



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

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

SIGNATURE

DATE: 29 January 2026

Case No. 2026-007278

In the matter between:

CANICIAS NDLOVU

Applicant

and

CILOAS BODY CORPORATE

First Respondent

CITY OF EKURHULENI METROPOLITAN MUNICIPALITY Second Respondent

FIRSTRAND BANK LIMITED

Third Respondent

THE SHERIFF: KEMPTON PARK AND THEM BISA

Fourth Respondent

JUDGMENT

WILSON J:

- 1 On 27 January 2026, I stayed an order of Wanless J, granted on 19 August 2025, which authorised the sale of the applicant's home in execution of a judgment of the Kempton Park Magistrate's Court granted on 20 July 2020. I also set aside a writ of execution issued to give effect to Wanless J's order. I

gave my reasons for making these orders *ex tempore*, but since the recording machine in the courtroom I was sitting in had broken down, there is no prospect of my judgment being transcribed. Accordingly, in what follows, I record my reasons for making the orders I did.

- 2 The applicant, Mr. Ndlovu, owns a sectional title unit within the scheme out of which the first respondent, Ciloas Body Corporate, is constituted. The unit is valued at around R710 000. Ciloas' Magistrates' Court judgment directs Mr. Ndlovu to pay just over R50 000 to Ciloas, apparently in arrear levies and other charges for which he was said to be liable as the owner of the unit.
- 3 For reasons that are not clear from the record, Ciloas waited almost four years after it obtained the Magistrates' Court judgment to approach this court for leave to execute on it against Mr. Ndlovu's home. Mr. Ndlovu instructed an attorney to oppose the application. Apparently because the attorney believed he had not been paid a deposit he had demanded to draft the answering affidavit, no answering affidavit was filed, and the application was treated as unopposed before Wanless J. Having obtained leave to execute against Mr. Ndlovu's home, Ciloas caused the fourth respondent, the Sheriff, to schedule a sale-in-execution for 5 February 2026.
- 4 Mr. Ndlovu says that he did not become aware that Wanless J's order had been granted until he instructed his present attorneys to bring the application to stay the 5 February sale. I found that claim difficult to assess on the papers before me, but the fact remained that, had I not stayed Wanless J's order, the sale would have proceeded on that date. Whatever criticism might be levelled

at Mr. Ndlovu for dragging his feet in bringing this application, the stay he sought was plainly urgent.

5 The stay was sought pending the outcome of an application to rescind Wanless J's order. The question before me was accordingly whether Mr. Ndlovu had a *prima facie* right to that rescission. That, in turn, depended on whether, *prima facie*, Mr. Ndlovu had advanced an acceptable explanation for his default of appearance before Wanless J, and whether, had he appeared, he would have had a defence on the merits of the application for leave to execute that stood some prospects of success.

6 Mr. Ndlovu avers that his previous attorney informed him neither that an answering affidavit had not been filed nor that the Wanless J order had been granted. He says that his previous attorney demanded a deposit to file that affidavit, and he avers that the deposit was paid. *Prima facie*, therefore, Mr. Ndlovu paid his previous attorney to file an answering affidavit, and was entitled to expect that this would be done. The fact that the answering affidavit was not filed cannot fairly lead to the inference that Mr. Ndlovu was in wilful default of appearance before Wanless J.

7 Although Mr. Ndlovu has in the past let the unit out, it was undisputed on the papers before me that he moved back into his unit in July 2025, and that the unit has been his primary residence since then. Unfortunately, that fact was not disclosed to Wanless J, who dealt with the matter on Ciloas' pleaded claim that the property was not Mr. Ndlovu's primary residence. Nonetheless, the fact that the property is Mr. Ndlovu's primary residence, and that it was his primary residence at the time Wanless J granted leave to execute, would have

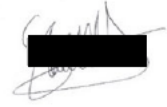
fundamentally altered Wanless J's approach to the application. It would have required Ciloas to show before Wanless J that execution against Mr. Ndlovu's home was proportionate to its need to collect the judgment debt (see *Gundwana v Steko Development CC* 2011 (3) SA 608 (CC), paragraph 54).

8 There are many reasons to believe that the required proportionality had not been demonstrated – or at least that it would not have been demonstrated had Wanless J been made aware of the facts Mr. Ndlovu drew to my attention. I have already pointed out that the value of Mr. Ndlovu's home is around fourteen times the value of the judgment debt, and that Ciloas waited four years before seeking to execute on it. Mr. Ndlovu also avers that, although he has in the past fallen behind with his levies, he has always been able to make substantial payments towards his arrears. There is no dispute on the papers that he has in the past made lump sum payments to Ciloas of up to R80 000. He also says that he has paid his currently monthly account in full and on time every month for the last three years, and has also made substantial payments towards his arrears. This, too, is undisputed.

9 This all tends to show, at least *prima facie*, that there are means to recover the Magistrates' Court judgment debt other than executing against Mr. Ndlovu's home. It also raises the possibility that the Magistrates' Court judgment may, in substance, have been satisfied in the years since it was granted. Mr. Ndlovu also raises the legality of various fees Ciloas has charged against his account. To the extent that these amounts are embodied in the Magistrates' Court judgment debt, they are plainly relevant to the proportionality inquiry.

- 10 Ciloas argued that the judgment debt was but a small portion of a much larger debt Mr. Ndlovu owes to it. It refers to an acknowledgment of debt apparently made by Mr. Ndlovu in October 2024, in which Mr. Ndlovu is said to owe over R200 000 in levies and related charges to Ciloas. However, Ciloas was not given leave to execute on the acknowledgement of debt. It was given leave to execute on the judgment debt. The question in the rescission application is not whether everything Ciloas says is currently owed to it can be paid to avoid execution, but whether the Magistrates' Court judgment granted in July 2020 has been or might yet be satisfied. The acknowledgement of debt is irrelevant to that question.
- 11 For all these reasons, I was satisfied that Mr. Ndlovu was, at least *prima facie*, entitled to the rescission of Wanless J's order. The stay of execution had to be granted.
- 12 As to the writ of execution, it was common cause that the writ provided for the payment of compound interest, whereas the Magistrates' Court judgment provided only for simple interest. Obviously, where a writ goes beyond the scope of the judgment it is issued to execute, the writ may be corrected or set aside. In this case, in light of the conclusion I had reached in respect of the stay of execution, I thought it best to set aside rather than correct the writ. There is plainly no appreciable prejudice to Ciloas to my doing so. If Mr. Ndlovu's rescission application is unsuccessful, Ciloas' attorneys need only issue a fresh writ on Wanless J's order.
- 13 The parties were ultimately agreed that, if I granted the relief sought, the costs of the stay application ought to be costs in the rescission application.

14 It was for these reasons that I granted the order I issued in this case on 27 January 2026.



S D J WILSON
Judge of the High Court

This judgment was prepared by Judge Wilson. It is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 29 January 2026.

HEARD ON: 27 January 2026

DECIDED ON: 29 January 2026

For the Applicant: C de Heus
Instructed by R Masilo Attorneys

For the Respondent: C Erasmus
(Heads of argument drawn by PJ Badenhorst)
Instructed by Heerschop Pienaar Attorneys