IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case No: 2025-028938

(1) REPORTABLE: YES/NO

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

(3) REVISED

..... DATE 27 May 2026

SIGNATURE

In the matter between:

FIRSTRAND BANK LIMITED **Applicant**

(Registration Number: 1929/001225/06)

and

AUBREY LESIBA MPHAGO **Respondent**

(Identity Number: 7[...])

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 27 May 2026.

JUDGMENT

DU PLESSIS, AJ

INTRODUCTION

1.

1.1. This is an opposed application in which the applicant, Firstrand Bank Limited ("FNB" or "the applicant"), seeks monetary judgment against the respondent, Mr Aubrey Lesiba Mphago, in his capacity as surety and co-principal debtor for the indebtedness of AL Mphago Civil Construction CC ("the principal debtor"). As more fully set out below, the applicant ultimately seeks judgment for the amount certified as outstanding on the loan account as at the date of hearing, together with interest, the recoverable amount being limited in terms of the suretyship, and costs on the attorney and client scale.

1.2. At the hearing, Adv N G Louw appeared for the applicant. There was no appearance for the respondent. I am satisfied, having regard to the notice of setdown and the manner of service reflected on the papers, that the respondent received proper notice of the application and of the date upon which it was enrolled for hearing. Notwithstanding the respondent's absence, the respondent has delivered an answering affidavit raising certain defences. I have considered those defences and deal with them fully in this judgment, as I am obliged to do, since the applicant must satisfy the Court that it is entitled to the relief it seeks.

1.3. The respondent's answering affidavit contends principally that (a) the amount claimed by the applicant is incorrect because the loan balance has reduced since the launching of the application; (b) the immovable property which served as security has been sold for R550 000.00, which sum must be brought into account; and (c) the provisions of the Special Power of Attorney did not meet "*the notions of fairness, justice and equity*".

BACKGROUND FACTS

2.

2.1. The factual matrix is, save in immaterial respects, largely common cause and may be summarised as follows.

2.2. On 10 October 2019, and at Pretoria, the applicant and the principal debtor concluded a written loan agreement in terms of which the applicant advanced a sum of R1 680 000.00 to the principal debtor. The respondent, being the sole member of the principal debtor, represented the principal debtor in concluding the loan agreement.

2.3. The salient terms of the loan agreement, as set out in the founding affidavit, were the following: (a) the loan would bear interest at a variable rate linked to prime plus 90 basis points; (b) the loan was repayable in monthly instalments of R23 047.01 over 120 months; (c) failure to pay any amount when due would constitute an event of default; (d) upon the occurrence of an event of default the applicant would be entitled to claim the full outstanding balance and enforce its security; and (e) a certificate signed by any manager of the applicant would constitute prima facie proof of the principal debtor's indebtedness.

2.4. On 28 August 2019 the respondent bound himself, in writing, as surety and co-principal debtor in favour of the applicant for the indebtedness of the principal debtor. The suretyship limits the respondent's liability to R2 100 000.00 plus interest, finance charges and other amounts specified therein.

2.5. On 15 October 2019, the principal debtor caused a first ranking Sectional Covering Mortgage Bond to be registered over its immovable property as security for the indebtedness owed under the loan agreement.

2.6. During March 2023, the principal debtor fell into arrears and so breached the loan agreement. Following the breach, on 9 March 2023, the principal debtor and the respondent signed an Acknowledgment of Debt and Undertaking to Pay incorporating a Special Power of Attorney ("the AOD"). In terms of the AOD the principal debtor and the respondent: (a) jointly and severally acknowledged indebtedness in the sum of R1 389 550.22 together with interest at prime plus 0.90% per annum; (b) undertook to maintain minimum instalments of R25 000.00 per month from 30 March 2023; and (c) undertook to settle the full indebtedness by no later than 1 October 2023, failing which the full balance would become due and payable and the applicant would be entitled to sell the property in terms of the Special Power of Attorney.

2.7. The principal debtor and the respondent failed to settle the full outstanding indebtedness by 1 October 2023. The full balance accordingly became due and payable. As at 16 January 2025, the

indebtedness as certified by the applicant in the Certificate of Balance (Annexure FA7) stood at R1 450 907.90. The indebtedness has since reduced, and an updated Certificate of Balance dated 27 May 2026 has been placed before the Court, to which I return below.

2.8. It is common cause that the applicant attempted to sell the property by auction on 10 July 2024, but no purchaser was found. The respondent in his answering affidavit states that the property has since been sold for R550 000.00. The applicant, in reply, does not dispute the sale but states that the purchase price has not yet been received by it and has therefore not yet been credited against the outstanding balance.

THE RESPONDENT'S DEFENCES

3.

3.1. The respondent's answering affidavit raises three points which must be considered.

3.2. First, the respondent contends that the amount claimed (R1 450 907.90) is incorrect, and he annexes a statement of account (Annexure ALM1) reflecting a balance of R1 319 190.06 as at 4 August 2025. He pleads that the amount owed by him is not the amount reflected in the Certificate of Balance.

3.3. Second, the respondent contends that the property has been sold for R550 000.00 and that the claim must be reduced by that amount.

3.4. Third, the respondent contends, in a single sentence and without elaboration, that "*the provisions of the Special Power of Attorney did not meet the notions of fairness, justice and equity*."

3.5. Save for these contentions, the respondent does not dispute the conclusion of the loan agreement, the suretyship, the AOD, the breach, or his joint and several liability as surety and co-principal debtor. To the contrary, in paragraph 5.2 of the answering affidavit, the respondent expressly admits that he is jointly and severally liable with AL Mphago Civil Construction CC.

LEGAL FRAMEWORK

4.

4.1. It is trite that in motion proceedings the applicant must make out its case in the founding affidavit, and that final relief may be granted

where the facts averred by the applicant, together with the facts admitted or not genuinely disputed by the respondent, justify such an order. A bare denial or a bald assertion which does not raise a real, genuine or *bona fide* dispute of fact does not preclude the granting of relief. Where, as here, the respondent does not appear but has filed an answering affidavit, the Court remains obliged to satisfy itself that the applicant is entitled to the relief sought before granting judgment.

4.2. A surety who has bound himself as co-principal debtor is liable jointly and severally with the principal debtor, and may be sued for the full outstanding indebtedness. The respondent in this matter bound himself as surety and co-principal debtor and expressly renounced the benefits of excussion and division in his suretyship. He moreover admits his joint and several liability in his answering affidavit.

4.3. As to the quantum, the applicant relies on Rossouw and Another v FirstRand Bank Ltd 2010 (6) SA 439 (SCA), cited in the applicant's heads of argument. In that matter the Supreme Court of Appeal recognised that an applicant may rely on an updated certificate of balance at the hearing of an application for monetary judgment, since the indebtedness may legitimately fluctuate, for example through further payments or credits, between the launching of the application and the date of judgment. What is sought is judgment for the amount actually outstanding as at the date of judgment, not the amount stated in the notice of motion.

4.4. The provisions of the National Credit Act 34 of 2005 ("the NCA") do not apply to the principal loan agreement, which is a large credit agreement concluded with a juristic person (the close corporation) and secured by a mortgage bond. By operation of section 8(5) read with section 4 of the NCA, the suretyship given by the respondent is similarly excluded from the NCA's reach. This is not in dispute and is confirmed in the updated Certificate of Balance.

EVALUATION

5.

The quantum of the claim

5.1. The respondent's complaint that the amount claimed in the notice of motion is incorrect is, on its own showing, no defence at all. His own statement of account (Annexure ALM1) discloses an outstanding balance of R1 319 190.06 as at 4 August 2025. That is

itself an admission that a substantial debt remains owing to the applicant. The fact that the balance has reduced since the notice of motion was issued in March 2025 is unremarkable: it reflects ordinary interest accruals, payments made or credits applied in the intervening period.

5.2. As recognised in Rossouw v FirstRand Bank, the applicant is entitled to rely on an updated certificate of balance at the hearing. The applicant has, both in its replying affidavit and in its heads of argument, expressly undertaken to place an updated certificate of balance before the Court at the hearing and has expressly limited its claim to the amount in fact outstanding at the date of judgment. That stance is sound in principle and disposes of the respondent's first complaint.

5.3. The applicant has duly produced an updated Certificate of Balance signed by Ms Maryanne Jooste on 27 May 2026. It certifies the indebtedness of the principal debtor as at 1 May 2026 as follows: (a) on account number 3[...], the sum of R1 102 359.89 together with interest at prime (then 10.25%) plus 0.90% per annum compounded monthly; and (b) on account number 6[...], the sum of R213 841.11 together with interest at prime plus 6.00% per annum compounded monthly. In terms of clause 11.4 of the suretyship, a certificate signed by a manager of the applicant constitutes prima facie proof of the indebtedness. The respondent has placed nothing before the Court to rebut that *prima facie* proof.

5.4. I pause to observe that the updated certificate reflects, in addition to the loan account, a separate amount of R213 841.11 on account number 6[...] at the rate of prime plus 6.00%. According to the founding affidavit, account 6[...] was a Facility Agreement which the principal debtor held with the applicant. The relief originally claimed in the notice of motion was confined to the loan-account indebtedness, and the applicant, by the draft order handed up at the hearing, persists only in seeking judgment for the loan-account balance of R1 102 359.89 at prime plus 0.90%. An applicant is bound by the case made out in its founding papers, and judgment will accordingly be granted only in respect of the indebtedness on account 3[...]. That amount falls well within the amount originally claimed and within the limit of the respondent's suretyship.

The sale of the property for R550 000.00

5.5. The respondent's second contention is that the purchase price of R550 000.00 for which the property is said to have been sold must be deducted from the claim. The applicant does not dispute that

the property has been sold, but states on oath that the proceeds had not been received by it as at the date of the replying affidavit. The respondent has placed no evidence before me to suggest that the proceeds have, in fact, been paid over to the applicant or credited against the loan.

5.6. A debt is reduced when payment is received and credited, not when a sale agreement is concluded. The applicant has correctly undertaken to bring the proceeds, if and when received, into account by means of the updated certificate of balance to be produced at the hearing. The respondent's contention therefore does not constitute a defence; at most, it concerns the calculation of the amount for which judgment will ultimately be given.

The challenge to the Special Power of Attorney

5.7. The respondent's third and final complaint is that the Special Power of Attorney "*did not meet the notions of fairness, justice and equity*." This contention is, with respect, devoid of substance for at least three reasons.

5.8. First, the assertion is wholly unparticularised. The respondent does not identify which provision of the Special Power of Attorney is said to be unfair, why it is unfair, in what manner it offends notions of justice or equity, or what consequence ought, in law, to follow. A bald allegation of this kind raises no triable issue.

5.9. Second, the respondent's stance is internally contradictory. He simultaneously complains that the Special Power of Attorney was unfair and relies on the very sale that flowed from it to seek a reduction of the debt by R550 000.00. He cannot, in the words of the old adage, both approbate and reprobate. By insisting that the sale price be credited to him, the respondent accepts the validity of the Special Power of Attorney and the sale that resulted from it.

5.10. Third, and in any event, the present application is one for monetary judgment against the respondent in his capacity as surety. The relief sought does not depend on the exercise of any power conferred by the Special Power of Attorney; it is founded on the loan agreement, the suretyship and the AOD. Even if the Special Power of Attorney were impugnable (which has not been shown), that would not detract from the respondent's underlying contractual indebtedness.

Conclusion on the merits

5.11. On the established principles set out above, the facts averred by the applicant, taken together with those admitted by the

respondent, justify the relief sought. The respondent has admitted his joint and several liability as surety and co-principal debtor, has admitted the existence of a substantial outstanding indebtedness, and has raised no *bona fide* dispute of fact in relation to the conclusion or terms of the loan agreement, the suretyship, the AOD, or the breach. The defences raised are either no defences in law or are bald and unsupported.

COSTS

6.

The applicant seeks costs on the attorney and client scale. Clause 25 of the suretyship and the corresponding provisions of the loan agreement entitle the applicant to recover its costs on the attorney and own client scale. Such a contractual entitlement, freely undertaken between commercial parties, is ordinarily enforced by the courts, particularly in matters of this kind where the creditor has had to incur the expense of litigation to recover what is plainly due. I see no reason to depart from that ordinary position.

ORDER

7.

In the result, and the applicant having made out a proper case for the relief it seeks, I make the following order:

7.1. Judgment is granted in favour of the applicant against the respondent for:

7.1.1. Payment of R1 102 359.89;

7.1.2. Payment of interest on R1 102 359.89 at the rate of prime plus 0.90% per annum, compounded monthly, calculated from 1 May 2026 until date of payment;

7.1.3. The amount recoverable from the respondent is limited to R2 100 000.00 plus interest and/or finance charges as set out in Clause 3 of the respondent's suretyship annexed to the applicant's founding affidavit as Annexure FA2.

7.2. The respondent is to pay the costs of the application on the scale as between attorney and client.

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DU PLESSIS AJ

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

APPEARANCES

Date of hearing:	25 May 2026
Date of judgment:	27 May 2026

For the applicant:

Adv N G Louw

Instructed by:

Rorich Wolmarans & Luderitz Inc, Pretoria

For the respondent:

Adv T Mojapelo

Instructed by:

Twala TR Attorneys, Pretoria