



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

Case 2019-26908

- (1) REPORTABLE: Yes ☐ / No ☒
(2) OF INTEREST TO OTHER JUDGES: Yes ☐ / No ☒
(3) REVISED: Yes ☒ / No ☐

Date: 18 May 2026

In the matter between:

**THE STANDARD BANK OF SOUTH AFRICA
LIMITED**

Applicant

and

MOSES JETHRO DIPHARE

First Respondent

LESLEY ANN THERESA GOODYAL

Second Respondent

JUDGMENT

DU PLESSIS J

Introduction

[1] This application concerns a default judgment due to the respondents' breach of the home-loan agreement and mortgage bond. The applicant ("the Bank") seeks

judgment for the accelerated debt, an order to declare the respondents' immovable property as specially executable, and other relief under Rule 46A.

[2] The matter is not a straightforward default judgment. There is no plea on the court file; the first respondent appeared in person; and there is an opposing affidavit to the default judgment application that raises issues about the fairness of the process, the reliability of some of the applicant's documents, and the consequences of execution against the family house. In those circumstances, it is prudent to address the complaints while acknowledging that no proper plea was filed.

[3] This is because of the nature of Rule 46A, which requires courts to approach such matters with care. Rule 46A concerns the execution against a person's home, which may have a severe impact on people's lives, and therefore judicial oversight is constitutionally required in such cases. At the same time, and acknowledging the protection afforded to debtors under Rule 46A, a debtor in default is not automatically immune from the enforcement of a mortgage. I remain bound to the law and to the facts properly before me.

[4] The procedural background has been addressed above. The first respondent contended that he had, in fact, delivered a plea or, alternatively, a notice to defend, to the Bank's former attorneys, and that the matter should therefore not have proceeded as a default judgment. The plea did not form part of the record, and I invited him to provide me with a copy of the plea and proof of service. None was forthcoming.

[5] The Bank's attorneys also stated that they have not received such a notice or plea, and that the records they received from the former attorneys did not include such documents. There was only an affidavit opposing the default judgment, and no plea in the action.

[6] In this instance, the matter remains, in law, an application for default judgment. The opposing affidavit does not convert it into defended action proceedings. However, since the respondents are lay litigants and the relief sought concerns their primary residence, it is proper and necessary to consider the issues

they raise before deciding whether the Bank has made out a case for the relief sought.

Background

[7] As stated, the property is the respondents' primary residence. This is common cause. The Bank submitted that the respondents are 46 months in arrears, with arrears of around R500 000. The Bank uploaded an updated valuation at the time of the hearing, as is the practice, showing a market value of R900 000, a forced-sale value of R630 000 and Municipal arrears of about R185 000. This indicates that the respondents are severely indebted.

[8] The first respondent did not meaningfully dispute that they are in default. His case is that the process was unfair from the outset, that he made a payment after receiving the summons, and that he does not trust the figures presented by the bank. He also requested insurance-related documents and indicated that he believes some of the bank's documents were fabricated or manipulated. He further submitted that, since they had entered a plea, the matter should not have proceeded as a default-judgment case. Furthermore, he states that the updated valuation material was uploaded at the time of the hearing, that this was unfair, and that the valuation was unreliable. Lastly, they rely on the constitutional protection afforded to a person's home under Rule 46A, read with section 26 of the Constitution, which provides that even if money is owing, execution should not follow.

[9] What follows are the reasons why none of the issues raised by the respondents defeats the Bank's claim.

[10] Firstly, the Court cannot decide the case on the basis of a plea that is said to exist outside the record and was not produced when given the opportunity to do so. I can only decide the matter on the papers before the Court, and before me there is no plea.

[11] This is also relevant to the respondents' discovery complaint, in which they requested that insurance documents be produced for them to plead. Even if the

process was not properly followed, and having regard to the papers, the insurance point does not help the respondents. The bank is not suing for unpaid insurance premiums; it sues on the loan agreement, the mortgage bond, and the respondents' default. The insurance also does not pay out in the event of non-payment.

[12] The allegation of fabrication and digital manipulation also fails. There is no evidence before the court that the documents were manipulated, and there is no alternative calculation or other evidence indicating that the indebtedness relied on by the applicant is false. The first respondent's suspicion does not displace the prima facie evidentiary value of the certificate of balance produced by the Bank.

[13] The respondents face a similar issue regarding the valuation. Rule 46A requires that a court consider current information to decide whether execution is warranted, and, if so, on what terms. The updated valuation material is relevant to enable the court to exercise its discretion as to the need for execution, and, if proceeding to execution, the conditions and the reserve price to be set.

[14] Lastly, the delay in prosecuting the matter does not extinguish a debt, invalidate a mortgage bond, or constitute a defence to judgment. The respondents remain in arrears and did not place any evidence before the court showing they have a realistic prospect of repaying the arrears to avoid execution.

Rule 46A inquiry

[15] Execution against a home limits the right of access to adequate housing under section 26(1) of the Constitution. Such a limitation is possible only if it satisfies the proportionality requirement in section 36. This proportionality enquiry was first introduced by the Constitutional Court in *Jaffha v Schoeman; Van Rooyen v Stoltz*¹ 2005 (2) SA 140 (CC), and extended to High Court mortgage foreclosures in *Gundwana v Steko Development*.² Judicial oversight is therefore indispensable in every case where a home is at stake, requiring the court to engage with the facts, including an inquiry into whether there are other means to satisfy the debt or whether

¹ [2004] ZACC 25; 2005 (2) SA 140 (CC); 2005 (1) BCLR 78 (CC).

² [2011] ZACC 14; 2011 (3) SA 608 (CC); 2011 (8) BCLR 792 (CC).

execution is justified on the facts. *FirstRand Bank Ltd v Folscher*³ set out the relevant circumstances to consider, including whether the property is a primary residence, the outstanding arrears, the debtor's payment history, and the proportionality of the prejudice between the debtor and the creditor.

[16] In this case, it is common cause that the property is the respondents' home (primary residence). The first respondent, appearing in person, was clearly concerned about losing it. The court takes this concern seriously. However, the arrears are substantial (currently about R500 000) and the last payment was made about 46 months ago. While R20 000 was paid after summons, there is no realistic payment plan or workable alternative before me to show that the debt can be satisfied in another way. On the other hand, the prejudice to the bank, where the accelerated debt exceeds the original loan, is real. In such an instance, execution is warranted, and the limitation on the respondents' section 26 right is justified. The Bank's right to enforce the mortgage bond, the purpose of the limitation, and execution are the only means reasonably available to do so. A carefully set reserve price provides the necessary safeguard against a sale that would unjustly strip the respondents of all equity in their home.

[17] The updated figures before me indicate a market value of R900 000 and a forced sale value of R630 000. The municipal indebtedness is approximately R185 000. It has become customary for courts in this division to use the forced sale value as a starting point in setting a reserve price, usually by deducting the rates, taxes and levies from the forced sale value, as these will have to be paid, usually in these instances by the buyer, before a clearance certificate can be obtained. However, in terms of section 118 of the Local Government: Municipal Systems Act⁴

³ 2011 (4) SA 314 (GNP).

⁴ 32 of 2000.

118. Restraint on transfer of property

(1) A registrar of deeds may not register the transfer of property except on production to that registrar of deeds of a prescribed certificate—

(a) issued by the municipality or municipalities in which that property is situated; and

(b) which certifies that all amounts that became due in connection with that property for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties during the two years preceding the date of application for the certificate have been fully paid.

(1A) A prescribed certificate issued by a municipality in terms of subsection (1) is valid for a period of 60 days from the date it has been issued.

[...]

read with *Jordaan and Others v City of Tshwane Metropolitan Municipality*,⁵ a distinction is drawn between the municipality's right under section 118(1) to insist upon payment of the amounts due for the two years preceding the application for a clearance certificate and, on the other, the remedies in relation to historical debt under section 118(3), which require their own enforcement steps.

[18] Section 118(1) explicitly mentions the amounts owed in the two years before applying for the certificate. In such cases, a sale in execution should not require the purchaser to assume unlimited historical municipal debt prior to transfer. Doing so would artificially reduce the reserve price. According to the municipal statement, the average debt is approximately R2000 per month. Rounding up, R50,000 appears to be a reasonable estimate to cover expected charges at transfer. Consequently, a fair reserve price would be the forced sale value of R630,000 minus R50,000, which totals R580,000.

[19] To avoid uncertainty in the process, the order will specify that, for transfer purposes under the sale in execution, the purchaser is responsible only for municipal charges from the two years prior to the application for the clearance certificate, excluding any older historical debt.

Conclusion

[20] The court carefully considered the first respondent's submission. The respondents' concerns, however, are not a defence to the Bank's claim. The Bank is therefore entitled to judgment and to an order to declare the property specially executable. Cost to follow the result, on a party-by-party scale B.

Order

[21] The following order is made:

1. Payment of the amount of R337 081.17;
2. Interest on the amount of R337 081.17 at a rate of 10% per annum from 27 August 2018 to the date of final payment;

(3) An amount due for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties is a charge upon the property in connection with which the amount is owing and enjoys preference over any mortgage bond registered against the property.

⁵ [2017] ZACC 31; 2017 (6) SA 287 (CC); 2017 (11) BCLR 1370 (CC) Paras 74 – 75.

3. The immovable property described as:
ERF 5[...] ELDORADO PARK EXT 4
REGISTRATION DIVISION I.Q, THE PROVINCE OF GAUTENG IN
EXTENT 469 (FOUR HUNDRED AND SIXTY-NINE) SQUARE
METRES HELD BY DEED OF TRANSFER T[...] (“the property”) be
declared specially executable for the aforesaid amounts;
4. The issuing of a writ of execution in terms of Rule 46 as read with Rule
46A for the attachment of the property is hereby authorised;
5. The reserve price is set at R580 000 for the sale of the property.
6. The conditions of sale shall include that the purchaser at a sale in
execution will be liable to the municipality in which the property is
situated for all unpaid amounts due in connection with the property
during the two years preceding the application for the clearance
certificate for municipal service fees, surcharges on fees, property
rates, municipal taxes, levies and duties.
7. Cost of suit on party and party scale B.

WJ du Plessis

Judge of the High Court, Gauteng Division,
Johannesburg

Date of hearing: 18 February 2026

Date of judgment: 18 May 2026

For the applicant: N Phambuka instructed by Findlay & Niemeyer Inc

For the respondent: In person