view, includes a proper valuation of the property (under oath), the outstanding arrears, municipal accounts and like information. This is not to thwart the mortgagee's right to execution, to which it may

be entitled, but to secure a just and equitable outcome. It is not a prohibition to realise a bank's security as is suggested in the affidavit filed by Investec. The oversight duty is a far cry from such perceived prohibition. This is based on s 1 of the Constitution which places an obligation on all to promote the value of human dignity, the achievement of equality and the advancement of human rights and freedoms which would include the application of s 26 of the Constitution by a court, having regard to all the relevant circumstances, before sanctioning the process that may lead to the ultimate eviction from a home. This is not to hamper the ability of the mortgagee to execute but that very process requires oversight.”

(ii) Ms Williams’ authority

[32] Ms Williams deposed to ABSA Bank’s affidavit in support of the application on 26 February 2024. In paragraph 1.2 of the affidavit, Ms Williams said that ABSA Bank duly authorised her to depose to the affidavit and to represent ABSA Bank in these proceedings. Attached to the affidavit was ABSA Bank’s resolution, entitled “*ABSA resolution-signing authorities*”. The resolution was dated 1 July 2023. Ms Williams’ name appears from the resolution. According to the resolution it would expire on 31 December 2023. In the result, by the time Ms Williams deposed to the founding affidavit, the resolution had already expired.

[33] I accept that Mr de Heus, acting in person, felt himself at a disadvantage regarding the legal arguments ABSA Bank raised in this regard. However, it is trite that a deponent needs no authority to depose to an affidavit. Streicher JA held in this regard as follows in *Ganes and another v Telecom Namibia Limited* 2004 (3) SA 615 (SCA) at 624G-I:

“[19] There is no merit in the contention that Oosthuizen AJ erred in finding that the proceedings were duly authorised. In the founding affidavit filed on behalf of the respondent Hanke said that he was duly authorised to depose to the affidavit. In his answering affidavit the first appellant stated that he had no knowledge as to whether Hanke was duly authorised to depose to the founding affidavit on behalf of the respondent, that he did not admit that Hanke was so authorised and that he put the respondent to the proof thereof. In my view, it is irrelevant whether Hanke had been authorised to depose to the founding affidavit. The deponent to an affidavit in motion proceedings need not be authorised by the party concerned to depose to the affidavit. It is the institution of the proceedings and the prosecution thereof which must be authorised. In the present case the proceedings were instituted and prosecuted by a firm of attorneys purporting to act on behalf of the respondent. In an affidavit filed together with the notice of motion a Mr Kurz stated that he was a director in the firm of attorneys acting on behalf of the respondent and that such firm of attorneys was duly appointed to represent the respondent. That statement has not been challenged by the appellants. It must, therefore, be accepted that the institution of the proceedings was duly authorised. In any event, Rule 7 provides a procedure to be followed by a respondent who wishes to challenge the authority of an attorney who instituted motion proceedings on behalf of an applicant. The appellants did not avail themselves of the procedure so provided. ...”

[34] In so far as Mr de Heus’ challenge to Ms Williams’s authority to launch the application is concerned, it is equally trite that he had to do so in terms of the mechanisms provided for in rule 7(1).¹

[35] I find that it is inconceivable that an application of this magnitude could have been launched on behalf of ABSA Bank without the knowledge and authority of ABSA Bank.

[36] In the result, I find that Mr de Heus’ challenge in this regard lacks merit.

¹ See Brand JA in *Unlawful Occupiers of the School Site v City of Johannesburg* 2005 (4) SA 199 (SCA) at 205, paragraphs 15 and 16.

(iii) Mr de Heus' argument on the merits

[37] In so far as Mr de Heus' argument is concerned that this court should fix a higher reserve price and order that the auction takes place by the Sheriff as auctioneer, with the Registrar as the administrator of the auction, with the auction being listed on the court roll, I find that Mr de Heus has failed to make out a case in support of this.

[38] Mr de Heus has not presented any authority for this proposition. He has also not provided any statistical data, or evidence that would support his suggestion of an unprecedented mode for the sale in execution.

[39] Moreover, Mr de Heus' suggestion does not accord with the rules and it will overburden the Registrar of this court. There is also no support for his contention that this will result in a higher sale price being achieved.

[40] In any event, this court per Makhoba J on 1 August 2022 ordered that the sale in execution should take place by Sheriff. I see no basis to interfere with that finding, or to rewrite the rules in so far as sales in execution are concerned.

CONCLUSION

[41] As I see it ABSA Bank's case for the reserve price to be reduced to R600,000, and the contentions it raised, stand uncontested.

[42] Of particular concern to me is that ABSA Bank's right to execute against the property has now been delayed for years.

[43] At the same time, Mr de Heus has since 2 May 2018, i.e. for the past seven years, not made any payment towards the arrear amount. The amount is slowly but surely increasing.

[44] In all this time, Mr de Heus could have made alternative arrangements. It was, of course, also open for him to arrange a private buyer, if the property had the value which he contended for in his answering affidavit. His failure to do so is significant.

[45] I therefore agree with Mr Eastes' submission on behalf of ABSA Bank that both ABSA bank and Mr de Heus would be prejudiced by any further delay in the matter and that interest charges and service fees will continue to accrue to the outstanding balance. This will result in the equity in the property being diminished.

[46] In the result, I grant the following orders.

ORDER

[1] It is confirmed that the reserve price of R750,000.00 set by the order of this court dated 1 August 2022 was not met.

[2] The property known as:

**ERF 5[...] BENONI TOWNSHIP
REGISTRATION DIVISION I.R., THE PROVINCE OF GAUTENG
MEASURING 595 (FIVE HUNDRED AND NINETY FIVE) SQUARE
METRES
HELD BY DEED OF TRANSFER T[...]**

SUBJECT TO THE CONDITIONS THEREIN CONTAINED

(hereinafter referred to as “*the property*”) may be sold by the Sheriff at a sale in execution with a reserve price of R600,000.00;

- [3] The respondent is ordered to pay the costs of the application.

H G A SNYMAN

Acting Judge of the High Court of
South Africa, Gauteng Division,
Pretoria

Heard in court: 18 August 2025

Delivered and uploaded to CaseLines: 3 September 2025

Appearances:

For the applicant: Adv J Eastes
Instructed by Delberg Attorneys Inc.

For the respondent: Mr C de Heus
In person