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IN THE HIGH COURT OF SOUTH AFRICA,

MPUMALANGA DIVISION, (MIDDELBURG LOCAL SEAT)

In the applications between:

CASE NUMBER: 1091/2020
(1) REPORTABLE: **YES**
(2) OF INTEREST TO OTHER JUDGES: **YES**
(3) REVISED **YES/NO**
DATE 11 May 2026
SIGNATURE

THE STANDARD BANK OF SOUTH AFRICA LIMITED **APPLICANT**
(Registration Number: 1962/000738/06)

versus

OMEGA GUTU **FIRST RESPONDENT**
(Identity Number: 6[...])

MARIA AMELIA GUTU **SECOND RESPONDENT**
(Identity Number: 6[...])

AND

CASE NUMBER: 6230/2024

FIRSTRAND BANK LIMITED **APPLICANT**

(Registration Number: 1929/001225/03)

versus

SIBULELO MLILELWA **FIRST RESPONDENT**
(Identity Number: 8[...])

GOVAN MBEKI MUNICIPALITY **SECOND RESPONDENT**

AND

CASE NUMBER: 1492/2017

NQABA FINANCE 1 (RF) LTD **APPLICANT**
(Registration Number: 2005/04005/07)

versus

AARON KENNETH MTHOMBENI **FIRST RESPONDENT**
(Identity Number: 8[...])
IN HIS CAPACITY AS DULY APPOINTED EXECUTOR
IN THE ESTATE OF THE LATE
KOPPIE JAPHTA MTHOMBENI
(Identity Number: 6[...])

EMALAHLENI LOCAL MUNICIPALITY **SECOND RESPONDENT**

JUDGMENT

<u>FOURIE AJ</u>

<u>INTRODUCTION:</u>

[1] This Judgment incorporates three Judgments for applications set down on the Unopposed Motion Court Roll of 17 April 2026. All three applications sought execution against the residential properties of the Respondents under the auspices of Rule 46A of the Uniform Rules of Court.

[2] All three applications have been considerably delayed for different reasons, and all remain unopposed.

[3] In evaluating whether the Applicant has sufficiently discharged its burden in each of the respective matters, the Court scrutinised the evidence the Applicant advanced in its attempts.

[4] Applications seeking executions against residential premises under the auspices of Rule 46A of the Uniform Rules of Court are a common sight on each and every unopposed Motion Court Roll in every division across the country.

[5] Courts and Presiding Judges are generally hastily informed by Counsel appearing on behalf of the Applicant that the papers are in order, reference is briefly made to one or two figures derived from the Applicant's papers, and consequently Counsel appearing seeks relief in terms of a generally generic Draft Order in which Default Judgment is granted and a reserve price in respect of the sale in execution of the property is set at an amount so fixed by the Court.

[6] This Judgment deals with the case-specific deficiencies in the matters presented to the Court under which heading this Judgment is written, but it also serves as a stark reminder to practitioners and litigating parties that generic lip service and non-compliant papers and supporting documentation are not an acceptable measure of proving one's case.

[7] It is crucially important for the Applicant to present, thoroughly, ethically, and compliantly, their necessary information to the Court when applications

under the auspices of Rule 46A are made in order for the Court to be placed in a position to make an Order for justice to be done between the respective parties.

BACKGROUND:

[8] In order to ultimately evaluate to what degree the Court will hold a litigant to strict compliance and a technical scrutiny of their papers, the Court is bound to evaluate why Rule 46A of the Uniform Rules of Court was enacted.

[9] I can do no better than Fisher J, who stated in the matter of ***SB Guarantee Company v De Sousa***,**[1]** that:

> *"[5] Mercifully, in this age of constitutional composure, it has been recognised that certain considerations of fairness and justice are inalienable and should be weighed as part of the process of judicial execution for the common and commercial good and in the interests of justice.*
>
> *[6] Moseneke* ***DCJ in Nkata*****[2]** *encapsulated the position thus:*
>
> *"The [National Credit] Act seeks to infuse values of fairness, good faith, reasonableness and equality in the manner actors in the credit market relate. Unlike in the past, the sheer raw financial power difference between the credit giver and its much-needed but weaker counterpart, the credit consumer, will not always rule the roost. Courts are urged to strike a balance between their respective rights and responsibilities. Yes, debtors must diligently and honestly meet their undertakings towards their creditors. If they do not, the credit market will not be sustainable. But the human condition suggests that it is not always possible — particularly in credit arrangements that run over many years or decades, as mortgage bonds over homes do. Credit givers serve*

a beneficial and indispensable role in advancing the economy and sometimes social good. They too have not only rights but also responsibilities. They must act within the constraints of the statutory arrangements. That is particularly so when a credit consumer honestly runs into financial distress that precipitates repayment defaults. The resolution of the resultant dispute must bear the hallmarks of equity, good faith, reasonableness, and equality. No doubt, credit givers ought to be astute to recognise the imbalance in negotiating power between themselves and consumers. They ought to realise that at play in the dispute is not only the profit motive, but also the civilised values of our Constitution."

[7] It is in this spirit and with these constitutional imperatives and norms in mind that Rule 46A was promulgated in 2017."

[10] This Court can only add to the sentiments displayed by Fisher J that, in the evaluation of these types of matters, general principles of logic ought to be applied. If, on the face value of a document, the document is not suitable for its intended purpose, and no reasonable explanation is offered for such, no justifiable reason could exist for such a document to be accepted, whether it be an affidavit, a report, or any other substantiating document.

[11] Although a Court no doubt needs to be mindful not to enter the arena, and to argue in opposition of an application against a financial institution, a distinction is to be drawn between the right of a litigant, having proven his claim to an order on the terms as proven by him, and the discretion afforded to the Court to determine in what way and on which terms ultimate execution is to be made.

[12] Whilst it will not be for the Court to interfere with the contractual terms entered into between the Applicant and the Respondent, in terms of the information the Court requires to come to a just conclusion on how such an obtained Judgment is to be executed necessitates that the Court to seriously

engage with the evidence presented to it, in order to ultimately exercise its discretion.

[13] If a Court is not satisfied that the evidence presented to it is of such a nature that it can be accepted, the Court would be left to speculate or guess in what way justice is ultimately to be done between litigants. This is a position which no Court will entertain.

[14] The Court, in the matter of ***ABSA Bank Ltd v Mokebe and Related Cases*****[3]** set out the requirements an Applicant needed to adhere to in order to place the Court in a position to competently evaluate matters under the auspices of Rule 46A of the Uniform Rules of Court. Litigants were, in this matter, given guidance on what was required from them to ultimately obtain the relief they sought.

[15] The essence of the current Judgment deals with the continued non-compliance with the requirements specifically pertaining to valuation reports and valuation affidavits, the necessity and particularity of which is, in most instances, either completely disregarded by Applicants, or alternatively, attended to in such a lackadaisical manner that the Court cannot accept the veracity of such documents for their intended purpose.

[16] Whilst the Court accepts that several other factors are to be evaluated for the Court to ultimately come to a just conclusion on a fair reserve price, this Judgment is confined to the difficulties encountered in respect of valuations and valuators' affidavits.

[17] The reasons for a sworn evaluation and an evaluation affidavit are logical. The Court cannot attend each and every premises to ascertain its condition and value. The Court relies upon experts who, through their qualifications and experience, need to evaluate a property, evaluate its condition, and each and every aspect thereof in order to indicate to the Court what the fair market value of the property ought to be. Absent this crucial portion of

evidence, the Court would in most instances be left to speculate what an appropriate reserve price at a sale in execution would be.

[18] If a proper, unbiased, and thorough valuation of a property is done, a Court can be satisfied and accept that, if it orders execution at a reserve price in line with what is stated in the valuator’s report, the Respondent would not be unjustly prejudiced when their property is ultimately sold, and it would safeguard against the sale in execution of property at an unjustified reduced rate, which would not be in any way and for obvious reasons be in the interest of justice.

EVALUATIONS, REPORTS, AND AFFIDAVITS:

A. PERSONAL ATTENDANCE:

[19] After the Judgement of Fisher J in SB Guarantee Company v De Sousa, *supra,* it would have been expected that the manner in which evaluations were conducted for the purpose of Rule 46A would have significantly improved and that practitioners would have been mindful not to fall foul of the complained of issues as raised in the stated Judgment.

[20] Unfortunately, rather than the position improving, it seems as if it is worsening, if regard is had to the manner in which evaluations are conducted.

[21] Insofar as it is necessary, it cannot be overstated how important it would be, as a very basic requirement, that the person conducting the evaluation of the property personally attend to such evaluation. The person attending the evaluation would be the only person, or, alternatively, the person best equipped to truthfully advance to Court the true nature of the evaluation that has been conducted in respect of the property. If personal attendance was not possible, exceptional circumstances need to be given as to why the Court should still allow such evidence from such a person.

[22] Courts are often confronted with evaluation reports indicating that the valuation was a so-called “drive-by” evaluation or a “digital evaluation”. In other instances, the reports make the vague statement that access to the property could not be obtained. The reports are generally silent on the number of attempts to gain access to the property and the specific steps taken to do so. To make matters worse for the valuators, upon scrutiny of their reports, the reports, absent the fine print stating that no access to the property was possible, give the impression that the property was valued from corner to corner.

[23] The aforesaid is so because most of the valuation reports address the number of rooms, bathrooms, and the material used, for instance, in respect of flooring, cupboards, and doors. When a valuator inserts, with great particularity, details on aspects such as the aforesaid, it provides a certain perception that those elements were indeed valued by the valuator and the Court can accept them as true. In actual fact, those valuations are speculative in nature and do not aid the Court in coming to an ultimate decision.

[24] If it is not seriously evident from the report or affidavit by the valuator which attempts have been made to gain access to the property, and in what way the valuator was prohibited from gaining such access, I find no reason not to accept that no serious attempt was made by such a valuator and that the Court ought not to accept the valuation as anything else than speculation on a possible value for the property.

[25] On the contrary, if the Applicant or the valuator is able to indicate to the Court that reasonable steps were taken to gain access to the premises, and for instance, the valuator was prohibited access through malicious actions of the Respondent, the position might be significantly different as the Court would then be faced with the best available evidence to come to an ultimate conclusion. In several instances, however, the Court is faced with a Sheriff’s

Return of Service where the occupants of a premises seemingly without any difficulty opened the door and let the Sheriff into the property for the service of process, but the valuators are allowed to make bold and unsubstantiated averments that no access to the premises was possible. These submissions ought to be scrutinised by the Court. In most instances, matters under the aforesaid auspices get brought to Court over a considerable amount of time, and the Court cannot accept that, in litigation spanning, in some instances, several years, one single attempt by a valuator to attend to the property would be sufficient.

B. AFFIDAVITS

[26] The next question is how the evidence of the valuator is to be presented to the Court. In ***ABSA Bank Ltd v Mokebe*** *supra*, it became settled that the evidence of the valuator ought to be presented to the Court by way of affidavit.

[27] The reason why the evidence of the experts is to be received under oath is well-reasoned. If nothing else, financial institutions and valuators handle an abundance of such valuations, and it is necessary to safeguard against potential abuse.

[28] At the very least, by requiring the valuator to make an affidavit, the Court amplifies the evidence from a mere document by requiring the valuator to appear before a suitable Commissioner of Oaths to confirm not only the existence of the valuator, but to allow the valuator the opportunity to swear, under oath, to the truthfulness and the veracity of the statement they are making to the degree that, should the valuator be found to perjure himself it could lead to possible criminal prosecution.

[29] It further allows the opportunity for a valuator to, after the completion of a valuation, consider the correctness and truthfulness of their submissions, and to ensure that the facts to which the valuator ultimately swears are in all aspects true and correct.

[30] Some valuators' reports have, at the end of it, certificates where the report itself can be commissioned. It follows that, under those circumstances, the report would be compiled, signed, and commissioned upon completion. In other instances, a report is compiled which is then incorporated into a valuation affidavit deposed to by the valuator and ultimately handed in to the Court.

[31] The Court finds no difficulty in accepting that, once a compliant valuator's report and a complaint valuator's affidavit are received, the information therein stated would significantly aid the Court in ultimately coming to a just decision in respect of the Order to be made. A well-reasoned and properly commissioned affidavit and report would elevate those documents from those obtained from a proverbial "hired gun" for the Applicants to a crucial aid utilised by the Court to ensure justice is ultimately done.

[32] When it becomes apparent however that, there has been non-compliance with either the manner in which the valuation of the property occurred or with the manner in which the affidavit or report has been commissioned, it alerts the Court to evaluate whether a valuation indeed occurred or whether the Court is rather to accept that a litigant has attempted to circumvent their obligations to gain some sort of strategic advantage over their opponent.

C. <u>COMMISSIONING OF AFFIDAVIT:</u>

[33] The commissioning of affidavits forms one of the cornerstones of motion proceedings. It is in the process of the commissioning of a document by a Commissioner of Oaths, in which a document is elevated from the mere status of a document to that of an affidavit.

[34] The manner in which a document is to be signed and commissioned by a Commissioner of Oaths is settled both in terms of legal precedent and the Justice of the Peace and Commissioners of Oaths Act, 16 of 1963.

[35] If a document purporting to be an affidavit is not properly signed and commissioned, it can, at least *prima facie,* be accepted as a fundamental procedural defect. Any deficiency in the manner in which a document is commissioned at the very least necessitates a reasonable explanation in order for the Court to accept the same. Under every circumstance where a party seeks non-compliance to be condoned, such a party seeks an indulgence from a Court, and under those circumstances, the Court would have a discretion whether or not to grant such an indulgence.

[36] As in most instances, when condonation is sought, proper reasons need to be provided for the non-compliance, and the Court, with the interest of justice in mind, will then evaluate whether or not such condonation ought to be granted.

[37] At the very least, what could be expected of a litigant, if there is any sort of non-compliance, is a disclosure and an acknowledgement of such non-compliance, and thereafter an explanation for such non-compliance.

[38] Where a proper explanation is advanced for not complying strictly with the manner in which affidavits are to be commissioned, which explanation is reasonable under the circumstances, Courts will generally allow the affidavits into evidence if substantial compliance with the relevant requirements has at least been met. Where substantial compliance has not been met, or no proper explanation for strict compliance has not been given, a Court is faced with no evidentiary basis upon which to exercise its powers, and can justifiably disregard the affidavit as *pro non scripto* under appropriate circumstances.**[4]**

[39] Having regard to the manner in which the world is changing and becoming digitalised, the commissioning of affidavits has, similarly, under appropriate circumstances and conditions, been accepted when a party did not appear in person before a Commissioner, and such commissioning occurred via a virtual platform.**[5]**

[40] At the very least, what could be expected of a deponent and a commissioner wishing to commission a document absent physical presence would be a disclosure of such to the Court to indicate exactly how the document was commissioned and why a deviation from the norm was necessitated.

[41] Similarly, a deponent may elect not to have their gender specified in the commissioning certificate for personal reasons. If a deponent, however, in the body of the affidavit elects to identify himself or herself or themselves, then surely a commissioner of oaths cannot be precluded from correctly completing the commissioning certificate.

[42] Unfortunately, it happens that documents are presented to the Court, purporting to be affidavits, where substantial compliance has not been met, and only after the deficiency in the commissioning of the documents has been highlighted to a litigant appearing, is an attempt made to rectify or explain the same.

[43] There ought to be a distinction between documents that are not properly commissioned, resulting from facts that necessitated the document to be signed in a specific fashion, given the facts of the matter, and documents where there was simply non-compliance with the manner in which the document ought to have been commissioned because parties were negligent.

[44] When deponents or commissioners of oath attend to a document and want to elevate such a document to the status of an affidavit, a certain amount of diligence can be expected to ensure compliance with the manner in which

the document ought to be commissioned. Absent such, a Court would be justified to accept that the Deponent or the Commissioner or both was either negligent or alternatively knew of their non-compliance and attempted to proceed with the affidavit in the hopes that the Court would not pick up on the deficiencies in the affidavit. In both scenarios, a Court would be slow to come to the aid of a litigant acting in such a manner.

CASE SPECIFIC DEFICIENCIES:

[45] Hereinafter, I set out briefly the manner in which each Applicant tried to comply with the requirements for the filing of a Valuator's Affidavit and in what way they were non-compliant.

STANDARD BANK v GUTU **CASE NUMBER: 1091/2020**

[46] The Applicant relies on a valuation attempted by DDP Valuers.

[47] The Valuation Report is drafted in the most general and generic terms.

[48] The report is drawn up under circumstances in which a blanket statement is made that no access to the property was possible.

[49] The report does not indicate what steps were taken to gain access to the property or why access was ultimately not granted. No explanation was given why, since the first attempted attendance at the property, for a period of three years, access to the property could not be gained.

[50] The associated valuator in the report is identified as JN de Vos, and the professional valuator is identified as HJ Prinsloo. Both individuals seem to sign the initial report on 16 October 2023, although the signatures seem to be electronically generated and affixed. The original report and affidavit were not presented to Court. The report, seemingly serving as an affidavit,

is then purportedly signed by a Commissioner of Oaths whose designation and name is not legible on the document presented to Court, but perplexingly on the 19th of October 2023, indicating that it was signed some days after the Deponent signed the document and evidently the signatories could not have appeared before the Deponent on the day on which it is alleged that same is signed.

[51] The commissioning certificate also holds no particularity, as on each junction, the genders of the respective Deponents are not specified, and it is continually reflected as he/she or I/we.

[52] No amount of weight can be placed on this document.

[53] Upon being directed by the Court to do so, an updated Valuator's Affidavit was obtained. The updated affidavit was seemingly signed on the 30th of January 2026. The affidavit was deposed to by JN de Vos again, and again in the commissioning certificate, no gender is specified, and the respective portion reflects merely he/she.

[54] The report annexed to the affidavit is exactly the report previously annexed. Neither the Deponent nor the Applicants explain how, over the period in question, being approximately 3 years, no single amendment to any amount on the report could be justified.

[55] Again, the report indicates that it was signed by De Vos and Prinsloo, De Vos signing on the 12th of August 2025, and Prinsloo signing on the 15th of August 2025. The report, again purporting to be an affidavit, is then commissioned by one Dewald Carel Nel of 4[...] F[...] Street, Nelspruit, who indicated that the document was signed before him on 15 August 2025. I pause to state that it would be an impossibility for this averment to be truthful under circumstances where De Vos alleges that he signed the document on the 12th of August, some three days prior, and as such, the Commissioner of Oaths's statement is false. Again, the signatures

are appended to the report in electronic format, and no particularity regarding gender is specified.

[56] Annexed to the update Valuator's Supplementary Affidavit is a Confirmatory Affidavit by Prinsloo. The affidavit is again signed before one Dewald Carel Nel at 4[...] F[...] Street, Nelspruit, again without any particularity to the gender of the Deponent, and again seemingly via electronic signature. Peculiarly, the affidavit pertaining to the years of experience of the Deponent is left blank, an indication that the Deponent or the drafter thereof merely utilised a pro-forma document without any particularity, which was not properly completed.

[57] Prior to the hearing of the matter, the Applicants presented a further updated report. The report again resembles the previous reports filed and exhibits the same deficiencies. De Vos signed the document on the 3rd of February 2026, Prinsloo signed the document on the 5th of February 2026, both seemingly electronically, and the document was then commissioned by one Marcelle Oosthuizen again from 4[...] F[...] Street, Nelspruit on the 5th of February 2026, several days after being signed by De Vos, again without any particularity to gender.

[58] The further report is again accompanied by an affidavit of Prinsloo, seemingly signed on 25 February 2026. The affidavit is again signed by Dewald Carel Nel at 4[...] F[...] Street, Nelspruit, and again appears to have been signed electronically, but De Vos's gender was selected as male.

[59] A further Valuator's Affidavit by De Vos was also obtained, seemingly signed on 25 February 2026 at Secunda, again without particularity to gender. The difficulty with this purported affidavit is the fact that De Vos in his affidavit, states that he aligns himself with the opinions of his report dated 5 February 2026, yet the report annexed to his affidavit was already signed by him on the 3rd of February 2026, several days prior to his statements in

the affidavit that he attended the premises, which attendance he states only occurred on 5 February 2026.

[60] Of greater concern is that, whether by error or design, a further Valuator's Confirmatory Affidavit is annexed to the exact same affidavit of De Vos, again by Prinsloo. Again, the years of experience are left vacant, but curiously, the affidavit is signed on the 25th of February 2026 at Secunda. The aforesaid is to be evaluated under circumstances where the exact same Deponent, allegedly on the exact same date, made an affidavit also bound into the record, in a different town, some several hundred kilometres away.

[61] In total, the Applicant relies on eight different affidavits in the matter. Not a single one of the affidavits relied on is compliant to the degree that the Court can accept same.

[62] For the period ranging from 16 October 2023 until 25 February 2026, every report, although identified as a supplementary report, remains exactly the same, without any amendment to the value of the property.

[63] During the appearance when the matter was ultimately heard, Counsel for the Applicant wished to bring it to the Court's attention that the matter ought now to be finalised since it has unnecessarily been delayed.

[64] The sentiment of Counsel appearing for the Applicant is ironic, given that the matter has been non-compliant since inception due to the sole actions of the Applicant. The documents presented by the Applicant have been presented in such a negligent manner that it would be an impossibility for justice to be done if the Court is left to speculate on the true value of the property, specifically under circumstances where it is evident the Applicant has made no real effort in respect of the valuation thereof.

[65] The manner in which the purported affidavits are continually signed and attended to should be the subject of much criticism. It is evident that the affidavits were attended to in such a manner that the Deponents either did not appear before a Commissioner of Oaths or some other scheme or arrangement pertaining to the bulk signature of affidavits exists whereby the respective Deponents or the Applicant presents a bulk of affidavits to a firm for the same to be commissioned in a manner that is not proper.

[66] As there is no proper valuation nor a valid valuation affidavit, it is impossible for the Court to come to a just conclusion on what the value of the property in question ought to be regarded as.

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[67] The Applicant in this matter relies on a Valuator's Affidavit by one Izak Buys.

[68] The initial affidavit by Buys was unsigned when it formed part of the Default Judgment Application. When a Supplementary Affidavit was filed, an affidavit by Buys was presented.

[69] The signature to the affidavit is again evidently an electronic signature, and the affidavit indicates to have been signed in Standerton by the Deponent, yet curiously, the affidavit is commissioned by one Samantha Germishuyzen at
No 2[...] D[...] Avenue, Kempton Park. No explanation is provided for this discrepancy.

[70] If regard is had to the report itself, the report indicates the purchase date of the property to be 23 September 2024. This seems rather to be the date on which the initial evaluation by Buys was done, rather than the purchase date of the property, if one has regard to the facts of the matter. The report again indicated that no internal access to the property was provided without any

particularity as to why, for a period of two years since the report was obtained, no access was possible, nor was it indicated what steps were taken in order to gain access.

[71] An extensive report is filed on other properties in the vicinity, but no meaningful engagement with the property in question is made.

[72] Prior to the hearing of the matter, a further affidavit of one Jacobus Coetzee Venter was provided, which was seemingly deposed to on 8 April 2026. The valuation purports to be a desktop evaluation, and the difficulty with this document is that it again seems to be a comparison with other buildings in the area without meaningfully engaging with the true state of the current property, whilst surrounding properties might be indicative of whether the area is one conducive to higher or lower property values, it is highly possible that ‘n high value property may present itself in a lower value area or that a lower value property might present itself in a higher value area. The Court cannot be expected to place a value on a property solely based on other properties in the area. It is not the other properties in the area that are to be sold, it is this specific property.

[73] Insofar as affidavits have been filed by Buys, the same are not compliant and are rejected. Insofar as any other documentation is presented, they do not aid the Court to ultimately come to a just conclusion on the true value of the property.

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[74] In this matter, the Applicants also relied on a valuation by DDP Valuators, and valuations again by JN De Vos.

[75] The attempted affidavit purports to have been signed on the 10th of November 2025, under circumstances where De Vos indicates that he

signed the affidavit at Kriel, and the Commissioner of Oaths purports to sign the affidavit in Secunda. No explanation for this is offered.

[76] Curiously, the commissioning certificate indicates that De Vos is female. In the report, mention is made again of some sort of ad hoc extension provided by HJ Prinsloo to De Vos. No signature of Prinsloo is affixed, nor is a Confirmatory Affidavit by Prinsloo annexed. The Court could similarly note no involvement by Prinsloo in this matter, and it seems a previous pro forma report was utilised by De Vos, which still mentioned Prinsloo. Again, the report is drafted in the most generic terms, without any particularity.

[77] Again, no proper evaluation of the property was conducted, no access was gained to the property, and no explanation was given regarding the attempts made to gain access and conduct a proper investigation.

DISCUSSION:

[78] In none of the matters was an explanation offered for the non-compliance, or the manner in which the properties were valued, or the affidavits ultimately deposed to. It is evident that the Applicants either did not notice the deficiencies with which their hired guns provided their reports, or alternatively, the Applicants have become so accustomed to this lackadaisical approach to the process that they merely advance these documents into the Court system in the hopes that same would not be picked up by the Court ultimately hearing the matter.

[79] I have no doubt that all of these continued postponements in these matters, and the allegations that subsequent valuations have been conducted, will ultimately be billed and placed on the Respondents' accounts. Because the Applicant does not feel any financial burden for their actions, it seems there is no real seriousness or effectiveness in the way this valuation process is undertaken.

[80] I believe that it is unfair to a consumer if an erroneous charge is billed against their account, even if they are in default of the initial credit agreement. If a valuator attempted a valuation, and it was conducted in such an insufficient manner that the Court cannot utilise his report or his affidavit, then I am convinced that justice dictates it ought to be the person instructing his subcontractor to be liable for their costs, and not the consumer. The consumer is in default of a credit agreement, and for that, ultimate judgment together with interest is charged against their account.

[81] Erroneous litigation or erroneous procedures followed by an Applicant cannot form part of the costs levied against a consumer in default. This principle ought to ring true as much for legal costs as it does for valuator's costs. Where procedural non-compliance exists, it would serve no practical purpose to have costs stand over or form part of the cause, given that it can be generally accepted that the Applicants will ultimately be successful in their applications.

[82] What transpires, however, is that matters are continually postponed due to the erroneous state of the Applicant's papers or the non-compliance with what the Applicant needed to prove, only for those wasted costs to ultimately form part of the account the Respondent is vested with in any event. I believe that, where a matter is non-compliant, and such non-compliance is squarely resultant from the actions of an Applicant, a Court has a duty to make a proper Order pertaining to the costs to ensure that those costs do not ultimately find their way back to burden a Respondent.

[83] Insofar as it relates to the commissioning of documents and affidavits, the Court is of the belief that the obligation to ensure compliance is as much on a Deponent as it is on a Commissioner of Oaths. Commissioners of Oath hold a specific office reserved for only certain professions that were deemed appropriate to afford to such professions a designation that could elevate a document from a mere document to an affidavit. Once such a designation is accepted by a Commissioner of Oaths, it should not be abused or misused.

[84] An affidavit which, on face value, is non-compliant and which, on face value, has not been properly commissioned should be, up until an explanation for the non-compliance is provided and accepted by the Court, regarded as an irregularity. The court generally applies a lenient approach to condoning non-compliance if there is substantial compliance in the commissioning of affidavits. Under those circumstances, however, at the very least, an explanation for the non-compliance should be offered by the Commissioner of Oaths and the Deponent to explain the non-compliance.

[85] Deponents and Commissioners of Oaths cannot simply proceed with the signing and commissioning of affidavits in a manner in which they deem appropriate under the circumstances, and to deviate from full compliance in the hopes that the affidavit will ultimately be accepted by the Court.

[86] Full compliance remains the standard to be applied, and a deviation therefrom, being the lesser bracket of substantial compliance, is something that, upon explanation, would, under certain circumstances, be accepted. Substantial compliance ought not to be the norm; full compliance ought to be the norm.

[87] Affidavits in respect of Rule 46A applications play a crucial role, as they aid the Court in reaching a just conclusion and ensuring ultimate justice between the parties. It is one of the most important documents to be filed by an Applicant when an application of this nature is made, and absent such an affidavit and a proper report, an order as sought by an applicant simply cannot be granted unless exceptional circumstances have been proven to explain the deviation from the norm.

REMOVAL FROM THE ROLL:

[88] Insofar as Counsel specifically for the matters of First Rand Limited – Case Number: 6230/2024, and Nqaba Finance 1 (RF) Ltd – Case Number:

1492/2017 wished for the matter to be removed from the roll, such requests were denied by the Court.

[89] It unfortunately happens too often that, when deficiencies are highlighted in Applicants' papers, the matter is simply removed from the roll, as it is evidently clear in the current matter; matters are simply placed back on the roll in the hopes of a new Presiding Officer not noticing the deficiencies that exist since the inception of a matter.

[90] The Court did not believe it to be in the interest of justice to simply remove the matters from the roll, and, by highlighting the deficiencies in the respective applications, the Court trusts that similar errors will not recur in future applications.

ORDERS:

1. Case Numbers: 1091/2020, 6230/2024, 492/2017 are removed from the roll.

2. The Applicant in each case is given leave to file new valuations under oath.

3. The Applicants may not set down their applications again before comprehensive and thorough valuations in respect of the properties in question have not been conducted.

4. In each of the matters, the Respondents shall be given Notice of Set Down of the next hearing date, which service shall be personal unless a substituted service order has already been granted by the Court.

5. Together with the Notice of Set Down, the Applicants are directed to serve a copy of this Judgment on the Respondents.

6. There shall be no order as to costs in respect of all of the applications, and the wasted costs in respect of the postponement of the hearings in all the cases are not to be charged to the Respondents' accounts as held by the respective Applicants.

7. The Registrar is directed to deliver a copy of this Judgment to the Council of Property Valuers, established under the Property Valuers Profession Act, 47 of 2000.

H F FOURIE AJ
ACTING JUDGE OF HIGH COURT, MIDDELBURG

Judgment reserved on: ____________________
Date of delivery: ____________________

[1] SB Guarantee Company (Pty) Ltd v De Sousa (2023/035447) [2024] ZAGP JHC 459; 2024 (6) SA 625 (GJ) (6 May 2024)

[2] NKATA v FIRSTRAND BANK LTD 2016 (4) SA 257 (CC) at para 94

[3] ABSA Bank Ltd v Mokebe and Related Cases 2018 (6) SA 492 (GJ)

[4] Nhlanhla Mdakane and Others v Kwadukuza Municipality and Others (2026/040712) [2026] ZALCD 11 (2 March 2026)

[5] See First Rand Bank v Briedenhan [2022] 3690 (ECG)

See also Knuttel NO v Bhana 2021 (JOL) 51059 (GJ)

See also Maluleke v JR 209 Investments [2021] 6033-2021 (GP)