

**THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case no 2025-119961

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| (1) | REPORTABLE: Yes ☐ / No ☒ |
| (2) | OF INTEREST TO OTHER JUDGES: Yes ☐ / No ☒ |
| (3) | REVISED: Yes ☒ / No ☐ |

Date: 06 July 2026

In the matter between:

**THE STANDARD BANK OF SOUTH
AFRICA LIMITED**

Applicant

And

BOITUMELO THEO RAKALE

Respondent

JUDGMENT

DU PLESSIS J

Introduction

[1] In this opposed application for summary judgment, the plaintiff bank seeks summary judgment against the defendant homeowner for payment of the outstanding balance under three home loan agreements, declaring the property specially executable, and setting a reserve price. The defendant opposes on three grounds, namely a special plea of jurisdiction, non-compliance with Rule 17(3)(a)-(c) of the Uniform Rules of Court and alleged non-compliance with s 129 of the National Credit Act.¹ The defendant appeared in person and represented himself during the

¹ 34 of 2005.

proceedings. During the hearing, he indicated that he used artificial intelligence to assist him in drafting his heads of argument. However well presented the heads of argument might be, the submissions do not succeed for the reasons below.

[2] What the artificial intelligence did pick up was the adage that summary judgment is a drastic remedy that may be granted only where there is no bona fide defence raised – in other words, where the plaintiff's case is unanswerable.² The test is whether, on the disclosed facts, which, if proven at trial, would constitute a real and honest defence.

[3] The plaintiff may apply for summary judgment once the defendant has entered a plea. Once the plaintiff has filed an affidavit in support of summary judgment, the defendant may file an affidavit opposing summary judgment, setting out the material facts relied upon.³ The defence in the opposing affidavit must be in harmony with the plea, and, as a general rule, the defendant may not use summary judgment to ventilate a new and different defence from that pleaded.⁴

[4] These are the tests that the defences must be measured against.

Defence: jurisdiction

[5] The first defence raised by the defendant is that the Johannesburg High Court lacks jurisdiction because the cause of action arose in Pretoria and the mortgaged property is in Soshanguve, thereby falling within the area of the Gauteng Division, Pretoria.

[6] This special plea is not a bona fide defence. A court's jurisdiction is established based on the fact that the third loan agreement was concluded in Pretoria, all three mortgage bonds were registered in the Deeds Office, Pretoria. The mortgaged property is in Soshanguve, Pretoria. The defendant's chosen domicilium addresses under the agreements are in Soshanguve and Mabopane. The Gauteng

² *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A).

³ *Tumileng Trading CC v National Security and Fire (Pty) Ltd* 2020 (6) SA 624 (WCC).

⁴ *Nedbank Ltd v Uphuhliso Investments and Projects (Pty) Ltd* [2022] 4 All SA 827 (GJ) para 24.

High Court has seats in Johannesburg and Pretoria that share concurrent jurisdiction. In *Standard Bank of SA Ltd v Thobejane*,⁵ the Supreme Court of Appeal confirmed that a High Court is obliged to hear any matter that falls within its jurisdiction and has no power to refuse on grounds of convenience.

Defence: 25-kilometre requirement

[7] The defendant contends that the plaintiff's former attorneys are not situated within 25 kilometres of this Court, and that the Johannesburg correspondents listed on the summons were placed there solely to create an appearance of compliance. This contention is factually incorrect as is evident from the papers on the record. This defence is not bona fide.

Defence: s129 NCA defence

[8] The defendant's opposing affidavit raises a single ground of opposition: that the Bank's section 129(1)(a) Default Notice, sent on 18 June 2025 by e-registered mail through the South African Post Office ("SAPO"), does not constitute valid delivery. The defendant's specific contentions are that he did not designate his email address as his chosen address for statutory notices under the credit agreements and that the SAPO certificate proves only that a message was transmitted, not that it was received or accessed.

[9] This Court notes at the outset that the s 129 defence was never raised in the defendant's special plea or plea. It appears for the first time in the opposing affidavit. Rule 32 requires the affidavit resisting summary judgment to be in harmony with the pleadings. The amendment was designed to allow the plaintiff an opportunity to address the defendant's grounds of defence in its own supporting affidavit, a purpose undermined when the defendant introduces a new and different defence at the opposition stage.

⁵ 2021 (6) SA 403 (SCA).

[10] The defendant has not applied to amend his plea to include this defence. Until he does so, and until an amendment is granted, it cannot form the basis of a triable issue for purposes of this application.

[11] Even if this Court were to look past the pleading objection, the s 129 defence does not raise a bona fide triable issue.

[12] Section 129(1) of the NCA requires a credit provider to send a notice to the consumer's chosen address before enforcing a credit agreement. Section 19(4) of the Electronic Communications and Transactions Act⁶ ("ECTA") provides that where any law requires or permits a document to be sent by registered or certified post, that requirement is satisfied if the document is sent electronically to SAPO, registered by SAPO, and transmitted by SAPO to the consumer's electronic address. Section 129 of the NCA permits delivery by registered post. Reading the two provisions together, delivery via SAPO e-registered mail is legally competent and permissible.

[13] This was confirmed in *Mokgoro and Others v Master of the High Court, Kimberley*,⁷ which held that documents required to be sent by registered mail may be registered by SAPO and sent electronically.

[14] The SAPO certificate attached as Annexure A to the opposing affidavit confirms the tracking status as DELIVERED. The defendant does not allege that he did not receive this email. He challenges only the method of delivery. That is insufficient. A bare challenge to method, in the absence of any factual denial of receipt, does not constitute a bona fide defence.

[15] The section 129 defence is dismissed.

⁶ 25 of 2002.

⁷ [2025] ZANCHC 60 para 38.

Rule 46A inquiry

[16] The Bank seeks an order declaring the property specially executable. The right of access to adequate housing under s 26(1) of the Constitution requires judicial oversight of this process.⁸

[17] It is common cause that the property is not the defendant's primary residence. He resides at 2[...] Block [...], M[...]. The property is at Erf 4[...], S[...]. The Sheriff's return confirmed that a neighbour stated that no one lives at the property in question. The defendant has also not placed any evidence before this Court of any other assets from which the judgment debt could be satisfied. The immovable property is therefore the only tangible security the applicant holds. Execution against the property is the only practical means of satisfying the debt.⁹ An order of special executability is thus not disproportionate in the *Gundwana* sense, as is granted.

[18] Under Rule 46A(5), the Court must fix a reserve price that is just and equitable having regard to all relevant information. The independent valuer values the market value at R600 000 and the forced sale value at R450 000. The local authority valuation is R480 000. The respondent owes (rounded) R35 000 to the City of Tswane. The outstanding balance at the time of hearing was R495 000 (rounded). The conventional approach in this Court is to calculate the reserve price as the forced sale value less outstanding rates and taxes. However, this figure falls short of the outstanding bond debt of R495 000. The purpose of a reserve price under Rule 46A is to protect both parties: it must prevent a distress-discounted sale, but must also be realistic enough not to cause the auction to fail to attract buyers. A reserve materially below the outstanding debt leaves the bank with an unsatisfied judgment and forces it back to court, a result that benefits neither party. The reserve price is therefore fixed at the outstanding balance of R495 000.

[19] The order will be suspended for a period of three months to provide the respondent the opportunity to sell the property himself by private sale.

⁸ *Gundwana v Steko Development CC* [2011] ZACC 14.

⁹ *ABSA Bank Ltd v Petersen* 2013 (1) SA 481 (WCC).

[20] The Mortgage Bonds provide for costs on the attorney-and-client scale. However, this Court has a discretion in the matter of costs. Mr Rakale engaged with the proceedings, and while his opposition was ultimately unsuccessful, it was not frivolous or vexatious as to warrant an attorney-and-client costs order. The costs will follow the result, and on scale B.

Order

[21] The following order is made:

1. Summary judgment and an order in terms of Rule 46(1) and Rule 46A of the Uniform Rules of Court is granted in favour of the applicant/plaintiff against the respondent/defendant for:
 - 1.1. Payment of the amount of R435 563.23 (FOUR HUNDRED AND THIRTY-FIVE THOUSAND FIVE HUNDRED AND SIXTY-THREE RAND AND TWENTY-THREE CENTS).
 - 1.2. Payment of interest on the aforementioned amount of R453 563.23 at the rate of 11.00% per annum from 25 March 2025 to the date of payment, together with monthly insurance premiums of R527.67 and insurance premiums of R2 215.00 from said date, both dates inclusive.
2. That the immovable property described as
ERF 4[...] S[...] TOWNSHIP
REGISTRATION DIVISION J.R.
PROVINCE OF GAUTENG
MEASURING 650 (SIX HUNDRED AND FIFTY) SQUARE
METRES
HELD BY DEED OF TRANSFER NO T[...]
SUBJECT TO THE CONDITION THEREIN CONTAINED
(“the Immovable Property”)
be declared executable for the aforesaid amounts.
3. An order authorising the issuing of a writ of execution in terms of Rule 46 as read with 46A for the attachment of the immovable property.
4. That a reserve price be set for the sale of immovable property, at a sale in execution, at the amount of R495 000.
5. The operation of paragraphs 2 and 3 of this order is suspended for a period of three months from the date of this judgment.

6. Costs on party and party scale B.

WJ du Plessis
Judge of the High Court,
Gauteng Division,
Johannesburg

Date of hearing:	5 May 2026
Date of judgment:	6 July 2026
For the applicant:	M Rakgoale instructed by Vezi & De Beer Inc
For the respondent:	In person