IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

Case No: M52/2023

Not Reportable

In the matter between:

RODEL FINANCIAL SERVICES (PTY) LTD Applicant

and

SASHQIA BELEGGINGS CC

(Registration Number: 2011/036366/23) First Respondent

JACOBUS COENRAAD PIETER BOSHOFF

(Identity Number: 5[...]) Second Respondent

Coram: Reddy J

Date(s) heard: 26 October 2023 and 22 November 2024.

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via email. The date and time for hand-down of the judgment is deemed to be 12h00 on 05 February 2026.

Summary: Application for money judgment and executability of property – facility agreement and suretyship – defence of voidness *ab initio* due to non-fulfilment of conditions precedent (cessions) – waiver of conditions for the sole benefit of the lender – defence of *pactum de non petendo* and oral amendment – *Shifren* principle applied – non-variation clause binding absent proof of public policy violation – alleged usurious interest rates (1.8% per month) – commercial transaction between parties of equal bargaining power not contrary to public policy – National Credit Act 34 of 2005 – applicability to juristic persons and sureties – principal debt exceeded thresholds – execution against immovable commercial property granted – counter-application for repayment dismissed.

ORDER

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1. The First and Second Respondents are ordered to pay the Applicant, jointly and severally, the one paying the other to be absolved, the sum of R21 224 693.92.

2. The Respondents are ordered to pay interest on the aforesaid amount at the rate of 1.8% per month, calculated daily and capitalised monthly, from 1 February 2023 to date of final payment.

3. The immovable property described as Erf 6[...] Geelhoutpark Extension 13 Township, Registration Division J.Q., Province of North West, is declared specially executable.

4. The Registrar is authorised to issue a Writ of Execution against the immovable property.

5. The Respondents' counter-application is dismissed.

6. The Respondents are ordered to pay the costs of the application (and the dismissal of the counter-application) on the scale as between attorney and client.

JUDGMENT

Reddy J

Introduction

[1] Under consideration before this Court is the main application for a money judgment in the amount of R21 224 693.92, together with interest thereon at a rate of 1.8% per month, calculated daily and capitalised monthly from 01 February 2023 to date of final payment.

[2] Additionally the applicant, Rodel Financial Services Pty Ltd (Rodel) seeks an order declaring the immovable property of the first respondent Sashqia

Beleggings CC (Sashqia), described as Erf 6[...] Geelhoutpark Extension 13 Township, specially executable.

Cause of action

[3] Rodel's claim arises from a written facility agreement concluded between the parties. Rodel avers that it advanced monies to Sashqia, for which the second respondent, Jacobus Coenraad Pieter Boshoff (Boshoff) signed as surety. Rodel states that Sashqia breached the agreement by failing to make payments as they fell due. Rodel asserts that the debt is due and payable and that the property held as security should be executed against.

[4] Sashqia and Boshoff, acknowledge the receipt of funds but challenged the enforceability of the agreement itself. Their defence rested largely on the contention that certain conditions precedent (specially the cession of rights to proceeds from the property sales) were not fulfilled, rendering the agreement void. Alternatively, they advanced that the agreement was amended by the conduct or oral agreement to allow for the payment only upon the sale of certain stands – a so -called *pactum de non petendo*.

Sashqia's and Boshoff's opposition

[5] Sashqia and Boshoff oppose the application. Moreover, they have launched a counter-application seeking repayment of amounts previously paid to Rodel, predicated on the wide-ranging allegation that the underlying agreement is void *ab initio*. Of significance Sashqia and Boshoff posited

several defences, regarding the validity of the agreement, the applicability of the National Credit Act 34 of 2005 (the NCA), contentions on public policy regarding interest rates, and reliance on an alleged *pactum de non petendo*.

Litigation history

[6] On 26 October 2023, the point *in limine* to the effect that the loan agreement contained 'conditions precedent' or 'suspensive conditions' which had allegedly not been fulfilled was argued as a separate issue. On 13 December 2023, I made the following order:

> '1. The point in limine raised by the Respondents is dismissed with costs.
>
> 2. The Applicant may approach the Registrar for a date for the allocation of the main application.
>
> 3. *Reasons for the dismissal of the point in limine will form part of the main judgment*. (emphasis added)

[7] Given the interrelation between the point *in limine* and the defences raised by Sashqia and Boshoff it would be prudent to address this collectively in an all-encompassing judgment. The reasons for the dismissal of the point *in limine* are therefore specifically incorporated in the judgment.

Principle issues to be considered

[8] This application pivots on five primary issues. First, whether the facility agreement is void *ab initio* due to non-fulfilment of conditions precedent (the point *in limine*). Second whether the agreement was validly amended (or a *pactum de non petendo* created) despite the non-variation clause.

Third, whether the interest rate claimed is usurious or contrary to public policy. Fourth, whether the NCA applies to Boshoff. Fifth, whether Rodel is entitled to the executability of the immovable property.

The reasons for the dismissal of the point *in limine*: The validity of the agreement (conditions precedent)

[9] Sashqia and Boshoff submitted *in limine* that the facility agreement was subject to suspensive conditions, which required cessions of proceeds from the sale of properties. They contend these cessions were never furnished, meaning the conditions were not met, and the agreement was never perfected.

[10] It is a fundamental principle of our law that a condition precedent suspends the operation of obligations until fulfilled. However, a condition inserted for the sole benefit of one party may be waived by that party. The conditions requiring security (cessions) were clearly for the benefit of Rodel (the lender).

[11] By disbursing the loan amount to Sashqia, Rodel clearly waived the strict enforcement of these conditions or accepted the risk. It is legally unsustainable for Sashqia to accept the capital sum, utilise it, and subsequently claim that no obligation to repay exists because Rodel failed to insist on all its security.

[12] Sashqia and Boshoff's counter-application for "repayment of amounts repaid" confirms they performed in terms of the agreement, further

contradicting the notion that the agreement was regarded as void by the parties at the time. It was on this basis that the point *in limine* was dismissed with costs.

The alleged amendment and *pactum de non petendo*

[13] Sashqia and Boshoff claim that the agreement was amended, or a *pactum de non petendo* was assented to, effectively suspending payment obligations until certain stands were sold. They rely on events and a slew of correspondence from November 2022 to bolster same.

[14] Rodel places store on the non-variation clause, which dictates that no amendment is valid unless reduced to writing and signed by the parties.

[15] In *SA Sentrale Ko-op Graanmaatskappy Bpk v Shifren*[1] the then Appellate Division affirmed that non-variation clauses are binding. This seminal judgment held that a clause in a contract that all amendments to that contract must be in writing (a ‘no oral variation’ or ‘non- variation’ clause) is legally enforceable. Central to the finding of Appellant Division was the need for legal certainty and the principle of freedom of contract upholding what parties agreed to in writing. In the original text, Steyn CJ held that:

‘Waar die partye so 'n bepaling in hul kontrak ingelyf het, d.w.s. ‘n bepaling wat nie slegs ander bedinge nie, maar ook homself teen mondelinge wysiging heilig, kan ek geen rede vind waarom die partye nie aan hul ooreenkoms gebonde gehou sou word nie. Hul klaarblyklike oogmerk met so 'n bepaling is juis **om twis en onsekerheid**

[1] *SA Sentrale Ko-op Graanmaatskappy Bpk v Shifren* 1964 (4) SA 760 (A) at 766 H - 767 A.

met betrekking tot die geldigheid van bedinge in hul kontrak **te voorkom**, en om **vryheid van kontrak** aan bande te lê kan dit in die openbare belang wees dat hulle aan so 'n bepaling, wat die sekerheid van hul regshandelinge ten goede kom, gehou word.'

(Loosely translated:

'Where the parties have incorporated such a provision in their contract, i.e. a provision which protects not only other terms but also itself against oral variation, I can find no reason why the parties should not be held bound to their agreement. Their apparent object with such a provision is **precisely to prevent dispute and uncertainty** concerning the validity of terms in their contract, and to restrict **freedom of contract** it may be in the public interest that they be held to such a provision, which promotes the certainty of their legal transactions.')

(emphasis added)

[16] In *Shifren*, the Appellate Division had to choose between two conflicting concepts of 'Freedom of Contract'. First that parties should be free to change their minds. If they agree orally to change a contract today, that new agreement should stand, even if they previously said they would not change it orally. Second, parties should be free to limit their *future* freedom. If they agree to bind themselves to a strict formality (writing), the court should respect that self-imposed limitation (the *Shifren* principle). Essentially, the Appellate Division ruled that if parties decide to put themselves in a 'straight jacket' regarding future amendments, the law must uphold that restriction to ensure legal certainty.

[17] The *Shifren* principle is often regarded as being harsh, prompting parties, such Sashqia and Boshoff *in casu* to try to bypass it. There are, however, very limited legal avenues available to a party who seeks to ride this unruly horse. The most used route is estoppel, in circumstances where one party represents that they will not enforce the strict terms, and the other party acts on that representation to their detriment, in which case

the court may prevent (estoppel) the first party from relying on the clause. Under our constitutional dispensation, parties have moved to arguing that enforcing a *Shifren* clause in bad faith is against public policy.

[18] In *Brisley v Drotsky*[2] (432/2000) [2002] ZASCA 35; 2002 (4) SA 1 (SCA); 2002 (12) BCLR 1229 (SCA) (28 March 2002), the SCA in a defining moment under our constitutional dispensation, affirmed that *Shifren* is still good law. The SCA held that "good faith" is an underlying value of contract law but does not act as an independent rule that can override clear contractual terms. The SCA stated as follows:

'[8] Die *Shifren*-beginsel is 'trite' en die vraag ontstaan waarom dit, na bykans veertig jaar, omvergewerp moet word? Mens kan jou beswaarlik die handelsgevolge, regsonsekerheid en die bewysprobleme wat gaan ontstaan, indink. Die huurder betoog egter dat die toepassing van die beginsel tot die absurde gereduseer kan word en verwys in hierdie verband na 'pittige' opmerkings van Hiemstra R wat die 'draak gesteek' het met hierdie hof. Natuurlik kan mens gevalle bedink waar die beginsel tot minder aanvaarbare resultate mag lei, maar daarvan was hierdie hof bewus. 'n Hof moet dikwels 'n beleidskeuse tussen twee teenstrydige standpunte maak waar daar gewigtige argumente na weerskante is. Die een antwoord is nie noodwendig in absolute terme 'reg' en die ander 'verkeerd' nie, maar as 'n keuse uitgeoefen is, moet ons daarby hou tensy daar gegronde redes is om daarvan af te wyk. *Contra bonos mores* is die verskansingsklousule van meet af nie; immers ons grondwetlike bedeling is op 'n analoë geval gebou en dit word dikwels in wetgewing opgeneem.

[9] Die *Shifren*-beginsel skep ook nie 'n onredelike 'dwangbuis' nie. Die algemene beginsels van die kontraktereg geld steeds. Die howe het reeds dikwels in die verlede 'n party uit die greep verlos, hoewel partymaal op twyfelagtige gronde. Die huurder se advokaat het tydens betoog elk en ieder van hierdie oplossings aangegryp soos

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[2] *Brisley v Drotsky* (432/2000) [2002] ZASCA 35; 2002 (4) SA 1 (SCA); 2002 (12) BCLR 1229 (SCA) (28 March 2002) at paras [8]

afstanddoening, *pactum de non petendo*, wysiging deur gedrag, eleksie, rektifikasie, kollaterale ooreenkomste, estoppel en, les bes, bona fides (oor lg later meer)...

[10] Die gevolge van die aanval op *Shifren* strek egter verder: is die ander klousules wat bv voorsiening maak vir 'n verbod op estoppel, novasie of afstanddoening nou ook kwesbaar? Indien wel, op watter gronde? Waar die kontraktereg die beginsel van regsekerheid nastreef, blyk dit nou dat dit op sand gebou is. Omdat die advokaat nie antwoorde hierop kon bied nie, was hy genoop om te betoog dat die skriftelike kontrak deur die partye gekanselleer is en dat daar 'n mondelinge huurkontrak tot stand gekom het. Dit was egter nooit die huurder se saak nie en daar is geen feite waarop die betoog gefundeer kon word nie.

[11] BONA FIDES: Ons handel vervolgens met die bona fides-argument.

...

[16] Wat die tweede punt betref, is dit inderdaad so dat Olivier AR ‘n pleidooi gelewer het dat aan goeie trou ‘n meer prominente plek in die kontraktereg toegedeel moet word. Die slotsom waartoe hy vir die doeleindes van sy uitspraak kom, nl dat ‘n handelsbevoegde persoon op grond van oorwegings van billikheid van aanspreeklikheid verskoon kan word, is dan ook ingrypend. Ons insiens, moet die standpunte in sy uitspraak met omsigtigheid benader word. In die eerste plek is dit ‘n minderheidsuitspraak wat die siening van 'n enkel regter verteenwoordig gebaseer op ‘n uiteensetting van die feite waarmee die ander vier regters dit nie eens was nie. Ten tweede is die aspek nie in daardie saak betoog nie. Ten derde het die meerderheidsuitspraak geen aanduiding gebied dat die regsuiteensetting juis is nie. Weliswaar is in *NBS Boland Bank v One Berg River Drive CC* 1999 (4) SA 928 (SCA) 937G die opmerking gemaak dat –

‘An analogous conclusion may well be reached if one applies the modern concept of public policy, bona fides and contractual equity to the question in issue (see, for example, *Eerste Nasionale Bank van Suidelike Afrika Bpk v Saayman NO* [1997] ZASCA 62; 1997 (4) SA 302 (SCA) 318-331, per Olivier JA).’

...

[22] Wat die rol van goeie trou betref, stem ons in wese saam met die siening van prof Hutchison (op 743-744) waarvolgens goeie trou nie 'n onafhanklike, oftewel 'n 'free-floating', basis vir die tersydestelling of die nie-toepassing van kontraktuele bepalings

bied nie. Goeie trou is 'n grondbeginsel wat in die algemeen onderliggend is aan die kontraktereg en wat uiting vind in die besondere reëls en beginsels daarvan. Of, soos hy dit t a p stel:

‘What emerges quite clearly from recent academic writing and from some of the leading cases, is that good faith may be regarded as an ethical value or controlling principle based on community standards of decency and fairness that underlies and informs the substantive law of contract. It finds expression in various technical rules and doctrines, defines their form, content and field of application and provides them with a moral and theoretical foundation. Good faith thus has a creative, a controlling and a legitimating or explanatory function. It is not, however, the only value or principle that underlies the law of contract; nor, perhaps, even the most important one.’

[23] ‘n Ander waarde onderliggend aan die kontraktereg is deur Rabie HR in *Magna Alloys and Research (SA)(Pty) Ltd v Ellis* [1984] ZASCA 116; 1984 (4) SA 874 (A) 893I-894A onderstreep toe hy daarop gewys het dat –

‘dit in die openbare belang is dat persone hulle moet hou aan ooreenkomste wat hulle aangegaan het. In laasgenoemde verband het STEYN HR in *S A Sentrale Ko-op Graanmaatskappy Bpk v Shifren en Andere* 1964 (4) SA 760 (A) op 767A, gewag gemaak van –
“die elementêre en grondliggende algemene beginsel dat kontrakte wat vrylik en in alle erns deur bevoegde partye aangegaan is, in die openbare belang afgedwing word.”’

(Loosely translated from Afrikaans:

‘[8] The *Shifren* principle is ‘trite’, and the question arises why, after almost forty years, it should be overturned? One can barely imagine the commercial consequences, legal uncertainty, and evidentiary problems that would arise. The lessee argues, however, that the application of the principle can be reduced to the absurd and refers in this regard to 'pithy' remarks by Hiemstra J, who 'poked fun' at this court. Naturally, one can conceive of cases where the principle may lead to less acceptable results, but this court was aware of that. A court must often make a policy choice between two conflicting viewpoints where there are weighty arguments on both sides. The one answer is not necessarily 'right' and the other 'wrong' in absolute terms, but once a choice has been exercised, we must stick to it unless there are well-founded reasons to deviate from it. The entrenchment clause is not *contra bonos mores* from the outset; after all, our constitutional dispensation is built on an analogous case, and it is often included in legislation.

[9] Furthermore, the *Shifren* principle does not create an unreasonable ‘straight jacket’. The general principles of the law of contract still apply. The courts have often in the past released a party from the grip [of the clause], although sometimes on dubious grounds. The lessee’s counsel, during argument, seized upon each and every one of these solutions, such as waiver, *pactum de non petendo*, variation by conduct, election, rectification, collateral agreements, estoppel, and, last but not least, *bona fides* (more on the latter later)...

[10] The consequences of the attack on *Shifren*, however, extend further: are the other clauses that, for example, provide for a prohibition on estoppel, novation, or waiver now also vulnerable? If so, on what grounds? Where the law of contract strives for the principle of legal certainty, it now appears that it is built on sand. Because counsel could not offer answers to this, he was compelled to argue that the written contract had been cancelled by the parties and that an oral lease agreement had come into existence. However, this was never the lessee's case, and there were no facts upon which the argument could be founded.

[11] *BONA FIDES*: We deal next with the *bona fides* argument. ...

[16] … it is indeed so that Olivier JA delivered a plea that a more prominent place be allocated to good faith in the law of contract. The conclusion he reaches for the purposes of his judgment—namely that a commercially competent person can be absolved from liability on grounds of considerations of fairness—is indeed far-reaching. In our view, the viewpoints in his judgment must be approached with circumspection. In the first place, it is a minority judgment representing the view of a single judge based on an exposition of the facts with which the other four judges did

not agree. Secondly, the aspect was not argued in that matter. Thirdly, the majority judgment offered no indication that the legal exposition is correct. Admittedly, in *NBS Boland Bank v One Berg River Drive CC* 1999 (4) SA 928 (SCA) at 937G, the remark was made that –

‘An analogous conclusion may well be reached if one applies the modern concept of public policy, bona fides and contractual equity to the question in issue (see, for example, *Eerste Nasionale Bank van Suidelike Afrika Bpk v Saayman NO* [1997] ZASCA 62; 1997 (4) SA 302 (SCA) 318-331, per Olivier JA).’ ...

[22] As to the role of good faith, we agree in essence with the view of Prof Hutchison (at 743-744), according to which good faith does not offer an independent, or a ‘free-floating’, basis for the setting aside or non-application of contractual provisions. Good faith is a fundamental principle that is generally underlying the law of contract and which finds expression in its specific rules and principles. Or, as he puts it *loc cit*:

‘What emerges quite clearly from recent academic writing and from some of the leading cases, is that good faith may be regarded as an ethical value or controlling principle based on community standards of decency and fairness that underlies and informs the substantive law of contract. It finds expression in various technical rules and doctrines, defines their form, content and field of application and provides them with a moral and theoretical foundation. Good faith thus has a creative, a controlling and a legitimating or explanatory function. It is not, however, the only value or principle that underlies the law of contract; nor, perhaps, even the most important one.’

[23] Another value underlying the law of contract was underscored by Rabie CJ in *Magna Alloys and Research (SA)(Pty) Ltd v Ellis* [1984] ZASCA 116; 1984 (4) SA 874 (A) at 893I-894A when he pointed out that –

‘it is in the public interest that persons must abide by agreements they have entered into. In the latter regard, STEYN CJ in *S A Sentrale Ko-op Graanmaatskappy Bpk v Shifren en Andere* 1964 (4) SA 760 (A) at 767A, made mention of – “the elementary and fundamental general principle that contracts entered into freely and in all seriousness by competent parties, are enforced in the public interest."'

[19] While the Constitutional Court in *Barkhuizen v Napier*[3] (CCT72/05) [2007] ZACC 5; 2007 (5) SA 323 (CC); 2007 (7) BCLR 691 (CC) (4 April 2007) held that while *pacta sunt servanda* (agreements must be kept) is vital, courts can decline to enforce clauses that are clearly contrary to public policy. However, broadly speaking, the *Shifren* principle has survived constitutional scrutiny.

[20] The fluidity and evolving nature of the law of contract is illustrated by the apex Court in *Beadica 231 CC and Others v Trustees for the time being of the Oregon Trust and Others*[4] where it was held that contracts may be unenforceable if contrary to public policy. For this to find application the party relying on unenforceability of the contract founded on the averment that it may be contrary to public policy must demonstrate that enforcement would be unconscionable in the specific circumstances.

[21] Sashqia and Boshoff assert estoppel, reasoning that Rodel represented it would not enforce the strict terms. Conversely, allowing estoppel to override a non-variation clause in these circumstances would render the *Shifren* principle nugatory. Sashqia and Boshoff have not provided sufficient evidence that the strict enforcement of the clause is contrary to public policy. That being so, the debt remains due.

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[3] *Barkhuizen v Napier* (CCT72/05) [2007] ZACC 5; 2007 (5) SA 323 (CC); 2007 (7) BCLR 691 (CC) (4 April 2007) at para 15, 29 and 30.

[4] *Beadica 231 CC and Others v Trustees for the time being of the Oregon Trust and Others* (CCT109/19) [2020] ZACC 13; 2020 (5) SA 247 (CC); 2020 (9) BCLR 1098 (CC) (17 June 2020).

Public Policy and Interest

[22] Sashqia and Boshoff submit that the interest rate (1.8% per month) is usurious and *contra bonos mores*.

[23] In commercial transactions between parties of equal bargaining power, our courts are reticent to interfere with contractual terms. Sashqia is a commercial entity, and the loan was for a substantial commercial venture. There is no evidence placed before this Court to suggest Sashqia and Boshoff were in a position of inequality or that the rate exceeds the maximums permitted for large agreements (where applicable). In the premises this defence is meritless and accordingly must fail.

Applicability of the National Credit Act

[24] Sashqia and Boshoff submit the guarantee by Boshoff is covered under the NCA.

[25] The NCA does not apply to a juristic person such as Sashqia where the principal debt exceeds the threshold of R250,000.00 or the asset value/turnover exceeds R1 million.

[26] Equally, Boshoff, as surety for a principal debt not governed by the NCA, cannot claim the Act's protection in respect of that suretyship (*Firstrand*

Bank Ltd v Carl Beck Estates (Pty) Ltd and Another[5]). Given the loan amount of over R20 million, Boshoff falls outside the NCA's protection.

Disputes of fact and hearsay

[27] Sashqia and Boshoff seek to strike out evidence by Mr. Morkel as hearsay. Even disregarding the contested hearsay, the common cause facts, which include, the loan agreement, the advance of money, and the failure to repay the full capital are sufficient to ground Rodel's claim.

[28] Relying on *Plascon-Evans Paints (TVL) Ltd. v Van Riebeck Paints (Pty) Ltd.*[6], Sashqia and Boshoff's version regarding the oral amendment is legally untenable due to the non-variation clause. Consequently, no genuine dispute of fact exists that bars the granting of final relief.

Executability

[29] The property in question is commercial (Erf 6[...] Geelhoutpark Extension 13). The apex Court safeguards regarding primary residences do not apply with equal force to commercial entities. Therefore, Rodel has made out a case that Sashqia is in default, and execution against the security is the procedurally correct remedy.

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[5] *Firstrand Bank Ltd v Carl Beck Estates (Pty) Ltd and Another* (56174/2007) [2008] ZAGPHC 423 (25 September 2008) at para [18].

[6] *Plascon-Evans Paints (TVL) Ltd. v Van Riebeck Paints (Pty) Ltd.* (53/84) [1984] ZASCA 51; [1984] 2 All SA 366 (A); 1984 (3) SA 623; 1984 (3) SA 620 (21 May 1984).

Conclusion

[30] The collective defences raised by Sashqia and Boshoff are meritless. This is founded on a trilogy of factors: first, the agreement is valid; second, the debt is due; and third, the property is executable. It follows that the counter-application, premised on the voidness of the agreement, must fail.

Costs

[31] While courts generally respect the principle of *pacta sunt servanda,* a court is clothed with an inherent discretion over legal costs. In the present matter there is no basis to override the agreement which provides for costs on an attorney and client scale.

Order

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

1. The First and Second Respondents are ordered to pay the Applicant, jointly and severally, the one paying the other to be absolved, the sum of R21 224 693.92.

2. The Respondents are ordered to pay interest on the aforesaid amount at the rate of 1.8% per month, calculated daily and capitalised monthly, from 1 February 2023 to date of final payment.

3. The immovable property described as Erf 6[...] Geelhoutpark Extension 13 Township, Registration Division J.Q., Province of North West, is declared specially executable.

4. The Registrar is authorised to issue a Writ of Execution against the immovable property.

5. The Respondents' counter-application is dismissed.

6. The Respondents are ordered to pay the costs of the application (and the dismissal of the counter-application) on the scale as between attorney and client.

A REDDY

JUDGE OF THE HIGH COURT OF SOUTH AFRICA,

NORTH WEST DIVISION MAHIKENG

Appearances

For the Applicant:	Advocate M G Hitge
Instructed by:	Minchin & Kelly Inc
For the Respondents:	Advocate J S Stone
Instructed by:	Nienaber & Wissing