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**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

CASE NUMBER: 7807/2021P

In the matter between:

FIRSTRAND BANK LIMITED

APPLICANT

and

METAL AFFAIRS (PTY) LTD

FIRST RESPONDENT

(Registration Number: 2013/018526/07)

SHANIL MAHARAJ

SECOND RESPONDENT

(Identity number 8[...])

MANISHA MAHARAJ

THIRD RESPONDENT

(Identity number 8[...])

MSUNDUSI MUNICIPALITY

FOURTH RESPONDENT

Coram: MOSSOP J

Heard: 16 April 2026

Delivered: 16 April 2026

ORDER

The following order is granted:

1. The order granted by consent by this court on 7 May 2024 is varied by:
 - (a) The deletion of the description of the immovable property presently appearing at paragraph 2 of the order; and
 - (b) The replacement of the deleted paragraph 2 with the following paragraph:
 'The following immovable property, described as
 Erf 7[...] L[...]
 Registration Division FT
 Province of KwaZulu-Natal
 in extent 344 (three hundred and forty four) square metres held by deed of transfer number:
 T7534/ 2016
 be and is hereby declared to be specially executable.'
2. The second and third respondent shall pay the costs of this application, jointly and severally, the one paying, the other to be absolved, and which costs may be taxed on scale A.

JUDGMENT

MOSSOP J:

Introduction

[1] This is an ex tempore judgment.

[2] On 7 May 2024, Notyesi AJ granted an order by consent (the order) between the applicant and the first, second and third respondents. The order granted read as follows:

'2. The following immovable property, described as:

ERF 7[...] A[...]

REGISTRATION DIVISION FU

MEASURING 344 (THREE HUNDRED AND FORTY-FOUR SQUARE METRES)

HELD BY DEED OF TRANSFER NUMBER T7534/ 2016

PHYSICAL ADDRESS: 1[...] G[...] T[...], ALLENDALE,

PIETERMARITZBURG

Be and is hereby declared specially executable

3. A reserve price is set for the sale of property, at a sale-in-execution, at a value to be determined by the Honourable Court, in the amount of R1,100,000.
4. The warrant of execution is authorized.
5. The Second and Third Respondents are liable jointly and severally, the one paying the other to be absolved, to pay the costs of this application on the attorney and client scale.
6. The Applicant shall pay the costs occasioned by condonation of the late filing of the Replying affidavit.
7. The orders above is suspended for a period of six months from date of granting of this order.'

[3] It now transpires that details of the immovable property mentioned above (the immovable property) are inaccurately stated in the order and the applicant accordingly seeks a variation of the order in terms of the provisions of Uniform rule 42 to reflect the correct details of the immovable property.

[4] The first to third respondents nominally opposed this application by virtue of a combined notice to oppose. However, despite this, the first respondent has not actively participated in the application because it has been placed under supervision and in business rescue. While the second and third respondents delivered an answering affidavit, they ultimately also delivered a notice indicating that they would abide the decision of this court.

Background information relevant to this application

[5] There are two significant aspects to the order. The first is that it was taken by consent. The second is that its terms were suspended for a period of six months. In other words, the order could not be given effect to during the period of suspension. This was apparently designed to permit the respondents to attempt to improve their financial situation and to, perhaps, save the immovable property from a sale in execution.

[6] The lapse of the period of six months did not bring about an improvement in the first to third respondent's financial position and the applicant proceeded to attempt to sell the immovable property but came up against an obstacle that prevented it from being able to do so. The obstacle was that the order reflected the

incorrect details of the immovable property. The correct description of the immovable property is the following:

'Erf 7[...] L[...]

Registration Division FT

Province of KwaZulu-Natal

in extent 344 (three hundred and forty four) square metres held by deed of transfer number: T7534/ 2016.'

[7] Because of the incorrect description of the immovable property, the applicant is unable to execute against it. To overcome this obstacle, the applicant accordingly seeks to vary the order in terms of the provisions of Uniform rule 42 so that it correctly describes the immovable property.

The extent of the claimed variation

[8] Considering the description contained in the order and the correct description of the immovable property mentioned above, it is evident that the variation that is required to be made is slight. The only change required is the deletion of the word 'Allandale' and the replacement thereof with the word 'Lotfive'.

[9] In all other respects the order will remain unchanged.

The opposition to the variation application

[10] The second respondent explains in his answering affidavit opposing the application that the principal debtor of the applicant was the first respondent. The second and third respondents were ensnared in the matter as suretys for the obligations of the first respondent.

[11] The second and third respondents contend, in essence, that the judgment ought not to have been granted in the first place because the applicant's conduct allegedly contravened what it calls 'the Sebola principles'. This is a reference to the matter of *Sebola v Standard Bank of South Africa Limited*.¹ In addition, the second and third respondents allege that there has been too long an interval between the granting of the consent order and the bringing of this application to correct the

¹ *Sebola v Standard Bank of South Africa Limited* 2012 (5) SA 142 (CC).

description of the immovable property. Finally, should the variation order be granted, the second and third respondents assert that they would be prejudiced, would lose their place of residence and the applicant would be permitted 'to correct its own error at our expense.'

Analysis

[12] That the immovable property has been incorrectly described in the order brooks of no doubt. How this error came about is, however, not explained at all in the founding affidavit. The error is simply presented as a fact. It is probably safe to infer that it was caused by some form of human error.

[13] Uniform rule 42 reads as follows:

'(1) The court may, in addition to any other powers it may have, *mero motu* or upon the application of any party affected, rescind or vary:

(a) An order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby;

(b) an order or judgment in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission;

(c) an order or judgment granted as the result of a mistake common to the parties.

(2) Any party desiring any relief under this rule shall make application therefor upon notice to all parties whose interests may be affected by any variation sought.

(3) The court shall not make any order rescinding or varying any order or judgment unless satisfied that all parties whose interests may be affected have notice of the order proposed.'

[14] It appears to me that Uniform rule 42(1)(c) fits the facts of this case suitably. That subsection requires that both parties to an order that is sought to be varied must have been mistaken as to certain facts. Thus, all the parties were of one mind, albeit that they were collectively mistaken, and they consequently share the same mistake.² In this instance, the parties agreed that the immovable property was to be declared specially executable, but both were mistaken as to its true and correct description. That this must be so is that both consented to the granting of an order that incorrectly described the immovable property that they agreed was to be sold.

² *Tshivase Royal Council v Tshivase* 1992 (4) SA 852 (A) at 863A.

Admittedly, the second and third respondents have alleged that the error was that of the applicant alone. That is not correct. The first, second and third respondents all agreed to an order that incorrectly described the immovable property. All the parties thus shared the same mistake, precisely what Uniform rule 42(1)(c) contemplates.

[15] The second and third respondents complain about the delay since the granting of the order and the bringing of this application. A fairly substantial period of time has elapsed since the granting of the order, but a portion of that delay is explained by the period of suspension of the order. A further portion of the delay has been consumed by the glacial pace at which our motion court rolls move.

[16] I am satisfied that there is nothing untoward in the time that is has taken to bring this application. The fact of the matter is that there is a perfectly valid order that the respondents have consented to that cannot be implemented without an amendment. The prejudice of which the second and third respondents complain in their answering affidavit is not prejudice that arises out of this application. In any event, the bringing of this application did not afford the second and third respondents a second bite of the cherry and a further opportunity to reargue why the consent order should not have been granted in the first place. They knowingly consented to the order and a way must now be found to give effect to that order. The variation proposed by the applicant achieves that goal.

Conclusion

[17] The application must therefore be granted. The applicant did not seek a costs order if the application was not opposed. The application was, however, opposed by the second and third respondents, but their opposition was misguided and was therefore unsuccessful. The second and third respondents must therefore bear the costs of their unsuccessful opposition.

Order

[18] The following order is accordingly granted:

1. The order granted by consent by this court on 7 May 2024 is varied by:
 - (a) The deletion of the description of the immovable property presently appearing at paragraph 2 of the order; and

(b) The replacement of the deleted paragraph 2 with the following paragraph:

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be and is hereby declared to be specially executable.’

2. The second and third respondent shall pay the costs of this application, jointly and severally, the one paying, the other to be absolved, and which costs may be taxed on scale A.

MOSSOP J

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