

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
28 August 2026	
DATE	SIGNATURE

In the matter between:

**ABSA HOME LOANS GUARANTEE
COMPANY (RF) PTY LTD**

Applicant

and

**PARMESAN THANGAVELOO GRAMONEY
SINDHA GRAMONEY**

First Respondent
Second Respondent

This Judgment is handed down electronically by circulation to the Applicant's Legal Representatives and the Respondents by email, publication on CaseLines and SAFLII. The date for the handing down is deemed to be 28 August 2026.

LEAVE TO APPEAL JUDGMENT

MUDAU, J:

Introduction

- [1] The respondents apply for leave to appeal against the entire judgment and order handed down by this Court on 10 June 2026. In that judgment, the Court granted a money judgment against the respondents in the amount of R 1,659,788.54, declared their immovable property specially executable in terms of Uniform Rule of Court 46A, and awarded costs on the attorney-and-client scale.
- [2] The respondents, who are self-represented, have filed a notice of application for leave to appeal together with heads of argument in support thereof. The applicant in the main application) has filed concise heads of argument opposing the application¹. The applicant has also delivered a Rule 30 application seeking to set aside the application for leave to appeal as an irregular step, on the basis that the respondents have purportedly supported their application with a founding affidavit, a procedure not provided for in the Uniform Rules of Court.
- [3] I deal first with the Rule 30 application, before turning to the merits of the application for leave to appeal.

The Rule 30 Application

- [4] The applicant contends that the respondents' application for leave to appeal is irregular in that it purports to be supported by a founding affidavit. The applicant submits that the Uniform Rules of Court do not provide for filing a founding affidavit in support of an application for leave to appeal. The applicant has delivered a notice in terms of rule 30(2)(b) and subsequently filed a rule 30 application to set aside the application for leave to appeal as an irregular step.
- [5] It is correct that the Uniform Rules of Court do not expressly provide for the filing of a founding affidavit in support of an application for leave to appeal. Rule 49(1) provides for the delivery of a notice of application for leave to appeal, and the rules do not contemplate the filing of further affidavits. The respondents have,

¹ The citation of the parties have been maintained for convenience.

however, filed heads of argument in support of their application, setting out the grounds on which they rely. The filing of the heads of argument is proper and in accordance with practice.

- [6] In the circumstances, I do not consider it necessary to set aside the application for leave to appeal on this technical ground. The application for leave to appeal is properly before the Court by way of the notice of application and the heads of argument. The applicant has not demonstrated any prejudice. The rule 30 application is dismissed. There is no order as to costs in respect thereof, as the applicant raised a technical point.

The Test for Leave to Appeal

- [7] Section 17(1)(a) of the Superior Courts Act² provides that leave to appeal may be granted where the judge is of the opinion that:

“(i) the appeal would have a reasonable prospect of success; or

(ii) there is some other compelling reason why the appeal should be heard...”

- [8] The test is more stringent than under the previous legislation. The Supreme Court of Appeal in *MEC for Health, Eastern Cape v Mkhitha*³ stated that:

“An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.”⁴

- [9] The respondents bear the onus of demonstrating that the appeal would have reasonable prospects of success, or that there are compelling reasons why the appeal should be heard. I now turn to consider whether the respondents have discharged that onus.

²10 of 2013.

³ [2016] ZASCA 176.

⁴ Id at para 17.

The Grounds of Appeal

[10] The respondents advance numerous grounds of appeal, which may be summarised as follows:

- a) The Court erred in granting an order declaring the respondents' primary residence specially executable without properly exercising judicial oversight as required by rule 46A and section 26 of the Constitution.
- b) The Court failed to conduct a proper enquiry into all relevant circumstances, including the respondents' financial position, proportionality, and whether execution was just and equitable.
- c) The Court failed to consider less restrictive measures and erred in granting execution without establishing that execution was a measure of last resort.
- d) The Court erred in finding that the respondent complied with all pre-enforcement procedures, despite the absence of meaningful engagement and procedural fairness.
- e) The Court erred in accepting the certificate of balance as sufficient proof of the quantum of the debt without proper scrutiny.
- f) The Court erred in concluding that no *bona fide* disputes of fact existed and failed to refer the matter to oral evidence or trial.
- g) The Court failed to properly balance the respondents' constitutional right of access to adequate housing against the respondent's rights.
- h) The Court granted an order which is disproportionate, resulting in severe and irreversible prejudice to the respondents.
- i) The Court erred in awarding costs on the attorney and client scale without justification.

Analysis Of the Grounds of Appeal

The Rule 46A Enquiry

- [11] The respondents contend that the Court failed to conduct a sufficiently rigorous enquiry into whether execution against their primary residence was just and equitable. They rely on *Jafftha v Schoeman; Van Rooyen v Stoltz*⁵ and *Gundwana v Steko Development CC*,⁶ in which the Constitutional Court emphasised the need for substantive judicial oversight.
- [12] I have carefully reconsidered the record and the judgment. The respondents, who bear the onus of placing information before the Court in opposed proceedings, did not provide any information about their financial circumstances, income, expenses, family situation, or prospects of securing alternative accommodation. They did not place any evidence before the Court to suggest that an order of execution would unjustifiably infringe their right of access to adequate housing. They did not propose any alternative arrangement to bring the payments up to date.
- [13] The judgment of 10 June 2026 expressly considered all these factors and found that the respondents had failed to discharge their onus. The Court correctly observed that the constitutional right to housing is not an absolute bar to execution; it requires a balancing of interests. The respondents had been in default for over a decade. The property has negative equity. The respondents did nothing to place information before the Court that could tip the balance in their favour.
- [14] Another court would not interfere with these findings. There is no reasonable prospect of success on this ground.

Compliance with the NCA

- [15] The respondents contend that the Court erred in finding that the applicant complied with all pre-enforcement procedures, including the requirements of sections 129 and 130 of the National Credit Act.⁷ The respondents suggest that there was no meaningful engagement or procedural fairness.

⁵ [2004] ZACC 25; 2005 (2) SA 140 (CC); 2005 (1) BCLR 78 (CC).

⁶ [2011] ZACC 14; 2011 (3) SA 608 (CC); 2011 (8) BCLR 792 (CC).

⁷ 34 of 2005.

- [16] The Court considered this issue in the judgment. 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 were attached to the founding papers. The respondents did not respond to the notices. They did not refer the matter to a debt counsellor. They did not apply for debt review. They did not make any arrangement to bring the payments up to date.
- [17] The law is settled that service by prepaid registered post is sufficient for purposes of section 129.⁸ The requirement is one of delivery, not actual receipt. The respondents had every opportunity to engage with the respondent and did not do so. However, there is more. Regarding the merits, they filed notices to oppose and provided their respective email addresses for the filing of further documents and processes. There is no reasonable prospect of success on this ground.

The Certificate of Balance

- [18] The respondents contend that the Court erred in accepting the certificate of balance as sufficient proof of the quantum of the debt. They submit that the quantum was disputed and not adequately verified.
- [19] I have carefully considered the record. The certificate of balance, signed by a duly authorised manager of the applicant, was produced in terms of the contractual provisions of the loan agreement, the indemnity, and the mortgage bond. Those provisions state that a certificate signed by a director, officer, or agent of the respondent shall be *prima facie* proof of the amount of indebtedness. The respondents did not challenge the certificate in their answering papers. They did not place any evidence before the Court to suggest that the amount was incorrect. They did not tender any evidence of payments made after September 2014.
- [20] The respondents are effectively raising a dispute on quantum for the first time in an application for leave to appeal. This is impermissible. The respondents cannot now be heard to challenge the quantum when they failed to do so in the main

⁸ See *Absa Bank Ltd v Mkhize and Another*, *Absa Bank Ltd v Chetty*, *Absa Bank Ltd v Mlipha* [2013] ZASCA 139; 2014 (5) SA 16; [2014] 1 All SA 1 (SCA).

application. The principle is well established: a party cannot raise a new issue on appeal that it did not raise in the court below. There is no reasonable prospect of success on this ground.

Disputes of Fact

[21] The respondents contend that material disputes of fact should have been referred to oral evidence or trial. They rely on their denial of having signed the power of attorney to register the mortgage bond.

[22] I have already dealt with this issue in the main judgment. The respondents admitted this fact in their amended plea in the action proceedings. They are estopped from denying it. The existence and validity of the mortgage bond itself is not disputed. The bond is a registered deed and a public document. The denial of the power of attorney does not create a genuine and *bona fide* dispute of fact.

[23] The respondents' other alleged disputes are bare denials, unsupported by any evidence. In motion proceedings, a respondent cannot avoid judgment by making bare denials that do not raise a real, genuine, and *bona fide* dispute.⁹ There is no reasonable prospect of success on this ground.

The Attorney and Client Costs Order

[24] The respondents contend that the Court erred in awarding costs on the attorney-and-client scale without justification. They submit that they were self-represented litigants defending proceedings affecting their constitutional housing rights, and that the conduct identified by the Court did not justify punitive costs despite the agreed scale of costs in the underlying agreement.

[25] I have reconsidered the costs issue. The respondents raised technical and procedural defences that lacked merit. They admitted key facts in the action proceedings and then sought to deny them in this application. They caused unnecessary delay and expense. They adopted an obstructive approach throughout the proceedings.

⁹ See *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A).

[26] It is trite that an attorney and client costs order may be justified where a party has conducted itself in a vexatious, unreasonable, or obstructive manner. The respondents' conduct in this matter falls within that category. The costs order was justified and part of the loan agreement.¹⁰ There is no reasonable prospect of success on this ground.

Whether Another Court Would Arrive at a Different Conclusion

[27] The respondents have raised numerous grounds of appeal. I have carefully considered each ground. The respondents have not shown that another court would reach a different conclusion on any material aspect of the judgment. The grounds of appeal are without substance. The respondents are effectively seeking to relitigate issues that this Court properly decided. There are no reasonable prospects of success on appeal.

Compelling Reasons

[28] The respondents contend that compelling reasons exist for the appeal to be heard. They submit that the matter raises important constitutional and procedural issues concerning the proper application of rule 46A and the protection of residential property under section 26 of the Constitution.

[29] The judgment concerns the execution of a primary residence and the exercise of judicial discretion under rule 46A. However, the judgment is consistent with established constitutional and legal principles. The respondents have not identified any unresolved legal question or issue of public importance warranting leave to appeal. The matter concerns applying settled law to the particular facts of this case. There are no compelling reasons why the appeal should be heard.

The Respondents' Failure to Place Evidence Before the Court

[30] Throughout the proceedings, the Respondents have consistently failed to place any evidence before the Court regarding their personal circumstances, financial position, income, expenses, family situation, prospects of securing alternative

¹⁰ See *Public Protector v South African Reserve Bank* [2019] ZACC 29; 2019 (6) SA 253 (CC); 2019 (9) BCLR 1113 (CC).

accommodation, or any other matter that could assist the Court in balancing the competing interests.

- [31] In *Absa Bank Ltd v Mokebe and Related Cases*,¹¹ the court emphasised that a debtor who seeks to resist execution against a primary residence bears an onus to place relevant information before the court. The court stated at para 59:

“If a debtor fails to place facts before the court despite the opportunity to do so, the court is bound to determine the matter without the benefit of the debtor’s input.”

- [32] The respondents did nothing to discharge that onus. They did not respond to the invitations in the founding affidavit to place such information before the Court. They did not do so in their answering papers. They did not do so in their heads of argument. They have still not done so in their application for leave to appeal. The applicants appear to believe that the mere fact that the property is their primary residence is sufficient to prevent execution. That belief is incorrect in law.

- [33] The respondents’ failure to place evidence before the Court is not a basis for granting leave to appeal. It is a reason to refuse it. The respondents have been afforded ample opportunity to place their case before the Court, and they have failed to do so.

The Prolonged Default

- [34] One further consideration is relevant. The respondents last made a payment on the mortgage loan in September 2014. That is over eleven years ago. They have been in default for more than a decade. They have made no attempt to pay the debt, engage with the credit provider, apply for debt review, or propose any alternative arrangement.
- [35] The respondents have continued to occupy the property while making no payments. They have effectively been living in the property for free while the debt

¹¹ 2018 (6) SA 492 (GJ).

has continued to accumulate and the interest has continued to accrue. The applicant has been denied the use of its security for over a decade.

- [36] In those circumstances, the respondents cannot complain that the Court granted execution against the property. The respondents have had every opportunity to regularise their position and have failed to do so. The order of the Court is just and equitable in the circumstances.

Conclusion

- [37] The application for leave to appeal is without merit. The respondents have failed to show that the appeal has a reasonable prospect of success. They have also failed to show compelling reasons to hear the appeal. The respondents are effectively seeking to relitigate issues that this Court properly decided. The application is an abuse of process and serves only to delay the inevitable.
- [38] This matter has been before the courts for many years. The respondents have repeatedly sought to delay the proceedings. They opposed the action proceedings on what the applicant describes as frivolous and vexatious grounds. They then opposed the motion proceedings on technical and procedural grounds that were without merit. They have now brought an application for leave to appeal that is devoid of merit. The respondents appear to be engaged in a strategy of delay.
- [39] The time has come to bring finality to this matter. The respondents have been in default for over eleven years. They have had every opportunity to place their case before the courts and have failed to do so. The judgment of 10 June 2026 was properly granted. There is no basis for the grant of leave to appeal.

Costs

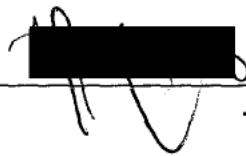
- [40] The applicant seeks costs on the attorney-and-client scale, supported by the loan agreement. The respondents' conduct in bringing this application for leave to appeal, in circumstances where there are no reasonable prospects of success and where the application is devoid of merit, warrants a punitive costs order. The respondents have persisted in their obstructive and unreasonable conduct. The

interests of justice require that they bear the costs of this application on a punitive scale.

Order

[41] In the premises, I make the following order:

1. The applicant's Rule 30 application is dismissed, with no order as to costs.
2. The respondents' application for leave to appeal is dismissed.
3. The respondents are ordered to pay the costs of this application on the attorney and client scale, jointly and severally, the one paying the other to be absolved, including the costs of counsel where employed.



T P MUDAU
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

APPEARANCES

For the Applicant:

Adv M De Oliveira

Instructed by:

Lowndes Dlamini Attorneys

For the 1st and 2nd Respondents:

Self Represented

Mr Parmesan Thangaveloo Gramoney

Ms Sindha Gramoney

Date of Hearing:

21 August 2026

Date of Judgment:

28 August 2026