**THE REPUBLIC OF SOUTH AFRICA**

**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, JOHANNESBURG**

**CASE NO: 2025/197275**

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES:NO

(3) REVISED: YES

DATE 10/12/2025

SIGNATURE

In the matter between:

**NEDBANK LIMITED** Applicant

and

**EVODIA TSHABALALA** Respondent

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**JUDGMENT-REASONS FOR COURT ORDER IN TERMS OF RULE 49(1)(c)**

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**INTRODUCTION**

1. This is an application for default judgment and an order declaring the Respondent's immovable property specially executable in terms of Rule 46A, consequent upon the Respondent's breach of a home loan agreement and mortgage bond.

## BACKGROUND AND PROCEDURAL HISTORY

2. The application is unopposed. The founding affidavit, deposed to by Michaela Hicks, a manager in the Applicant's foreclosure department, sets out the following facts which are not disputed:

2.1. The Applicant and Respondent entered into a loan agreement on or about 20 June 2012 and on 18 July 2012 a mortgage bond (No. S[...]) was registered over the immovable property, a sectional title unit, in the Protea Glen Estate, Soweto.

2.2. The Respondent failed to maintain the monthly instalments and, despite demand and the delivery of a notice in terms of Section 129(1)(a) of the National Credit Act, Act 34 of 2005 ("the NCA"), remains in default.

2.3. At the time of hearing the matter, the arrears stood at R99,832.18, representing approximately 20 months of instalments of R4,970.67 per month. The total outstanding judgment debt is R365,085.39.

3. The application was duly served. The Sheriff's return indicates that the papers were served on the Respondent's daughter, who informed the Sheriff that the Respondent no longer resided at the chosen domicilium address.

4. The matter was set down on the unopposed roll for 27 November 2025. A practice note was filed by the Applicant's counsel. At the hearing, it came to light that the Respondent was present in person and unrepresented. Upon the Court being alerted to her presence, the matter was stood down to enable the parties to engage.

## THE RESPONDENT'S CIRCUMSTANCES AND THE PARTIES' AGREEMENT

5. Upon resumption, counsel for the Applicant advised the Court that the parties had reached an agreement that in the event the court were to grant the applicant's draft order, he/she would seek an order suspending operation of same for a period of four

(4) months. Counsel further placed before the Court the exceptional circumstances underpinning the Respondent's default.

6. The Respondent purchased the property as a new development. Shortly after taking occupation, significant structural defects, including cracks in the walls, were discovered. The defects were of such a serious nature that regulatory bodies, including the National Home Builders Registration Council ("NHBRC"), intervened. The property was subsequently declared uninhabitable and was demolished. The site currently stands vacant, with no structure in existence. The matter was further reported to the Office of the Public Protector.

7. The Respondent was compelled to vacate the premises and has since been renting alternative accommodation while still being liable for the mortgage bond. This has caused her severe financial and personal hardship, impacting her ability to meet her bond obligations.

**COURT'S EVALUATION AND EXERCISE OF DISCRETION**

8. Rule 46A and the constitutional imperative in section 26 of the Constitution require this Court to be vigilant in exercising its discretion before granting an order for the execution of immovable property, particularly where the property may be a person's home. The Court must consider all relevant circumstances to ensure justice and equity.

9. While the Applicant has established a clear cause of action and has complied with the procedural requirements of the NCA and the Rules of Court, the circumstances presented are highly unusual and complex. The core asset securing the debt has, through no fault of the Respondent, been utterly destroyed due to alleged apparent latent defects and/or shoddy workmanship. The Respondent is now left with a liability secured by vacant land.

10. The parties' agreement to seek a four-months' suspension of the order is noted. However, the Court must independently assess what is just and equitable in the circumstances.

11. The following factors weighed heavily in the Court’s deliberation:

11.1. **The Nature of the Security**: The property, as a vacant stand, has a drastically different value and marketability compared to a developed residential unit. The forced sale value of R462,000.00, upon which the proposed reserve price is based, likely reflects a valuation of a developed property as according to the sworn valuation. A sale in execution of a bare stand, in circumstances where the residential complex has a history of structural failure and demolition, may not realise a fair value, to the severe detriment of both parties.

11.2. **Complex Legal Issues**: The Respondent’s predicament raises potential legal claims against third parties, including the developer, the builder, NHBRC, or possibly other entities responsible for the construction and certification of the property. These are complex issues requiring proper legal advice and possibly further litigation to hold the responsible parties accountable and potentially secure redress for the Respondent.

11.3. **Justice and Equity:** It would be unjust in the extreme to allow the execution process to proceed precipitously in these circumstances, where the Respondent is a victim of a failed housing project. A longer suspension is warranted to allow for the exploration of all legal avenues that may ultimately contribute to resolving the underlying debt.

11.4. **Reserve Price**: The Court notes the Applicant’s proposal for a reserve price of R355,000.00, calculated by deducting outstanding rates of R36,463.96 and levies of R70,340.22 from the forced sale valuation. Given the unique circumstances, this calculation appears reasonable as a baseline to protect both parties' interests should a sale ultimately proceed.

**RATIONALE FOR THE EXTENDED SUSPENSION**

12. The four-month suspension agreed upon by the parties was in the Court’s view insufficient to address the profound complexities of this case. A period of twelve

months provides a more realistic timeframe within which the Respondent, ideally with the benefit of legal assistance, can:

12.1. Investigate avenues of redress against those responsible for the defective workmanship of her home.

12.2. Allow time for the respondent to sell, if she so chooses and possibly secure the best bargain. Engage constructively with the Applicant, from a potentially strengthened position, to explore a sustainable settlement, which could include a voluntary sale of the land, a debt restructuring, or another resolution informed by the outcome of any third-party claims.

12.3. Seek appropriate legal advice and, if necessary, approach relevant consumer protection or ombud institutions.

13. This extended suspension is not intended to absolve the Respondent of her financial obligations. It is a necessary, equitable intervention to prevent an irreversible sale of the only remaining security under conditions that are manifestly unfair and potentially financially ruinous, while enabling a process that could lead to a more just and final resolution for all involved.

**ORDER**

14. In the exercise of my discretion, and in the interests of justice, I granted an order in the following terms:

14.1. Judgment in favour of the Applicant for the capital sum of R365,085.39, with interest at the rate of 9.40% per annum from 1 September 2025. The property was declared specially executable.

14.2. A reserve price of R355,000.00.

14.3. Operation of the order is suspended for a period of twelve (12) months.

**CONCLUSION**

15. These then are my reasons for the order I granted on 27 November 2025.

Nkoenyane AJ<br>ACTING JUDGE OF THE HIGH COURT<br>GAUTENG DIVISION, JOHANNESBURG

Appearances:
For the Applicant: Advocate Msomi
Instructed by: Fairbridges Wertheim Becker Attorneys

For the Respondent: In person

DATE OF HEARING: 27 NOVEMBER 2025
DATE OF REASONS: 10 DECEMBER 2025