

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

Case Number: 2023-101360

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
_____ DATE _____ SIGNATURE	

In the matter between:

PEBBLE FALLS BODY CORPORATE

APPLICANT

And

MHLELI OPULENCE LINDA

1st RESPONDENT

EKURHULENI METROPOLITAN MUNICIPALITY

2nd RESPONDENT

GREENHOUSE FUNDING 4 RF LTD t/a NEDBANK LTD

3rd RESPONDENT

SHERIFF BOKSBURG

4th RESPONDENT

JUDGMENT – MAIN APPLICATION

STRYDOM, J

- [1] This is an opposed application wherein the applicant seeks an order to have the immovable property of the first respondent, namely unit 93, in the scheme known as Pebble Falls Body Corporate, situated at 4[...] G[...] Avenue, C[...] Ext 1, Boksburg, Gauteng (“the property”) declared specially executable.
- [2] The first respondent opposed the application and sought condonation for the late filing of his answering affidavit, which the applicant did not oppose. Such condonation should be granted.

- [3] The second, third, and fourth respondents are not opposing this application.
- [4] On 29 January 2024, a default judgment was granted against the first respondent in the amount of R477 805. 33, in respect of arrear levies and ancillary charges together with interest and costs.
- [5] The deponent of the applicant's founding affidavit, Mr. David Brandon Hirschowitz, states that he has the authority to depose to the affidavit. In the answering affidavit, his authority and the authority of the applicant's attorneys were challenged on the basis that they were not authorized by lawfully appointed trustees of the applicant to act on their behalf. The first respondent failed to comply with the procedures under Rule 7 of the Uniform Rules of Court to clarify issues relating to the authority to institute this application and to depose to affidavits. Accordingly, this challenge is not competent. (see *Eskom v Soweto City Council* 1992 (2) SA 703 (W) at 705F and *Ganes v Telecom Namibia Ltd* 2004 (3) SA 615 (SCA) at 624I–625A)
- [6] In the first respondent's answering affidavit, he attempted to make out a case that the default judgment should not have been granted. This is not competent, as the court order will remain in effect until it is rescinded. This was not done. A rescission application was filed only after the current applicant filed a replying affidavit, in which it was pointed out to the first respondent that he could not attack the default judgment in this application.
- [7] As his rescission application was filed after the current application, a hearing date was obtained on the opposed motion roll for the week of 19 January 2026. The date the registrar provided for the rescission application was during May 2026. The parties approached me with a request to hear both matters on 19 January 2026. I agreed to the request, and both matters were heard simultaneously.
- [8] In a separate judgment, I refused to grant condonation for the late filing of the rescission application, and the same was dismissed.
- [9] Consequently, only defences raised concerning the executability of the immovable property of the first respondent, and not defences relating to the

monetary judgment, could be relied upon by him. His main defence, i.e., that the trustees of the applicant and the managing agent at present were improperly elected and appointed, and as such, were unable to validly levy contributions of the members of the body corporate, could not be relied upon.

[10] This left the respondent without a valid defence against the applicant's application to declare his property executable.

[11] The applicant initially alleged that the property was not the respondent's primary residence. At some stage, the sheriff served legal process at the respondent's property on a person believed to be a tenant. Later, the applicant conceded that the property might be the respondent's primary residence. A supplementary affidavit was filed, showing that the requirements of Rule 46A were met. The market value and local authority valuation were provided. Also, the amount owing on a mortgage bond, outstanding rates and taxes due, and the amount of the outstanding body corporate levies. These amounts were not disputed by the respondent except for his allegation that the body corporate could not levy contributions through unlawfully appointed agents.

[12] The sworn valuation of the property indicated the market value to be R440 000.00 and a forced sale value of R280 000.00. The municipal valuation stood at R 439 000.00. The outstanding bond amount was R329 548.00. R33 355.00 was owed to the local municipality. The judgment debt was for R447 805.33, and as at August 2025, the arrear contribution had increased to an amount of R610 735.65. This amount is currently even higher.

[13] For more than 6 years, the respondent has made no contributions whatsoever, all because the respondent alleges that the trustees and the managing agents were not lawfully appointed. He will resume payments when he is satisfied with the validity of the trustees' appointment.

[14] What has become clear is that there is no equity value left in the property. For that reason, a reserve price should not be determined.

[15] I am satisfied that the respondent failed to put up any valid defence against the relief sought by the applicant in its notice of motion. The following order is made:

- a. The immovable property of the first respondent situated at Unit 9[...], Pebble Falls, 4[...] G[...] Avenue, C[...] Ext 1, Boksburg, Gauteng, registered under Title Deed ST24678/2010, together with the exclusive use area registered under Notarial Bond S[...] ("the property"), is declared specifically executable.
- b. It is ordered that a writ of execution is to be issued in respect of the property.
- c. The first respondent is to pay the costs of this application.

R. STRYDOM
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Heard on: 19 January 2026

Delivered on: 26 January 2026

Appearances:

For the Applicant: Adv. P.J. Badenhorst

Instructed by: Heerschop Pienaar Incorporated Attorneys

For the Respondent: Adv. B. Yalezo

Instructed by:

Thokozani Radebe Incorporated