

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

Case no 2025-123685

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

Date: 06 July 2026

In the matter between:

**ABSA HOME LOANS GUARANTEE
COMPANY (RF) PROPRIETARY
LIMITED**

First Applicant

ABSA BANK LIMITED

Second Applicant

And

OWOLABI ADEKUNLE OSHIKOYA

Respondent

JUDGMENT

DU PLESSIS J

Introduction

[1] This is an application for summary judgment under Rule 32, coupled with an application under Rule 46A for an order declaring the defendant's immovable property, being his primary residence, specially executable. The plaintiffs seek a money judgment, together with ancillary relief.

[2] The defendant opposes the application, submitting that the arrears are modest and that the claim for the full accelerated indebtedness is absurd and inequitable, that he has made a further payment, that he wishes to pay a reduced instalment in terms of a restructured loan and that the matter should be mediated or be dealt with in a debt review (brought after the delivery of his plea) and not through litigation.

[3] For the reasons that follow, I am not satisfied that any of these defences are bona fide in the sense required to resist summary judgment, and that, having weighed the considerations required by Rule 46A and the constitutional jurisprudence on execution against a primary residence, an order declaring the property specially executable is warranted.

Summary judgment

[4] Summary judgment is intended to prevent sham defences from defeating a plaintiff's rights and not to shut out a defendant who has a defence worthy of investigation.¹

[5] To resist summary judgment, a defendant must set out a defence, valid in law, disclosed with sufficient particularity and in a manner that is not needlessly bald, vague or sketchy, such that the Court can be satisfied the defence is bona fide and not raised merely to delay the action.² Where the defence is premised on the National Credit Act ("the NCA"),³ the consumer must place the material facts supporting that defence before the Court; bare assertions of unaffordability or good faith are not enough.⁴

Defence: the payment made

[6] The defendant relies on a payment of R3,000 (and subsequent payments) to demonstrate an intention to reduce the arrears. No particulars of the date, method or

¹ *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture* 2009 (5) SA 1 (SCA) para 32.

² *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A) at 42.

³ 34 of 2005.

⁴ *Seffert v FirstRand Bank Ltd t/a First National Bank* 2012 (6) SA 581 (SCA) para 15.

reference of this payment were furnished, nor was any proof attached to his affidavit. A defence of payment must be particularised and proved with reference to such documents; a bare allegation does not raise a triable issue.⁵

[7] Shortly before the hearing, proof of payment was uploaded to the court file and referred to during the hearing. The amounts evidenced by those payment records ranged from R4,500.00 to R8,500.00, all of which were below the monthly instalment amount of R13,215.10. The Court is not unsympathetic to the defendant's attempt to address the arrears, but even if the Court were to accept the payment of R3,000.00 relied upon in the answering affidavit, it has not stopped the growth of the arrears, which stood at almost nine months in arrears by the time of the hearing, exceeding R100,000.00. The proportionality of execution on immovable property will be dealt with in more detail below, but suffice it to state that the payments made do not raise a bona fide defence to ward off summary judgment, and fall to be rejected.

Defence: modest arrears and the acceleration clause

[8] The defendant contends that the plaintiffs' claim for the full accelerated balance, rather than merely the arrears, is absurd and inequitable. This is not a defence. Once a valid acceleration clause has been triggered by non-payment, as in this case, the plaintiffs are entitled to the accelerated amount. It is the practice of this division (mandated by the Full Court⁶) to seek a money judgment and execution simultaneously where the property has been specially hypothecated for that purpose. This ground therefore does not assist the defendant.

Defence: payment plan, restructure and request to mediate

[9] The defendant's central defence is that the agreement should be restructured (by capitalising the arrears and extending the term) to allow him to pay R11,500 per month, alternatively that the matter be stayed for mediation. I am not satisfied that this is a bona fide defence capable of warding off summary judgment.

⁵ *Standard Bank of SA Ltd v Oneanate Investments (Pty) Ltd (in liquidation)* 1998 (1) SA 811 (SCA).

⁶ *Absa Bank Ltd v Mokebe and Related Cases – 2018 (6) SA 492 (GJ) at paras 22, 29 and 31.*

[10] Despite the proposed range of R8 000 – R11 500, there is no clarity on the affordability of any of the proposals, and the plaintiff indicated that under the proposal it will take eight years just to service the arrears with this proposal, at best, and will remain indebted for the rest of his life at worst.

[11] As to mediation, it is trite that it is voluntary and requires good-faith participation from both sides. A court cannot stay proceedings for a mediation that has no realistic prospect of producing an agreement the defendant can honour, or to force the parties to mediate.⁷ The defendant may still dispose of the property by private sale before the execution, and nothing in this judgment should be read as precluding the parties from reaching an agreement, even after judgment is granted, should it become possible.

Defence: debt review application

[12] The defendant's supplementary answering affidavit, filed without the leave of the Court or the plaintiffs' consent, raises for the first time the contention that a pending debt review application under s 86 of the NCA bars further prosecution of this matter.

[13] It is impermissible, as a matter of procedure, to introduce a new defence on the merits by way of a further affidavit filed without leave from the Court.⁸ No application for leave was made. That alone is sufficient to disregard the defence as pleaded.

[14] Even if the Court were to have regard to the merits, the defence fails. Section 86(2) of the NCA, as amended, excludes an application for debt review in respect of a credit agreement where the credit provider has, at the time of that application, already taken the steps contemplated in s 130 to enforce the agreement.⁹ On the uncontested chronology, the debt review application post-dates the institution of

⁷ *Lamroo (Pty) Ltd and Others v Theron* [2024] ZAFSHC 32 paras 43–45.

⁸ *Shackleton Credit Management CC v Standard Bank of South Africa Ltd* [2023] ZAGPPHC 200 paras 28 – 29.

⁹ *Nedbank Ltd v The National Credit Regulator* [2011] ZASCA 35 para 14.

enforcement and is, on the authority relied upon by the plaintiffs, excluded from the ambit of s 86 in respect of this agreement.

Execution

[15] The property is the defendant's primary residence. Execution against a primary residence is not, for that reason alone, impermissible. It is, as the Constitutional Court held in *Gundwana v Steko Development*,¹⁰ part and parcel of ordinary economic life, and it is only where there is disproportionality between execution and other available means of achieving payment that the Court should be constitutionally concerned.

[16] The defendant's submission that he has the ability to pay on different terms does not render the execution disproportionate either. During this stage of the inquiry, the question is not whether the debtor has asserted that another arrangement must work. Rather, it asks whether he has shown, on the facts, that he is capable of resolving the debt within a reasonable time. On the facts, this is simply not the case. The bond was concluded relatively recently (in 2023), and it is still in the early interest-heavy phase of its amortisation. Little capital has yet been paid. A restructuring at this stage would just service the interest, rather than make inroads to the capital. But more pertinently, the defendant's own debt review application discloses a monthly net income of R30,000 against expenditure exceeding R32,000, before any contribution to arrears is even considered. On his own version, he cannot not service the existing instalment, let alone a restructured one plus arrears.

[17] I have considered the debt amount; the fact that the arrears represent almost nine months of non-payment and continue to grow; the absence of any alternative means, properly substantiated, by which the defendant could discharge the debt within a reasonable time; and the defendant's own failure to honour proposed payment arrangements. Against that, I have weighed the probable hardship execution will have on the defendant. Despite this hardship and these considerations, I am not satisfied that any proportionate alternative to execution is reasonably possible.

¹⁰ 2011 (3) SA 608 (CC) para 54.

[18] The plaintiffs have placed before the Court a municipal valuation of R850,000.00 and an independent valuation of R1,180,000.00, outstanding rates and taxes of R28 5000. Using the so-called "Opperman-formula"¹¹ gives a forced value of R710 500. Taking into account the outstanding rates and taxes of R28 5000, the total is R682 000. In these circumstances, a reserve of R700 000 seems reasonable.

Costs

[19] Costs should follow the result. Although the agreement makes provision for an attorney-and-client scale, the court retains a discretion. Costs will be on a party-and-party scale B.

Order

[20] 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:
2. Payment of the amount of R1 101 120.07 (ONE MILLION ONE HUNDRED AND ONE THOUSAND ONE HUNDRED AND TWENTY RAND AND SEVEN CENTS).
3. Payment of interest on the amount of R453 563.23 in paragraph 2 above at the rate of 12.10% per annum, calculated and capitalised monthly in arrears from 9 July 2025 to date of payment, both dates inclusive;
4. That the immovable property described as

ERF 4[...] LA ROCHELLE TOWNSHIP
REGISTRATION DIVISION I.R. PROVINCE OF GAUTENG
MEASURING 495 (FOUR HUNDRED AND NINETY FIVE) SQUARE
METERS
HELD BY DEED OF TRANSFER NUMBER T[...]
SUBJECT TO THE CONDITION THEREIN CONTAINED

¹¹ Municipal valuation plus independent valuation divided by two minus 30% and minus the rates and taxes.

be declared executable for the aforesaid amounts.

5. 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.
6. That a reserve price be set for the sale of immovable property, at a sale in execution, at the amount of R700 000.
7. The respondent is to pay costs of the application on a 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: KM Boshomane instructed by Lowndes
Dlamini Attorneys

For the respondent: I Nwakodo instructed by Tony Okorie
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