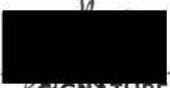




**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Case No: **97703/2015**

(1)	REPORTABLE: No
(2)	OF INTEREST TO OTHER JUDGES: No
(3)	REVISED: YC
 SIGNATURE	2 nd SEPTEMBER 2026 DATE

In the matter between:

NOMVULA FRED A MATHIBELA

Applicant

and

THE BODY CORPORATE SILVERSTREAM

Respondent

This judgment is prepared and authored by the Judge whose name is reflected as such and is handed down electronically by circulation to the parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for handing down is deemed to be 2 September 2026.

JUDGMENT: LEAVE TO APPEAL

RETIEF J

INTRODUCTION

[1] According to the filed application for leave to appeal [application], the lawful owner of the immovable property and judgment debtor, Ms NF Mathibela, together with the affected person, Ms P Mathibela, seek leave to appeal to the Supreme Court of Appeal [SCA] against the whole order and judgment of this Court dated the 31st of July 2025.

[2] Absent an application for joinder serving before this Court to order that the affected person, Ms P Mathibela, be joined as a party to the main application, Ms NF Mathibela is the only cited party and, the only party against whom the Respondent sought relief against, at the material time.

[3] On the date of the hearing of the main application this Court however, in exercising the Court's mandated judicial oversight as envisaged in terms of uniform rule 46A, the Court considered the submissions of Ms P Mathibela who was considered as a person who would be affected by the execution of the immovable property owned by her mother, Ms NF Mathibela. This aspect is dealt with fully in the body of the judgment.

[4] The procedural fact that Ms NF Mathibela was the only cited Respondent in the main application is considered in this application, which now serves before this Court, is brought by Ms NF Mathibela who cites herself as the First Applicant and by Ms P Mathibela who cites herself as the Second Applicant. For convenience and applying the procedural fact eluded to, Ms NF Mathibela will be referred to as the Applicant and Ms P Mathibela the affected party.

[5] Another procedural aspect which must be raised and dealt with is the unreasonable delay in the determination of this application. More than a year and a half has lapsed from the date the filed application to the date of this hearing. The automatic suspension of the operation of the order, as envisage in terms of section 18 of the Superior Courts Act 10 of 2013 persist until the final determination of this application. This delay is unsatisfactory and must be dealt with.

DELAY

[6] According to the filed application, the Applicant in the preamble of the leave to appeal announced her intention to arrange a date and a time with the Registrar for a hearing. It is common cause the Applicant nor her legal team nor the affected party made arrangements with the Registrar to set the application down for hearing. The weight of the intention announced in the preamble is diluted by such inaction.

[7] Factually, the Senior Appeals Registrar of this Court [Registrar] only became aware of the application on the 23 July 2026. Furthermore, it was the Respondent's legal team who notified the Registrar of the application and the party who required a date for its hearing.

[8] The Registrar on the 23 July 2026 brought the application to this Court's attention for the first time. As a direct result of the unreasonable delay and to curb yet any further delay, the parties were informed that a hearing of the matter would take place 08h30 on Wednesday, 29 July 2026.

[9] On the 28 July 2026, a day before the set down, the attorney for the Applicant, Mr Sambo of Sambo-Mlahleki Attorneys [Mr Sambo] sent an email in which he stated that: "*Please take note that due to the short notice, our counsel (singular-own emphasis) that is fully conversant with this matter is unfortunately not available. He (own emphasis) will be available between 12 and the 19th of August 2026*".

[10] Considering the short notice and accepting Mr Sambo's indication that his well traversed Counsel on brief would only become available on the dates referred to in August, this Court informed the parties that it would make itself available before

Court hours on the 12th and the 19th of August 2026. Both parties subsequently confirmed that the 19th of August 2026 at 08h30 would be convenient. The hearing was duly then set down again for hearing.

[11] However, on the 18th of August 2026, a day before the agreed hearing, Mr Sambo yet again informed this Court via email that: *"Counsel for the first applicant (Ms NF Mathibela) advised us yesterday that, due to factors beyond his control, he will not be available on 19 August 2026 and requests that, if possible, the hearing should proceed on the 4th of September 2026. However, the second applicant (being the affected party, Ms P Mathibela) is available for the 19th of August 2026."*

[12] Mr Sambo was directed to be at Court on the 19th of August 2026. The affected party who telephonically enquired about the receipt of Mr Sambo's email, was then telephonically informed that if a postponement was sought a substantive application for consideration was to be filed, failing which the hearing was to proceed as arranged.

[13] On the date of the hearing Mr Sambo, who was directed to appear, did not nor was an application for a postponement filed by him in respect of the Applicant. Instead, an attorney, Mr D Mbazima of Mbazima D Incorporated [Mr Mbazima] announced that Mr Sambo had requested him to appear at Court in his place. It was clear that Mr Mbazima was not *au fait* with the matter serving before the Court and that he too did not hold instructions for the benefit of the Applicant. Yet again, the Applicant, as at the hearing in the main application, as the registered owner of the immovable property and as the judgment debtor, had no voice.

[14] Furthermore, the details of the Counsel who was ostensibly on brief as indicated by Mr Sambo in his email of the 28th of July 2026 remained a mystery by election. The mystery by election arose as Mr Mbazima did not know nor did he hold instruction from Mr Sambo as to such Counsel's details and, the affected person, when prompted by the Court, refused to inform this Court of the Counsel's details who held a brief for the Applicant.

[15] Due to the fact that no substantive application was brought seeking a postponement none was granted. The Court at the hearing considered the filed

papers and the submissions made by the affected person together with the submissions by the Respondent's Counsel.

GROUND

[16] A number of grounds were raised; however, the grounds can conveniently be dealt with by reaffirming that the Applicant's indebtedness and her failure to pay such debt was common cause. Furthermore, the submissions by the affected person were considered and weighed in light of the Courts judicial investigation into whether a possible section 26 Constitution right infringement arose. Although this Court, as reasoned, did not find that the affected person was indeed an indigent homeless person whose rights were affected, it none the less took a balanced approach as dictated to by uniform rule 46A and, in so doing ordered certain conditions to be imposed prior to the implementation of the execution of the immovable property as provided for in uniform rule 46A.

[17] The conditions by order, attached certain obligations on the Respondent. The Respondent has not filed a cross-appeal against the order as such obligations affect them.

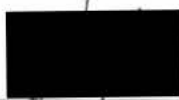
[18] Furthermore, having perused and reconsidered the reasoned judgment again, as against the raised grounds of appeal and the submissions of the affected person, this Court finds that the threshold of 17(1)(a)(i) and (ii) of the Superior Courts Act 10 of 2013 has not been met and as such the application must fail.

[19] As to costs, there is no reason why costs should not follow the result. However, in the absence of the Applicant's attorneys, Mr Sambo who, by election failed to appraise Mr Mbazima of anything, it is unclear whether Mr Sambo possessed clear and unequivocal instructions from the Applicant or whether, by design the affected party was the only person to provide submissions as in the main application. Furthermore, this Court too places weight on the fact that the Respondent, who was aware of this application having been served a copy too did not place it before the Registrar for allocation in terms of the uniform rules. Absent

a determination of this application, the Respondent on simply decided to execute the order. This too an unsatisfactory misstep. Therefore, this Court exercising its discretion, orders that both parties are to pay their own costs.

[20] Therefore, the following order:

1. The application of Leave to appeal is dismissed.
2. Each party to pay their own costs.



L.A. RETIEF

Judge of the High Court
Gauteng Division

Appearances:

For the Applicant:

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For the Respondent:

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Date of leave to appeal:	21 February 2025
Date of knowledge provided to the Judge and Registrar:	23 July 2026
Date of initial arranged hearing:	28 July 2026
Date of final heard:	19 August 2026
Date of Judgment:	2 September 2026