IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

(1)	NOT REPORTABLE
(2)	NOT OF INTEREST TO OTHER JUDGES

CASE NO: 2024-010120

DATE: 14 MAY 2026

In the matter between:

LOMBARDY HOME OWNERS ASSOCIATION NPC Applicant

and

LILLIAN MOKGALAKANE MAKGOLELA First Respondent

KINGSLEY MAKGOLELA Second Respondent

THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY Third Respondent

ABSA HOME LOANS GUARANTEE CO (RF) (PTY) LIMITED Fourth Respondent

Neutral Citation: *Lombardy HOA v Makgolela and Others (2024-010120)* **[2026] ZAGPJHC ---** (14 May 2026)

Coram: Adams J

Heard: 4 May 2026 – 'virtually' as a videoconference on *Microsoft Teams*

Delivered: 14 May 2025 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 10:30 on 14 May 2026.

Summary: Monetary judgment – application for – claim by Home Owners' Association – arrear levies and related charges – duty on the applicant to collect levies – obligation on members of the association to pay their levies –
Execution – sale in execution – of immovable property – for substantial debt, growing monthly – no other remedies available to the applicant – judicial oversight provided over the sale in execution – reasonable and fair reserve price set for the sale in execution – to ensure that applicant's constitutional right to adequate housing in terms of section 26 of Constitution is not unreasonably limited –
Judgment – monetary – granted in favour of the applicant against the respondents – respondents' immovable property declared specially executable – realistic and reasonable reserve price set for the sale in execution at a public auction.

ORDER

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(1) Judgment is granted in favour of the applicant against the first and the second respondents, jointly and severally, the one paying the other to be absolved, for payment of the sum of R211 662.07, together with interest thereon at the prime interest rate plus 3% per annum, compounded monthly in arrears, from date of issue of the application, being 30 July 2025.

(2) The first and the second respondents' immovable property, being Erf 1[…], P[…] Township, City of Tshwane Metropolitan Municipality, Registration Division JR, Gauteng, measuring 796 square meters, held by Deed of Transfer number: T[…], be and is hereby declared to be specially executable.

(3) The Registrar of this Court be and is hereby authorised and directed to issue a writ of execution against the hypothecated property above, to cause to be realised by public auction for payment of the outstanding balances set out above and in other judgments of this and other Courts, and also all other costs and charges in this said case to be hereafter duly taxed according to Law.

(4) A reserve price is set for the sale of the property, at a sale in execution, at a value of R3.5 Million.

(5) The first and the second respondents, jointly and severally, the one paying the other to be absolved, shall pay the applicant's costs of this opposed application, including Counsel's costs on scale 'A' of the tariff referred to in Uniform Rule of Court 67A(3), read with rule 69.

JUDGMENT

Adams J:

[1]. This is an opposed application by the applicant in terms of Uniform Rule of Court 46A. The applicant seeks an order declaring the immovable property of the first and second respondents, being Erf 1[…], P[…] T[…], City of Tshwane Metropolitan Municipality, Registration Division JR, Gauteng, measuring 796 square meters, held by Deed of Transfer number: T[…] ('the property'), specially executable. The applicant also applies for a monetary judgment for arrear levies that have accrued since a previous default judgment, as well as costs on an attorney-and-client scale.

[2]. The first respondent opposes the application. The second respondent has not opposed. The third and fourth respondents are cited as interested parties and have also not opposed.

[3]. The issue to be decided in this matter is simply whether the applicant has made out a case for the relief sought and whether the first respondent has raised sustainable defences against the relief being sought. Those issues are to be decided against the factual backdrop of the matter, with the facts herein, as set out briefly in the paragraphs which follow, by and large being common cause.

[4]. The first and second respondents are the joint registered owners of the property, which presently is the primary residence of the first respondent. By virtue of their ownership of the property, the first and second respondents are members of the applicant, a home owners association, and are bound by its Memorandum of Incorporation ('MOI'). On 14 March 2024, this Court granted default judgment against the first and second respondents in favour of the applicant in the amount of R333 294.39, together with interest and costs, for

arrear levies and other charges. The respondents subsequently launched a rescission application, which was dismissed by this Court on 20 May 2025.

[5]. Pursuant to the judgment, the applicant caused a writ of execution against movable property to be issued. On 19 June 2025, the Sheriff attended at the property. The first respondent informed the Sheriff that she did not have sufficient money or assets to settle the judgment debt. The Sheriff was able to attach movable assets worth an estimated R3 100 only. A *nulla bona* return was rendered.

[6]. As at 1 August 2025, the arrears had, according to the applicant, increased to R544 956.46. The Applicant now seeks an additional monetary judgment of R211 662.07 (the increase in arrears since the default judgment) and an order declaring the property specially executable.

[7]. It bears emphasising that the applicant already has a final monetary judgment of R333 294.39. The relief sought under rule 46A is to declare the property executable to satisfy that judgment. The additional monetary claim of R211 662.07 is ancillary to the main relief. It arises from the same cause of action (non-payment of levies under the MOI) and seeks to update the Court on the continuing indebtedness. The Court has jurisdiction to grant such relief in order to avoid a multiplicity of actions. The first respondent has not denied the indebtedness in any substantive way, nor has she placed any evidence before the Court to suggest the amount is incorrect.

[8]. The applicant is accordingly entitled to a judgment for that sum, which represents the least amount of the first and second respondents' indebtedness to the applicant, if regard is had to the fact that that sum has since the date of the issue of this application increased. In that regard, the first respondent has made payments since then, however, those payments service current levies charged and failed to make a dent in the arrears.

[9]. I therefore intend granting the monetary judgment prayed for by the applicant.

[10]. As regards the executability application, rule 46A(2) requires a court considering an application to declare a primary residence executable to establish whether the property is the primary residence of the judgment debtor and to consider alternative means of satisfying the judgment debt. The court may authorise execution only if, having considered all relevant factors, it is warranted.

[11]. The property is reportedly the primary residence of the first respondent, her adult daughter and her minor daughter. The Court must therefore carefully balance the applicant's right to enforce its judgment against the first respondent's right to adequate housing under section 26 of the Constitution.

[12]. The first respondent contends that there are other reasonable ways to satisfy the debt. She points to a valuation report of her movable property, which values the movable assets at R326 415.90. She also states that she is employed, earns a net salary of R50 000 per month, and is willing to pay R5 000 per month towards the debt. Furthermore, she has made some payments (from November 2025 to April 2026) of approximately R5 353 to R5 853 per month.

[13]. In support of his foregoing contentions, Mr Netshipise, who appeared on behalf of the first respondent, rightly placed reliance on the case authority in *Standard Bank of South Africa Ltd v Van Nelson and Another*[1], in which it was held as follows at para 51: -

'[51] An execution order against the primary residence of the debtor should be the last resort and only when all other avenues to satisfy the arrears have been meaningfully exhausted. This was not the case on the facts before me. This should not be construed to mean that debtors who have put up their immovable property as security for the mortgage loan agreement are absolved of their contractual obligations

[1] *Standard Bank of South Africa Ltd v Van Nelson and Another* 2025 (3) SA 658 (WCC).

under the loan agreement. To order otherwise would be inconsistent with the legal position that contracts voluntarily concluded should be enforced if they and/or their enforcement is not contrary to public policy. However, this approach, in my view, strikes a balance between the contractual rights of the bank and the s 26 rights of the debtors.'

[14]. I was also referred to *Williams and Another v Standard Bank of South Africa Ltd and Another*[2], which held as follows: -

'When considering such an application, the Court must consider whether there are alternative means by which the judgment debtor may satisfy the judgment debt other than execution, and may only grant an order authorising execution against the primary residence of a judgment debtor if there are no other satisfactory means of satisfying the judgment debt.'

[15]. Moreover, as submitted by Mr Netshipise, it must be borne in mind that execution against immovable property, which is the primary residence of the judgment debtor, may have a serious impact on the judgment debtor's Constitutional right to adequate housing. Hence our justice system requires a judicial oversight when an order to declare a debtor's immovable property which is his/her primary, specially executable.

[16]. This principle was confirmed in *Bestbier and Others NNO V Nedbank Ltd*[3], which held as follows: -

'[22] Rule 46A requires judicial oversight and consideration by a court of various factors when a creditor seeks to execute against "the residential immovable property of a judgment debtor". There is considerable force in *Du Plessis & Penhold's* argument in their discussion of *Jaftha and Saunderson*, that the only way to determine whether the right to adequate housing has been compromised is to require judicial oversight in all cases of execution against the immovable property on a case-by-case basis.'

[2] *Williams and Another v Standard Bank of South Africa Ltd and Another* [2019] ZAGPPHC 364 (3 May 2019).

[3] *Bestbier and Others NNO V Nedbank Ltd* 2023 (4) SA 25 (SCA).

[17]. The applicant submits that the movable property is insufficient to satisfy the judgment debt (R333 294.39, exclusive of interest and costs). Even on the first respondent's own valuation, the movable goods are worth less than the judgment debt. Moreover, the valuation reflects 'market value', not the likely proceeds of a forced sale by the Sheriff, which would be substantially lower. The payments made by the first respondent are minimal and have been allocated to the most recent arrears, leaving the judgment debt largely undisturbed.

[18]. I accept the applicant's submissions. The value of the movable property is insufficient to satisfy the judgment debt. The offer to pay R5 000 per month is also insufficient. The judgment debt is more than R333 000, and the monthly offer would take many years to extinguish even the capital, ignoring continuing monthly levies and interest. The first respondent has not made a meaningful proposal to clear the judgment debt within a reasonable period.

[19]. The Sheriff's *nulla bona* return is a strong indicator that execution against movables is not a viable alternative. The first respondent's own version confirms that the Sheriff was unable to find sufficient attachable movables. The fact that she later commissioned a valuation does not change the practical reality that the movables were either not pointed out to the Sheriff or were not readily attachable.

[20]. The first respondent's narrative relating to the construction delays and penalties is not a defence to the judgment. The rescission application was dismissed. The judgment debt is final and binding. The applicant is not obliged to accept an unrealistic payment proposal that would leave the debt outstanding for many years.

[21]. As regards the principle of proportionality and the right to housing, I have considered the impact that the sale of the property will have on the first respondent and her children. It will undoubtedly be severe. The Constitutional

Court judgment in *Jaftha v Schoeman*[4] finds application. Insofar as the first respondent's right to adequate housing may be limited by the order sought herein, it should be borne in mind that a debtor cannot avoid a legitimate judgment indefinitely by claiming that the home will be lost. The Court must balance the competing interests.

[22]. In this case, the debt is substantial and growing. The applicant is a homeowners' association that relies on the payment of levies by all members to maintain the common property and meet its obligations. The non-payment by the respondents places an unfair burden on the other paying members. The applicant has exhausted all reasonable means to recover the debt – a default judgment, a dismissed rescission application and execution against movables. There is no other satisfactory means to satisfy the judgment debt.

[23]. Moreover, the first respondent clearly has the means to acquire alternative accommodation, which means that the limitation on her right to housing is reasonable in the circumstances.

[24]. The first respondent's offer of R5 000 per month is not a reasonable alternative. Even if accepted, the debt would continue to escalate because monthly levies and interest exceed R5 000. The latest levy statement shows that as at April 2026, the arrears have grown to R681 777.32. The bondholder's balance is R1 878 810.53 and municipal arrears are R6 167.54. The property's forced sale value is R3 100 000, which is well above the total secured and unsecured debt, so there is equity to protect the first respondent's interest after the sale.

[25]. I am satisfied that execution against the property is proportionate and warranted. The judicial oversight required by rule 46A and the Constitution has been exercised. The Applicant has made out a proper case. The reserve price should, in my view, be set at R3.5 million.

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[4] *Jaftha v Schoeman* 2005 (2) SA 140 (CC).

Costs

[26]. The general rule is that costs should follow the suit. The applicant should therefore be granted the costs of this application. In that regard, the applicant seeks costs on the attorney-and-client scale in terms of clause 6.24 of the MOI, which provides that a defaulting member is liable for all legal costs on that scale. I am not persuaded that a punitive costs order is warranted in the circumstances of this matter.

[27]. I therefore intend granting costs on the party and party scale.

Order

[28]. In the result, I make the following order: -

(1) Judgment is granted in favour of the applicant against the first and the second respondents, jointly and severally, the one paying the other to be absolved, for payment of the sum of R211 662.07, together with interest thereon at the prime interest rate plus 3% per annum, compounded monthly in arrears, from date of issue of the application, being 30 July 2025.

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L R ADAMS
Judge of the High Court
Gauteng Division, Johannesburg

HEARD ON:	4 May 2026 – 'virtually'
JUDGMENT DATE:	14 May 2026 – handed down electronically
FOR THE APPLICANT:	P J Badenhorst
INSTRUCTED BY:	Heerschop Pienaar Incorporated, Allen's Nek, Roodepoort
FOR THE FIRST RESPONDENT:	M E Netshipise
INSTRUCTED BY:	Mudau and Netshipise Attorneys, Alberton
FOR THE THIRD and THE FOURTH RESPONDENTS:	No appearance
INSTRUCTED BY:	No appearance