**REPUBLIC OF SOUTH AFRICA**

**IN THE HIGH COURT OF SOUTH AFRICA**
**GAUTENG LOCAL DIVISION, JOHANNESBURG**

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

DATE: 29 APRIL 2026…………SIGNATURE…………………

**CASE NO: 2023-133293**

In the matter between:

**NEDBANK LIMITED** Applicant

and

**FREDERICK SAMMY WILLIAMS** First Respondent

**MICHEL DOLORES WILLIAMS** Second Respondent

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**JUDGMENT**

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**MAUNATLALA AJ:**

[1] This is an application by Nedbank Limited ("the Applicant") for an order declaring the immovable property being Erf 8[…] E[…] Park Ext 9, Gauteng ("the property"), which is the primary residence of the Second Respondent, specifically executable. The application was

brought in terms of Rule 46A of the Uniform Rules of Court and was set down for hearing before me on 11 April 2026.

[2] When the matter was called, there was no appearance on behalf of the Applicant. The Second Respondent, Ms Michel Dolores Williams, appeared in person. She requested that the application be dismissed.

[3] Having considered the papers filed of record, including the Applicant's founding affidavit with its extensive annexures and the Second Respondent's opposing affidavit, and having regard to the Applicant's failure to appear and its failure to file a replying affidavit, I am satisfied that the application falls to be dismissed. I set out my reasons below.

**Procedural Failures of the Applicant**

[4] The Applicant set this matter down for hearing. It was therefore under an obligation to appear and prosecute its own application. Its failure to do so, without any explanation tendered to the court, is a clear abandonment of the relief it seeks. A court cannot grant relief in favour of an absent party who fails to support its own case, particularly where the opposing party appears and opposes the relief.

[5] Furthermore, the Second Respondent filed an opposing affidavit on 14 January 2026. The Applicant has not filed any replying affidavit. In motion proceedings, a replying affidavit is not merely a formality; it is the applicant's opportunity to answer the respondent's version and to place disputed facts beyond contention. By failing to file a reply, the Applicant has effectively conceded that it has no answer to the material disputes raised by the Second Respondent.

**Material Disputes of Fact on the Papers**

[6] Even if the Applicant had appeared, the papers themselves reveal numerous material disputes of fact that are not capable of resolution on the papers without oral evidence. The court in the case of *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* [2008] ZASCA 6; 2008 (3) SA 371 (SCA) , at paragraph 12 provided that; “an applicant who seeks final relief on motion must in the event of conflict, accept the version set up by his opponent unless the latter’s allegations are, in the opinion of the court, not such as to raise a real, genuine or bona fide dispute of fact or are so farfetched or clearly untenable that the court is justified in rejecting them merely on the papers.”

The Applicant’s failure to file a replying affidavit leaves the disputed facts hanging. In such circumstances, the application cannot succeed.

[7] **Dispute as to the outstanding balance:** The Applicant claims, at paragraph 11 of its founding affidavit, that as at 30 March 2024, the Respondents were indebted to it in the sum of R124,264.99, with arrears of R59,108.68 as at 29 March 2024. The Second Respondent, however, disputes the accuracy, lawfulness, and enforceability of this balance. In her opposing affidavit, at paragraph 35 and 36, she states under oath that as at 2018, the last statement she received reflected an outstanding balance of approximately R180,000. She further states that she made a lump sum payment of R100,000 in 2020, under the genuine belief that the bond had been largely settled. She complains that for three years following that payment, the Applicant provided her with no regular monthly or quarterly statements, making it impossible for her to verify how interest, fees, or penalties were being calculated.

[8] At Paragraph 20 of her affidavit in opposition of rule 46A, she specifically disputes the capitalised interest and legal fees reflected in a reconciliation provided to her by a Mr Marius Fourie on 23 December 2025. These are not bald or vague denials; they are specific, particularised disputes that go to the very foundation of the Applicant's claim.

[9] **Dispute as to compliance with the National Credit Act:** The Applicant alleges that it delivered a section 129(1)(a) notice to the First Respondent and a section 86(10) notice to the Second Respondent by registered post, and that these notices were delivered to the designated post office. The Second Respondent at paragraph 5 of her affidavit in opposition of rule 46A, however, states that she did not receive the alleged registered mail. She further states that correspondence was sent to incorrect contact details, despite her having provided correct information to the Applicant. The Applicant's reliance on printouts from the South African Post Office website does not, without more, prove actual receipt or that a reasonable attempt was made to ensure delivery to the correct address. Given the Second Respondent's sworn denial, a factual dispute arises as to proper notice.

[10] **Dispute as to the Applicant's conduct and administrative failures:** The Second Respondent raises serious allegations of administrative failures on the part of the Applicant. At paragraph 21 of her opposing affidavit, she states that a Mr Magell, a home loan agent of the Applicant, advised her to suspend further payments due to missing information and incorrect contact details on her account, and undertook to escalate the matter for investigation, but no such investigation occurred. She states that in February 2025, she attended the Applicant's head office, submitted all required documentation for a restructuring, and proposed a suretyship by her brother. She was only informed in July 2025 that the restructuring had not been processed because the bond was allegedly a joint

account, notwithstanding that she is divorced. She submits, correctly in my view, that the Applicant's contradictory instructions, administrative failures, and prolonged delays materially prejudiced her and caused the arrears to worsen. The Applicant has filed no replying affidavit to deny or explain these serious allegations.

[11] **Dispute as to the section 86(10) termination:** The Applicant alleges that it terminated the Second Respondent's debt review process in terms of section 86(10) of the National Credit Act. However, the Second Respondent states, at paragraph 3 of her opposing affidavit to Rule 46A, that the Applicant accepted minimum payments through a debt counsellor arrangement for several years without issuing statements, and that interest and penalties were applied retroactively despite her good-faith compliance. She also states that she was not informed that acceptance of minimum payments would result in the cancellation of insurance benefits or retrenchment cover. These allegations, if true, could have a material bearing on the lawfulness of the termination and the enforceability of the accelerated debt. Again, the Applicant has chosen not to reply.

**The Constitutional Balance and Rule 46A**

[12] Section 26 of the Constitution of the Republic of South Africa, 1996, guarantees everyone the right to have access to adequate housing. A court may not order the execution sale of a person's primary residence without having regard to all relevant circumstances, as required by Rule 46A.

[13] The Applicant itself, in its founding affidavit, acknowledges that the property appears to be the primary residence of the Second Respondent. The Applicant also acknowledges that it is unclear whether any dependants, minor children, elderly persons, or disabled persons

reside in the property. In the face of this uncertainty, and given the Second Respondent's appearance in person and her stated willingness to resolve the matter, it would be disproportionate and unjust to grant an order declaring the property executable.

[14] The Second Respondent has not refused to pay her lawful obligations. To the contrary, she states under oath that she is willing to pay a verified, lawful, and properly reconciled amount. She has arranged to lease the property and proposes to utilise the rental income to service and settle the outstanding balance over an extended period. She does not consent to any restructuring that results in further capitalisation of interest or charges – a position that is not unreasonable given the disputes she has raised.

**Conclusion on the Papers**

[15] In motion proceedings, an applicant must make out its case on the papers filed. Where the respondent raises material disputes of fact, and the applicant fails to file a replying affidavit to answer those disputes, the court is entitled to accept the respondent's version, particularly where that version is coherent, detailed, and not inherently implausible. See *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* [2008] ZASCA 6; 2008 (3) SA 371 (SCA) at paragraph [13]:

> "A real, genuine and bona fide dispute of fact can only exist where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed".

[16] Further, the court *in Plascon-Evans Paints Ltd v Van Riebeeck Paints(Pty) Ltd 1984 (3) SA 623 (A) (At 634E-635C)* held that if a dispute of fact becomes apparent on the affidavits, a final order/a relief with a final effect may only be granted if the allegations in the applicant's affidavits, which have been admitted by the respondent, considered together

with the allegations made by the respondent, justify such an order. In this case, this was not the position. As a result of the hanging material dispute of facts, I am inclined to refuse the grant of a final order on paper only.

[17] The Applicant's failure to appear at the hearing of its own application is, in any event, fatal. A party who sets a matter down and then abandons it cannot expect the court to grant relief in its absence, especially over the opposition of a respondent who appears in person and asks for dismissal.

[18] In all the circumstances, the Applicant has failed to establish that it is entitled to the relief sought. The application is devoid of merit and falls to be dismissed.

**Order**

[19] Accordingly, I make the following order:

1. The application is dismissed with costs.

**MI MAUNATLALA**
**ACTING JUDGE OF THE HIGH COURT,**
**JOHANNESBURG, GAUTENG DIVISION**

**DATE OF HEARING: 20 January 2026**

**DATE OF ORDER: 11 February 2026**

**DATE OF REASONS FOR JUDGMENT: 29 April 2026**