REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case Number: 78050/17

(1) REPORTABLE: NO

(2) OF INTEREST TO THE JUDGES: NO

(3) REVISED: NO

DATE: 25/03/2026

SIGNATURE:

In the matter between:

STANDARD BANK OF SOUTH AFRICA LIMITED	**Applicant**
and	
THANDO FAKU	**First Respondent**
PATISWA PATRICIA FAKU	**Second Respondent**

***Delivered**: this judgment was prepared and authored by the judge whose name is reflected and is handed down electronically and by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of his matter on Caselines. The date for handing down is deemed to be 25 March 2026.*

JUDGMENT

CARELSE, AJ

Introduction

[1] This is an opposed application for summary judgment in terms of Rule 32 of the Uniform Rules of Court as it existed prior to its amendment with effect from 1 July 2019.

[2] The applicant ("the bank") seeks judgment against the respondents, who are married in community of property, for payment of the outstanding balance arising from a home loan agreement concluded with them, together with interest and costs. In addition, the bank seeks an order declaring the mortgaged immovable property specially executable in terms of Rule 46A of the Uniform Rules of Court.

[3] Having regard to the nature of the respondents' opposition, which is primarily based on points *in limine* and the procedural history of the matter, it is necessary to set out the relevant factual background in some detail.

Background

[4] On 8 December 2008, the bank and the respondents concluded a written home loan agreement.

[5] The relevant terms of the home loan agreement for purposes of this application include the following:

(a) the loan amount was R 695 000, with the principal debt, including the initiation fee and the first insurance premiums, amounting to R 698 990.74;
(b) the initial term of the loan was 240 months;
(c) Part A, clause 18 provides, *inter alia*, that the mortgage bond would secure an additional amount equal to 25% of the bond amount;
(d) clause 8.12 provides that a certificate signed by any of the bank's managers, whose appointment need not be proved, will, on its mere production, be sufficient proof of any amount due and/or owing by the respondents under the agreement, unless the contrary is proved;

(e) the respondents chose 5[…] H[...] N[...], Alberante, Alberton as their *domicilium citandi et executandi* (clause 17.1 read with the heading of Part A); and

(f) clause 17.3 requires written notice should the respondents change that address.

[6] Pursuant to the home loan agreement, and on 6 February 2009, the respondents caused a mortgage bond to be registered in favour of the bank over the immovable property described as: Erf 9[...] Randhart Extension 1 Township. Registration Division I.R, Gauteng Province, Measuring 991 square metres, Held by Deed of Transfer No. T[...].

[7] The relevant provisions of the mortgage bond include:

(a) clause 1.1 records that the respondents are lawfully indebted and bound to the bank for the sum of R 695 000, together with an additional amount of R 173 750;

(b) clause 6 provides for a certificate of balance clause similar to that contained in the home loan agreement;

(c) the respondents, at clause 14.2, chose 2[…] M[...] Close, Randhart as their *domicilium* for the service of legal processes; and

(d) clause 14.4 requires written notice should that address change.

[8] By May 2016, the respondents had fallen into arrears with their repayment obligations. On 1 June 2016, the bank caused notices in terms of section 129 of the National Credit Act ("the NCA")[1] to be sent to the respondents by registered post. The notices reached the correct post office and a first notification was sent to the respondents.

[9] The respondents failed to comply with the section 129 notices and the bank, on 17 June 2016, issued summons against the respondents in this Division under case number 48285/2016 ("the 2016 action").

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[1] Act 34 of 2005.

[10] The respondents subsequently made payments, which temporarily brought the arrears up to date, and the bank consequently withdrew the 2016 action without tendering costs.

[11] Thereafter, the respondents again fell into arrears. On 4 October 2017, the bank's attorneys again dispatched notices in terms of section 129 of the NCA by registered mail to the respondents' chosen *domicilium* addresses, at 2[...] M[...] Close, Randhart and 5[…] H[...] N[...], Alberante, Alberton, respectively. The notices reached the relevant post offices and first notifications were issued to the respondents. The respondents failed to respond to or comply with those notices.

[12] The bank subsequently, on 14 November 2017, issued a summons under the present case number (78050/17), seeking payment of the outstanding indebtedness arising from the loan agreement and an order declaring the mortgaged immovable property specially executable ("the 2017 action").

[13] As at 12 September 2017, the bank calculated the outstanding balance on the loan account to be R 864 135.37, together with interest thereon at the rate of 10.25% per annum from 12 September 2017 to date of payment, together with monthly insurance premiums of R 488.04 and assurance premiums of R 516.09 from the said date.

[14] The respondents served their notices of intention to defend the 2017 action on 12 December 2017.

[15] Thereafter, on 22 December 2017, the bank served the present application for summary judgment on the respondents by faxing it to their attorneys of record (a fact not disputed during argument) and, subsequently, on 9 January 2018, effected service at their attorneys' office address.

[16] On 27 March 2018, the respondents served their affidavit resisting summary judgment.

[17] At the hearing of the summary judgment application on 14 January 2019, the Honourable Judge Makhuvele ordered that the application be postponed *sine die* and granted the bank leave to supplement its papers to comply with the provisions of Rule 46A.

[18] Consequently, on 10 March 2021, the bank served its notice of application in terms of Rule 46A together with an affidavit in support thereof ("the Rule 46A affidavit"). Although the respondents delivered notices indicating an intention to oppose the Rule 46A application, they failed to file any answering affidavit dealing with the allegations contained in the Rule 46A affidavit or placing any information before the Court explaining why the property should not be declared specially executable.

[19] On 16 April 2021, the bank sought to amend its notice of application in terms of Rule 46A. The respondents objected to the proposed amendment and the bank did not pursue the amendment any further. In fact, it indicated in its heads of argument that it abandons the amendment.

[20] There were also several interlocutory applications and the intervening COVID-19 pandemic, which further delayed the matter. I was informed, from the bar, that the various interlocutory applications brought during the course of the litigation have all since been resolved.

The issues

[21] Against this background, the issues for determination are:

(a) whether the respondents have disclosed a bona fide defence as required by Rule 32 sufficient to defeat the application for summary judgment;

(b) whether any of the points *in limine* raised by the respondents constitute a valid basis for refusing summary judgment; and

(c) whether the bank has satisfied the requirements of Rule 46A for the declaration of the mortgaged property as specially executable.

The legal framework: Rules 32, 46 and 46A

[22] It is well established that summary judgment is a stringent remedy. The plaintiff must verify the cause of action and the amount claimed, while the defendant must satisfy the Court that he or she has a bona fide defence by fully disclosing the nature and grounds of that defence together with the material facts relied upon. A defendant must therefore set out facts which, if proved at trial, would constitute a defence in law.[2] Bald or vague allegations will not suffice. The material facts relied upon by a defendant must be set out with sufficient particularity to demonstrate the existence of a defence.[3] The purpose of the procedure is to prevent defendants who have no genuine defence from delaying the enforcement of a plaintiff's rights.[4]

[23] In banking matters involving mortgage bonds and loan agreements, the evidential weight of a certificate of balance has also been recognised. In *Rossouw and Another v FirstRand Bank Ltd*,[5] the Court held that where a contract provides that a certificate of balance constitutes prima facie proof of indebtedness, such a certificate is sufficient evidence of the amount due unless the debtor places evidence before the Court to challenge its correctness.

[24] Rule 46A was introduced to give effect to the right of access to adequate housing under section 26 of the Constitution, as interpreted by the Constitutional Court in *Jaftha*[6] and then *Gundwana*.[7] These cases established that judicial supervision is required before a debtor's home may be declared specially executable and that such execution must be proportionate in the circumstances.

[25] Rule 46A regulates execution against residential immovable property and requires the Court to exercise judicial oversight before declaring a debtor's primary residence specially executable. The rule mandates that the Court consider all

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[2] *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A) at 426A-E.
[3] *Breitenbach v Fiat SA (Edms) Bpk* 1976 (2) SA 226 (T) at 228B-229G.
[4] *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture* 2009 (5) SA 1 (SCA) paras 32-33.
[5] 2010 (6) SA 439 (SCA) at para 48.
[6] *Jaftha v Schoeman and Others; Van Rooyen v Stoltz and Others* 2005 (2) SA 140 (CC).
[7] *Gundwana v Steko Development and Others* 2011 (3) SA 608 (CC).

relevant circumstances, including whether there are alternative means of satisfying the judgment debt, before granting such relief.

[26] The Constitutional Court has emphasised that execution against a person's home requires judicial scrutiny and that such execution must be proportionate in the circumstances.[8] Rule 46A, therefore, requires the Court to consider all relevant circumstances, including the debtor's personal circumstances and whether alternative means exist to satisfy the judgment debt.

[27] It is against this legal framework that the respondents' preliminary objections and the merits of the application must be considered.

Analysis

The respondents' main argument at the hearing

[28] As will appear hereunder, counsel for the respondents and his instructing attorney, who is also the first respondent, were content to argue only one point, which, according to them, was dispositive of the whole matter. That point, as they framed it, was that the Court lacked jurisdiction to hear the matter. However, it later emerged that what was actually meant was that the summary judgment proceedings before the Court were a nullity.

[29] That argument was premised on the following facts. The 2016 action was issued under case number 48285/2016. The 2017 action (the combined summons) was issued under case number 78050/17. The application for summary judgment under the 2017 action was, however, issued under the case number 48285/2016 (the 2016 action's case number). The argument that followed was that the Court lacked jurisdiction or that the summary judgment application was a nullity because the 2016 action had been withdrawn and the summary judgment application could therefore not have been issued under that case number.

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[8] Id at para 53.

[30] This point was raised for the first time at the hearing. It was not raised in the respondents' heads of argument or in their supplementary heads of argument. Nor was the submission supported by any authority.

[31] Counsel for the bank correctly pointed out that the use of the 2016 action's case number on the summary judgment application in the 2017 action appears from the papers to have been an obvious and bona fide mistake. The respondents were, in any event, clearly aware of this manifest error, as they themselves used the correct 2017 case number in their opposing affidavit and in their heads of argument. Curiously, the respondents also used an incorrect case number (2025-78050) in their supplementary heads of argument.

[32] The most important aspect was, however, that the respondents were unable to demonstrate what, if any, prejudice they suffered due to the use of the wrong case number on the application for summary judgment. The respondents' own heads of argument effectively answer the point, where they stated:

> "54 In Standard Bank of South Africa Ltd v Roestof 2004 (2) 492 (WLD) at 496F - The court found that a plaintiff should not be non-suited if the papers are not technically correct due to obvious and manifest errors, causing no prejudice to the defendant, especially such as in that case where the defendant set out what he perceived to be an answer to the plaintiffs case as required by rule 32."

[33] The respondents' main argument advanced at the hearing is therefore without merit.

[34] The respondents' counsel advanced two further brief submissions: (a) that the bank failed to pursue its intended amendment of the Notice of Motion in respect of the Rule 46A application after the respondents objected; and (b) that the bank did not comply with section 129 of the NCA by failing to send the notices to the respondents' new addresses, despite knowing of those addresses.

[35] The first submission is without merit. A litigant is under no obligation to proceed with an amendment once an objection has been raised. The second submission is addressed under the seventh point *in limine* below.

[36] Even though these were the only arguments advanced by the respondents at the hearing, the Court has nevertheless considered whether any other defences can be discerned from the respondents' answering affidavit.

The respondents' answering affidavit on their indebtedness

[37] The respondents do not meaningfully engage with the merits of the bank's claim in their affidavit, but instead rely primarily on several points *in limine*, which they contend preclude the granting of summary judgment.

[38] Their dispute concerning their indebtedness is seemingly based on payments made in June, July and August 2016, before the withdrawal of the 2016 action. That withdrawal occurred because they had settled the arrears. They subsequently fell into arrears again but notably failed to provide any evidence of any kind to dispute their indebtedness under the 2017 action. According to the bank's records, the respondents' last payment was made on 10 March 2017. This is also consistent with the updated home loan statement dated 4 February 2026. Those payments, therefore, related to the arrears that gave rise to the 2016 action, and do not constitute a defence to the indebtedness arising under the present action.

[39] The other issues raised by the respondents, which might conceivably relate to their indebtedness, concern the so-called additional amount of R 173 750 and the loan period. These issues were dealt with by the bank under the fifth and sixth points *in limine* and I find it convenient to continue doing so. They will therefore be addressed hereunder.

The respondents' points in limine

[40] The respondents oppose the application primarily on the basis of eight points *in limine*. These points are directed at alleged procedural or technical deficiencies in

the bank's claim, rather than at the substantive merits of the indebtedness arising from the loan agreement.

[41] At the hearing of the matter, counsel for the bank dealt comprehensively with each of the points *in limine* raised by the respondents. Detailed submissions were advanced both in the written heads of argument and in oral argument explaining why, in the bank's submission, the respondents had failed to disclose a bona fide defence as required by Rule 32 and why there is no merit in any of the points *in limine*.

[42] By contrast, despite being repeatedly invited by the Court to address these points *in limine* and the submissions by the bank's counsel, counsel for the respondents, with the assistance of the first respondent, did not substantively engage with the majority of them. Instead, counsel indicated that the respondents elected to stand by the contents of their opposing affidavit and the written heads of argument previously filed.

[43] That stance does not discharge the burden imposed by Rule 32. A defendant resisting summary judgment must place before the Court material facts demonstrating a genuine defence. Merely standing by an affidavit, which itself contains bald or unsubstantiated allegations, does not suffice.

[44] In determining the issues before it, the Court nevertheless assessed the points in limine on the basis of the affidavits, the documentary record, the written submissions and the argument presented on behalf of the bank.

First point in limine: The mortgage bond is not a liquid document

[45] The first point *in limine* is that the bank's claim does not qualify for summary judgment because the mortgage bond is a continuing covering bond and therefore not a liquid document.

[46] This contention is misconceived. The bank's claim is not founded solely upon the mortgage bond but arises from the indebtedness created by the loan agreement and reflected in the loan account. In addition, the bank relies on a certificate of

balance, which, in terms of the contractual provisions governing the parties' relationship, constitutes prima facie proof of the amount owing unless the contrary is established.

[47] Apart from bare assertions, the respondents have placed no factual material before the Court demonstrating that the certificate of balance is incorrect. The evidential value of such certificates has been recognised by the Supreme Court of Appeal in *Rossouw v FirstRand Bank Ltd*.[9]

[48] Furthermore, in terms of the old Rule 32, summary judgment is also competent where the claim in the summons is for a liquidated amount of money. A "liquidated amount of money" is an amount that is either fixed or capable of prompt and easy ascertainment from the terms of the agreement or the supporting documents. That much is evident from the certificate of balance.

[49] In these circumstances, the respondents' objection to the liquid character of the claim is without merit.

Second point in limine: The 2016 action was withdrawn without a tender for costs

[50] The respondents contend that the present proceedings are defective because an earlier action between the parties was withdrawn and the issue of costs in that matter has not yet been determined.

[51] This submission is untenable. The earlier action was withdrawn after the arrears, which gave rise to that action, had been settled. The question of costs in the withdrawn proceedings does not affect the validity of the present action, which arises from a subsequent default. If the respondents' complaint is that they are entitled to the costs of the withdrawn 2016 action, then they are entitled to follow the remedies provided by the rules for such a situation.

[9] Above n 5.

[52] Furthermore, where actions have been withdrawn but the costs have not yet been paid, this does not provide a basis for a *lis pendens* defence, if that is what the respondents rely upon. *Lis pendens* rests upon the existence of a pending, earlier action and depends on the continued existence of that other action. Once it is withdrawn, the other action is no longer in existence. The payment of costs is also not regarded as part of the action in law, and the costs procedure does not form part of the original action between the parties.[10]

[53] The second point *in limine* must therefore fail.

Third point in limine: The application is an abuse of process

[54] The respondents further contend that the institution of the present proceedings constitutes an abuse of the court process because the bank withdrew the earlier action and instituted fresh proceedings. This is related to the second point *in limine*.

[55] This argument cannot be sustained. The earlier action was withdrawn after the respondents remedied their default by settling the arrears. When the respondents subsequently defaulted again, a new cause of action arose.

[56] The mere institution of fresh proceedings in such circumstances does not constitute an abuse of process. The principles governing abuse of process were authoritatively stated by the SCA in *Price Waterhouse Coopers Inc*,[11] and none of those circumstances arise, nor have they been properly alleged or proved in this case.

[57] No facts have been placed before this Court suggesting mala fides or an improper purpose on the part of the bank.

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[10] *Body Corporate of Valence House (SS: 183/1992) v Malani NO and Others* [2015] JOL 33407 (KZD) at para 7(c) referencing *RSA Faktors Bpk v Bloemfontein Township Developers (Edms) BpkenAndere* 1981 (2) SA 141 (O).

[11] *Price Waterhouse Coopers Inc and Others v National Potato Co-Operative Ltd* 2004 (6) SA 66 (SCA) at para 50.

[58] The third point *in limine* is therefore unsustainable and must fail.

Fourth point in limine: The inclusion of insurance and assurance premiums

[59] The fourth point *in limine* relates to the inclusion of insurance and assurance premiums as part of the indebtedness claimed by the bank. This, according to the respondents, means that the claim is not liquid and further that, due to their allegation that the assurance has lapsed, the monthly instalments are no longer correct.

[60] The loan agreement expressly provides for such premiums to form part of the respondents' contractual obligations. Moreover, the certificate of balance relied upon by the bank reflects the amount outstanding on the account.

[61] The respondents have not demonstrated that any amount included in the certificate is contractually impermissible or factually incorrect.

[62] Their objection in this regard is without merit and the fourth point *in limine* must fail.

[63] However, the bank sought an order directing the respondents to pay the monthly insurance and assurance premiums reflected in the summons from 12 September 2017 to date of payment. In my view, such relief is neither necessary nor appropriate in the present proceedings. The certificate of balance relied upon by the bank certifies the amount owing under the loan agreement and provides the basis for the liquidated monetary claim advanced in the summons. The additional premiums referred to in the summons form part of the respondents' contractual instalment obligations under the loan agreement and are reflected in the running loan account. In summary judgment proceedings, the Court grants judgment for the certified indebtedness and interest thereon, while any ongoing contractual charges remain regulated by the loan account and do not require a separate order of Court.

Fifth point in limine: The additional sum of R 173 750

[64] The respondents further contend that the additional amount of R 173 750 is not due and payable and may not be included in the amount claimed, as this amount was not agreed upon nor advanced.

[65] The evidence indicates that the additional amount was expressly agreed upon in the mortgage bond as foreshadowed in the home loan agreement and that it represents security for costs, charges and interest that may arise in connection with the loan agreement. It does not form part of the principal debt claimed in these proceedings.

[66] The respondents have not shown that the bank has included any amount in the claim that was not contractually due. The fifth point *in limine* must accordingly also fail.

Sixth point in limine: The loan period issue

[67] The sixth point *in limine* concerns an alleged discrepancy relating to the duration of the loan agreement and the calculation of the monthly instalments. It was not clearly articulated how this issue constitutes a defence to the bank's claim.

[68] Even if such discrepancy existed, the undisputed evidence shows that the respondents failed to make the payments necessary to maintain the loan account in good standing. It remains undisputed that at the time this action was instituted, their last payment was on 10 March 2017.

[69] The issue raised, therefore, does not constitute a defence to the bank's claim.

[70] The sixth point *in limine* must, therefore, also fail.

Seventh point in limine: Section 129 of the NGA

[71] The respondents further contend that the bank failed to comply with the requirements of section 129 of the NCA.

[72] The evidence before the Court indicates that the statutory notices were dispatched by registered mail to the *domicilium* addresses chosen by the respondents. The tracing results reveal that the notices were received at the relevant post office and that a first notification was sent to the respondents. It follows that the bank had, in fact, complied with the requirements of section 129 of the NCA.

[73] The Constitutional Court has made it clear that delivery of such notices occurs once the credit provider has taken the steps required by the NCA to bring the notice to the consumer's attention. The Constitutional Court in *Kubyana*[12] further held that if a consumer had elected to receive notices by way of registered mail, the consumer must respond to notifications from the post office requesting the consumer to collect registered items, unless, in the circumstances, a reasonable person would not have responded.

[74] At the hearing, the respondents further argued, without providing any context or evidence, that they had changed their *domicilium* addresses and that the bank was aware thereof. However, when pressed to produce evidence showing that the respondents had done so in writing, as required by the agreements between the parties, their counsel was unable to do so. No other evidence could be found on the papers that the respondents informed the bank that they had changed their *domicilium* addresses.

[75] The respondents have not demonstrated that the bank failed to comply with these requirements. The seventh point *in limine*, therefore, cannot succeed.

Eighth point in limine: The application was brought out of time

[76] The final point *in limine* concerns the timing of the summary judgment application. The respondents submitted that the application was served outside the prescribed 15-day period provided for in the rule.

[12] *Kubyana v Std Bank of South Africa Limited* 2014 (3) SA 56 (CC) at para 43. Also see: *Sebola and Another v Standard Bank of South Africa Ltd and Another* 2012 (5) SA 142 (CC).

[77] The respondents served their notices of intention to defend on 12 December 2017. In these notices, they provided a fax number at which their attorneys would accept service. The application for summary judgment was faxed to the respondents' attorneys on 22 December 2017, thus within the prescribed period and was physically served on their attorneys thereafter, on 9 January 2018. None of this was disputed at the hearing, and even if the application was out of time due to the intervening December holiday period, no prejudice is evident or was alleged by the respondents.

[78] The eighth point *in limine* must, therefore, also fail.

Conclusion on the points in limine

[79] For the reasons set out above, none of the points *in limine* raised by the respondents constitute a valid basis for refusing summary judgment. Moreover, none of these points was meaningfully pursued at the hearing, despite repeated invitations from the Court to address them.

[80] The respondents have failed to disclose a bona fide defence as contemplated in Rule 32 and the preliminary objections raised by them cannot be sustained.

[81] Each of the points *in limine* must accordingly be dismissed.

Should the immovable property be declared specially executable?

[82] The bank has complied with the procedural requirements of Rule 46A by placing before the Court an affidavit addressing the nature of the property, the respondents' indebtedness, their payment history, and the value of the property.

[83] The bank has produced an updated certificate of balance, dated 4 February 2026, confirming that the respondents are indebted to it in the amount of R 2 006774.04, together with interest at 10.25 % per annum from 4 February 2026 to date of payment. The certificate further reflects arrears in the amount of R 1 573 888.06 and a current monthly instalment of R 23 096.20.

[84] The certificate of balance, dated 4 February 2026, reflects the respondents' current indebtedness on the loan account and was placed before the Court primarily for purposes of the Rule 46A enquiry. The monetary judgment sought in these proceedings, however, remains the amount claimed in the summons, namely R 864 135.37, together with interest. The updated certificate, therefore, serves to illustrate the respondents' continuing default and the magnitude of the indebtedness, but does not alter the relief claimed in the summons.

[85] The respondents have not placed any evidence before the Court to challenge the correctness of the certificate of balance or the calculation of the indebtedness. In the absence of such evidence, the certificate constitutes prima facie proof of the amount owing in accordance with the contractual provisions governing the parties' relationship.

[86] The bank has also placed before the Court a recent municipal account issued by the City of Ekurhuleni, which indicates that the property is in substantial arrears in respect of municipal rates and services. As at 26 December 2025, the outstanding municipal balance amounted to approximately R 202 775.05.

[87] The municipal statement further reflects that the account has been in arrears for a considerable period, with significant portions of the debt falling into the 60-day and 90-day arrears categories.

[88] The respondents have not placed any evidence before the Court explaining how the municipal indebtedness will be settled or demonstrating an ability to maintain payment of the property-related obligations going forward.

[89] The bank has also produced an updated independent valuation report prepared by DDP Valuers (Pty) Ltd, which values the property at R 2 200 000 and indicates a forced-sale value of R 1 550 000.

[90] The valuation report records that the property comprises a residential dwelling with various improvements, including a swimming pool and outbuildings.

[91] Execution against a person's home engages the right of access to adequate housing under section 26 of the Constitution. Courts are therefore required to provide judicial oversight to ensure that execution is justified and proportionate in the circumstances.[13]

[92] In considering whether the property should be declared specially executable, this Court has had regard to all the relevant circumstances contemplated in Rule 46A, including the amount of the indebtedness, the respondents' payment history, the municipal arrears, the value of the property, and the absence of evidence from the respondents regarding their personal circumstances or alternative means of satisfying the judgment debt.

[93] In the present matter, several considerations weigh in favour of granting the order sought.

[94] First, the property was mortgaged to the bank as security for the loan agreement concluded between the parties.

[95] Second, the respondents have been in persistent default of their repayment obligations, and the arrears have reached a substantial level. The certificate of balance reflects arrears exceeding R 1.5 million, which indicates that the default is longstanding and serious.

[96] Third, the municipal account demonstrates that the respondents have also failed to maintain payment of municipal rates and services associated with the property. The arrears exceeding R 200 000 further indicate that the respondents have not been able to meet the financial obligations attached to the ownership of the property.

[97] Fourth, despite indicating opposition to the Rule 46A relief, the respondents have not placed any evidence before this Court regarding their personal

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[13] *Gundwana v Steko Development and Others* above n 7.

circumstances, their financial position, or any alternative means by which the judgment debt could reasonably be satisfied.

[98] In the absence of such information, there is no basis upon which the Court could conclude that execution against the property would be disproportionate.

[99] Having regard to the magnitude of the indebtedness, the persistent failure to maintain payments under the loan agreement, and the additional municipal arrears, it appears unlikely that the respondents will be able to satisfy the judgment debt through less invasive means.

[100] In these circumstances, and in the absence of any evidence suggesting that the indebtedness could reasonably be satisfied by less invasive means, execution against the mortgaged property remains the only effective mechanism available to the bank to enforce its rights under the loan agreement.

[101] The respondents have placed no evidence before this Court suggesting that execution against the property would render them homeless or otherwise unjustly deprive them of access to housing.

[102] In those circumstances, execution against the property constitutes a proportionate and justified remedy.

[103] Rule 46A(9) further requires the Court to consider whether it is appropriate to determine a reserve price for the sale in execution.

[104] The determination of an appropriate reserve price remains a matter of judicial discretion to be exercised, having regard to all the relevant circumstances of the particular case. No rigid formula is prescribed by Rule 46A, and approaches such as the so-called Opperman method[14] serve merely as a guideline and cannot replace the Court's evaluation of the evidence placed before it. In any event, even if the

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[14] Adding the municipal value with the market value, dividing it by two and subtracting the outstanding rates and taxes - *Changing Tides 17 (Proprietary) Limited NO v Kowlaser and Another* 2024 JDR 3001 (GJ) at para 16.

Opperman method was applied to the valuation evidence placed before the Court in this matter, it would yield a reserve price broadly comparable to the reserve price determined herein.

[105] The independent valuation indicates a market value of R 2 200 000, and a forced-sale value of approximately R 1 550 000.

[106] The outstanding indebtedness to the bank exceeds R 2 million, while the municipal arrears exceed R 200 000, which together represent a significant encumbrance over the property.

[107] In determining an appropriate reserve price, the Court must strike a balance between protecting the respondents from a sale at an unreasonably low price and ensuring that the property can realistically be realised in execution.

[108] Having regard to the valuation evidence and the forced-sale value reflected therein, a reserve price of R 1 400 000 represents a reasonable and equitable reserve price in the circumstances.

[109] Such a reserve price protects the respondents from a sale at a grossly inadequate price, while ensuring that the property remains capable of being realised in execution.

Conclusion

[110] The first issue is whether the respondents have disclosed a bona tide defence to the bank's claim, sufficient to defeat the application for summary judgment. In terms of Rule 32, a defendant resisting summary judgment must disclose fully the nature and grounds of a bona tide defence together with the material facts upon which that defence is founded. Having considered the respondents' affidavit, the documentary record and the submissions made on their behalf, I am satisfied that the respondents have failed to do so. The affidavit resisting summary judgment does not identify material facts which, if proved at trial, would constitute a defence in law. Instead, it raises a series of technical objections and speculative allegations which

do not engage with the substance of the indebtedness arising from the loan agreement and mortgage bond. In these circumstances, the respondents have not raised a genuine or triable issue and the requirements for summary judgment under Rule 32 have been satisfied.

[111] The second issue is whether any of the eight points *in limine* raised by the respondents constitute a valid basis for refusing summary judgment. For the reasons set out above, each of the points *in limine* is without merit. None of them establishes a procedural or substantive defect in the bank's claim, and none constitutes a defence to the action.

[112] The third issue concerns whether the bank has satisfied the requirements of Rule 46A for the declaration of the mortgaged property as specially executable. Having considered the evidence placed before the Court regarding the respondents' indebtedness, their payment history, the municipal arrears, the valuation of the property and the absence of any evidence relating to the respondents' personal circumstances or alternative means of satisfying the judgment debt, I am satisfied that execution against the property is justified and proportionate in the circumstances. The bank has therefore established that the requirements of Rule 46A have been met.

[113] For the sake of completeness, the applicant is not entitled to a separate order for the payment of ongoing insurance and assurance premiums, those obligations being regulated by the loan account as explained above.

[114] The applicant further seeks an award of costs on the attorney and client scale. This is justified by the express terms of the mortgage bond, which provides for recovery costs on the scale as between attorney and client.

[115] In the circumstances, the bank has established its entitlement to the relief sought.

Order

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

(1) Summary judgment is granted in favour of the applicant against the respondents jointly and severally, the one paying the other to be absolved, in the amount of R 864 135.37.

(2) The respondents are ordered to pay interest on the aforesaid amount at the rate of 10.25% per annum from 12 September 2017 to the date of payment.

(3) The following immovable property is declared specially executable:

Erf 9[...] Randhart Extension 1 Township Registration Division I.R
Province of Gauteng Measuring 991 square metres
Held under Deed of Transfer No T[...]

(4) The Registrar is authorised to issue a writ of execution against the aforesaid immovable property in terms of Rule 46 read with Rule 46A of the Uniform Rules of Court.

(5) A reserve price of R 1 400 000 is set for the sale in execution of the aforesaid immovable property.

(6) In the event that the reserve price is not achieved at the first auction, the sheriff shall report the outcome of the sale to the Court together with the information required by Rule 46A(9)(c), whereupon the applicant may approach the Court on supplemented papers for directions regarding the further conduct of the sale.

(7) The respondents are ordered to pay the costs of suit on the attorney and client scale.

C CARELSE
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of hearing: 27 February 2026
Judgment delivered: 25 March 2026

For the Applicant:	Adv M Rakgoale instructed by Ramsay Webber Inc.
For the Respondents:	Adv Z Fani instructed by T Faku Incorporated