REPUBLIC OF SOUTH AFRICA

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

Reportable: NO
Of interest to other Judges: NO
Revised: NO
Date: 04 June 2026 S.S Tebeile AJ
Signature: [redacted]

Case No: 2024-122884

In the matter between:

FIRSTRAND BANK LIMITED — Applicant

and

MAHENDRA DEOKI — First Respondent

SUBASHANY DEOKI — Second Respondent

CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY — Third Respondent

Heard on : 28 April 2026

Decided on : 04 June 2026

JUDGMENT

TEBEILE AJ:

Introduction

[1] This is an application for summary judgment by the applicant, FirstRand Bank Limited, against the first and second respondents. The applicant seeks payment of R273 689.66 together with interest, and an order declaring the first and second respondents' immovable property specially executable.

[2] The second respondent opposes the application. The applicant seeks a default judgment against the first respondent. The first respondent did not oppose the application for default judgment against him.

The parties

[3] The applicant is FirstRand Bank Limited. The first respondent is Mahendra Deoki. The second respondent is Subashany Deoki. The third respondent is the City of Johannesburg Metropolitan Municipality. However, no substantive relief is sought against the third respondent.

Factual background

[4] On 12 December 2007, the first and second respondents entered into a written home loan agreement ("the agreement") with the applicant for a principal debt of R420 000.00. The agreement recorded both the first and second respondents as "the Customer". Clause 4.22 of the agreement provided that where there is more than one customer, their liability is joint and several.

[5] As a form of security, a covering mortgage bond was registered over the immovable property described as Erf […] Gauteng Province, measuring 397 square metres, held by Deed of Transfer No […] ("the property"). The bond was registered on 24 January 2008 in the sum of R1.2 million. For the reasons to be

apparent later in this judgment, it is important to mention that the second respondent is recorded on the bond as one of the mortgagors.

[6] The first and second respondents defaulted under the agreement. On 2 September 2024, the applicant's attorneys delivered letters of demand by registered post to the first and second respondents' chosen *domicilium citandi et executandi*. On 20 September 2024, the applicant delivered notices in terms of section 129(1)(a) of the National Credit Act 34 of 2005 ("the NCA") by registered post to the same address. The track-and-trace reports indicate that the notices reached the Lenasia Post Office and that first notifications to the recipient were issued.

[7] The first and second respondents did not respond. As of 24 October 2024, the arrears amounted to R89 689.66 and the total outstanding balance was R273 689.66.

[8] The summons was issued and was served personally on the first respondent on 11 November 2024 at an address different from chosen *domicilium citandi et executandi*. The sheriff's return of service records that the first respondent was personally served. The first respondent did not file a plea and notice of intention to oppose and an opposing affidavit in respect of the application for default judgment against him. Only the second respondent filed a notice of intention to defend and thereafter she filed a plea. The applicant then brought this application for summary judgment against the second respondent following the second respondent's notice to defend and a plea.

The second respondent's defences

[9] The second respondent raises numerous defences both in her plea and in her affidavit opposing summary judgment.

[10] I summarize the defences as follows: first, she signed the agreement only as the spouse of the first respondent to consent, and not as a party to the agreement;

second, the agreement was not signed on behalf of the applicant; third, the mortgage bond does not stipulate that the respondents are indebted in the amount claimed; fourth, the applicant failed to comply with its obligations; fifth, the second respondent denies being in breach or indebted; sixth, the applicant did not send a letter of demand nor comply with section 129 of the NCA in that the notices were not brought to her attention personally, and the dysfunctional South African Post Office and which means reliance on registered post is unreasonable; seventh, the applicant is not entitled to enforce the debt; eighth, the applicant did not notify the respondents of changes in the interest rate, and therefore the amounts were not properly calculated; ninth, the property is her primary residence and the home of her minor child and she cannot afford alternative accommodation and her child attends school in the area, and that the execution would infringe her constitutional right to adequate housing under section 26 of the Constitution; tenth, she did not authorize or consent to further advances under the bond and the applicant failed to obtain her consent as required by section 15(2)(f) of the Matrimonial Property Act 88 of 1984 and the debt was recklessly incurred; eleventh, the bond debt forms part of the joint estate and will be addressed in pending divorce proceedings under Case No 2024-025729) and therefore this court should exercise judicial restraint; and twelfth, she has made proposals for payment plans, arrears settlement, debt review, and voluntary restructuring and her employer has offered to assist with restructuring but the applicant has ignored these proposals.

Legal principles on summary judgment

[11] The purpose of Rule 32 of the Uniform Rules of Court is to afford an applicant in clear cases, a remedy to avoid the costs and delay of a trial where the defendant cannot demonstrate a bona fide defence. In *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture*[1], the Supreme Court of Appeal held that

[1] 2009 (5) SA 1 (SCA) at para 32.

summary judgment proceedings are not intended to deprive a defendant with a triable issue of its day in court, but that recalcitrant debtors must pay what is due. A court must examine whether there has been sufficient disclosure of the nature and grounds of the defence, and whether the defence disclosed is both bona fide and good in law. The Supreme Court of Appeal held:

> "The rationale for summary judgment proceedings is impeccable. The procedure is not intended to deprive a defendant with a triable issue or a sustainable defence of her/his day in court. After almost a century of successful application in our courts, summary judgment proceedings can hardly continue to be described as extraordinary. Our courts, both of first instance and at appellate level, have during that time rightly been trusted to ensure that a defendant with a triable issue is not shut out. In the *Maharaj* case at 425G-426E, Corbett JA, was keen to ensure first, an examination of whether there has been sufficient disclosure by a defendant of the nature and grounds of his defence and the facts upon which it is founded. The second consideration is that the defence so disclosed must be both bona fide and good in law. A court which is satisfied that this threshold has been crossed is then bound to refuse summary judgment. Corbett JA also warned against requiring of a defendant the precision apposite to pleadings. However, the learned judge was equally astute to ensure that recalcitrant debtors pay what is due to a creditor." (Emphasis added)

[12] A defendant who raises a defence that is not pleaded but appears for the first time in an affidavit resisting summary judgment is generally not permitted to do so. In *Bragan Chemicals*[2] and *MJG Logistics*[3], the courts held that where no defence was raised in the plea, it is irregular to raise a new defence in an affidavit resisting summary judgment.

[2] *Bragan Chemicals Pty Ltd v Devland Cash and Carry Pty Ltd and Another* (11096/20) [2020] ZAGPPHC 397 (5 August 2020) (Unreported) at para 7.
[3] *MJG Logistics (Pty) Ltd v Foloyi Construction and Projects CC* (2863/2023) [2024] ZAMPMHC 37 (10 July 2024) at para 12.

Analysis of the defences

Whether the second respondent is a party to the agreement

[13] The second respondent's primary contention is that she signed the agreement only as the spouse of the first respondent to provide consent, and not as a party to the agreement. For the reasons to follow, this defence lacks merit. The agreement records both the first and second respondents as "the Customer". The second respondent's signature appears on the agreement, and she also signed the mortgage bond as a mortgagor. Clause 4.22 of the agreement expressly provides that where there is more than one customer, their liability is joint and several.

[14] The fact that her signature appears above the words "consent of spouse" is of no significance. She signed as a co-principal debtor. The mortgage bond registered on 24 January 2008 names her as one of the mortgagors. She cannot now be heard to say that she is not bound by the very agreement and bond she signed.

[15] In *FirstRand Bank Ltd v Soni*[4] , the court held that a spouse who signs a mortgage bond as a co-mortgagor is jointly and severally liable for the debt, even if the underlying loan agreement was signed only as a consenting spouse. The first defence is therefore not bona fide and is dismissed.

Whether the agreement was signed on behalf of the applicant

[16] The second defence raised by the second respondent is that the agreement was not signed on behalf of the applicant. She pleads that "annexure A was not signed on behalf of the plaintiff" [5]. In her heads of argument, this is framed as a material omission: the bank did not sign the agreement, and therefore the agreement is not binding.

[4] 2013 (2) SA 481 (GJ).
[5] See para 5.3.2 of the plea.

[17] This defence is legally unsustainable. The agreement contains an express term at clause 4.20 and the signature page, which states:

> "The Bank shall be bound by the terms and conditions of this agreement on receipt by the Bank of this agreement duly initialled and signed by the Customer."

[18] There is no requirement in the agreement that the bank must also sign. The bank's acceptance is evidenced by its conduct: advancing R420 000.00, registering a mortgage bond, and making the loan available to the first and second respondents.

[19] In any event, a written credit agreement under the NCA does not require bilateral signature to be enforceable, but what matters is that the consumer signed and the credit provider acted on the agreement. This defence is therefore patently unmeritorious and does not raise any genuine triable issue. It is dismissed.

Denial of indebtedness and challenge to the mortgage bond

[20] The third defence denies that the mortgage bond records the defendants as being lawfully indebted to the bank in the amount of R1 200 000.00. The second respondent goes further and pleads that she and the first respondent have "not at any time been indebted to the plaintiff in the aforesaid amounts".

[21] This is a bare denial that flies in the face of documentary evidence. The mortgage bond, signed by both first and second respondents, expressly records:

> "The Mortgagor is lawfully indebted and bound to the Bank in the sum of ONE MILLION TWO HUNDRED THOUSAND RAND … as continuing covering security … for the total amount owing from time to time … in respect of all amounts lent and advanced … including all interest, fees, charges and costs."

[22] The second respondent signed the bond as a mortgagor. She cannot now, in the face of that signed document, simply deny any indebtedness. Moreover, the bank

has produced a certificate of balance, and which, in terms of clause 4.33 of the loan agreement, constitutes *prima facie* proof of the indebtedness.

[23] In my view, a mere denial of indebtedness, without any factual foundation does not amount to a bona fide defence. The third defence is therefore dismissed.

Denial that the plaintiff complied with its obligations

[24] The fourth defence[6] simply states that "the allegations herein contained are denied as if specifically traversed and the plaintiff is put to the proof thereof". This is a bare denial of the plaintiff's allegation that it complied with its obligations under the agreement.

[25] It is common cause that the bank advanced the full principal sum of R420 000.00 to the first and second respondents. That is the primary obligation of a lender. The second respondent does not allege, for example, that the bank failed to pay the funds or that the loan was not advanced. In the absence of any factual particularity, a bare denial does not create a triable issue.

[26] Rule 22(2) requires a pleader to plead all material facts upon which a denial is based. A bald assertion that "the plaintiff did not comply" without identifying which obligation was breached and how, is legally insufficient. The fourth defence is accordingly dismissed.

Non-compliance with section 129 of the NCA

[27] The second respondent contends that the applicant failed to comply with section 129 of the NCA. She argues that there is no proof that the notice was brought to

[6] See para 8 of the second respondent's plea.

her personal attention, and that the dysfunctional South African Post Office means reliance on registered post is unreasonable.

[28] In *Kubyana*[7], the Constitutional Court held that a credit provider need not to bring the section 129 notice to the subjective attention of a consumer, nor is personal service required.[8]

[29] In *Kubyana* it was held that the credit provider's obligation consists of dispatching the notice by registered mail,[9] ensuring it reaches the correct branch of the post office, and ensuring the post office notifies the consumer at his or her address that a registered item awaits collection. The steps required are those that would bring the notice to the attention of a reasonable consumer.[10] If the credit provider complies with these requirements and the consumer does not respond, the credit provider may enforce its rights.[11] It is up to the consumer to show that the notice did not come to his or her attention.[12]

[30] In this matter, the applicant dispatched the section 129 notices by registered post to the respondents' chosen *domicilium citandi et executandi*, as recorded in clause 4.34.2 of the agreement. The track-and-trace reports confirm that the items reached the Lenasia Post Office and that first notifications to the recipient were issued.

[31] The second respondent's argument about the postal service's dysfunction, while not without factual foundation, does not relieve her of the obligation to collect her registered mail from her local post office. The principle in *Kubyana* is clear: once the credit provider has complied with the prescribed steps, the notice is deemed to have been delivered.[13] The consumer bears the risk of not collecting the notice. The sixth defence is therefore dismissed.

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[7] *Kubyana v Standard Bank of South Africa Ltd* 2014 (3) SA 56 (CC).
[8] Id at paras 31 and 39.
[9] Id at para 39.
[10] Id at para 33.
[11] Id at para 35.
[12] Id at para 36.
[13] Id at para 39.

The constitutional right to housing (section 26)

[32] The second respondent invokes section 26 of the Constitution, which gives everyone the right to have access to adequate housing. Section 26(3) provides that no one may be evicted from their home without an order of court made after considering all relevant circumstances.

[33] However, the second respondent agreed to the mortgage bond. She voluntarily hypothecated the property as security for the loan. In *Jaftha*[14] the Constitutional Court stated:

> "Another factor of great importance will be the circumstances in which the debt arose. If the judgment debtor willingly put his or her house up in some or other manner as security for the debt, a sale in execution should ordinarily be permitted where there has not been an abuse of court procedure. The need to ensure that homes may be used by people to raise capital is an important aspect of the value of a home which courts must be careful to acknowledge."[15]

[34] In *Saunderson*[16] the Supreme Court of Appeal stated:

> "A mortgage bond is an agreement between borrower and lender, binding upon third parties once it is registered against the title of the property, that upon default the lender will be entitled to have the property sold in satisfaction of the outstanding debt. Its effect is that the borrower, by his or her own volition, either on acquiring a house or later when wishing to raise further capital, compromises his or her rights of ownership until the debt is repaid. The right to continued ownership, and hence occupation, depends on repayment. The mortgage bond thus curtails the right of property at its root,

[14] *Jaftha v Schoeman and Others*, *Van Rooyen v Stoltz and Others* 2005 (2) SA 140 (CC).
[15] Id at para 58.
[16] *Standard Bank of South Africa Ltd v Saunderson and Others* 2006 (2) SA 264 (SCA).

and penetrates the rights of ownership, for the bond-holder's rights are fused into the title itself."[17].

[35] In the present case, the second respondent's right to housing is not absolute. It must be balanced against the applicant's right to enforce its security in terms of the agreement signed by the second respondent. The Constitutional Court in *Gundwana*[18] appreciated a need for judicial oversight in execution of immovable property. In doing so, the Court stated:

"The combined effect of these two cases is that execution may only follow upon judgment in a court of law. And where execution against the homes of indigent debtors who run the risk of losing their security of tenure is sought after judgment on a money debt, further judicial oversight by a court of law of the execution process is a must."[19]

[36] The second respondent cannot have an order having the effect of losing her home granted, without a judicial oversight. In my view, she must be given an opportunity that between the granting of an order of executability and the sale in execution, she may still pay the arrears and reinstate the agreement in terms of section 129(3) and (4) of the NCA.

[37] In my view, the ninth defence raises a legitimate constitutional concern, although it does not on its own defeat the applicant's claim. The court's duty is to ensure that the reserve price is set at a level that protects the defendant's equity, and that execution is not a mechanical exercise. I will address the reserve price below.

[17] Id at para 2.
[18] *Gundwana v Steko Development CC and Others* 2011 (3) SA 608 (CC).
[19] Id at para 41.

The defence of unauthorized further advances

[38] The second respondent contends that the applicant made further advances under the bond without her written consent as required by section 15(2)(f) of the Matrimonial Property Act 88 of 1984. She argues that she was unaware of these advances and that they were squandered by the first respondent.

[39] This defence was not raised in the second respondent's plea. It appears for the first time in her affidavit opposing summary judgment.

[40] In light of the decisions in *Bragan Chemicals* and *MJG Logistics* where it was held that a defendant is bound by the defences pleaded and may not raise new defences in an affidavit resisting summary judgment without first amending the plea under Rule 28(1), this defence must fail.

[41] But even if I consider this defence on its merits, it does not discharge the second respondent from her liability as a co-mortgagor. The mortgage bond registered on 24 January 2008 secures, in terms of clause 1, "all amounts lent and advanced, or to be lent and advanced, by the applicant to or on behalf of the Mortgagor in terms of or arising out of the provisions of any loan agreement between the applicant and the Mortgagor". The bond is a continuing covering security. The second respondent signed this bond, and she is bound by its terms.

[42] The fact that the first respondent may have misappropriated funds or that the applicant failed to obtain separate written consent for each advance does not, without more, vitiate the second respondent's liability.

[43] In my view, the allegation of reckless lending is a bald assertion. In *SA Taxi Securitisation (Pty) Ltd*[20] the court held that a bald allegation of reckless credit without verificatory detail will not suffice. The second respondent has provided

[20] *SA Taxi Securitisation (Pty) Ltd v Mbatha*; *SA Taxi Securitisation (Pty) Ltd v Molete*; *SA Taxi Securitisation (Pty) Ltd v Makhoba* (51330/09, 52948/09, 53080/09) [2010] ZAGPJHC 24; 2011 (1) SA 310 (GSJ).

no substantiation for this allegation and consequently the tenth defence is therefore dismissed.

The pending divorce proceedings

[44] The second respondent argues that the bond debt forms part of the joint estate and will be addressed in the pending divorce proceedings. She asks this court to exercise judicial restraint.

[45] The divorce proceedings are between the first and second respondents and the applicant is not a party to those proceedings. Any division of assets or redistribution order made in the divorce court cannot bind the applicant or affect the applicant's rights as a secured creditor. The two proceedings are separate and independent. The eleventh defence is dismissed.

The request for restructuring and debt relief

[46] The second respondent states that she has made repeated proposals to the applicant proposing payment plans, arrears settlement, formal debt review, and voluntary restructuring. She says her employer, Nedbank, has offered to assist with restructuring the bond.

[47] The applicant contends that it has already taken steps under section 130 of the NCA to enforce the agreement, and that the second respondent is therefore precluded from applying for debt review under section 86(1) of the NCA. Section 86(2) provides that an application for debt review may not be made if the credit provider has proceeded to take the steps contemplated in section 130 to enforce the agreement. That is correct in law. However, the applicant's refusal to engage with the second respondent's proposals must be considered in light of the

constitutional and statutory framework. In *Ferris*[21] the Constitutional Court emphasized that credit providers must engage in good faith with consumers seeking debt relief.

[48] The second respondent is not a recalcitrant debtor. In my view, the second respondent seems to be a victim of financial abuse in that the first respondent controlled all financial matters related to the property, concealed information relating to payments, and has now absconded. The second respondent works for Nedbank—a competitor of FirstRand—and has been employed there for 22 years.

[49] The amount in arrears as of 24 October 2024 was R89 689.66. The total outstanding balance was R273,689.66. The property's market value is estimated at R650 000.00 and the municipal valuation is R644 000.00. The equity in the property (market value less outstanding bond and rates) is approximately R650 000 - R273,690 - R237,824 = R138,486.

[50] The applicant has proposed a reserve price of R215,000. In my view, the proposed reserve price of R215 000.00 is substantially below the property's value and if the property is sold at that price, the second respondent would lose her home and any remaining equity.

[51] In *Mokebe*[22] the court emphasized that reserve prices should prevent properties from being sold for significantly less than their market value, thereby preserving the debtor's residual equity. The court also recognized that courts have a discretion to allow for a determination of the debtor's personal circumstances before making an order of special executability.

[52] Rule 46A requires a rigorous investigation of alternatives before a residential property is declared executable. In the case before this court, I am of the view that the second respondent demonstrated a genuine willingness to pay. She has proposed payment plans. She is gainfully employed. Her employer is willing to

[21] *Ferris and Another v Firstrand Bank Limited and Another* 2014 (3) SA 39 (CC).
[22] *Absa Bank Limited v Mokebe*; *Absa Bank Limited v Kobe*; *Absa Bank Limited v Vokwani*; *Standard Bank of South Africa Limited v Colombick and Another* 2018 (6) SA 492 (GJ).

assist. In my view, the applicant's refusal and/or unwillingness to engage appears to be rigid and mechanical. The applicant must be ordered to engage the second respondent in good faith.

[53] I am mindful of the applicant's rights as a secured creditor. But I am also mindful that the second respondent is an innocent party who did not directly cause the default. The first respondent—the primary debtor—has absconded, leaving her to bear the consequences. She deserves an opportunity to engage the applicant in good faith in attempt to settle the arrears.

Conclusion

[54] The second respondent has not raised a bona fide defence to the applicant's claim for payment of the outstanding balance. She is a party to the agreement and the bond. She is jointly and severally liable. The applicant complied with section 129 of the NCA. The constitutional right to housing does not render the agreement unenforceable.

[55] However, this court found that the ninth defence raises legitimate constitutional concern. In the exercise of the court's discretion under Rule 46A and under the inherent power to prevent injustice, I am not prepared to grant an order declaring the property specially executable at this stage. The second respondent has made out a case that less intrusive measures must be used before an order to declare the property specially executable is granted.

[56] The applicant has not meaningfully engaged with the second respondent's proposals. I am mindful that the Constitutional Court in *Gundwana* established the constitutional foundation for what became Rule 46A. The Court held that the sale of a debtor's primary residence in execution requires judicial oversight because the loss of a home affects not only the debtor but also their dependents and broader societal interests. The Court in *Gundwana* stated:

> "In *Jaftha*, Mokgoro J, before listing some relevant factors that needed to be considered in judicial oversight of the execution process, warned that "it would be unwise to set out all the facts that would be relevant to the exercise of judicial oversight." Mindful of that warning, I would merely add the following. It must be accepted that execution in itself is not an odious thing. It is part and parcel of normal economic life. It is only when there is disproportionality between the means used in the execution process to exact payment of the judgment debt, compared to other available means to attain the same purpose, that alarm bells should start ringing. If there are no other proportionate means to attain the same end, execution may not be avoided." (Footnote omitted)

[57] I am of the view that the proper order is to grant summary judgment for the payment of the debt, but to postpone the determination of the special executability application to allow the second respondent a final opportunity to regularize the arrears.

Order

[58] Accordingly, I make the following order:

(1) Summary judgment is granted in favour of the applicant for payment of the sum of R273 689.66 with interest on the said amount at the variable rate of 11.95% nominal per annum, calculated daily and compounded monthly from 31 October 2024 to date of final payment.

(2) The application to declare the immovable property specially executable is suspended subject to the order in paragraphs (3) – (5) below.

(3) The second respondent is granted leave to pay the arrears amount together with any interest and default administration charges that have accrued since that date, within 8 (eight) months of this order.

(4) Upon full payment of the arrears amount together with interest and default administration charges within the eight months period, the

credit agreement shall be reinstated in accordance with section 129(3) of the National Credit Act 34 of 2005, and the applicant shall not proceed with execution against the property.

(5) Should the second respondent fail to make payment as set out in paragraph 3 above, the applicant may, on the same papers duly supplemented, apply for an order declaring the property specially executable, whereafter the court will determine an appropriate reserve price taking into account the updated valuations and outstanding rates and taxes.

(6) The applicant is ordered to engage in good faith with the second respondent and her employer regarding any reasonable proposal for a payment plan to bring the arrears up to date and present a report to that effect to this court in its application to declare the property specially executable.

(7) The costs of the summary judgment application shall be costs in the cause.

SHADRACK TEBEILE

Acting Judge of the High Court of South Africa

Gauteng Local Division, Johannesburg

For the Applicant:	Adv R Peterson instructed by Glover Kannieappan Inc
For the Second Respondent:	Adv R Lavine instructed by Saders Attorneys
	(Heads of argument prepared by Adv A Sather)