

REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG
CASE NO: 3648/2020

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

In the matter between:

THE STANDARD BANK OF SOUTH AFRICA LIMITED Plaintiff
(Registration Number: 1962/000738/06)

and

MBUYISENI TSHABALALA Defendant
(Identity Number: 7[...])

COURT ORDER

- A. Summary judgement is granted for payment of the amount of R439 829-21;
- B. Interest is to be paid on the amount referred to immediately above at the rate of 8.75% per annum from 13 November 2019 to date of payment as provided for in the Loan Agreement, both dates inclusive;
- C. It is ordered that the immovable property described as:

- (1) A unit consisting of:
- (a) Section No. 22 as shown and more fully described on Sectional Plan No. 67/1988, in the scheme known as Graceland One in respect of the land and building or buildings situate at Northwold Extension 12 Township. Local Authority: City of Johannesburg of which section the floor area, according to the said Sectional Plan is 80 (eighty) square metres in extent; and
 - (b) An undivided share in the common property in the scheme apportioned to the said section in accordance with the participation *quota* as endorsed on the said sectional plan, held by Deed of Transfer No. S[...] (“the Property”);
- be declared executable for the aforesaid amounts;
- D. An order is granted authorising the issuing of a writ of execution in terms of Rul 46 as read with 46A for the attachment of the Property;
- E. It is ordered that a reserve price of R NIL be set for the sale of the property;
- F. Costs of suit on the attorney and own client scale to be paid by the respondent.
-

JUDGEMENT

INTRODUCTION

- (1) This is an application for summary judgement based on a mortgage loan which is secured by a first mortgage bond over a sectional title property owned by the respondent.
- (2) Summons was already issued in 2020 and the amount allegedly owed by the respondent in respect of unpaid mortgage instalments, municipal rates and taxed, as well as levies and other charges owing to the body corporate, have increased significantly since 2020 if regard is had to the information made available by the applicant in 2025.
- (3) The respondent's personal and employment circumstances seem to have changed, mostly for the better, since he delivered his plea on 15 September 2022, but his attorney submitted at the hearing in 2025 that he is over-indebted.
- (4) From the documents filed on Caselines it appears that the matter was in the unopposed motion roll of 12 October 2023. On that date Strijdom J postponed the matter *sine die*, ordered the matter to be re-enrolled in the opposed motion roll and the respondent was directed to ensure that his attorneys of record officially place themselves on record within 14 days from the grant of that order. The respondent was directed to

ensure that his attorneys of record are present in court on the next hearing date.¹

- (5) At the hearing date in 2025, the respondent's attorney was present in court, but the respondent was personally not present. I asked the respondent's attorney whether he was ready to proceed although he has never placed himself on record as directed by Strijdom J on 23 October 2023. He did not object. He was willing to provide any information that might be required by the court in terms of Rule 46A(3), (5), (8) and (9) and generally for the court to exercise its judicial oversight function properly.

LITIGATION HISTORY

- (6) On 16 September 2008 the parties entered into a Loan Agreement² for a loan amount which was utilised by the respondent to acquire the mortgaged property.
- (7) The Loan Agreement was to endure for a period of 240 months.³
- (8) The Loan Agreement was subject to terms and conditions, including that a mortgage bond be registered in favour of the plaintiff for an amount of R580 000-00 over the immovable property described as:

¹ Caselines, 029-1 to 2.

² Caselines, Particulars of Claim ("PoC"), para 4, 001-6.

³ Caselines, PoC, para 5.4, 001-7.

Certain: (1) A unit consisting of: (a) Section No. 22 as shown and more fully described on Sectional Plan No. 67/1988, in the scheme known as GRACELAND ONE in respect of the land and buildings situate at Northwold Extension 12 Township, Local Authority: City of Johannesburg of which section the floor area, according to the said Sectional Plan is 80 (EIGHTY) square metres in extent; and (b) an undivided share in the common property in accordance with the participation *quota* as endorsed on the said sectional plan, held by Deed of Transfer No. S[...] (hereinafter referred to as “the property”).⁴

- (9) The defendant chose three different addresses as the addresses at which notices and documents in any legal proceedings against the defendant, including notices of attachment of the property, could be served.
- (10) Default notices were sent by registered mail to all three addresses in terms of section 129, read with section 130, of the National Credit Act 34 of 2005.⁵ As at the date of this notice the arrears were R44 495-85 and the total indebtedness under the Loan Agreement was R439 829-21.⁶

⁴ Caselines, PoC, para 5.9, 001-7 to 8.

⁵ Caselines, Annexure “**PoC4**”, 001-57 to 001-61.

⁶ Caselines, PoC, paras 12.1-12.2, 001-11.

- (11) The respondent failed to remedy his breach of the Loan Agreement and the applicant was accordingly entitled to claim the total of all amounts owing by the respondent under the Loan Agreement.⁷
- (12) The applicant avers in the particulars of claim that it made various attempts to assist the respondent to regularise his arrears position under the Loan Agreement.
- (13) In the particulars of claim the applicant claimed all amounts outstanding under the Loan Agreement, with interest thereon, that the property be declared executable for the amounts claimed, an order authorising the issuing of a warrant of execution in terms of Rule 46, read with Rule 46A, for attachment of the property, that a reserve price be set by the court for the sale of the property at a sale in execution, at a value to be determined by the court, and costs on an attorney and client scale.
- (14) The combined summons was served on 13 February 2020. The respondent (defendant in the action) served a notice of intention to defend and delivered a plea on 14 September 2022.⁸
- (15) On 6 October 2022 the applicant served an application for summary judgement on the respondent.⁹ By that time the arrears on the Loan

⁷ Caselines, PoC, 18.1-18.4, 001-13 to 001-14.

⁸ Caselines, 006-1 to 006-14.

⁹ Caselines, 007-1 to 007-18.

Agreement was R266 373-08 according to a certificate of balance dated 6 October 2022.¹⁰

- (16) On a consideration of the plea filed, the respondent pleaded that he was unemployed since 2014 until 2022, he denied having received a section 129 letter, read with section 130, in terms of the NCA and insisted that service of the summons was premature.¹¹ The respondent denied the correctness of the Certificate of Balance and described it as “mythical” and that it is unestablished how the balance was computed.¹²

- (17) The respondent has, however, not pleaded any facts to substantiate his bare denial of the amount owed according to the applicant.

- (18) The applicant has pleaded, in its particulars of claim, all the averments necessary to comply with the National Credit Act as well as those required by section 26 of the Constitution and those in Rule 46(1)(a)(ii) in respect of the property being declared executable, as the property concerned is the primary residence of the respondent.

- (19) The respondent has raised as a defence in his plea that the applicant has not complied with section 129 (read with section 130) of the NCA.¹³ He denies being “associated” with any addresses to which the section 129 NCA default notices were sent. The applicant referred to the following:

¹⁰ Caselines, Annexure “**SJ2**”, 007-21.

¹¹ Caselines, Plea, para 13, 006-5.

¹² Caselines, Plea, para 16, 006-5.

¹³ Caselines, Defendant’s Plea, para 13, 006-4 to 5.

- (19.1) In the Loan Agreement the respondent chose 3 Greenwood, Niven Avenue, Bryanston as his address for service of legal notices.¹⁴
- (19.2) In the mortgage bond the respondent chose 589, 5th Road, Northwold Extension 12, Randburg and 675 Mpela Street, Dube as his *domicilium* addresses.¹⁵
- (19.3) 2[...] G[...], N[...], Randburg is the respondent's residential and primary address.¹⁶
- (20) The respondent denied that the section 129 notices were never "delivered". The applicant submitted that this defence does not raise an issue for trial as the notices were dispatched to the respondent's *domicilium* addresses and that it had complied with the requirements laid down for credit providers in relation to section 129 Notices in **Sebola v Standard Bank**.¹⁷ The applicant:
- (20.1) Sent the section 129 default notices by registered mail to the respondent's *domicilium* addresses;
- (20.2) The Section 129 default notices were delivered to the correct post office;

¹⁴ Annexure "**POC1**", Loan Agreement, Clause 17, 001-38.

¹⁵ Mortgage Bond, Annexure "**POC2**", Clause 13, 001-54.

¹⁶ Answering Affidavit, paras 48049, 008-18.

¹⁷ 2012 (5) SA 142 (CC).

- (20.3) A “track and trace” report has been annexed to the particulars of claim; and
- (20.4) The necessary allegations had been made in the particulars of claim.
- (21) Once the applicant has satisfied the above requirements, any contention by the respondent that a Section 129 default notice was not dispatched, is without merit and does not raise an issue for trial.
- (22) Another defence raised by the respondent, having not denied to be in default in terms of the Loan Agreement, is merely that he does not accept that he has been in default to the “... exaggerated extent that the applicant exacts”¹⁸ and also claims that he serviced the loan “whenever he could”.¹⁹ No facts were pleaded in respect of these defences.
- (23) The respondent also claimed that the Certificate of Balance has “untrue contents” and he also denies that the Certificate of Balance is proof of amounts owed.
- (24) The applicant submitted that the said defence does not raise an issue for trial for the following reasons:
- (24.1) When entering into the Loan Agreement and mortgaging the immovable property, the respondent agreed that a certificate

¹⁸ Answering Affidavit, para 23, 008-9.

¹⁹ Answering Affidavit, para 4, 008-5.

of balance will on its mere production be sufficient proof of any amount due or owing unless the contrary is proved.²⁰

(24.2) The respondent does not deny the mortgage bond or its terms.²¹

(25) In any event, denying the Certificate of Balance or the amount claimed without providing a factual basis is not enough to withstand the granting of summary judgement. In **NPGS Protection and Security Services CC v First Rand Bank Limited**²² it was held at paragraph 11:

“Rule 32(3) of the Uniform Rules requires an opposing affidavit to disclose fully the nature and grounds of the defence and the material facts relied upon therefor. To stave off summary judgement, a defendant cannot contend him- or herself with bald denials, for example, that it is not clear how the amount claimed was made up. Something more is required. If a defendant disputes the amount claimed, he or she should say so and set out a factual basis for such denial. This could be done by giving examples of payments made by them which have not been credited to their account.”

(26) The respondent pleaded that the applicant has brought the summary judgement application to dispossess the respondent of his

²⁰ Mortgage Bond, Annexure “**POC2**”, clause 5, 001-51.

²¹ Answering Affidavit, paras 10-13, 008-6.

²² [2019] JOL 44849 (SCA).

Constitutional right to housing as the property in question is the respondent's primary and only abode.²³

- (27) The respondent also contends that, as at the date of his answering affidavit²⁴ he was poverty stricken, he relied on a meagre disability pay to sustain himself and granting judgement against him will render him homeless.²⁵
- (28) It transpired at the hearing of the matter in 2025 that the respondent's position has improved financially. That emerged from an email letter he himself uploaded onto Caselines²⁶ a few days before the hearing. This aspect was canvassed with his attorney when the court considered the prescribed factors under Rule 46A(2). This will be dealt with later.
- (29) The respondent further pleaded bare denials or that he had no knowledge of the applicant's allegations or that he regards those allegations with suspicion. Rule 32(3)(b) requires an affidavit filed in opposition to summary judgement to disclose fully the nature and grounds of the defence and the material facts relied upon therefore. It is found that these bare denials by the respondent did not raise any triable issue and are not sufficient to resist summary judgement.
- (30) The affidavit filed in support of the application for summary judgement complied with the requirements under Rule 32 in that the applicant

²³ Defendant's Answering Affidavit, para 27, 011-11.

²⁴ As at 28 December 2022, 011-21.

²⁵ Answering Affidavit, para 30, 011-12.

²⁶ Caselines 039-1.

launched the application within 15 days after delivery of the respondent's plea and the applicant's deponent has:

(30.1) Verified the cause of action and the amount claimed;

(30.2) Identified the facts upon which the claim is based; and

(30.3) Explained briefly why the defences as pleaded do not raise any issue for trial.

(31) It is therefore found that the applicant is entitled to summary judgement as claimed in the particulars of claim.

EXECUTABILITY OF THE PROPERTY

(32) The applicant claimed relief that the respondent's property be declared executable for the amounts claimed as owing in the particulars of claim, that an order be issued for a warrant of execution in terms of Rule 46, as read with Rule 46A, for the attachment of the respondent's property and that a reserve price be set for the sale of the property at a sale in execution at a value to be determined by the court.²⁷

(33) The respondent submitted that the applicant failed to provide evidence of the market value of the property and the amount owing to the local authority. These issues are to be considered under Rule 46A(5)(a) and (c). These will be considered later in the judgement. The respondent objected to his property being declared executable as he has nowhere

²⁷ Caselines, Particulars of Claim, paras 22.3-22.5, 001-15 to 16.

to go should he be evicted.²⁸ He accused the applicant of having an ulterior motive and of seemingly employing devious tactics in seeking executability of the respondent's primary residence. He submitted that the applicant is inspired by profit and has seen the executability of the respondent's property as a shortcut to achieving that sinister objective. The respondent further submitted that the applicant will not suffer any prejudice whatsoever should the respondent's primary residence not be declared executable. The respondent submitted that he will be rendered destitute should he be dispossessed of his primary residence.²⁹

(34) As will become evident hereunder, by 2025, when the hearing in this matter took place, the facts were different from 2022 when the answering affidavit was signed and commissioned. The debt has increased significantly and a large amount, albeit in dispute, is owing to the body corporate of Graceland 1 Scheme, a significant amount was owing to the City of Johannesburg for property rates and other charges, the total of which amounts exceeded the market value of the property.

(35) The applicant submitted that an order declaring the immovable property executable, is in this case warranted taking into account that:

(35.1) The respondent's attention was drawn to the relevant provisions of the Constitution;

²⁸ Answering Affidavit, 011-13.

²⁹ Answering Affidavit, para 37, 011-15.

- (35.2) There has been proper service of the application, including service on the local authority and the body corporate; and
- (35.3) The application complied with Rule 46A(5) as all the prescribed supporting documents were annexed thereto.³⁰ These documents include a Lightstone valuation³¹ and an independent valuation.³²
- (36) Further documents were annexed to the application such as statement of the mortgage account,³³ a municipal account (which also reflected the municipal valuation of the property),³⁴ and a payment profile of the respondent's mortgage accounts detailing all payments made by him.
- (37) The applicant complied with the requirements of Rule 46A(5) in respect of a primary residential property. It relied on the judgement of the Constitutional Court in **Jaffha v Schoeman**³⁵ where it was held that:

"If the judgement debtor willingly put his or her house up in some or other manner as security for the debt, a sale in execution should ordinarily be permitted where there has not been an abuse of court procedure."

CONSIDERATION OF RULE 46A

³⁰ Annexures "SJ6" and "SJ7", 008-46.

³¹ "SJ6", 007-43 to 50.

³² "SJ7", 007-51 to 54.

³³ "SJ4", 007-28 to 42.

³⁴ "SJ5", 007-43 to 44.

³⁵ **Jaffha v Schoeman and Others; Van Rooyen v Stoltz and Others** 2005 (2) SA 140 (CC) at [58].

- (38) In **Bestbier and Others v Nedbank Lt**³⁶ the Constitutional Court considered the scope, purpose and interpretation of Rule 46A, the history of which may be traced back to the **Jafta**-judgement referred to above. The purpose of Rule 46A is for the courts to protect the rights enshrined in section 26 of the Constitution and to exercise judicial oversight in the execution process. It is important for the court to tailor a remedy after having regard to the facts of a case and against the fact that execution is not an odious thing, provided that the peremptory provisions of Rule 46A are followed. The Constitutional Court then considered the provisions of Rule 46A to consider whether and how they were applicable to the facts of that matter.
- (39) What made this matter complicated is that the factors placed before the court by the applicant in the affidavit supporting summary judgement, were stated as at 1 October 2022. The hearing of the matter took place in January 2025 and updated financial information was provided. The information as at 1 October 2022 will be dealt first and thereafter the 2025 information. What has become clear was that the financial position of the respondent had become much worse over that period and that prompted the respondent's attorney to submit at the hearing that his client is "over-indebted". That is relevant in considering the provisions of Rule 46A(2)(a)(iii) as to whether there are alternative means by the respondent, as judgement debtor, of satisfying the judgement debt

³⁶ 2024 (4) SA 331 (CC) paras [54]-[65].

other than by execution against the judgement debtor's primary residence. No alternative means were put forward by any party.

(40) The applicant placed the following factors before the court as at 1 October 2022.

(40.1) The instalments payable by the respondent in terms of the Loan Agreement amount to R8 785-82 (the instalments).³⁷

(40.2) The instalments in arrears as at 1 October 2022 amount to R266 373-08, which means that the respondent was approximately 30.31 months in arrears with payment of his monthly instalments.³⁸

(40.3) The last payment received from the respondent was an amount of R6 590-85 on 3 May 2021.³⁹

(40.4) The full amount owing by the respondent to the applicant, and which was secured by the mortgage bond, is the amount of R531 057-59.⁴⁰

(41) The applicant submitted that it is unlikely that the respondent will be willing or able to satisfy the judgement debt by way of payment to the applicant for the above reasons and that there is no alternative or less

³⁷ Caselines, para 34.1, 007-12.

³⁸ Caselines, paras 34.2 and 34.2, 007-12.

³⁹ Caselines, para 34.4, 007-12.

⁴⁰ Caselines, para 34.5, 007-13.

invasive means available for satisfying the judgement debt.⁴¹ The respondent referred to this submission as “utterly confounding” and then stated that he cannot admit or deny it.⁴² He did not plead any facts to assist the court to understand his plea.

- (42) The applicant submitted that the respondent’s right of access to housing as envisaged in section 26(1) of the Constitution should be weighed against the applicant’s rights against a property specially mortgaged to it as security, and on the basis that the respondent expressly agreed that the applicant could foreclose on the property in the event that the respondent is in default with his obligations in terms of the Loan Agreement.⁴³ The respondent denied this submission.
- (43) The applicant submitted that the bond serves as a continuing covering security for the obligations of the respondent and that the applicant would not have lent and advanced the monies for which judgement is sought in the absence of the registration of the bond.⁴⁴ The respondent denied this submission in a bare denial.
- (44) The applicant further submitted that it was not seeking the executability order with an ulterior motive, but does so to recover a debt that is due, owing and payable to it.⁴⁵ The respondent pleaded that the applicant had an ulterior motive and was inspired by profit and that it would suffer

⁴¹ Caselines, para 35, 007-13.

⁴² Caselines, at 011-14.

⁴³ Caselines, para 36, 007-13.

⁴⁴ Caselines, para 37, 007-13.

⁴⁵ Caselines, para 38, 007-13.

no prejudice if a declaration of executability was not made.⁴⁶ This aspect was not pursued further by the respondent in argument at the hearing.

(45) In support of its application for summary judgement, the applicant annexed to the founding affidavit, the following in support of the financial information stated in the affidavit:

(45.1) A certificate of balance⁴⁷ which confirmed the total indebtedness of the respondent.

(45.2) A payment profile statement⁴⁸ which recorded each and every payment made by the respondent from 31 July 2008 to 3 October 2022. This statement was not disputed.

(45.3) A statement of the bond account⁴⁹ of the respondent indicating all debits and credits on the account from registration of the bond up to 3 October 2022. This statement was not disputed.

(46) Within the above context, the applicant placed further factors and information before the court to be taken into account when determining a reserve price for a sale in execution, should it be deemed appropriate to do so.

⁴⁶ Caselines, para 37, 011-15.

⁴⁷ Caselines, Annexure “**SJ2**”, 007-21.

⁴⁸ Caselines, Annexure “**SJ3**”, 007-22 to 27.

⁴⁹ Caselines, Annexure “**SJ4**”, 007-28 to 42.

(47) A copy of a tax invoice⁵⁰ from the City of Johannesburg in respect of the respondent's property was annexed to the affidavit showing a municipal valuation of R700 000-00 and an amount owing of R22 446-09 as at 7 September 2022. The monthly charges were R455-39 excluding VAT and the arrears outstanding for more than 90 days an amount of R20 406-62.

(48) A Lightstone Valuation⁵¹ was annexed indicating:

(48.1) The property zoned as a residential property;

(48.2) The estimated higher tier value of R820 000-00;

(48.3) The municipal value of the property is R700 000-00;

(48.4) The estimated lower tier value of the property is R670 000-00;

(48.5) The estimated overall value of the property is R720 000-00;

(48.6) The aforesaid estimated values of the property are based on an accuracy score of 92%; and

(48.7) The comparative sales within the area of the property.

⁵⁰ Caselines, Annexure "SJ5", 007-14.

⁵¹ Caselines, Annexure "SJ6", 007-45 to 50.

(49) A current and independent market valuation in respect of the respondent's property was provided⁵² indicating that:

(49.1) The property is zoned for residential purposes;

(49.2) The market value of the property is estimated at R670 000-00; and

(49.3) The forced sale value of the property is R536 000-00.

(50) The applicant submitted that a reserve price could be calculated as follows:⁵³

Forced Sale Value:	R536 000-00
Less: Outstanding Rates and Taxes:	R22 446-09
Proposed reserve price:	R513 553.91

(51) The deponent to the founding affidavit declared that to the applicant's knowledge the property was not obtained by way of a state subsidy.

(52) In respect of the applicant's submissions on the calculation of the reserve price, the respondent simply pleaded that the applicant's calculation should not be entertained.⁵⁴

(53) The applicant further submitted that there were no other bonds registered over the respondent's property and thus no other secured creditor.

⁵² Caselines, Annexure "SJ7", 007-51 to 54.

⁵³ Caselines, para 44, 007-15.

⁵⁴ Caselines, Answering Affidavit, para 43, 011-17.

(54) The applicant then summarised the factors pleaded by the respondent,⁵⁵ and also the applicant's submissions in respect thereof. They are not dealt with here due to what was part of the information before the court some two-and-a half years later in 2025.

(55) The applicant submitted that, in weighing up the rights of the applicant and respondent:

(55.1) The respondent's inability to afford the property and being unable to pay what is lawfully due to the applicant and being unable to pay and keep the liabilities associated with the property up to date should be considered.

(55.2) It was submitted that there is no other satisfactory means of satisfying the respondent's indebtedness to the applicant and that an order should be granted to declare the property specially executable;

(55.3) The applicant will be severely prejudiced if it is not permitted to execute against the property as it will have no other means of recovering the debt.⁵⁶

SUBMISSIONS AND INFORMATION AT THE HEARING

(56) At the hearing in January 2025 Mr Phambuka appeared for the applicant. Mr Mukwevho of Mukwevho Mokgola Inc. Attorneys

⁵⁵ Caselines, paras 49-54, 00716 to 17.

⁵⁶ Caselines, para 55, 007-17 to 18.

appeared for the respondent, despite the fact that the said attorneys had not placed themselves officially on record as ordered by Strijdom J on 12 October 2023.⁵⁷ At this hearing the respondent did not attend the proceedings in court. I enquired from Mr Mukwevho whether he would be able to address the court and answer any questions which the court may want to ask when considering the factors prescribed in Rule 46A(8) and (9). When he answered in the affirmative, he was allowed to address the court on behalf of the respondent.

(57) Prior to the hearing, the applicant uploaded onto Caselines certain updated information as follows:

(57.1) A Certificate of Balance dated 16 January 2025 indicating the indebtedness of the respondent to be an amount of R647 470-44 as at that date and that the monthly instalment at that date was R16 766-61.⁵⁸

(57.2) An account statement from the applicant up to 3 January 2025 with the amount owing as per the Certificate of Balance of R647 470-44. This statement indicates that no monthly instalment was paid since 2019, save for an amount of R5 000-00 on 20 November 2024 and an amount of R5 500-00 on 14 December 2024.⁵⁹

⁵⁷ Caselines, Court Order, 029-1 and 2.

⁵⁸ Caselines, 038-18.

⁵⁹ Caselines, 038-1 to 17.

- (57.3) A statement⁶⁰ issued on behalf of the Body Corporate of Graceland 1 by Whitfield Property Management indicating an amount due by the respondent to the Body Corporate as at 1 February 2025 for levies and electricity of R1 897 620-37.
- (57.4) A statement from the local authority indicating that at 11 January 2025 an amount of R36 692-23 was due and payable.⁶¹
- (58) Counsel for the applicant dealt with the claims and the defences raised and submitted that the respondent did not raise any triable issue in opposition to the application for summary judgement. He pointed out that it was now the third time the matter is in court and that the indebtedness of the respondent increased significantly since summons was issued in 2020. From the statement filed by the applicant it was clear that each and every debit order since 2018 was reversed.
- (59) The applicant submitted that in view of the indebtedness of the respondent and the amounts owing to the applicant, the local authority and the body corporate in 2025, the setting of a reserve price was a futile exercise as there was no equity in the property. In all probability no bids would be received at a sale in execution as the purchaser would have to pay the amounts owing to the local authority and the body

⁶⁰ Caselines, 040-4 to 17.

⁶¹ Caselines, 038-23 to 24.

corporate in terms of the prescribed conditions of sale, the total of which far exceeded even the market value of the property.

- (60) When the court considered whether a reserve price should be set, the *dicta* in the judgements of **Standard Bank of South Africa Ltd v Hendricks and Related Cases**⁶² and **Absa Bank Ltd v Mokebe and Related Cases**⁶³ were taken into account that where a court grants an order for execution against the primary residence of a debtor, saving exceptional circumstances it is obliged to set a reserve price. Such exceptional circumstances are present in this matter and therefore no reserve price is set. These circumstances have been set out above, including that the respondent's total indebtedness far exceeds even the market value of his property.
- (61) Mr Mukwevho submitted on behalf of the respondent that he remains employed and could pay the amount owing to the applicant in eight equal monthly instalments.⁶⁴ The respondent had made an offer to the applicant on 9 October 2023, which offer was not accepted.
- (62) Mr Mukwevho nevertheless submitted that the respondent is over-indebted, after having heard the argument on behalf of the applicant. He contended that the levy calculation was incorrect and that the amount owing was R200 000-00 less.

⁶² 2019 (2) SA 620 (WCC) at 641 C-D.

⁶³ 2018 (6) SA 492 (GJ).

⁶⁴ Caselines, Supplementary Heads of Argument, para 5.4, 034-2.

- (63) Even if the court gives the respondent the benefit of the doubt and reduce the amount owing to the body corporate by R200 000-00, the balance of approximately R1 600 000-00 far exceeds the market value of the respondent's property.
- (64) On a question from the court, Mr Mukwevho replied that the respondent and his brother reside in the property concerned. No further information was made available as to whether the brother could contribute to the expenses in respect of the property.⁶⁵
- (65) The court asked Mr Mukwevho whether he had received an email letter addressed to him a few days prior to the hearing and which letter was uploaded onto Caselines by the respondent personally.⁶⁶ He confirmed that he did receive it. The email reads as follows:

"Hi Phathu

Thanks for taking my call. Could you please negotiate with Standard Bank that I repay R10 000-00 at the moment until I get back on my feet. The current instalment of just over R15 000-00 is unaffordable. Otherwise that's what our defence will be that I did not just leave the bond as it is, but I suggested reduced premiums and that we ask the court to reduce the premiums.

Thanks in advance

⁶⁵ See Rule 46A(9)(b)(VI).

⁶⁶ Caselines, 039-1.

Mbuyi”

- (66) Mr Mukwevho confirmed that he had not made the offer to the applicant as instructed by his client. He also did not request that monthly instalments be reduced.
- (67) The court put it to Mr Mukwevho that if his client could afford to spend R10 000-00 per month on residential accommodation, the respondent would not be homeless if his property was sold in execution and that he could rent reasonable alternative accommodation for R10 000-00. He agreed with the court.
- (68) In reply counsel for the applicant pointed out that no allegation of an abuse of court process was made by the respondent. He also submitted that the mortgage bond made provision for executability.
- (69) An interim order was issued at the end of the proceedings that the parties had two more days to upload information and submissions to verify the amount outstanding in regard to amounts payable to the body corporate, including any judgement of the magistrates court to which reference was made in argument.
- (70) Well after the deadline, and some four months later, the respondent's attorney uploaded supplementary submissions to the affect that a claim of R184 159-17 by the body corporate against the respondent was dismissed and that the body corporate riled an appeal against the

dismissal of that claim. The submission was made that the court could not set a reserve price whilst there are matters pending which challenged the levies.⁶⁷

- (71) Having considered all the facts set out in Rule 46A(9), and the information set out above, the court has come to the conclusion that it is most likely that no offer will be received should a reserve price be set. Arranging a sale in execution in accordance with Rule 46 at a reserve price will simply cause more time to pass by without any likelihood of an offer being received, which will just cause further costs being incurred. This will cause prejudice to the applicant to pay the costs of the sale in execution and it will prejudice the respondent in that his indebtedness to the applicant, the local authority and the body corporate will simply further increase significantly without the possibility that there may be value for him to be obtained from a sale when his indebtedness far exceeds even the market value of the property.
- (72) The order to be issued will consequently make provision for the execution of and attachment of the property, with a sale in execution to be held at a R NIL reserve price. Any purchaser will have to pay the amounts owing to the local authority and the body corporate.
- (73) Consequently, the order set out above, is made.

⁶⁷ Caselines, 043-1 to 2.

LM du Plessis
Acting Judge of the High Court
Gauteng Division
Johannesburg

REPRESENTATION

For the applicant
Counsel:
Attorneys:

Adv N Phambuka
Ramsay Webber Inc.

Respondent

Attorneys:

Mr Phathutshedzo Mukwevho
Mukwevho Mokgola Inc. Attorneys

Date of Hearing:

23 January 2025

Date of Judgement:

25 September 2025