

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

Case Number: 2020-3649

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES
21 November 2025

In the matter between:

THE STANDARD BANK OF SOUTH AFRICA LIMITED

Applicant

and

JEROME MARANG

Respondent

This Judgment is handed down electronically by circulation to the applicant's legal representatives and the respondents by email, publication on Case Lines. The date for the handing down is deemed 21 November 2025

Civil Procedure – Execution against immovable property – Application in terms of rule 46A to have the mortgaged property declared specially executable – New occupier- property no longer a primary home- application granted.

JUDGMENT

MUDAU, J

Introduction

[1] This is an application for default judgment; payment of a sum of money, and an order declaring the respondent's immovable property specially executable. The

matter has a protracted history, having been initiated in 2020. The respondent initially failed to defend the action, leading to this application for default judgment.

- [2] The following relief is sought: payment of the sum of R 570 397.60; interest on the amount referred to immediately above; a declaration that the immovable property described above is specially executable; an order authorising the issuing of a warrant of execution in terms of rule 46, read with rule 46A for the attachment of the immovable property; and costs of suit on a scale as between attorney and client.
- [3] The respondent subsequently filed an answering affidavit, and the applicant has now filed a replying affidavit, for which it seeks condonation due to its significant delay.

Background facts

- [4] The core facts are that on or about 27 January 2005, the parties concluded a written home loan agreement (“the agreement”). The applicant agreed to advance the sum of R 520 000.00 to the respondent. A mortgage bond was registered over the respondent's property described as: REMAINING EXTENT OF ERF 6[...] B[...] V[...] TOWNSHIP REGISTRATION DIVISION I.R, THE PROVINCE OF GAUTENG; In extent 4[...] (F[...] HUNDRED AND F[...]) Square metres; HELD BY DEED OF TRANSFER NUMBER T[...] SUBJECT TO THE CONDITIONS THEREIN CONTAINED (“the property”), to secure the debt. It is common cause that the property was previously the respondent's primary residence. From the objective evidence, the return of service dealt with below, there is a current occupier. Evidently, the property is no longer the respondent's primary home.
- [5] From the agreement, all amounts owing to the applicant in terms of the home loan agreements would bear compound interest, which would accrue daily from the date advanced, and calculated in the manner determined in the home loan agreements; to be paid to the applicant without any deduction or set off. The respondent chose the addresses – 8[...] B[...], B[...] V[...], 2[...], and 4[...] 1[...] Avenue, B[...] V[...] - as the addresses to which notices and documents in any

legal proceedings against him, including notices of attachment of immovable property, could be served.

- [6] In the case of a default by the respondent, the agreement provides that the applicant would, inter alia, have the right, without prejudice to any other rights or remedies available to it, to cancel the agreement and claim immediate repayment of all amounts due to it.
- [7] A certificate signed by any of the applicant's managers, whose appointment need not be proved, would, on its mere production, be sufficient proof, unless the contrary is proved, of any amount due and payable by the respondent, the rate of interest payable, and the date from which the interest is calculated. As of 11 July 2024, the total arrears were R 655 419.67, and the total outstanding amount is R 927 897.00.
- [8] The applicant's case is that the respondent breached the agreement by falling into arrears, and despite numerous attempts at assistance, has failed to regularise his account, leading to the current application. The applicant instituted action against the respondent by way of a combined summons for payment of R 570 397.60. The combined summons could not be served on 8[...] B[...], B[...] V[...], as the respondent was unknown at the address. The application for default judgment was served by affixing it to the main gate on 9 June 2022 at 4[...], 1[...] Avenue, B[...] V[...].
- [9] The applicant then launched an application for substituted service to serve the application for default judgment on the Respondent by substituted service, in terms of Uniform Rule 4 at 2[...] [...] Avenue, B[...] V[...], Gauteng, being the mortgage property address, and an order to that effect was granted on 21 September 2021.

The applicant's replying affidavit and condonation

- [10] The applicant's replying affidavit was filed approximately two years out of time on or about 29 July 2024, after the respondent filed an answering affidavit on 28 June 2022. The respondent filed a notice to oppose the condonation as sought in the applicant's replying affidavit on 12 August 2024 and filed his

opposing affidavit on the same date. The applicant filed its replying affidavit on or about 11 September 2024 in response to the respondent's opposing affidavit to the condonation application. The respondent filed a supplementary affidavit to continue to oppose the applicant's request for late filing of its replying affidavit, on 19 September 2024.

- [11] The explanations provided: attorneys' turnover, misplaced files, and internal administrative delays are far from ideal. While the delay is excessive and the explanation reflects poorly on the applicant's attorneys, the prejudice to the applicant if condonation is refused, being precluded from placing its full case before the court, is substantial. In the interests of justice and to ensure that the matter is decided on its full merits, condonation for the late filing of the replying affidavit is granted as there is no real prejudice to the respondent despite his opposition thereto.

Service of process and compliance with the National Credit Act¹

- [12] The respondent denied receiving the section 129 notice and challenged the service of the summons and the current application, providing a detailed account of the Sheriff's alleged errors. The Applicant relies on the track and trace receipts and notification slips attached to the particulars of claim to demonstrate that the Section 129 notice was sent to the chosen *domicilium* addresses.
- [13] The issue of service is a serious one. However, the respondent's own annexure ("JMA7") is a letter from the Bank dated 2015, sent to 235 8th Avenue, confirming that this was an address of record. The track and trace documents for the section 129 notice indicate delivery to this and another address. The Respondent has maintained that this *domicilium citandi et executandi* is at no. 2[...] [...] Avenue, B[...], the same address consistent with the substituted service order. In the face of this objective evidence, the respondent's bare denial of receipt is not enough to non-suit the applicant. The applicant has made a *prima facie* case of proper dispatch, which the respondent has not rebutted with clear evidence. Regarding the service of the

¹ 34 of 2005 ("NCA").

current application, even if the Sheriff's conduct was questionable, the respondent, on his version, ultimately obtained the papers and has fully availed himself of the opportunity to oppose, thus suffering no prejudice.

[14] Significantly, the sheriff's return on the 16th day of September 2024 records that the Sheriff served the FILING REPLYING AFFIDAVIT AND ANNEXURES at No 2[...] [...] Avenue B[..] “ upon MRS GIGABA, the current occupier, apparently a responsible person and apparently not less than 16 years of age, in control of the place of residence of JEROME MA RANG at NO.2[...] [...] AVENUE, B[...] V[...] the last mentioned being temporarily absent, and by handing to the first mentioned a copy thereof after explaining the nature and exigency of the said process. RULE 4(1) (a) (ii) defendant left the given address as per Ms Gugaba, the occupier”. All indications are accordingly that the property is not the respondent's primary home as of 16 September 2024.

[15] The Court must now consider the application, considering all three sets of affidavits. The principles are clear: in application proceedings, where disputes of fact arise on the affidavits, a final order may be granted only if those facts averred by the applicant, together with the facts alleged by the respondent that are admitted by the applicant, justify such an order. Where a real, genuine, and bona fide dispute of fact exists, the matter should be referred to trial.

[16] I will now address the key disputes raised by the respondent and the applicant's replies. As stated above, the respondent denied receipt of the section 129 notice and challenged the service of the summons and the current application. He alleged some errors on the Sheriff's part. The applicant relies on the track and trace receipts and notification slips attached to the particulars of claim to demonstrate that the section 129 notice was sent to the chosen *domicilium* addresses.

[17] Regarding the validity and terms of the agreement, the respondent's case alleged a “verification problem” regarding the agreement's validity, denied knowledge of an “additional sum” of R 130 000,00, and claimed the loan term was unilaterally extended from 25 to 27 years.

[18] The respondent also relies on numerous other “defences”, including that: he continued to receive emails to effect payments, and it is a mockery of the Prescription Act. The respondent avers that the applicant served the notice of motion at No. 80 Broadway on the 9th June 2022, and “the respondent was subsequently called by the Sheriff to go and pick it up” via the Sheriff contrary to the substitute service order in his 19 September 2024 supplementary affidavit. He contends that his 25-year loan was extended to a 27-year loan without his knowledge; the more he pays, the higher the instalment surges. Further, that he is not in arrears, and if he were, what is the arrears amount? He contends that legal action is premature, and he does not owe the municipality the amount of R 994 433.59.

[19] The applicant provides a comprehensive rebuttal in its reply. It clarifies that the “additional sum” is not a separate loan but a standard provision in a mortgage bond to cover ancillary costs like foreclosure expenses. Regarding the loan term, the applicant admits the extension but states it was done to reduce the respondent's monthly instalments, to his benefit. Crucially, it points to a letter (“JMA 7”), dated 19 November 2015 (attached by the respondent himself), which reflects the extended term and argues that the respondent never objected at the time. Importantly, in this letter, one would note the item which reads: “*Remaining bond term: 197 months*”. At that point in time, the respondent's home loan account has been in existence for a period of over 10 years already. This is evident from the fact that the loan was taken out in 2005. The respondent did not, at the time, question or take umbrage to the term being extended. The respondent carefully attached such a letter to his answering papers, which clearly indicates that he was aware of the extension of the terms of the agreement and did not take the matter any further.

[20] The applicant further notes that the NCA, which the respondent relies upon, was not in force when the loan was entered into and, in any event, it permits a credit provider to lengthen the repayment period. The applicant points out that the respondent has fallen into arrears on his home loan account due to not meeting the monthly payments. Further, the applicant states that had the term of the agreement not been extended and the monthly repayments re-adjusted,

the respondent would have been further in arrears on his bond account. The extension of the term has been more favourable to the respondent.

- [21] The respondent's defence regarding the invalidity of the agreement is vague and unsupported by evidence. His allegations concerning the "additional sum" and the extension of the loan term have been persuasively answered. As for the service of process, the respondent, by his own admission, became aware of this application, was able to file opposing papers. Therefore, there is no prejudice. The applicant's explanation is logical and supported by the documentary evidence. On these points, the respondent has failed to raise a bona fide dispute of fact.

Quantum of the debt and arrears

- [22] The respondent's case is that, as it must be recalled, he disputes the arrears and quantum, citing inexplicable fluctuations in his instalment and pointing to lump-sum payments he made. The applicant replied fully to this. The applicant attaches the full loan statement ("CN2") and an updated Certificate of Balance ("CN3"), showing the outstanding balance as R 927 897.00 and arrears of R 655 419.67 as of July 2024, as indicated above. Evidently, despite the lump-sum payments, the respondent's payments were erratic and often fell short of the monthly obligations, leading to the arrears. As to the money due, the arrears are not trifling.

- [23] The applicant has provided detailed, contemporaneous financial records to substantiate its claim. The respondent's mere denial, without providing a coherent alternative calculation or challenging the specific entries in the statements, is insufficient to create a genuine dispute. The applicant has established the debt and the arrears on a balance of probabilities.

The municipal debt

- [24] The respondent's case is that he vehemently disputes the R 994 433.59 municipal debt, claiming it is a long-standing billing error as he uses a prepaid meter. In reply, the applicant notes the respondent's lack of recent proof but does not take a firm position on the accuracy of the municipal account. This

dispute is between the respondent and the municipality. For this application, it is sufficient to note that the municipal debt constitutes a significant prior charge over the property. Its existence, whether disputed or not, profoundly impacts the equity in the property and is a critical factor under Rule 46A.

Rule 46A and Executability

[25] Rule 46A provides for judicial oversight in foreclosure applications, the aim of which is to protect the constitutional right to adequate housing provided for in section 26 of the Constitution. The property is the respondent's primary residence. The court must be slow to grant an order declaring it executable and must consider all relevant circumstances. Subrule (5) requires every application under the rule to be supported by the following documents, if applicable:

- (a) the market value of the immovable property;
- (b) the local authority valuation of the immovable property;
- (c) the amounts owing on mortgage bonds registered over the immovable property;
- (d) the amount owing to the local authority as rates and other dues.

[26] The property was valued on 2020/03/10 by the Municipality at R 1,316 000.00 and independently at R 930 000.00 on 20 March 2020. The applicant has provided a valuation showing a forced sale value of R 650 000.00. The registered municipal debt, even if disputed, is R 994,433.59. This creates a situation of profound negative equity. The property is security for the applicant's claim, but its value in a forced sale is entirely consumed by a prior claim. Notably, the valuations were done approximately 5 years ago. The property would have grown in value. That said, section 26(1) of the Constitution accords everyone the right to have access to adequate housing. This, however, does not provide that a person has the right to housing that they cannot afford. It is a standard provision in mortgage bonds, as in this instance, that upon default, the

mortgagee will be entitled to claim an order declaring the property specially executable.²

[27] Precedent has held that in deciding whether to grant or refuse an order of special executability, the question whether the judgment debtor could satisfy the debt in some other reasonable way has to be judicially considered.³ This Court in *Absa Bank Ltd v Mokebe and Related Cases*⁴ stated:

“[65] It will be incumbent upon an applicant for execution to set out such facts relevant to a particular case with due regard to the provisions of rule 46A so that a court can exercise its discretion properly. After all, a court is obliged to consider whether to set a reserve price. It can only do so if all the facts are fully disclosed. A reserve price will balance the misalignment between the banks and the debtors, where execution orders are granted. It ensures that the debtor is not worse off due to unrealistically low prices being obtained and accepted at sales in execution. This oversight regarding the imbalance between the parties can only effectively be exercised if the matters are brought properly to court, setting out all relevant factors so that a court can decide whether to set a reserve price in a particular matter”.

Further at para 53:

“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.”

[28] In sum, the respondent entered into a written home loan agreement and registered a mortgage bond in favour of the applicant, against the mortgaged property. The respondent has breached the agreement by failing to maintain the monthly obligations. Unsurprisingly, the applicant is simply exercising its rights to recover what it is owed, in terms of the mortgage bond. There is no

² See in this regard *Changing Tides 17 (Pty) Ltd NO v Frasenburgh* [2020] 4 All SA 87 (WCC) at para 19.

³ See in this regard *Gundwana v Steko Development CC and others* [2011] ZACC 14, 2011 (3) SA 608 (CC); 2011 (8) BCLR 792 (CC) at para 53–54; see also *FirstRand Bank Ltd v Folscher and another and similar matters* 2011 (4) SA 314 (GNP) at para 41.

⁴ 2018 (6) SA 492 (GJ).

evidence that the debtor has other assets from which to satisfy the judgment. I do not find it just to grant the money judgment and refuse or defer an order of special executability, as there is no supporting evidence to that effect.

Conclusion and Order

[29] The applicant has successfully proven the existence and terms of the loan agreement, the respondent's breach, and the quantum of the outstanding debt. The defences raised by the respondent regarding the validity of the agreement and the quantum are without merit. However, due to the unique and decisive factor of the massive municipal debt, which eclipses the property's forced sale value, declaring the property executable is not a futile and disproportionate remedy.

[30] In making the rule 46A assessment, the prospect of the judgment debt being satisfied without recourse to the mortgaged property, as indicated, has to be investigated. In *Changing Tides 17 (Pty) Ltd NO v Frasenburg*⁵ it was stated: “ If a debtor is substantially in arrears and fails to place information before the court pointing to the existence of other assets from which the indebtedness might be satisfied, a court would generally be justified in proceeding on the basis that execution against the mortgaged property is the only means of satisfying the mortgagee's claim”. Having considered all relevant factors, it is my view that execution against the property is warranted.

[31] Fixing a reserve price under the circumstances is, however, necessary, mindful that the evaluations of the property were done about 5 years ago. According to the applicant, the forced sale value of the immovable property is R650,000. The Bank contends that the price should be set at R344,433.59, which is calculated by subtracting the total arrear rates and taxes and levies (if applicable) from the forced sale value determined as aforesaid R650,000.00 - R994,433.59. I disagree. Common sense dictates that the property would, in the meantime, have appreciated in value. Besides, this is probably the respondent's main investment. Ideally, a postponement of the application would have been

⁵ [2020] 4 All SA 87 (WCC) at para 51.

preferred, but given the fact that there is a new occupier, it is necessary to protect the applicant's interest in the property.

[32] In the result, the following order is made:

1. Condonation for the late filing of the applicant's replying affidavit is granted.
2. Judgment is granted in favour of the Applicant against the respondent for:
 - 2.1 Payment of the amount of R570 397,60.
 - 2.2 Interest on the aforesaid amount at the applicable contractual rate from 28 December 2017 to the date of final payment;
3. The application for an order declaring the immovable property ERF 6[...] B[...] V[...] TOWNSHIP REGISTRATION DIVISION I.R., THE PROVINCE OF GAUTENG; In extent 4[...] (F[...] HUNDRED AND F[...]) Square metres; HELD BY DEED OF TRANSFER NUMBER T[...], specially executable is granted subject to a reserve price of R 1 000 000; and
4. The respondent is to pay the costs of the application on an attorney and client's scale.

T P MUDAU
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Appearances

For the Applicants	:	Adv ZE Mahomed
Instructed	:	Joubert Scholtz INC
For the Respondent	:	In Person
Instructed	:	None
Date of hearing	:	03 November 2025
Date of Judgement	:	21 November 2025