IN THE HIGH COURT OF SOUTH AFRICA

(MPUMALANGA DIVISION, MBOMBELA MAIN SEAT)

CASE NUMBER: 525/2025

(1)	REPORTABLE:NO
(2)	OF INTEREST TO OTHER JUDGES: **NO**
(3)	REVISED: YES
[redacted]	6/08/2026
SIGNATURE	DATE

In the matter between:

FIRST RAND BANK **APPLICANT**

and

SURPRISE THABO LUKHELE **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 email. This Order is further placed on the Court file of this matter by the Judge or her/his Secretary. The date of this order is deemed to be 6 August 2026.

JUDGMENT

GUMEDE AJ

1. The applicant seeks payment of the amount of R572 449-97, interest and costs of suit, in terms of a loan agreement of 31 October 2018 for the indebtedness of Prosperous Prop 111 (Pty) Ltd ("the Principal Debtor"), of which the Respondent is the sole director. The respondent bound himself as a surety and co-principal debtor for all the sums of money which the principal debtor may from time to time owe the applicant, that amount was R980,000.00 advanced in October 2018.

2. The loan agreement inter alia contains an acceleration clause operative on breach, a clause rendering a certificate signed by any manager of the applicant prima facie proof of the amount owing, and a non-variation clause requiring any variation or amendment to be in writing and signed by both parties. The deed of suretyship contains materially identical provisions, including a clause recording that no relaxation or indulgence granted to the principal debtor shall constitute a waiver of the applicant's rights against the respondent, and that the suretyship is continuing cover until the principal debtor's indebtedness is extinguished.

3. The Respondent resists the application on the following grounds:

    a. that the application is premature as the applicant was obliged to refer the matter for mediation under Rule 41A of the Uniform Rules of Court.

    b. that no proper notice of demand was given

    c. that the applicant's accounting including the certificate of balance is incorrect

    d. that the deed of suretyship is not valid

    e. that repayment of the debt had been compromised

    f. that there is a dispute of fact which should be referred to oral evidence, alternatively that the parties should be directed to consider mediation.

4. The respondent delivered a supplementary answering affidavit in which he alleges that the principal debtor sold one of three sectional title units over which the applicant holds registered mortgage bond security in the amount of R725,000.00. He says that the applicant's conveyancing attorneys received a bank guarantee from The Standard Bank of South Africa Limited in the sum of

R477,719.23 which is the full amount owing on the loan account. This amount is payable to the applicant on registration of transfer.

5. The respondent takes issue with the fact that the applicant did not sue the principal debtor but applied for its liquidation instead. He alleges that his liability as a surety is “accessory” in nature and dependent on the obligations of the principal debtor.

6. A related application under case number 526/2025, in which the Applicant seeks the final winding-up of the Principal Debtor on the grounds of deemed insolvency following a notice in terms of section 345 of the Companies Act 61 of 1973, was enrolled for hearing on the same day as this matter.

<u>MEDIATION IN TERMS OF RULE 41A</u>

7. Rule 41A requires a party to proceedings to indicate whether it agrees to or opposes referral of the dispute to mediation. Nothing in my reading of the Rule suggest that the mediation is compulsory. The rule merely empowers a court to direct that a matter be referred to mediation.

8. The loan agreement or the deed of suretyship before me does not impose a contractual obligation to mediate before litigating, and no Practice Directive of

this Division comparable to the mediation directive considered by the Gauteng Division has been shown to apply to a claim of this kind.

9. Accordingly, this point in limine is dismissed.

<u>DISPUTE OF FACT</u>

10. The well-established ***Plascon Evans*** rule is that where there is a dispute of fact, final relief may be granted only if the facts averred in the Applicant's affidavits, admitted by the Respondent, together with the facts alleged by the Respondent, justify the order sought, except that where allegations or denials that are so far-fetched or untenable that they can be rejected on the papers do not preclude final relief. Bare denials do not raise a genuine, bona fide dispute of fact.

11. The rule in ***<u>Badenhorst v Northern Construction Enterprises (Pty) Ltd 1956 (2) SA 346 (T)</u>***, relied on by the respondent, that a court will ordinarily refuse to wind up a company where the underlying debt is bona fide disputed on reasonable grounds — and the wide judicial discretion recognised in *Kalil v Decotex (Pty) Ltd and Another* 1988 (1) SA 943 (A) apply to winding up proceedings and have no direct application to an ordinary application for payment under a written suretyship, such as in this case.

12. As already mentioned, both the loan agreement and the deed of suretyship provide that a certificate signed by any manager of the Applicant is prima facie proof of the indebtedness. The Respondent's answering papers does not identify any specific entry, debit, credit, or interest calculation which is said to be incorrect.

13. The assertion that the accounting is incorrect and that the certificate of balance is disputed without evidence in support thereof, does not raise a genuine dispute.

14. In addition to disputing the amounts owed, the respondent also contends that the deed is not a proper deed of surety.

15. Section 6 of the General Law Amendment Act 50 of 1956 requires a suretyship to be reduced to writing and signed by or on behalf of the surety, with the material terms contained in, or ascertainable from, the document.

16. The suretyship relied on by the applicant, annexed to the papers as "MJ5" was signed by the respondent, identifies the applicant as creditor and Prosperous Prop 111 (Pty) Ltd the as principal debtor, and stipulates a monetary limit of R980,000.00.

17. In my view, this complies with the requirements set out in section 6 of the General Law Amendment Act 50 of 1956.

18. The Respondent fails to identify the shortcomings in the deed of surety which renders it defective.

19. I am accordingly satisfied that the respondent has not raised any genuine, bona fide dispute of fact to his liability, as surety and co-principal debtor, for the principal debtor's indebtedness to the applicant.

20. In the premises, the matter falls to be decided on the papers.

THE PENDING SALE AND GUARANTEE

21. The issue of a guarantee does not extinguish the indebtedness of the principal debtor or the respondent, only the actual payment would.

22. Registration had not occurred as at the hearing date.

23. In the result, I make the following order:

    1. The point in limine based on alleged non-compliance with Rule 41A of the Uniform Rules of Court is dismissed.

2. Judgment is granted in favour of the Applicant against the Respondent for payment of the sum of R477,719.23 (four hundred and seventy-seven thousand seven hundred and nineteen Rand and twenty-three cents) plus interest on the aforesaid sum

3. Costs of the application, on the party and party scale.

[redacted]

Zodwa Gumede

Acting Judge of the High Court

APPEARANCES

For the Applicant: Advocate WP Steyn

Instructed by: Thethe Swart Inc, c/o Combrink Greyling Attorneys

For the Respondent: Mr J du Toit

Instructed by: Gerrie Groenewald Attorneys Inc

Heard on: 3 March 2026

Delivered: 6 August 2026