

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 19777 / 2020

(1) REPORTABLE: NO

(2) OF INTEREST TO THE JUDGES: NO

(3) REVISED: NO

DATE: 17 November 2025

SIGNATURE:

In the matter between:

OATES ARCHITECTS CC

Applicant

and

PHATUDI PHENEAS NKOSI

First Respondent

NEDBANK LIMITED

Second Respondent

JUDGMENT

This judgment is handed down electronically by circulation to the parties' legal representatives by email and by being uploaded to CaseLines. The date and time for hand down is deemed to be 17 November 2025.

MAHON AJ:

INTRODUCTION

[1] This application concerns the execution of a judgment debt arising from an architectural services agreement concluded between the applicant, Oates Architects CC, and the first respondent, Mr Phatudi Pheneas Nkosi, in respect of the design and renovation of the latter's residential property situated at 4[...] S[...] A[...] Road, Bryanston. The applicant seeks an order declaring the immovable property specially executable in terms of Rules 46 and 46A of the Uniform Rules of Court, pursuant to an order granted by Dippenaar J on 30 June 2022, in which summary judgment was entered against the first respondent. The second respondent, Nedbank Limited, is cited by virtue of a registered mortgage bond over the property.

[2] The underlying contractual relationship is largely common cause. The applicant, represented by its sole member, Mr Mark Dylon Oates, was engaged to provide architectural services for a residential project of considerable scale. The agreement adopted the ordinary regime of staged architectural fees, calculated as a percentage of the final value of the works. During the course of the project, the estimated value of the works escalated

materially. The applicant maintains that this escalation was the inevitable product of the design brief, the client's instructions and the professional assessment of the scope of work. The applicant contends that it completed the stages for which fees are claimed, and that despite partial payment, a substantial balance remained due. When the first respondent terminated the agreement, the applicant became entitled to be remunerated for the completed stages, which formed the basis of the claim successfully advanced in the summary judgment proceedings.

[3] The first respondent advances a very different narrative. He contends that the applicant unilaterally inflated the project budget, increasing it from an initial estimate of approximately R2.5 or R3 million to more than R10 million without his informed consent. He further alleges that the applicant failed to discharge material obligations under the agreement, including the submission of building plans to the City of Johannesburg, compelling him to engage a replacement architectural firm to regularise the drawings ultimately used to renovate the property. These issues formed the essence of his opposition to the summary judgment application, and later his attempt to appeal the order. Both the High Court and the Supreme Court of Appeal rejected these contentions, the latter refusing leave to appeal on the basis that there were no reasonable prospects of success.

[4] Against this background, the present application for execution is resisted not on the basis of impecuniosity, homelessness or considerations traditionally advanced in Rule 46A matters, but through a renewed assertion that the underlying judgment is erroneous and that the applicant acted

unprofessionally. These contentions are intertwined with the first respondent's subsequent complaint to the South African Council for the Architects Profession ("SACAP"), which led to disciplinary proceedings and a finding of professional misconduct against Mr Oates some months after the order by Dippenaar J had been granted. The first respondent urges that these disciplinary findings call into question the legitimacy of the fees claimed and, by extension, the executability of his home.

[5] On the papers, the applicant maintains that the disciplinary proceedings have no bearing on the judgment debt, which stands unless set aside on proper procedural grounds, and that the first respondent's renewed attempt to traverse the merits of the summary judgment is impermissible. It further contends that the present application does not fall within the class of matters in which execution against a primary residence threatens homelessness or infringes constitutional protections, particularly as the first respondent appears to own additional immovable property and has not placed before the Court a concrete case of personal or financial hardship.

[6] It bears noting that, from the Bar, it was averred that the adverse finding initially made by the disciplinary committee was subsequently overturned on appeal. If true, that development would further underscore that the disciplinary process has no bearing on the validity of the judgment debt. However, in my view, it matters not as the existence of the judgment debt remains unaffected, whatever the outcome of those proceedings may have been.

[7] The matter therefore requires the Court to assess the factual matrix with some care, to identify the true issues that remain open for determination at the

execution stage, and to determine whether the statutory requirements governing execution against a primary residence have been met.

ISSUES FOR DETERMINATION

- [8] The dispute had narrowed considerably by the time it reached this stage of the proceedings. The judgment debt is extant, final, and has withstood challenge at both High Court and appellate level. The essential question is therefore not whether the applicant is owed the amount reflected in the Dippenaar J order, but whether the applicant has met the requirements of Rules 46 and 46A for the execution of that judgment against the first respondent's immovable property, and whether any of the first respondent's contentions justify withholding or qualifying such relief.
- [9] The issues that arise for determination may be distilled into four interrelated questions.
- [10] First, whether the applicant has complied with the procedural and substantive requirements of Rule 46A, including the furnishing of a proper valuation, the identification of a suitable reserve price, and the placing before the Court of all information necessary to enable a just and equitable assessment of whether execution against the property is warranted.
- [11] Secondly, whether the first respondent has demonstrated, on the papers, that execution against the immovable property would undermine constitutional protections associated with access to adequate housing, or would otherwise render the order unjust or disproportionate. This enquiry encompasses whether the property is indeed his primary residence; whether he has access

to alternative accommodation; whether the judgment debt arises from obligations that justify recourse to a primary residence; and whether the first respondent's financial circumstances demand judicial intervention to temper the ordinary consequences of a final monetary judgment. The question of whether the property is the first respondent's primary residence is clouded by contradictory indications: the answering affidavit cites a different residential address, whereas the first respondent later suggested from the bar that he resides at the property.

[12] Thirdly, whether the matters raised by the first respondent concerning the conduct of the applicant, the escalation of the project budget, the alleged non-submission of plans, and the subsequent disciplinary findings of SACAP bear any relevance to the execution enquiry. The Court must consider whether these issues, already canvassed and rejected during the summary judgment proceedings and in the unsuccessful application for leave to appeal, may permissibly be revisited at this stage, either directly or indirectly.

[13] Fourthly, whether any equitable considerations, including the existence of a mortgage bond in favour of the second respondent, the level of indebtedness on the property, and the relationship between the municipal valuation, market valuation, and the proposed reserve price, support or detract from the relief sought.

[14] These issues form the basis of the Court's analysis and, taken together, determine whether an order declaring the property specially executable is appropriate in the circumstances.

LEGAL FRAMEWORK

[15] Execution against immovable property is governed by Rules 46 and 46A of the Uniform Rules of Court. Rule 46 provides the general mechanism for execution against immovable property, while Rule 46A creates a specialised and constitutionally sensitive regime that applies whenever the property concerned is a residential immovable property owned by a judgment debtor. Rule 46A must therefore be treated as the governing framework in this matter, although it operates against the backdrop of the procedural architecture established by Rule 46.

[16] At common law and under Rule 46, execution against immovable property is permissible only if the judgment debtor's movable assets have been excused, or if the court has declared the immovable property specially executable. Rule 46A preserves this principle, but overlays it with judicial oversight that gives effect to section 26 of the Constitution. The purpose of Rule 46A is to ensure that execution against a person's home does not occur in a mechanical fashion and that considerations of proportionality, dignity and fairness are properly weighed.

[17] Rule 46A(1) requires that no writ of execution against the residential immovable property of a judgment debtor may be issued unless a court has, after considering all relevant circumstances, declared such property specially executable. This judicial oversight extends not only to the fact of execution but also to its practical modalities, including the reserve price and any conditions to be imposed on the sale.

[18] Rule 46A(2) obliges the execution creditor to place before the court detailed information concerning the property. Central to this is a current valuation of

the property, which must be obtained from a sworn appraiser or other qualified person. This valuation assists the court in determining whether a reserve price is required under Rule 46A(9) and in assessing the proportionality of execution.

- [19] Rule 46A(3) obliges the judgment debtor to disclose relevant information regarding his or her personal circumstances, including employment, income, dependants, and the presence or absence of alternative accommodation. Although the subrule creates an obligation, the case law makes clear that the court may not infer that such circumstances are irrelevant merely because the judgment debtor has elected not to disclose them. Judicial oversight requires that the court evaluate all available information, but it is equally true that the debtor bears a burden to place hardship before the court in concrete terms.
- [20] Rule 46A(5) requires service of the application on the judgment debtor, any occupier of the property, and any mortgagee. This ensures that all affected parties are afforded notice and an opportunity to participate in the process.
- [21] Rule 46A(6) embodies the central proportionality assessment. The court must consider all relevant factors, including whether the property is the primary residence of the judgment debtor, the circumstances under which the debt was incurred, the amount of the debt, the debtor's payment history, the presence or absence of alternative means to satisfy the debt, and the potential impact of execution on the debtor and any dependants. Where the property is not a primary residence, the constitutional considerations that animate the rule diminish, though judicial oversight remains required.

- [22] Rule 46A(8) empowers the court to set a reserve price. In recent jurisprudence, this has become the norm rather than the exception, particularly where there is evidence of substantial equity in the property or where the amount owed is markedly lower than the market value. The reserve price serves as a safeguard against sales in execution that would unjustly enrich purchasers or disproportionately harm the debtor. The court may dispense with a reserve price if justified by the evidence.
- [23] Rule 46A(9) requires the court, before authorising a sale in execution, to ensure that the reserve price (if set) reflects a fair balance between the interests of the creditor and the debtor. The market valuation is the starting point, but the rule allows deviation where circumstances demand it.
- [24] Rule 46A(11) permits variation of the reserve price or other conditions of sale should a sale not take place at the reserve price. This ensures flexibility and fairness in circumstances where an initially fair reserve price proves impracticable.
- [25] When execution proceeds, Rule 46 governs the procedural steps relating to attachment, notice, advertising, the preparation of conditions of sale, and the conduct of the auction. These provisions do not require comprehensive discussion here, but two features of Rule 46 remain relevant. First, the sheriff must ascertain and notify all mortgagees and preferent creditors of the intended sale. Secondly, the sale must take place subject to a reserve price where one has been ordered under Rule 46A(9).
- [26] Taken together, Rules 46 and 46A create a dual system in which execution against immovable property is permitted, but in the case of a primary

residence only after careful judicial scrutiny has ensured that the constitutional rights implicated by such execution have been properly respected. The task of the court is to apply these principles to the facts before it, determining whether the applicant has discharged its burdens and whether the first respondent has demonstrated that execution would be unjust, disproportionate or constitutionally impermissible.

POSTPONEMENT APPLICATION

[27] Before turning to the merits of the application, it is necessary to record that at the commencement of the hearing the first respondent, who appeared in person following the withdrawal of his attorneys on 1 August 2025, sought a postponement in order to obtain new legal representation. I afforded him a full opportunity to address me on the circumstances giving rise to the withdrawal, the steps he had taken to secure alternative representation, and the reasons why the matter could not proceed. Counsel for the applicant opposed the postponement, submitting that it was neither timeously nor adequately motivated and that its effect would be to prolong litigation that has already been pending for several years despite the judgment debt having been finalised in 2022.

[28] The first respondent explained that financial constraints had prevented him from securing new attorneys and that he wished to have a legal representative who could, in his view, articulate his grievances concerning the architectural contract more effectively. However, he was unable to provide a satisfactory account of what steps he had taken between the withdrawal of his attorneys on 1 August and the date of the hearing to secure alternative representation.

The explanation proffered was vague and unsupported by any confirming material. He did not contend that he was unaware of the hearing date, nor did he suggest that his former attorneys withdrew without warning or that he had been misled or prejudiced in any way that could not be cured by an appropriate costs order.

[29] In determining the application, I was guided by the well-established principles governing postponements. A postponement is not a matter of right; it is an indulgence granted in the exercise of a judicial discretion, and only where it is in the interests of justice. The applicant is entitled to the finalisation of proceedings that have been delayed for a considerable period. The judgment debt was confirmed on appeal more than two years ago and the first respondent has had multiple opportunities to advance his defences, including through the filing of an answering affidavit in these very proceedings. No new facts or developments were identified that would justify a further delay.

[30] Having considered the submissions of both parties and the history of the matter, I concluded that good cause had not been shown. The request for a postponement appeared to be a belated attempt to defer the inevitable consequences of a final judgment rather than a genuine necessity arising from circumstances beyond the respondent's control. I accordingly dismissed the application for a postponement, with reasons to follow in the main judgment. The hearing then proceeded, with the first respondent participating fully and being afforded the opportunity to address all issues arising in the main application.

ANALYSIS

[31] A preliminary issue concerns the status of the property as the first respondent's primary residence. The papers are not entirely clear on the point. In his answering affidavit, the first respondent identifies his residential address as 3[...] L[...] Avenue, Bryanston, and he does not expressly assert that he occupies the S[...] A[...] Road property as his home. During argument, the first respondent, who appeared in person, initially conceded that the property was not his primary residence. He then appeared to withdraw or qualify that concession, and sought to suggest that he does, in some manner, reside there. The equivocation leaves the record without a definitive and coherent assertion one way or the other.

[32] For purposes of this judgment, however, it is unnecessary to resolve that ambiguity. Even if one assumes in the first respondent's favour that the property is indeed his primary residence, the requirements for granting the relief sought are nonetheless met. The first respondent has placed no evidence before the Court demonstrating that execution would render him homeless, deprive him of access to adequate housing or impose a burden of such gravity as to outweigh the applicant's entitlement to enforce a final judgment. He has identified an alternative residential address and owns at least one additional immovable property, neither of which is said to be unavailable to him. He has provided no information on dependants, household circumstances or financial vulnerability, despite the clear injunction of Rule 46A(3) to do so. In the absence of any concrete evidence of hardship, and given the substantial equity in the property relative to the judgment debt, the constitutional concerns that ordinarily require heightened scrutiny do not arise with any persuasive force. Indeed, in his oral submissions he accepted that he

could relocate if necessary and that the property, if sold, would yield a surplus, even on a conservative valuation. On either characterisation of the property, the proportionality enquiry yields the same conclusion.

[33] The applicant has taken all steps required of an execution creditor in terms of Rule 46A. A current sworn valuation was furnished, together with the municipal valuation and the title deed particulars, enabling the Court to assess the property's present worth and the equity available. The application was properly served on the first respondent and on the mortgagee, Nedbank, and there is no suggestion that any interested party lacked notice or an opportunity to participate. The sheriff's report confirms that the procedural requirements of Rule 46 have been satisfied and that the property may be sold in execution subject to the Court's determination of the questions reserved for judicial oversight. The applicant has therefore placed before the Court the information that the rule obliges it to provide.

[34] The first respondent's answering papers, by contrast, do not engage directly with the constitutional and proportionality enquiries contemplated by Rule 46A. Instead, they invite the Court to revisit the merits of the underlying dispute by asserting that the applicant acted unprofessionally, unilaterally escalated the project budget and failed to submit the building plans. These allegations mirror those raised in opposition to the summary judgment application, and later in the unsuccessful attempt to obtain leave to appeal. The summary judgment stands as a final order, and the Supreme Court of Appeal has refused leave on the basis that none of these contentions presents a reasonable prospect of success. As a matter of principle, the execution stage is not a forum in which

the merits of the judgment may be re-opened. To permit a judgment debtor to resist execution by simply repeating contentions already adjudicated would undermine the finality of judgments and render the execution process contingent on the debtor's dissatisfaction with the outcome of prior proceedings. The proper remedy for a debtor who disputes the correctness of a judgment is an appeal or rescission where available. Neither mechanism assists the first respondent here.

[35] The first respondent's reliance on the subsequent disciplinary proceedings before SACAP does not alter this position. Those proceedings occurred after the order had been granted by Dippenaar J, and no application for rescission or variation has been brought on their account. A disciplinary finding of misconduct against a professional does not retrospectively nullify a civil judgment, nor does it constitute a basis for refusing to give effect to a final order. Unless and until the judgment debt is set aside by a court of competent jurisdiction, the debt exists and must be enforced in accordance with the procedural regime established by the rules. Moreover, the disciplinary findings do not resolve the matters that formed the subject of the summary judgment. They reflect a professional body's evaluation of conduct with reference to its own statutory standards, not a court's determination of contractual liability or quantum. The attempt to blur these domains cannot be sustained.

[36] The Rule 46A enquiry is instead directed to whether execution against the property would constitute an unjustifiable infringement of the protections implicit in section 26 of the Constitution. The first respondent avers in broad terms that the property is his home, but he does not place before the Court

concrete information regarding his household composition, the presence of dependants, or the availability of alternative accommodation. He does not assert that execution will result in homelessness, nor does he provide the kind of personal financial information contemplated by Rule 46A(3). What emerges from the papers is that the first respondent owns at least one other immovable property, which is not said to be encumbered or unavailable for occupation. In the absence of evidence of hardship, the Court cannot assume that the first respondent faces destitution or displacement. While Rule 46A does not permit indifference to the debtor's circumstances, it equally does not require the Court to speculate on hardship where none has been demonstrated. During the hearing, the first respondent acknowledged that he had previously resided at the L[...] Avenue property, that he owns no fewer than two immovable properties on the papers, and that he had attempted to market the S[...] A[...] Road property for sale. None of this supports a conclusion that execution would leave him without accommodation.

- [37] The proportionality enquiry also takes into account the nature and origin of the debt. The judgment arises from fees payable for architectural services voluntarily engaged for a substantial renovation project. The debt is not trivial, nor does it arise from involuntary circumstances or an unforeseen calamity. The first respondent initiated an ambitious building project, accepted the professional services that were rendered, and then chose to terminate the agreement in circumstances that led to litigation. The debt therefore owes its existence to contractual obligations voluntarily assumed, and the creditor is not a financial institution seeking to enforce a mortgage bond, but a professional who has successfully pursued a claim for remuneration. Rule 46A

does not distinguish between classes of creditors, but the provenance of the debt remains a relevant factor in assessing proportionality. The first respondent's oral submissions reinforced the voluntary nature of the underlying obligation: he described the property as a high-value home, accepted that he had invested substantially in its construction, and acknowledged contemplating its sale to address his indebtedness.

[38] The property in question has a material value well in excess of the judgment debt and associated costs. The sworn valuation indicates that even if the reserve price is fixed conservatively, there is substantial equity that can be realised without unfairness to the debtor. The availability of such equity ordinarily supports the granting of an order declaring the property specially executable, subject to an appropriate reserve price, since it avoids the risk of the debtor's home being sacrificed for a fraction of its worth. The presence of a mortgage bond in favour of Nedbank is not a bar to execution; the bank has been notified and has not opposed the application. There is no evidence of arrear municipal debts or encumbrances that would absorb the equity in a manner that threatens injustice.

[39] Against this background, and in the absence of circumstances that would render execution disproportionate or constitutionally impermissible, the requirements of Rules 46 and 46A are satisfied. The judgment remains extant, the debtor has not made payment, and no credible basis exists to withhold the ordinary consequences of a final order. The first respondent's attempt to revisit the merits cannot be entertained, and he has not established the kind of hardship that would justify refusing or postponing the relief sought. In these

circumstances, it is just and equitable to authorise execution against the property, with a reserve price to be fixed so as to protect the interests of all parties concerned.

CONCLUSION

[40] In the result, the applicant has demonstrated compliance with the procedural and substantive requirements governing execution against residential immovable property. The first respondent, despite ample opportunity, has not placed before the Court any evidence capable of establishing that execution would imperil his access to adequate housing, render him homeless or otherwise produce consequences of a constitutionally impermissible kind. His opposition rests substantially on matters already adjudicated in the summary judgment proceedings and in his unsuccessful attempts to appeal. Those issues cannot be revived at this stage, nor do the subsequent disciplinary proceedings alter the status of the judgment debt or furnish a basis to resist execution.

[41] The property bears a value markedly exceeding the judgment debt and associated liabilities, and there is no indication that a properly supervised sale in execution, subject to an appropriate reserve price, would yield anything other than a fair realisation of the respondent's equity. Weighing the interests of both parties, and applying the judicial oversight required by Rule 46A in light of section 26 of the Constitution, I am satisfied that authorising execution accords with justice and equity in the circumstances.

[42] In my view, a reserve price of R11 050 000 (eleven million and fifty thousand rand) is appropriate to fix for the sale in execution of the property. This amount

reflects a fair proportion of the most reliable evidence of market value placed before the Court, takes account of the municipal valuation, the extent of the judgment debt, the outstanding bond and municipal charges, and preserves the respondent's substantial equity while ensuring that the applicant is not deprived of the fruits of a final judgment.

[43] In the circumstances, the following order is made:

1. The immovable property situated at 4[...] S[...] A[...] Road, Bryanston, held under Title Deed T[...], is declared specially executable in terms of Rules 46 and 46A of the Uniform Rules of Court.
2. A reserve price of R11 050 000 (eleven million and fifty thousand rand) is fixed for the sale in execution of the property.
3. The sheriff for the district in which the property is situated is authorised to attach and sell the property in execution, subject to the reserve price fixed above and in accordance with Rules 46 and 46A. Should the property not be sold at or above the reserve price, the applicant shall return the matter to Court for reconsideration of the reserve price or for such further directions as the Court may deem appropriate.
4. The sheriff shall give all notices required by Rule 46, including notice to mortgagees and preferent creditors, and shall settle the conditions of sale subject to the terms of this order.
5. The sheriff is directed to effect service of this order on the first respondent.

6. The first respondent shall pay the costs of this application, including all reserved costs, on scale B.

D MAHON

Acting Judge of the High Court
Johannesburg

Date of hearing: 12 August 2025

Date of judgment: 17 November 2025

APPEARANCES:

For the Applicant: Adv van der Linde

Instructed by: Blumenthal Attorneys

For the 1st Respondent: In person

No appearance for the 2nd Respondent: