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IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NUMBER: 27112/2025

DATE: 25 MAY 2026

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHERS JUDGES: YES/NO

(3) REVISED

DATE

SIGNATURE

In the matter between:

**ABSA HOME LOANS GUARANTEE
COMPANY (RF) (PTY) LTD**

First Plaintiff/Applicant

ABSA BANK LIMITED

Second Plaintiff/Applicant

and

PASEKA TIMBER KUBAYI
(Identity Number: 8[...])

First Defendant/Respondent

MAUREEN JOHANNA MBAMBO
(Identity Number: 9[...])

Second Defendant/Respondent

This order is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the Parties/their legal representatives by e-mail. This Order is further uploaded to the electronic file of this matter on Case Lines by the Judge or his/her secretary. The date of this Order is deemed to be 26 May 2026.

JUDGMENT

DU PLESSIS, AJ

1.

This is an opposed application for summary judgment in terms of Rule 32, in which the plaintiffs seek monetary judgment together with relief declaring the defendants' immovable property – Erf 7[...] L[...] G[...] Extension 8, situated at 4[...] G[...] Street, Lotus Gardens Extension 8, Pretoria (“the property”) – specially executable under Rule 46 read with Rule 46A. The conclusion of the mortgage loan agreement, the indemnity, the guarantee, the registration of the bond, the second plaintiff's compliance, and that the property is the defendants' primary residence, are all common cause. Although the defendants delivered a plea and an answering affidavit, there was no appearance on their behalf at the hearing. Adv Sevenster appeared on behalf of the applicant.

2.

The defendants' principal defence is non-compliance with section 129 of the National Credit Act 34 of 2005, on the basis that the notice was addressed to 4[...] G[...] Street, which they assert is “not our residential address”. That point is opportunistic and contrary to the record. The valuation report (“BT11”), the City of Tshwane municipal account (“BT12”, describing the property as “STAND 7[...] / 4[...] G[...] STREET”), the sheriff's returns reflecting personal service at 4[...] G[...] Street, and the letters of demand all establish that Stand 7[...] and 4[...] G[...] Street are one and the same property. The first defendant's own affidavit heading records his residence as “7[...] G[...] Steet, Lotus Gardens” – the very property at which he was personally served. On the *Kubyana v Standard Bank of South Africa Ltd* 2014 (3) SA 56 (CC) test, the notices were dispatched to the chosen domicilium, reached the Post Office and first notifications issued. The section 129 defence fails.

3.

The denial of the arrears is bald. The defendants identify no error of calculation, no disputed transaction and no unaccounted payment, despite holding the full account history (“AB3”). On the contrary, in “Ad paragraph 42” of the plea they admit reduced income and a tendered proposal for a lower instalment, thereby conceding the breach. The certificate of balance is prima facie proof of indebtedness and stands unanswered. The supporting affidavit of Ms Berna Malan adequately engages with the plea, satisfying Rule 32(2)(b).

4.

As to execution against the primary residence, a debtor bears an onus to

place before the Court information enabling a proportionality assessment (NPGS Protection and Security Services CC v FirstRand Bank Ltd 2020 (1) SA 494 (SCA) paras [55] and [63]). The defendants disclose no income, no statement of expenditure, no other assets and no alternative means of discharging a debt exceeding R800,000.00, nor with voluntary sale or relocation within the same school zone. The plaintiffs expressly invited them to provide this information; they did not, and they did not appear to advance it. Where a debtor fails to place facts before the Court despite the opportunity, the Court determines the matter without that input (ABSA Bank Ltd v Mokebe 2018 (6) SA 492 (GJ) para [59]). The presence of minor children, though weighed, is not an automatic bar to execution, particularly against the plaintiffs' demonstrated forbearance. The onus is not discharged.

5.

On the reserve price, the private valuation is R750,000.00, the municipal valuation R440,000.00, and the indebtedness exceeds the market value. A reserve of R525,000.00 (approximately 70% of the private valuation) fairly balances the parties' interests and protects against a sale at an undervalue at first auction.

6.

The defendants have raised no *bona fide* defence and no triable issue. The plaintiffs are entitled to summary judgment. In the result, the following order is made and is recorded in the draft order made an order of court.

- 6.1. Summary judgment is granted against the defendants, jointly and severally, Payment of the sum R709,732.03 (SEVEN HUNDRED AND NINE THOUSAND SEVEN HUNDRED AND THIRTY-TWO RAND AND THREE CENT) together with interest at 12.50% per annum calculated daily on the outstanding balance and capitalised monthly in arrears from 30 January 2024 to date of final payment, and;
- 6.2. costs of suit on the attorney-and-client scale;
- 6.3. Erf 7[...] L[...] G[...] Extension 8 Township, Registration Division J.R., Province of Gauteng, measuring 251 square metres, held by Deed of Transfer T21991/2019 (4[...] G[...] Street, Lotus Gardens Extension 8, Pretoria), is declared specially executable.
- 6.4. The Registrar is authorised to issue a writ of execution against the said property.
- 6.5. A reserve price of R525,000.00 is set in terms of Rule 46A(9)(a).

J DU PLESSIS
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES

For the Plaintiffs/Applicants:

Adv CGVO Sevenster

Instructed by:

Delberg Inc Attorneys, Pretoria

For the Defendants/Respondents: No Appearance

Ndubane Attorneys, Pretoria

Date of hearing: 25 May 2026

Date of judgment: 26 May 2026