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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 131907/2024

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

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

(3) REVISED:

DATE 8/10/25

SIGNATURE

In the matter between:

**ABSA HOME LOANS GUARANTEE COMPANY
RF (PTY) LTD**

First Applicant

ABSA BANK

Second Applicant

and

VERONICCA MAKGAO LEDWABA

Respondent

ORDER

The following order is **made**:

1. Summary judgment is granted in favour of the First Applicant against the Respondent, for:
 - 1.1 Payment of the sum of R1 767 523.05;

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- 1.2 Interest on the amount of R1 767 523.05 calculated at the rate of 13% per annum, calculated and capitalized monthly in arrears from 5 November 2024 to date of payment, both dates inclusive;
- 1.3 Interest on the amount above at the rate of 13% per annum, calculated and capitalized monthly in arrears from 5 November 2024 to date of payment, both dates inclusive;
- 1.4 An order declaring the following immovable property specially executable:
 - 1.4.1 Remainder of Erf 1[...] P[...] N[...] Township, Registration Division J.R. Gauteng Province, measuring 1375 (ONE THOUSAND THREE HUNDRED AND SEVENTY-FIVE) square meters and held by Respondent in terms of Deed of Transfer Nr T12424/2021. ("the immovable property").
- 1.5 That the Registrar of the above Honourable Court be authorised to issue a writ of execution in respect of the immovable property referred to above, in order to give effect to the orders granted above;
- 1.6 A reserve price for the sale in execution of the immovable property is set at R 1 000 000.00;
- 1.7 In the event that the reserve price, as referred to in prayer 5 above, is not achieved at the first sale in execution, the First Applicant is granted leave to approach the Court on the same papers, duly supplemented as required, for purposes of obtaining a reduced reserve price for subsequent sales in execution;
- 1.8 That the Respondent is advised that the provisions of Section 129(3) (a) and (4) of the National Credit Act of 2005 ("the NCA") may apply to the judgment granted in favour of the Applicants;

1.9 The Respondent may prevent the sale of the property above if the Respondent pay all the overdue amounts (arrears) owing to the Applicants together with the Applicants' permitted default administration charges and reasonable costs of enforcing the agreement up to the time of reinstatement, prior to the property being sold in execution.

1.10 This Order is to be served upon the Respondent prior to any sale in execution of the property; and

1.11 The Respondent is to pay costs on the attorney and own client scale.

JUDGMENT

TOLMAY J

1. This is a summary judgment application. The applicants also seek an order of executability in terms of Rule 46A of the Uniform Rules of Court. The respondent is in arrears with the payments to the applicant in terms of a mortgage bond. On the day of the hearing Ms Ledwaba, who appeared in person, indicated that she was going to make a payment and was hopeful that the matter would be settled. After argument was heard, the matter stood down until 10 September 2025 to give the parties an opportunity to settle. A further extension was requested and granted, but on 15 September the Court was informed that the settlement negotiations failed.
2. The respondent raised several points in her answering affidavit opposing the summary judgment application but limited her argument in court to the financial challenges that she is facing. The crux of it is her business went through some difficulty and she is hopeful that she will soon be in a position to comply with her obligations towards the applicants. The last payment to the applicants was made on 7 June 2024 in the amount of R20 338.12. The monthly instalment on the bond is R23 508.20. She is in arrears in the amount of R413 515.75.

3. Seeing that the respondent appeared in person, it is appropriate to deal and consider the defences raised in her opposing affidavit, even though she did not deal with all the issues raised in her affidavit in her oral argument.
4. The respondent, in a summary judgment application, is required to disclose fully the nature and grounds of the defence and the material facts relied upon. In *Breitenbach v Fiat SA (Edms) Bpk*¹ it was said that bold, vague and sketchy defences should not be countenanced. In subsequent cases the same principle was reiterated. In the matter of *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture*² the Supreme Court of Appeal explained that summary judgment procedure is not intended to deprive a defendant with a triable issue or a sustainable defence of his/her day in court. In considering whether a defendant does indeed have a triable issue or sustainable defence, the court should first consider whether there was a sufficient disclosure by the defendant of the defence sought to be relied upon. Second, it should be considered whether the defence so disclosed is bona fide and good in law.
5. In *NPGS Protection and Security Services CC & another v FirstRand Bank Ltd*³ the Supreme Court of Appeal confirmed again that summary judgment applications require an opposing affidavit to disclose fully the nature and grounds of the defence and the material facts relied upon therefor. To stave off summary judgment, a defendant cannot content 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.

¹ 1976 (2) SA 226 (T) at 229F-H.

² 2009 (5) SA 1 (SCA) at 11G-12D.

³ *NPGS Protection and Security Services CC & another v FirstRand Bank Ltd* (314/2018) [2019] ZASCA 94 (6 June 2019).

6. In respect of the content of the affidavit which must support an application for summary judgment under the amended Rule 32, In *Tumileng Trading CC v National Security and Fire (Pty) Ltd; E and D Security Systems CC v National Security and Fire (Pty) Ltd*:⁴ it was explained as follows:

'Is the deponent to the supporting affidavit then required to repeat in narrative form what should already be apparent from the plaintiff's pleadings? Or is he or she expected to set out the facta probantia in elaboration of the facta probanda alleged in the pleadings? Having regard to the purpose of summary judgment proceedings, which is to prevent matters in which the defendant does not appear to have a bona fide defence having to go to trial, no obvious point is served by an elaborate supporting affidavit concerning the merits of the plaintiff's pleaded claim. I think that it would be desirable therefore if plaintiffs were encouraged to confirm what should already be apparent from their pleaded case as succinctly as possible. No purpose will be served by a laborious repetition of what the judge and the defendant should be able to discern independently from the pleaded claim. No harm will be done by using a 'formulaic' mode of expression if it serves the purpose, which, it seems to me, it would do in most matters.

The requirement that the plaintiff's supporting affidavit should explain briefly why the pleaded defence 'does not raise an issue for trial' is of more interest. ... the plaintiff is not required to explain that the plea is excipiable. It is required to explain why it is contended that the pleaded defence is a sham.

What the amended rule does seem to do is to require of a plaintiff to consider very carefully its ability to allege a belief that the defendant does not have a bona fide defence. This is because the plaintiff's supporting affidavit now falls to be made in the context of the deponent's knowledge of the content of a delivered plea. That provides a plausible reason for the requirement of something more than a 'formulaic' supporting affidavit from

⁴ 2020 (6) SA 624 (WCC).

*the plaintiff. The plaintiff is now required to engage with the content of the plea in order to substantiate its averments that the defence is not bona fide and has been raised merely for the purposes of delay.*⁵

7. In the affidavit resisting summary judgment, the respondent stated, without any elaboration that "...I wish to object to the application of this summary judgment simultaneously with the RULE 46A". She disputes her breach of the written mortgage loan agreement. She said that the applicants failed to properly contextualize the situation in the particulars of claim. She then proceeds to state "Ever since I bought the house in question, I did not at all default on my instalments until I ran short of money and this was communicated to the Applicant." The Respondent further ostensibly disputes compliance with the requisite pre-enforcement steps as contemplated in terms of the National Credit Act 34 of 2005 (NCA) and the outstanding amount.
8. In respect of the denial of breach, if the content of the plea and affidavit resisting summary judgment is viewed in context, it is evident that the respondent does not dispute her objective failure to comply with the repayment obligations arising from the mortgage loan agreement. The respondent explained the lack of compliance. She pleads that "... I am self-employed and not earning a salary every month. At the time when I took the loan, the business was running very well and I paid my monthly instalments on time and in full. Then business started doing badly early this year and I told the Plaintiff's staff about my problems". She also admitted non-compliance during her argument in court.
9. In respect of the denial by the respondent that there was compliance with the provisions of the NCA, the following points to the lack in merit of that argument. In the mortgage loan agreement and the indemnity, the respondent chose as her domicile address the address of Unit B[...] C[...] E[...], Akasia, Pretoria. As is evident from the papers a pre-enforcement notice was dispatched by the second applicant to this address. This is

⁵ Id paras 19-22.

evident from the track and trace report. The applicants also dispatched a pre-enforcement notice to this address. The respondent, however, states that this address should not have been utilised since she has moved from this address to the mortgage property (being 1[...] E[...] Road, Pretoria North) subsequent to the conclusion of the relevant agreements. However, pre-enforcement notices were also dispatched to the mortgaged property, and the track and trace report reflects that the notice reached the Pretoria North Post Office and that a first notification of receipt was issued. Moreover, as evident from the annexure, the first applicant also dispatched a pre-enforcement notice to this address.

10. In *Kubyana v Standard Bank of South Africa Ltd*⁶ the Constitutional Court dealt with the issue of what will be considered to suffice as proper “delivery” of a notice contemplated in Section 129 of the NCA. It was held that: “...the Act does not require a credit provider to bring the contents of a s 129 notice to the subjective attention of a consumer. Rather, delivery consists of taking certain steps, prescribed by the Act... When the consumer has elected to receive notices by way of the postal service, the credit provider's obligation to deliver generally consists of dispatching the notice by registered mail, ensuring that the notice reaches the correct branch of the Post Office for collection and ensuring that the Post Office notifies the consumer (at her designated address) that a registered item is awaiting her collection” and “...the Act does not allow a consumer to ignore, or unreasonably fail to respond to, notifications from the Post Office and thereby stave off enforcement proceedings by a credit provider.”
11. As far as the respondent disputes the correctness of the indebted amount it is important to note the terms of the agreement. Clause 8 of the executed indemnity and clause 9 of the mortgage bond stipulates that the indebtedness due in terms of the mortgage loan agreements shall be prima

⁶ 2014 (3) SA 56 (CC). the notice reaches the correct branch of the Post Office for collection and ensuring that the Post Office notifies the consumer (at her designated address) that a registered item is awaiting her collection.”³⁹ and “...the Act does not allow a consumer to ignore, or unreasonably fail to respond to, notifications from the Post Office and thereby stave off enforcement proceedings by a credit provider.”

facie proven by the presentation of a certificate of balance. The amount claimed in the particulars of claim is supported by such a duly presented certificate of balance and, furthermore, an updated certificate of balance is attached to the affidavit filed in support of the summary judgment application.

12. In *F & I Advisors (Edms) Bpk en 'n Ander v Eerste Nasionale Bank Van Suidelike Afrika Bpk*⁷ it was held by the Supreme Court of Appeal, that it is not required from a Plaintiff to deconstruct the manner in which a claim amount was constituted in the pleadings if the claim amount is not placed in dispute. Once the claim amount is sufficiently placed in dispute, only then will it be required from a Plaintiff to deconstruct and prove the manner in which the claim amount has been constituted. The respondent did not tenably place the claim amount in dispute.
13. In respect of the simultaneous institution of an application for summary judgment and the relief envisaged in terms of Rule 46 read with Rule 46A, this is uncontroversial. In the matter of *Absa v Swayer*⁸ it was held that a plaintiff is entitled to apply for orders in terms of a summary judgment and rule 46A simultaneously. As was pointed out all the relevant information is before the court and I agree that there is no reason why a separate application is required.
14. The rule was amended to stipulate that the court must exercise a judicial oversight, where the property is the primary residence of the judgment debtor. no writ shall issue, unless the court, having considered all the relevant circumstances, orders execution against such judgment⁹
15. In *Gundwana v Steko Development CC and Nedcor Bank Limited*¹⁰ the following was said:

⁷ 1999 (1) SA 515 (SCA).

⁸ Absa Bank Limited v Sawyer (2018/17056) [2018] ZAGPJHC 662 (14 December 2018).

⁹ Rule 46(1)(a).

¹⁰ 2011 (3) SA 608 (CC).

*'It must be accepted that execution in itself is not an odious thing. It is part and parcel of normal economical life. It is only when there is disproportionality between the norms used in the execution process to exact payment of the judgment debt, compared to other available means to attain the same purpose, that the alarm bells should start ringing. If there are no other proportionate means to achieve the same end, execution may not be avoided'*¹¹

16. In the matter of *FirstRand Bank Limited v Folscher and Another and Similar Matters*¹², it was explained:

*'If a creditor's claim is opposed, the debtor will ordinarily be in the best position to advance any contentions he may wish to make and will be able fully to inform the court of any aspect that should be taken into account.'*¹³ In *ABSA v Mokebe*¹⁴ it was emphasised that in matters where executability is sought, a balance should be struck between the interest of a commercial institution on the one hand, and the importance of a debtor's right to adequate housing, in light of the important socio-economic tool that bond financing entails.¹⁵

17. The court reiterated the principles espoused in *Nkata*¹⁶, to the effect that a debtor will, until a sale in execution has been conducted (implying that the property in question has been sold and the proceeds of the sale has been paid), be in a position to reinstate an agreement by payment of the arrears and permitted other charges.¹⁷
18. The property is a primary residence and therefore it is appropriate to set a reserve price. The respondent is residing there with her three children. She says she will be rendered homeless if the relief is granted. She however does not give any detail regarding the possibility of obtaining alternative

¹¹ Ibid par [54].

¹² 2011 (4) 314 (GNP).

¹³ par [41].

¹⁴ 2018 (6) SA 492 (GJ).

¹⁵ At paragraph [1] and [3].

¹⁶ *Nkata v FirstRand Bank Limited and Others* 2016 (4) SA 257 (CC) (21 April 2016) 'Nkata'.

¹⁷ At paragraph [43].

accommodation. In oral argument and in the affidavit, she said she will soon be able to pay the amounts owing. This is indicative of the fact that she will be able to obtain alternative accommodation if she fails to make payment.

19. In considering the reserve price that must be set, the factors to determine the setting of the reserve price will depend on the facts of each case. There is no *numerus clausus* (limited list) of factors that should be considered to determine a reserve price. In order to exercise a proper discretion, however, it is incumbent upon an applicant to address relevant factors in the application. In this instance the applicants did that. The respondent failed to place facts before the court. The court must determine the matter based on the facts provided by the applicants.
20. A proper case for summary judgment was made out. A reserve price should be set. The private valuation reflects a market value of R1 800 000.00. The municipal valuation is R970 000.00. The arrear rates and taxes amount to R336 527.63. Taking these into account a reserve price of R1 000 000 is reasonable.

The following order is made:

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R TOLMAY
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances:

For First and Second Applicant: Adv CL Markram-Jooste instructed by VZLR Inc

For Respondent: In person

Date of Hearing: 1 September 2025

Date of Judgment: 8 October 2025