REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: **2024/110664**

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

[redacted]

14 April 2026
DATE | SIGNATURE

In the matter between:

CHANGING TIDES 17 (PTY) LTD Plaintiff

and

MICHAEL MAFU 1st Defendant

NOKUTHULA LEARNMORE MAFU 2nd Defendant

JUDGMENT

MODIBA, J

[1] This is an opposed application for summary judgment in which the plaintiff seeks judgment for specific performance arising from an indemnity executed by the defendants in favour of the plaintiff, together with an order declaring certain immovable property specially executable in terms of Uniform Rule 46A.

[2] The plaintiff is the South African Home Loans Guarantee Trust, duly represented *nomine officio* by its sole trustee. The defendants are natural persons who are joint owners of the immovable property situated at 1536 Miradelle, 170 Bellairs Drive, Northriding, Randburg (the property).

[3] On 28 May 2019 the defendants concluded a home loan agreement with Blue Banner Securitisation Vehicle RC1 (Pty) Ltd in the principal amount of R1 270 000.00 for the purchase of the property. Pursuant to that loan agreement, and at the defendants' instance, the plaintiff issued a guarantee in favour of the lender securing the defendants' performance of their obligations under the loan agreement.

[4] On the same date, the defendants executed a written indemnity in favour of the plaintiff in terms of which they irrevocably and unconditionally indemnified the plaintiff against any loss or liability incurred under the guarantee. As security for their obligations under the indemnity, the defendants authorised the registration of an indemnity bond over the property, which bond was duly registered on 29 July 2019.

[5] The defendants fell into arrears under the loan agreement. As at 1 September 2024, arrears amounted to R146 735.77; and 11 March 2025, arrears amounted to R256 164.73, representing approximately 12.32 months' arrears. The lender made demand under the guarantee. The plaintiff, in turn, demanded payment from the defendants under the indemnity, relying on certificates of balance issued in accordance with the express terms of the indemnity. It instituted the present action, which the defendants oppose. It then applied for summary judgment which the defendants also oppose.

[6] The plaintiff contends that the defendants' plea and opposing affidavit disclose no *bona fide* defence and that summary judgment should accordingly be granted.

The defendants oppose the application on essentially three grounds: alleged non-compliance with section 129 of the National Credit Act 34 of 2005 (the NCA); a dispute regarding the quantification of the debt and the evidentiary value of the certificates of balance; and opposition to the declaration of the property as specially executable under Rule 46A.

Applicable legal principles

[7] The principles applicable to summary judgment are well established. A defendant must fully disclose the nature and grounds of the defence and the material facts upon which it is founded, such that the court is satisfied that the defence is *bona fide* and good in law. Summary judgment is not intended to shut out a defendant who has a triable issue, but it is designed to prevent sham defences raised merely for purposes of delay.[1]

Defences

<u>*The National Credit Act*</u>

[8] The defendants' principal defence is that the plaintiff failed to comply with section 129 of the NCA, in that the statutory notices allegedly did not come to their attention. The documentary evidence placed before court demonstrates that four section 129 notices were dispatched by registered mail: two to the defendants' chosen *domicilium citandi et executandi*; and two to the property address. Proof of delivery to the relevant post offices, as required by section 129(7) of the NCA, was furnished.

[9] The defendants' reliance on *Kubyana v Standard Bank of South Africa Ltd*[2] is misplaced. Subsequent to the 2015 amendment of section 129, compliance is achieved once delivery by registered mail to the correct post office is established.

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[1] *Maharaj v Barclays National Bank Ltd* 1976 1 SA 418 (A), *Joob Joob Investments v Stocks Mavundla Zek JV* [2009] All SA 407 (SCA) paragraph 32, p 415; 2009 (5) SA at 12A-D.

[2] *2014 (3) SA 56 (CC)*.

Actual receipt is no longer determinative. The defendants' attempt to rebut delivery by way of affidavits from security personnel does not undermine statutory compliance as currently prescribed. At best, the complaint amounts to an allegation of non-receipt, which does not constitute a defence to enforcement proceedings. I accordingly find that the NCA defence is without merit and does not raise a triable issue.

The certificate of balance and quantification of the debt

[10] The defendants admit execution of the indemnity. Its express terms provide that a certificate of balance signed by a manager, trustee or accountant of the plaintiff constitutes *prima facie* proof of indebtedness. Certificates of balance reflecting the defendants' indebtedness as at 1 September 2024 and 11 March 2025 were duly issued and attached to the pleadings and affidavits. The defendants' denial of the quantum is entirely bald. No factual basis or alternative computation is advanced, nor is any particular error identified.

[11] A general allegation that an accounting expert may be engaged at trial does not constitute full disclosure of a defence as required in summary judgment proceedings. This defence is accordingly neither *bona fide* nor good in law.

Rule 46A and executability of the property

[12] It is common cause that the property is the defendants' primary residence. The court is therefore required to exercise judicial oversight as contemplated in Rule 46A. The relevant circumstances include: substantial and increasing arrears exceeding one year, the defendants' continued failure to make full monthly payments, unsuccessful attempts to rehabilitate the loan, the absence of any concrete payment plan and the commercial nature of the transaction.

[13] Although the defendants assert an improved financial position, this is not borne out by their payment history. Partial payments made after the institution of proceedings demonstrate an inability to service the debt adequately. I am satisfied that there is no other satisfactory means of satisfying the debt and that execution is proportionate in the circumstances. I am also not persuaded that the sale of the property in execution will render the defendants homeless. On the papers, it is apparent that they do have sources of income and should therefore be able to secure alternative accommodation. It is not their case that they cannot secure alternative accommodate.

Reserve Price

[14] The plaintiff proposed a reserve price calculated on the forced sale value less a contingency and known municipal and homeowners' association arrears. Having regard to the valuations and outstanding charges placed before court, I am satisfied that the proposed reserve price is reasonable and accords with Rule 46A(8).

In conclusion

[15] The defendants have failed to disclose a defence that is *bona fide* or legally sustainable. The plaintiff has established its entitlement to summary judgment and to an order declaring the property specially executable. The following order is made:

Order

1. Summary judgment is granted against the first and second defendants, jointly and severally, the one paying the other to be absolved.

2. The defendants are ordered to perform in terms of the indemnity and to pay the amounts certified as due, together with interest and costs as provided for therein.

3. The immovable property known as **1536 Miradelle, 170 Bellairs Drive, Northriding, Randburg** is declared specially executable in terms of Uniform Rule 46A.

4. A reserve price is set in the amount of **R863 467.88**.

5. The defendants are to pay the plaintiff's costs on the attorney and client scale as contractually agreed.

[redacted]

LT MODIBA

JUDGE OF THE HIGH COURT

JOHANNESBURG

Appearances

For the Plaintiff: Adv Nieuwoudt
Instructed by: Moodie & Robertson Attorneys

For the 1st Defendant: Self-representing
For the 2nd Defendant: Self-representing

Date of hearing: 26 February 2026

Date of judgment: 14 April 2026

This Judgment is handed down electronically by circulation to the parties' legal representatives by email and publication on Case Lines and SAFLII. The date for the handing down is deemed 10am on 14 April 2026.