REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2025-101602

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES

10 June 2026 _____
DATE SIGNATURE

In the matter between:

ABSA HOME LOANS GUARANTEE COMPANY (RF) PTY LTD Applicant

and

PARMESAN THANGAVELOO GRAMONEY First Respondent

SINDHA GRAMONEY Second Respondent

This Judgment is handed down electronically by circulation to the Applicant's Legal Representatives and the Respondents by email, publication on Case Lines. The date for the handing down is deemed to be 10 June 2026.

Mortgage — Foreclosure — Judicial execution — Primary residence — Bank seeking default judgment and order under rule 46A declaring property specially executable — Respondents more than a decade in arrears — Execution proportionate and justified— Application for default judgment granted — Uniform Rules of Court, rule 46A.

JUDGMENT

MUDAU, J:

Introduction

[1] The applicant approaches this court on motion for two principal orders: first, a money judgment against the respondents for the outstanding indebtedness under a home loan agreement; and second, an order declaring the respondents' immovable property, which is mortgaged to the applicant as security, specially executable in terms of Uniform Rule of Court 46A.

[2] The respondents oppose the application. Their opposition is not directed at the merits of the indebtedness. Instead, they raise a series of procedural and technical defences, which they contend are dispositive of the matter. I deal with each of these defences in turn, but before doing so, it is necessary to set out the factual matrix and the contractual arrangements that underpin the applicant's claim.

The factual and contractual background

[3] On 25 April 2006, the respondents concluded a written mortgage loan agreement with Sanlam Home Loans 101 (Proprietary) Limited ("Sanlam 101"). In terms of that agreement, Sanlam 101 lent and advanced to the respondents a total principal debt of R 716 955.44, repayable in 240 monthly instalments, initially in the amount of R 6 787.35, at an interest rate of 9.2% per annum (prime minus 1.3%).

[4] The loan agreement was structured within a broader contractual framework that is common in the home loan industry. Simultaneously with the conclusion of the loan agreement, the applicant's predecessor in title, Sanlam Home Loans Guarantee Company (Pty) Ltd, entered into a Common Terms Guarantee Agreement with the lender's predecessor. In terms of that guarantee agreement, the guarantee SPV (now the applicant) irrevocably guaranteed the due and punctual payment of all sums due by the respondents to the lender.

[5] As security for the guarantee, the respondents executed an indemnity in favour of the applicant's predecessor and registered a mortgage bond (B[…]) over their immovable property, being Erf 1[…] I[…] Township, in favour of the applicant's predecessor. The mortgage bond was registered on 2 June 2006 at the Deeds Office in Johannesburg.

[6] Over time, corporate restructurings took place. Sanlam 101 changed its name to Absa Home Loans 101 (Pty) Ltd. Sanlam Home Loans Guarantee Company changed its name to the applicant, Absa Home Loans Guarantee Company (RF) (Pty) Ltd. With effect from 12 June 2014, Absa Home Loans 101 (Pty) Ltd sold, ceded, and assigned its home loan business – including the respondents' loan agreement – to Absa Bank Limited. Absa Bank thereafter became the lender under the loan agreement, while the applicant remained the guarantor and the holder of the indemnity and mortgage bond.

[7] It is common cause that the respondents last made a payment in respect of their home loan on 7 September 2014 for R 9 000.00. Since then, no further payments have been made. As a result of the respondents' default, the entire outstanding balance became due and payable.

[8] On 7 August 2019, the lender's attorneys addressed a letter of demand to the respondents, calling upon them to remedy their breach. That letter was sent by prepaid registered post to the respondents' chosen *domicilium citandi et executandi* in terms of the Home Loan Agreement. A further letter of demand was sent on 13 January 2020. Both letters complied with the requirements of section 129 of the National Credit Act 34 of 2005 (the "NCA"). The respondents were referred to section 129 (1) of the NCA and it was proposed that they refer the Home Loan Agreement to a debt counsellor, altemative dispute resolution agent, consumer court or the Ombudsman for Financial Services, so that the parties would be able to resolve any dispute arising out of their default or agree to a plan to bring the payments under the Home Loan Agreement up to date.

[9] The respondents were notified that their failure to respond to the letters would result in legal proceedings being instituted against them by Absa Bank and/or

the applicant to enforce the Home Loan Agreement and to recover the full amount of the indebtedness together with collection costs and administration charges. The respondents did not respond to either letter, nor did they make payment or propose a plan to bring the arrears up to date.

[10] On 16 October 2019, Absa Bank gave the applicant written notice in terms of the guarantee agreement, calling upon the applicant to proceed against the respondents under the indemnity and the mortgage bond.

[11] On 7 September 2020, the applicant and Absa Bank instituted action proceedings against the respondents under case number 24054/2020. Those proceedings were defended. The applicant subsequently decided to withdraw the action and instead bring the present application on motion, contending that there were no genuine disputes of fact. On 1 September 2025, the action was formally withdrawn. Notice of withdrawal was served on the respondents and uploaded to CaseLines.

[12] As of 29 May 2025, the respondents' outstanding indebtedness to the applicant stood at R 1 659 788.54. Because no payments have been made for more than a decade, the arrears amount to the entire outstanding balance. A certificate of balance, signed by a duly authorised manager of the applicant, has been produced. That certificate constitutes *prima facie* proof of the indebtedness in terms of the loan agreement, the indemnity, and the mortgage bond.

The respondents' grounds of opposition

[13] The respondents raise four principal grounds of opposition. First, they contend that the matter is *lis pendens* because the action proceedings under case number 24054/2020 were still pending at the time this application was launched. Second, they argue that the applicant lacks locus standi because it failed to attach the cession agreement in terms of which Absa Bank acquired the home loan book, and that this constitutes a fatal non-compliance with Uniform Rule of Court 18 (6). Third, they complain that the founding affidavit is defective because the paragraph numbering is irregular, in breach of Rule 18(3). Fourth, they allege that there is a dispute of fact regarding whether they

signed the power of attorney for the registration of the mortgage bond. In addition, they have noted that the property is their primary residence and that their right of access to adequate housing is engaged.

[14] I deal with each ground in turn, but I also observe at the outset that the respondents have not challenged the existence or validity of the loan agreement, the guarantee, the indemnity, or the mortgage bond. They have not denied that they received the loan proceeds. They have not denied that they defaulted on their payment obligations. They have not placed any evidence before the court to suggest that they have made any payment since September 2014. In substance, the respondents' opposition is technical and procedural, and it is to that opposition that I now turn.

Lis pendens

[15] The doctrine of *lis pendens*, as our courts have consistently held, prevents a party from pursuing multiple proceedings involving the same parties, the same cause of action, and the same subject matter. The underlying principle is the requirement of finality in litigation and the avoidance of oppressive and duplicative proceedings.[1]

[16] The respondents point to the fact that the action proceedings were instituted before the present application, and that at the time the application was launched, those proceedings had not yet been finalised. They submit that the applicant should not be permitted to litigate the same dispute in two different forms of proceedings simultaneously.

[17] However, the action proceedings have now been withdrawn. The notice of withdrawal was served on the respondents on 1 September 2025, and the applicant has placed a copy of that notice before this court. Withdrawal of proceedings brings those proceedings to an end. There are no longer any pending proceedings between the same parties based on the same cause of action. The *lis* that previously existed has been removed.

[1] See *Nestlé (South Africa) (Pty) Ltd v Mars Inc* 2001 (4) SA 542 (SCA); *Socratous v Grindstone Investments* 2011 (6) SA 325 (SCA); *Caesarstone Sdot-Yam Ltd v World of Marble and Granite* 2000 CC 2013 (6) SA 499 (SCA).

[18] In any event, even if the action had not been withdrawn at the time the application was heard, the doctrine of *lis pendens* is not an absolute bar. This court has discretion to permit parallel proceedings where there is good reason to do so, particularly where the applicant seeks to avoid the delays inherent in trial proceedings and where there are no genuine disputes of fact. The respondents have not identified any prejudice that they would suffer beyond the ordinary inconvenience of having to defend proceedings. The withdrawal of the action eliminates any remaining concern. The *lis pendens* defence therefore falls away entirely.

Locus standi and compliance with Rule 18 (6)

[19] The respondents argue that the applicant has failed to prove its locus standi because it relies on a cession agreement in terms of which Absa Bank acquired the home loan business from Absa Home Loans 101 (Pty) Ltd, but that cession agreement was not attached to the founding affidavit. They invoke Uniform Rule of Court 18 (6), which provides that where a party relies on a contract, the pleading must state whether the contract is written or oral, when, where, and by whom it was concluded, and if it is written, a true copy must be annexed.

[20] There is no doubt that the cession agreement is a written contract and that a copy thereof was not attached to the founding affidavit. The applicant has, however, attached a copy of the sale and cession agreement to its replying affidavit. Moreover, when the respondents raised this point, the applicant expressly invited them to file a further affidavit dealing only with that agreement, and the applicant indicated that it would consent to the admission of such further affidavit. The respondents declined that invitation. They have not filed any further affidavit. They have not challenged the authenticity or validity of the cession agreement. They have not alleged any prejudice, nor have they demonstrated any.

[21] The purpose of Rule 18 (6) is to ensure that the opposing party is placed in a position to meaningfully respond to the allegations and to test the validity of

the contract relied upon.[2] In the present case, the respondents have been given a full opportunity to respond to the cession agreement. They have chosen not to do so. A technical non-compliance that causes no prejudice and that has been cured in the replying affidavit, with an offer to allow a further responsive affidavit, cannot be permitted to defeat an otherwise unopposed claim on the merits.

[22] In addition, the transfer of assets from Sanlam 101 to Absa Bank is a matter of public record. The name changes of the relevant entities are similarly a matter of public record, as evidenced by the certificate of name change from CIPRO, which the applicant has annexed to its papers. The respondents' suggestion that the applicant lacks locus standi is without substance. The applicant is the registered holder of the mortgage bond. It is the party entitled to enforce the indemnity. It has standing to bring these proceedings.

Defective pleadings under Rule 18 (3)

[23] The respondents complain that the founding affidavit's paragraph numbering is irregular, running from paragraphs 1 to 24 and then reverting to paragraph 19. They submit that this causes embarrassment and prevents them from properly answering the allegations.

[24] This complaint is, with respect, opportunistic and without merit. The numbering irregularity is a minor clerical error. It does not obscure the substance of the applicant's case. The respondents have in fact filed an answering affidavit and heads of argument. They have demonstrated that they understand the case they are required to meet. A court will not strike down a pleading for a trivial irregularity that does not cause substantial prejudice. Courts will not be over-technical about the matter.[3] Rule 18 (3) is directory, not peremptory, and substantial compliance is sufficient. The respondents' point on this issue is rejected.

The power of attorney dispute

[2] See *Home Talk Development (Pty) Ltd v Ekurhuleni Metropolitan Municipality*2018 (1) SA 391 (SCA) at [28].
[3] See *Lind v Spicer Bros (Africa) Ltd* 1917 AD 147.

[25] The respondents contend that there is a dispute of fact because they deny signing the power of attorney for the registration of the mortgage bond. In support of this contention, they point to a single sentence in their answering papers.

[26] There are several answers to this contention. First, in the action proceedings under case number 24054/2020, the respondents filed an amended plea in which they admitted the allegations relating to the power of attorney. Paragraph 10 of their amended plea states: "The contents of this paragraph are admitted insofar as the same accurately reflects the contents of POC2". That admission is binding on them. A party cannot admit a fact in one set of proceedings and then deny the same fact in another set of proceedings. The respondents are estopped from now raising a dispute that they have already conceded.

[27] Second, the existence and validity of the mortgage bond itself is not disputed. The mortgage bond is a registered deed. It is a public document. It creates real rights. The power of attorney is merely the authorising instrument that preceded registration. Even if there were some irregularity in the power of attorney – which there is not – that would not invalidate the registered bond. The bond speaks for itself.

[28] Third, the respondents' bald denial, without any supporting evidence, is not a genuine or bona fide dispute of fact. In motion proceedings, a respondent cannot avoid judgment by making a bare denial. The denial must be credible and raise a real, genuine, and bona fide dispute.[4] The respondents have fallen far short of that standard.

Compliance with the National Credit Act

[29] Section 129 (1) of the NCA requires a credit provider, before commencing legal proceedings, to draw the consumer's default to the consumer's attention in writing and to propose that the consumer refer the credit agreement to a debt counsellor, an alternative dispute resolution agent, a consumer court, or

[4] See *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A).

an ombudsman. Section 130 (1) provides that a credit provider may approach the court for an order to enforce a credit agreement only if the consumer has been in default for at least 20 business days and at least 10 business days have elapsed since the notice was delivered.

[30] The applicant has proved that the letters of demand dated 7 August 2019 and 13 January 2020 were sent by prepaid registered post to the respondents' chosen domicilium. The tracking results from the South African Post Office have been annexed, showing that the items were processed and that notifications were left for the respondents. The law is settled that service by prepaid registered post is sufficient, and that a reasonable consumer would check for notices at the post office.[5]

[31] The respondents have not responded to the notices. They have not referred the matter to a debt counsellor. They have not applied for debt review. They have not made any arrangement to bring the payments up to date. The requirements of sections 129 and 130 have been fully satisfied. There is no legal impediment to the grant of the relief sought.

Uniform Rule of Court 46A – execution against primary residence

[32] Rule 46A was introduced to give effect to the constitutional right of access to adequate housing, enshrined in section 26 of the Constitution. A court may not order execution against a person's primary residence unless it has considered all relevant circumstances, including the amount of the arrears, the period of default, the financial position of the debtor, the likelihood of the debtor being able to pay the debt within a reasonable period, and whether the property was acquired with a state subsidy[6].

[33] The applicant has provided the court with detailed information. The property is the respondents' primary residence. The respondents have not placed any information before the court regarding their financial position, nor have they suggested that they are able to pay the debt within a reasonable period. The

[5] See *Absa Bank Ltd v Mkhize and Two Similar Cases* [2013] ZASCA 139; 2014 (5) SA 16 (SCA); *Kubyana v Standard Bank of South Africa Ltd* [2014] ZACC 1; 2014 (3) SA 56 (CC); 2014 (4) BCLR 400 (CC).

[6] See generally,J*aphta v Schoeman & Others; Van Rooyen v Stoltz & Others* 2005 (2) SA 140 (CC) at para [55].

evidence is that they have made no payments since September 2014 – a period of over twelve years when the matter was argued. The outstanding indebtedness is approximately R 1.66 million. The market value of the property, according to a sworn valuation by a registered valuer, is R 950 000.00. The municipal valuation of the property is R2 980 000.00, but it is not a reliable indicator of market value for execution purposes. The expected low market value of the Property is R 1 020 000.00 per the Windeed valuation that was attached. The outstanding balance in respect of rates, taxes and other charges amounts to R 2 684.00.

[34] The applicant has demonstrated that there is negative equity in the property. The security is insufficient to cover the debt. In such circumstances, there is no equity to protect for the benefit of the respondents. Courts have held that where the market value of the property is less than the outstanding debt, a reserve price may not be necessary, and the court may be disinclined to set one. However, as the full court pointed out, "it will always be in the interests of both the Banks and the judgment debtor to realise as much value in the property as reasonably possible". Setting a reserve price ensures that ensures that the debtor "is not worse off due to unrealistically low prices being obtained and accepted at sales in execution".[7]

[35] The respondents have not claimed that an order of execution would unjustifiably infringe their right of access to adequate housing. They have placed no evidence before the court about their personal circumstances, their income, their expenses, their family situation, or any alternative accommodation. The mere fact that the property is their primary residence is not sufficient to prevent execution. The constitutional right to housing is not an absolute bar to eviction or execution; it requires a balancing of interests.[8]

[36] In balancing the competing interests, the following factors weigh heavily in favour of the applicant: the respondents have been in default for more than a decade; they have not attempted to pay or to engage with the credit provider; they have obstructed the previous action proceedings on what the applicant

[7] See *Absa Bank Ltd v Mokebe and Related Cases* 2018 (6) SA 492 (GJ) at [65].
[8] See *Jaftha v Schoeman and Others; Van Rooyen v Stoltz and Others* 2005 (2) SA 140 (CC).

describes as frivolous and vexatious grounds; the property has negative equity; the applicant is a commercial entity that is entitled to enforce its security; and the respondents have failed to place any information before the court to support their constitutional claim. The prejudice to the applicant if the order is not granted is substantial – it will be left with an unsecured debt and a deteriorating security. The prejudice to the respondents, on the limited record before the court, is not sufficiently established to outweigh the applicant's right to enforce its security.

[37] I am accordingly satisfied that the requirements of Rule 46A have been met and that an order declaring the property specially executable is just and equitable in the circumstances. In the exercise of this court's oversight role and discretion, a reserve price is set. Should the sale in execution not achieve a price that covers the debt and costs, the shortfall will remain a claim against the respondents.

Costs

[38] The applicant seeks costs on the attorney-and-client scale. The respondents have opposed the application on grounds that are without substance. They have raised technical defences that have no merit. They have admitted key facts in the action proceedings and then sought to deny them in this application. They have caused unnecessary delay and expense. In my view, this is a proper case for an award of costs on a higher scale consistent with the loan agreement. The respondents have conducted themselves in an obstructive and unreasonable manner. Costs on the attorney and client scale are warranted.

Order

[39] In the premises, the following order is made:

1. The respondents, jointly and severally, the one paying the other to be absolved, are ordered to pay the applicant the sum of R 1 659 788.54 (ONE MILLION SIX HUNDRED AND FIFTY-NINE THOUSAND

SEVEN HUNDRED AND EIGHTY-EIGHT RAND AND FIFTY-FOUR CENTS).

2. Interest on the aforesaid amount at the rate of 0.00% per annum, calculated daily on the outstanding balance and capitalised monthly in arrears, from 29 May 2025 to the date of final payment, both dates inclusive.

3. The immovable property described as Erf 1[…] I[…] Township, Registration Division I.R., Province of Gauteng, measuring 892 (eight hundred and ninety-two) square metres, held by Deed of Transfer No. T29254/2006, is hereby declared specially executable.

4. The Sheriff of this court is authorised and directed to attach and sell the said immovable property in execution, in accordance with the Uniform Rules of Court.

5. A reserve price is set for the sale in execution at R 1 200 000.00 (1.2 million rands).

6. If the property is not sold at the reserve price, the applicant is granted leave to approach this Court on the same papers, duly supplemented, for further directions.

7. Costs on the attorney and client scale.

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MUDAU J

JUDGE OF THE HIGH COURT

JOHANNESBURG

Date of Hearing:	25 May 2026
Date of Judgment:	10 June 2026

APPEARANCES

For the Applicant:	Adv M De Oliveira
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For the Respondents:	Self-Represented
	Mr Parmesan Thangaveloo Gramoney
	Ms Sindha Gramoney