REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

(1) REPORTABLE: YES / ~~NO~~

(2) OF INTEREST TO OTHER JUDGES: YES / ~~NO~~

(3) REVISED: YES

<u>19 MAY 2026</u>

[redacted]

DATE SIGNATURE

Case number: 2024-064227

In the matter between:

FNB MORTGAGE LOANS (RF) LIMITED Plaintiff / Applicant

and

KAMOHELO MOKOTJO Defendant / Respondent

REASONS

GREYLING AJ

INTRODUCTION:

1. On 4 May 2026 summary judgment was granted in favour of the Plaintiff, FNB Mortgage Loans (RF) Ltd, against the Defendant, Mr Kamohelo Mokotjo. The order included relief declaring the immovable property executable in terms of Rule 46A, fixing a reserve price of R3 300 000.00, and directing the Defendant to pay the costs of the application.

2. The Defendant requested reasons for the order. These are my reasons.

3. The matter concerns an opposed summary judgment application together with Rule 46A relief. The issues requiring determination were

the Plaintiff's locus standi, the Defendant's challenge to cession and securitisation, the alleged non-receipt by the Defendant of the section 129 notice under the National Credit Act 34 of 2005, the allegation of reckless credit, the Rule 46A enquiry and the appropriate reserve price.

4. The court considered all the relevant material uploaded onto CaseLines and those referred to during argument.

5. Summary judgment is not granted merely because a Plaintiff's claim appears probable. The Court must be satisfied that the Defendant has not disclosed a bona fide defence which is good in law and which raises an issue properly triable at trial. The Defendant must disclose the nature and grounds of the defence and the material facts relied upon with sufficient particularity. A bare denial, a demand for proof or a legal conclusion without supporting facts does not suffice. These legal principles were applied when the Court granted the order sought by the Plaintiff.[1]

6. The Plaintiff's claim was founded on a written mortgage loan agreement and mortgage bond. The Plaintiff alleged that the Defendant had defaulted, that the indebtedness had become due and payable and that the Plaintiff was entitled to enforce payment through the Uniform Rule 46A mechanisms.

7. The Defendant did not place before Court facts which, if established at trial, would defeat the Plaintiff's claim. Therefore, the Plaintiff had

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1 Maharaj v Barclays National Bank Ltd 1976 (1) SA 418 (A); Breitenbach v Fiat SA (Edms) Bpk 1976 (2) SA 226 (T); Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture 2009 (5) SA 1 (SCA).

verified its cause of action and had engaged sufficiently with the defences raised in the amended plea and became entitled to the relief sought.

8. The Defendant contended that the particulars of claim were defective and that the cause of action was incomplete or excipiable. These submissions were advanced with reference to Nedbank Ltd v Kgobe,[2] In Kgobe, the Plaintiff sued under an instalment sale agreement relating to a motor vehicle but failed to plead delivery of the vehicle. Amm AJ held that delivery was a necessary averment and that the Plaintiff's cause of action was therefore incomplete.

9. Kgobe is distinguishable as this is not a goods-sold-and-delivered, but a loan agreement with a mortgage-loan as security. Plaintiff's cause of action was correctly pleaded with no obvious lacuna. The Defendant's complaint was not, in substance, that the loan, bond, breach, indebtedness, or enforcement mechanism was absent from the pleaded case. The real thus is locus standi, premised on the cession agreement not properly and fully pleaded. This Court read the judgment and it is clearly distinguishable from the present set of facts and no basis for legal argument advanced.

10. The Defendant's argument was that the Plaintiff had not proved that it was the creditor entitled to sue as the originating loan documentation referred to First National Bank, a division of FirstRand Bank Ltd, whereas the Plaintiff before Court is FNB Mortgage Loans (RF) Ltd. It

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[2] Nedbank Ltd v Kgobe [unreported judgment by Amm AJ Gauteng Local division under case number 2023-007205 dated 19 October 2024]

is trite that a Plaintiff relying on cession must place sufficient material before Court to establish, at least prima facie for purposes of summary judgment, that it is the creditor entitled to enforce the claim. However, this was not a case of the mere absence of cession. The cession appeared prima facie from the source documents before Court, was recorded against the title deed at registration of the mortgage bond and the written loan agreement specifically makes provision for a cession. This provided objective support for the Plaintiff's entitlement to enforce the mortgage security. In the absence of a competing creditor, the Defendant did not identify an actual break in the chain of title. The challenge to cession and securitisation was therefore formality over substantive and did not engage the legal shortcomings annunciated in Badenhorst.[3] Badenhorst does not hold that every general denial of cession defeats summary judgment. It also does not hold that a prima facie cession appearing from source documents and recorded against registration of the mortgage bond must be disregarded. Hence, on the facts before me, the Plaintiff's locus standi was sufficiently established and this argument was accordingly rejected.

11. The Defendant contended that the section 129 notice had not been received. This argument lost sight of the statutory enquiry. It is now trite that the question is not whether the Defendant subjectively received or accepted receipt of the notice, but whether the Plaintiff took the steps required by the National Credit Act and the applicable authorities to bring the notice to the Defendant's attention. The Plaintiff placed before Court the section 129 notice and the supporting dispatch and track-and-

[3] FirstRand Bank Limited v Badenhorst NO and Others (2022/5936) [2023] ZAGPJHC 779 (10 July 2023).

trace material. The Defendant's assertion of non-receipt did not, without more, displaced the evidentiary value of that material. Kubyana[4] makes clear that the enquiry is whether the credit provider took the steps reasonably required to bring the notice to the consumer's attention. Once such steps are shown, a bare denial of actual receipt is insufficient. Absent allegations that the notice was sent to an incorrect address or that the dispatch process was materially defective the Court cannot find that the statutory process failed in a manner attributable to the Plaintiff. The section 129 defence was accordingly rejected.

12. The Defendant raised reckless credit under sections 80 and 81 of the National Credit Act. That defence was not sufficiently raised and correctly not persisted with during argument. This court do not hold that the passage of time, by itself, creates a legal time-bar to a reckless-credit, but relevant to whether the defence is genuine and sufficiently particularized and raised at a level of generality.

13. As a result, The Defendant's opposition rested on labels: cession, securitisation, non-receipt of a section 129 notice, reckless credit, and Rule 46A. These labels were not supported by material facts sufficient to constitute triable defences.

14. Summary judgment was therefore granted.

4 Kubyana v Standard Bank of South Africa Ltd 2014 (3) SA 56 (CC);

15. Subsequent summary being granted, the Rule 46A was considered separately. The property was treated as residential property for purposes of the enquiry; whether execution was justified; whether the property was the Defendant's primary residence and lastly, whether less drastic means were available, and what reserve price should be fixed.

16. The Constitutional Court in Jaftha[5] requires judicial oversight where execution against a home may implicate a debtor's housing interests.

17. The more direct authority on reserve prices remains the Full Court decision in ABSA[6], which requires meaningful judicial oversight and recognises that a reserve price may be an appropriate safeguard in residential execution matters. The authorities do not prescribe a single arithmetic formula for fixing a reserve price and therefore it's a judicial safeguard to be determined on the facts before Court. This court applied all the necessary factors and fixed the reserve price at R3 300 000.00.

18. Therefore the draft was made an order of Court.

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5 Jaftha v Schoeman; Van Rooyen v Stoltz 2005 (2) SA 140 (CC).

6 ABSA Bank Ltd v Mokebe 2018 (6) SA 492 (GJ); Gundwana v Steko Development CC 2011 (3) SA 608 (CC); Standard Bank of South Africa Ltd v Saunderson 2006 (2) SA 264 (SCA).

[redacted]

P J GREYLING

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA