IN THE HIGH COURT OF SOUTH AFRICA,

MPUMALANGA DIVISION, (MIDDELBURG LOCAL SEAT)

CASE NUMBER: 4108/2022

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: **YES**
(2)	OF INTEREST TO OTHER JUDGES: **YES**
(3)	REVISED **YES/NO**
22 APRIL 2026 DATE	SIGNATURE

In the application between:

THE STANDARD BANK OF SOUTH AFRICA LIMITED **APPLICANT**

and

SPYGRASS INVESTMENTS 266 CC **FIRST RESPONDENT**

MARTIN WAYNE BROWN **SECOND RESPONDENT**

RENEE CLAUDELLE SAMUEL **THIRD RESPONDENT**

JUDGMENT

FOURIE AJ

INTRODUCTION:

[1] In the current application, the Applicant seeks payment in respect of an overdraft facility due to the First Respondent's breach thereof and, subsequent thereto, to perfect the security held by the Applicant by executing against certain immovable properties.

[2] The application against the Second and Third Respondents is instituted resultant from the fact that these Respondents are guarantors for the outstanding debts of the First Respondent as towards the Applicant.

[3] The application has been opposed by all the respective Respondents, and after a considerable delay in the finalisation of the matter due to events described hereinafter, the matter was heard on 14 April 2026.

CRONOLOGY OF RELEVANT EVENTS:

[4] In what is to follow, I find it necessary to set out in a brief overview of the material issues that have transpired since the inception of the application:

[4.1] On 20 June 2022, the application was made by the Applicant in which the Applicant sought payment in the sum of R 6 229 806.29 together with interest thereon at a rate of prime plus 7.75% per annum, calculated daily and compounded monthly in arrears from 25 April 2022 to date of payment, together with the declaration of certain properties as specially executable.

[4.2] On 31 August 2022, a settlement agreement was entered into between the Applicant and the Respondents reflecting certain payments having been received by the Applicant from the Respondents since the issuing of the application and acknowledging an indebtedness by the Respondents to the Applicant in the amount of R 5 977 864.42 together with certain interests and costs. This settlement agreement afforded the Respondents an opportunity to repay the agreed-upon debts in a structured repayment plan.

[4.3] On 8 February 2024, the Respondents were placed on terms stating that they have not kept to the arrangements in respect of the settlement agreement and indicating that the Respondents are in arrears in terms of their settlement agreement, and strictly on the repayment schedule thereof, they have fallen behind in an amount of R 835 878.89.

[4.4] On 25 September 2024, after the breakdown of the settlement agreement and after the Respondents had not strictly complied with the same, the outstanding amount due and payable in terms of the overdraft agreement was stated as R 4 203 018.45.

[4.5] On the day of hearing, being 14 April 2026, the Applicant alleges that the amount due and payable, which remains outstanding and which is as such being claimed from the Respondents, is an amount of R 1 422 676.90.

MATERIAL FACTS:

[5] It has never been the case for the Respondents that an indebtedness towards the Applicant does not exist.

[6] It is also noteworthy that the Respondent has not, during the whole existence of the dispute, absconded in totality from their obligation towards

the Applicant. Even though it is common cause between the parties that the First Respondent has not strictly adhered to their financial obligations in terms of the repayment of the overdraft facility towards the Applicant initially and thereafter to strictly comply with the repayment in terms of the settlement agreement, the Respondents have significantly reduced the amount due by them to the Applicant over the period since inception of the application.

[7] The aspects that complicate the current matter are not necessarily the true facts between the respective parties, but to a greater degree the manner in which such facts were ultimately presented to the Court. After the initial founding and answering papers were filed, the matter was, in essence, overtaken by events in that the parties reached a settlement. The settlement reached on the exact amounts calculated by the Applicant can only be indicative that, at the time the settlement was reached, the parties agreed that such amounts were indeed the outstanding amounts due and payable by the Respondents to the Applicant.

[8] After non-compliance with the terms of the settlement agreement, the Applicant elected to re-enrol the initial application and, by way of application, presented a Supplementary Affidavit to supplement the initial founding papers filed by them. Condonation was sought for the filing of this affidavit, and as it was uncontested and the Respondents, in turn, filed their own amended answering papers, the Court had no difficulty in accepting it. The logic of accepting the aforesaid affidavits is evident in that the initial papers were overtaken by events, and those events required canvassing by the filing of further papers.

[9] It is in these papers that the breach of the settlement agreement was highlighted, and the indebtedness at that stage of proceedings was claimed in the amount of R 4 203 018.45. To substantiate this amount, a certificate of balance and an updated statement of account were annexed.

[10] As from the date on which the supplementary papers were filed, it could reasonably be expected of the Respondents to know in which amount their

indebtedness was called up, and if they felt disgruntled by the outstanding amount as claimed, or if they wanted to rebut same, they, as Respondents, could have and should have provided proof of any contrary position.

[11] If, for instance, the Respondents noted that they had made payments to the Applicant, which payments did not reflect at that stage on the Applicant's statement of account, proof of such payments could have, and should have been annexed to their opposing papers in order to reflect an alternative position than the one presented by the Applicant. In their amended answering papers, the Respondents, however, merely make the bold averment that the calculation by the Applicant in respect of the outstanding indebtedness is not correct, and that the Respondents seek discovery of certain documents.

[12] A formal notice seeking discovery or an application for discovery of certain documents during motion proceedings was not filed by the Respondents.

[13] Since the filing of the amended affidavits, it is common cause that the Respondents proceeded to make payments in respect of their indebtedness towards the Applicant. It is further common cause that the indebtedness of the Respondents continued to be significantly reduced by the payments being made by the Respondents. At this junction, it is opportune to state that the indebtedness of the Respondents was, throughout the proceedings, presented by the Applicant in two ways, firstly the rendering of a transaction specific account for the whole period in question, and thereafter by the filing of a certificate of balance drawn under the hand of an authorised representative from within the office of the Applicant.

[14] Barring the bold statement in the Supplementary Answering Affidavit, the Respondents had, until that stage, never taken issue with the statement of account, nor the certificate of balance, nor did the Respondents ever indicate that they had made certain payments that did not reflect on the statement of account.

[15] Although not canvassed in the papers, during argument the Court requested the respective legal representatives to address me on the fact that the statement of account continually annexed to the papers seems to indicate that the account was an account that was sent on a monthly basis by the Applicant to the First Respondent via email in the manner in which a financial institution ordinarily does with its clients. On the face value of the statement of account, this seems to have been the case, and I have no reason to believe that these statements of account were not rendered by the Applicant to the Respondents on a monthly basis as indicated on the face thereof. It has also never been the case for the Respondents in their papers that the statements of account were not presented by the Applicant or received by the Respondents. The Respondents further do not allege that they requested the statements or an amendment to the statements from the Applicant, which request was denied.

[16] As a result of unfortunate circumstances emanating from within the office of the previous legal representatives of the Respondents, their Heads of Argument could not be filed in time. It is accepted by the Applicant as well as by the Court that the passing of the Respondent's legal representative hindered the timeous delivery of their Heads of Argument.

[17] In support of the late filing of their Heads of Argument, the Respondents, on 9 April 2026, and two Court days before the hearing of the matter, filed a condonation application in support of the late filing of their Heads of Argument.

[18] The difficulty with the Affidavit as filed lies perhaps in its identification and substance. The affidavit is identified as a "Respondents' Supplementary Affidavit" rather than the "Respondents' Affidavit in support of condonation for the late filing of their Heads of Argument". The affidavit further deals not only with condonation in respect of the late filing of the Heads of Argument, but venture into settlement proposals made by the Respondents, which were not accepted by the Applicant, and an allegation that the outstanding capital that is being claimed on the updated claim of the Applicant, in the amount of R 1 422 679.90 is being disputed as being correct.

[19] On 13 April 2026, and one day before the matter was to be heard, the Applicant filed what was phrased as an “Applicant’s Explanatory Affidavit”. In this affidavit, the Applicants indicated that they took no issue with the late filing and the condonation sought in respect of the Respondent’s Heads of Argument, but the application then proceeds to deal with the allegation that falls outside the ambit of what would ordinarily be dealt with in a condonation application, specifically, the calculation of the outstanding indebtedness. The Applicant then proceeds to annex to the Explanatory Affidavit an updated statement of account and updated certificates of balance, all indicating the amount due and payable at the date of the hearing of the matter as R 1 422 676.90.

[20] During the argument, the Respondents’ defence developed into the crystallised position that the Respondents dispute the calculated amount of R 1 422 676.90 and, as they presented their matter, they required time to evaluate the updated statement in order for an evaluation to be made into the validity of the updated amount. I immediately state that the Respondents did not seek a postponement of the application, and no postponement application was presented to me when the matter was ultimately heard. When the matter was called, this issue became apparent to be the only issue outstanding between the respective parties, and as such, the matter was stood down till later in the afternoon to afford the Respondents the opportunity, if they so wished, to evaluate the statements and to indicate whether any payments had been made by them which did not reflect on the statement. If the Respondent could present any payments made that did not reflect on the statement of account, the Applicant and the Court would have been necessitated to accept that the statement of account, and consequently the certificate of balance, could not be accepted on face value, and a recalculation of the indebtedness would have been needed to occur.

[21] When the matter was recalled several hours later, the Respondents’ legal representatives indicated that instructions could not be obtained from their client, in respect of the enquiry as raised by the Court.

[22] As such, when the matter was heard, the Court was confronted with the updated information received from the Applicant and a request by the Respondent that the application either be dismissed, or alternatively that the Court grant a statement and debatement order for the reconsideration of the accounts.

[23] The statement and debatement request by the Respondents did not reach the Court by way of formal application, but rather via informal request and through the Respondents' Heads of Argument.

[24] I have no difficulty in refusing such a statement and debatement under those circumstances. The making up of one's case as you go along has long been held not to be an appropriate manner in which parties are to litigate.**[1]**

[25] In this judgment, I am accordingly confined to evaluate whether the Applicant has sufficiently made out a case for the relief it seeks and, in doing so, whether the evidence presented specifically by the Applicant in their Explanatory Affidavit ought to be accepted.

APPLICABLE LEGAL PRINCIPLES:

[26] Ordinarily, three sets of affidavits are filed in motion proceedings, being:

[26.1] Applicant's Founding Affidavit
[26.2] Respondents' Answering Affidavit, and
[26.3] Applicant's Replying Affidavit. **[2]**

[27] I am, however, mindful that the South African legal spectrum is flexible, and the rigid application of Rules might not always bring matters to a just and equitable conclusion. It was eloquently put by Gutsche, J., in the matter of **HERMAN [3]** that:

"I am of the opinion that the Court should accept affidavits if they contain matters that is material to the issue and should not reject them

merely because they were not timeously filed when the explanation is that knowledge of the matter in question reached the party after he had filed his affidavits. If I was satisfied that this information reached the defendants after they filed their affidavits, I would admit it."

[28] I am mindful, however of the sentiments of the Court in **STANDARD BANK OF SA LTD v SEWPERSADH [4]** where the Court held that:

"The Applicant cannot simply be allowed in Law to take it upon himself and file an additional affidavit and put same on record without even serving the other party with the said affidavit….. Clearly a litigant who wishes to file a further affidavit must make a formal application for leave to do so. It cannot simply slip the affidavit into the Court file."

[29] In the current matter, I cannot accept that the Applicant has fallen foul of what was the position in Sewpersadh *supra*. The Applicant did not, of their own accord, file a further application. The Applicant received a disguised condonation application in which the Respondents raised certain new averments, specifically regarding the amount of indebtedness. The Applicant could have proceeded with the filing of a Rule 30A notice for the actions of the Respondents to be regarded as an irregular step, or could easily have applied in terms of Rule 6(15) of the Uniform Rules for the striking of the unnecessary averments from the condonation affidavit. The Applicants elected, however, to respond to those averments.

[30] These statements and allegations pertaining to the indebtedness all strangely found themselves as part and parcel of a condonation application for the late filing of the Respondents' Heads of Argument. In essence, I see no reason why the Respondents could not have filed a Replying Affidavit, had they so wished, to the affidavit of the Applicant in respect of this interlocutory process. The unfortunate reality of the matter is that the Respondents elected to bring their condonation application only on the 9th of April 2026, and the curtailed timeframes within which the Applicant took subsequent steps followed therefrom.

[31] It has become an acceptable notion and in certain divisions the norm for Courts to expect, on the day of trial, for a litigant to present to the Court an updated statement of account or an updated certificate of balance, indicating to the Court the exact indebtedness of a Respondent at the date on which the matter is to be heard. In the matter of **ROSSOUW AND ANOTHER [5]** the Court stated that:

> *"The certificate of balance, also handed up to the Court a quo stands however on a different footing. The Court a quo refused to have regard to the certificate. That approach was not correct. The certificate did not, as the Court a quo considered, amount to new evidence, which would be inadmissible under Rule 32(4). To the extent that the certificate reflects the balance due as at date of hearing, it is merely an arithmetical calculation based on the facts already before the Court, which the Court would otherwise have to perform itself. Such calculations are better performed by a qualified person in the employ of a financial institution and to the extent that such a certificate may reflect additional payments by the Defendant after the issue of summons, or payments not taken into account when Summons was issued, this constitutes and admission against interest by the bank, and the bank is entitled to abandon part of the relief it seeks. Certificates of balance handed in at the hearing (whether a quo or on appeal) perform a useful function, and are not hit by the provisions of Rule 32(4)."*

[32] In the same matter the Court correctly emphasized that, Rule 35(11) of the Uniform Rules of Court allow the Court, during the cause of any proceedings to order the production by any party thereto under oath of such documents or tape recordings in its power or control relating to any matter in question in such proceedings as the Court may think meet, and the Court may deal with such documents or tape recordings when produced as it deems meet.

[33] It is for the aforesaid reasons that I believe Courts generally accept and, in certain instances, request updated statements of account and certificates of balance in order to ultimately come to a just conclusion.

[34] Absent the updated statement of account and certificates of balance, this Court would have been confronted with an outdated statement of account and certificates of balance of 25 September 2024, on which an indebtedness of
R 4 203 018.45 was indicated.

[35] Since receiving the statements and certificate of balance on at least 25 September 2024, the Respondents have not challenged the amount of R 4 204 018.45 by providing any sort of proof indicating that such amount was, as at 25 September 2024, incorrect. If the Court had disregarded the updated statements and certificate of balance, as the Respondents now seek the Court to do, the undisputed evidence would need to lead the Court to grant an Order in the amount as stated on 25 September 2024. To do so would be wholly unjust under circumstances where the parties are in agreement that certain payments have been received by the Applicant since that date. It follows accordingly that the Respondents, even more than the Applicants, need the statement of account and certificate of balance to be updated prior to the hearing of the matter, to ensure that an excessive Judgment is not granted against the Respondents.

[36] As stated previously, the manner in which the Applicants had proven their claim has always remained the same, and prior to the Respondents' address in Court has never been challenged. The Court is also not in any way convinced that the statements of account and the indebtedness from time to time of the Respondents towards the Applicant were not continually known by the Respondents resultant from the statements being received from the Applicant on a monthly basis.

[37] For the same reason, the Court would be inclined to accept amended statements to reflect payments received up until Judgment is granted. I find no reason why the Court would not similarly afford a Respondent the exact same indulgence by accepting proof that certain payments have been made by the Respondents which do not reflect on the Applicant's accounts. The acceptance of these documents cannot delay matters; they are subject to immediate evaluation and incorporation into the proceedings.

[38] The question is whether the evidence advanced, whether under affidavit or handed in from the Bar, materially alters the case presented by a litigant or whether such evidence merely updates a position to reflect the position as at the day of hearing. If the evidence presented merely updates the position between the respective parties, the Court should accept the same, and such evidence will not fall foul of Rule 32(4) of the Uniform Rules of Court. If the evidence, however, alters the claim or defence of a party and does not merely serve to update the position between the litigants for purposes of coming to a just calculation, such updated information ought not to be accepted without following the proper processes.

[39] In the matter at hand, the Applicant claims that the Respondents have defaulted on their contractual obligations in respect of an overdraft facility that is due and payable to the Applicant. The Defendant does not deny the default in respect of the overdraft facility nor the initial settlement agreement. The updated statements of account and the updated certificates of balance do not alter the Applicant's claim in any way, they merely reflect the correct position at the time when the matter is heard. If the Respondents intended to advance facts to the Court indicating that the statements have omitted certain payments, they could have easily done so. Such a process would not be a difficult one to undertake. The reasoning by the Respondents that, upon receiving an updated certificate of balance and statement of claim, the Court should allow the Respondents a right to a statement and debatement is one that would, if implemented as such, lead to matters never being finalised as, on every day of trial once an updated statement or certificate of balance is received, a Respondent would merely claim a right of statement and debatement which would throw the matter into a never-ending loop without the matter coming to finality. Litigants deserve their matters to be finalised, and where *bona fide* disputes do not exist between the respective parties, a practical and sensible approach to the resolution of the matter ought to be taken.

[40] Having regard to the nature of the matter, the defences that have been raised by the Respondent throughout and the evidence that has been

presented to me, I have no difficulty in accepting the Respondent's indebtedness as at the date of hearing to amount to R 1 422 676.90.

MEDIATION:

[41] During the argument, counsel for the Respondents suggested that this matter ought not to serve on the court roll, and is a classic example of a matter that ought to be dispensed with by way of mediation.

[42] Courts generally encourage parties to enter mediation to resolve issues that are capable of informal resolution. Issues of the current nature, no doubt, form part of the types of matters that would be capable of resolution by way of mediation.

[43] The difficulty in respect of the current matter is simply that the first Letter of Demand indicating a breach by the First Respondent was sent on 15 September 2020, which is approximately five and a half years prior to this Judgment. Subsequently to that, the record is replete with the parties engaging one another both formally, as with the Settlement Agreement, and informally by way of correspondence to resolve the matter and to restructure the indebtedness of the Respondents in such a way as to make the repayment thereof manageable.

[44] It was suggested by the Respondents that, by not again indulging the Respondents by attending a form of mediation, the Applicants were acting maliciously. This Court cannot accept that notion. The fact that the Applicant accepted payments that deviate from the initial payment structure agreed to by the respective parties, and has continued to do so for several years, indicates nothing but *bona fides* on the part of the Applicant to attempt to come to the aid of the Respondents to settle their ultimate debt towards the Applicant. The initial Settlement Agreement restructured the Respondents' debt to allow for repayment in a specific manner. This was achieved through a form of mediation. At this juncture, the Applicant is confronted with a Respondent that again attempts to shift the proverbial goalposts regarding how the remaining outstanding debt is to be paid. To

order such a process at this juncture would be neither just nor conducive to the speedy finalisation of the matter.

[45] The Court cannot, however, turn a blind eye to the Respondents' attempts to settle their indebtedness and their continued efforts over several years to reduce the outstanding debt. It is evident that the Respondents consciously and as far as possible attempt to settle the indebtedness owed.

[46] It is for this reason that, although the Court is satisfied that an order is warranted in respect of the indebtedness of the Respondents, and although the Court is inclined to grant an Order ordering that the immovable property as stated ought to be declared executable, under the circumstances of the matter, it would be just if such an Order for executionability be suspended for a specified period to allow the Respondents a last attempt to resolve the payment of their outstanding debt. If the Respondents, within the time as stipulated, settle their indebtedness, the Order in respect of the immovable property being declared executable will accordingly have no effect.

[47] This Court believes that, although a Court cannot have a discretion in ordering whether an indebtedness by one party towards the other exists, the Court hold a discretion, having regard to the facts of the matter and the history of the actions of the respective parties specifically the attempts pertaining to settlement and the manner and total with which the indebtedness has over the cause of the litigation been reduced, to stay ultimate execution for a period of time if justice so dictates.

[48] In the current matter, I am satisfied that it does.

COSTS:

[49] Although the litigation has been drawn out over several years, I accept that the Applicant has, throughout, been protected by their claim in respect of

interest, and I am further mindful that the Respondent has, as stated previously, genuinely attempted to resolve its indebtedness by making ongoing payments to the Applicant. The Respondents' default has, however, necessitated that the Applicants institute and persist with the Litigation. This is an issue that the Respondent cannot deny and that the Court cannot overlook. I am satisfied under the circumstances that a cost order is warranted against the Respondents.

[50] I am, however, not satisfied that the actions of the Respondents warrant a punitive cost order to be ordered against them. I am similarly of the view that the matter was in no way complex or consisted of an extraordinary volume of documents. As such, a normal order of party and party costs is appropriate under the circumstances.

ORDER:

[51] For all the aforesaid reasons, the following Order is made:

[51.1] Leave is granted to the Applicant to file a Supplementary Founding Affidavit, for the Respondents to file a Supplementary Answering Affidavit, and for the Applicant to file a Consequential Replying Affidavit after the breach in the settlement agreement by the Respondent.

[51.2] The late filing of the Respondents' Heads of Argument is condoned.

[51.3] Judgment is granted against the Respondents, jointly and severally, the one paying the other to be absolved for:

[51.3.1.] Payment in the sum of R 1 422 676.90 together with interest thereon on a rate of prime plus 5% per annum, calculated daily and compounded monthly in arrears from 25 March 2026 to date of final payment.

[51.3.2] The following immovable properties are declared to be specially executable:

[51.3.2.1] Erf 1[…], Witbank Extension 8 Township, Registration Division J.S Province of Mpumalanga, measuring 991 (nine hundred and ninety one) square meters, held by Deed of Transfer: T[…], subject to the conditions therein contained; and

[51.3.2.2.] Erf 4[…] Witbank, Extension 25 Township, Registration Division J.S. Province of Mpumalanga, measuring 1378 (one thousand three hundred and seventy-eight) square meters, held by Deed of Transfer: T[…], subject to the conditions therein contained.

[51.4] The Registrar of the above Honourable Court is authorised to issue a Warrant of Execution against the aforementioned immovable properties of the First Respondent.

[51.5] The Warrants of Execution shall be held over for a period of six months from the date of Judgment, during which period the Applicant shall not be allowed to execute the said warrants of Execution to allow the Respondents the opportunity of settling their indebtedness towards the Applicant prior to such execution steps being taken.

[51.6] The Respondents are to pay the costs of the application on a party and party scale.

H F FOURIE AJ
ACTING JUDGE OF HIGH COURT, MIDDELBURG

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Judgment reserved on: 14 April 2026
Date of delivery: 22 April 2026

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[1] Skosana v RAF 3257/23 [2026] ZAMPMHC 5 ; 1 All SA 588 (MM) at paragraph 48, 49 and 50

[2] See amongst others Transvaal Racing Club v Jocky Club of South Africa 1959 (3) SA 599 (W) at B602

[3] Herman v Jacobsz Brothers 1931 E.D.L 284 at P 286

[4] Standard Bank of South Africa Limited v Sewpersadh & Another 2005 (4) SA 149 (C) at 12 - 13

[5] Rossouw and Another v First Rand Bank Ltd t/a FNB Home Loans (Formally First Rand Bank of SA Ltd) [2011] 2 All SA 56 (SCA)