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**IN THE HIGH COURT OF SOUTH AFRICA,**

**GAUTENG DIVISION, JOHANNESBURG**

**Case Number: 2025-137618**

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

**30 October 2026** _____

In the matter between:

**GOODENOUGH SIFISO SIMELANE** **First Applicant**

**LINDIWE PERTUNIA SIMELANI** **Second Applicant**

and

**THE STANDARD BANK OF SOUTH AFRICA LIMITED** **Respondent**

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**JUDGMENT**

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**Mdalana-Mayisela J**

*Introduction*

[1] The applicants seek to vary an order granted by Mudau J on 8 May 2023 under case number 2020-9130. The order was granted against the applicants in favor of the respondent ("the bank") for R1 936 769.06 with interest, and their immovable

property, Erf 1[…] Roodekrans Extension 8 Township, situated at 2[…] A[…] Street, Roodekrans Extension 8, Roodepoort ("the property"), was declared specially executable, subject to a reserve price of R1 570 000.00.

[2] The variation sought is that the executability order be suspended; that the applicants be permitted to continue living in the property; that they be directed to pay a deposit of R200 000.00 towards the arrears and thereafter the monthly instalments under the mortgage bond; and that the bank may proceed with a sale in execution in terms of the order of Carrim AJ of 21 July 2025 only if the applicants remain in default for more than one month.

[3] The application was launched on 13 August 2025 in two parts. Part A sought an urgent stay of the sale in execution. The bank's attorneys advised on 15 August 2025 that no sale had been arranged, and Part A was removed from the roll by notice on 22 August 2025. The applicants no longer persist with it. Only Part B, the variation, is before me. The bank opposes it.

[4] The bank raises three points: first, that the application was brought under a new case number; secondly, that the application and the replying affidavit were both delivered out of time without any application for condonation; and thirdly, that no case for variation is made out on the merits. It is unnecessary to decide the first point. Although proceedings to vary an order ought ordinarily to be brought under the case number in which the order was granted, the papers in case number 2020-9130 are before the court, and nothing turns on it. The second and third points are decisive.

*Background*

[5] The material facts are common cause or not seriously disputed.

[6] On 21 July 2014, the parties concluded a written home loan agreement under which the bank lent the applicants R1 350 000.00, repayable over 360 months in initial monthly instalments of R12 805.39. On 2 September 2014, a continuing covering mortgage bond, B23115/2014, was registered over the property in favor of the bank as security.

[7] The applicants first fell into arrears in December 2014. The bank's statement of account records long periods without payment, including from July 2019 to February 2022 and from May 2022 onwards, as well as repeated debit order reversals. On 30 January 2020, the bank dispatched notices under s 88(3) and s 129(1) of the National Credit Act 34 of 2005 ("the NCA"). As of 21 January 2020, the arrears stood at R67 089.43 and the full balance at R1 936 769.06.

[8] The bank issued summons on 16 March 2020. Leave for substituted service was granted on 9 September 2020. An application for default judgment was set down for 31 January 2022. On 25 January 2022 the first applicant wrote to the bank's then attorneys, explaining his financial difficulties and asking to conclude an acknowledgment of debt. The bank removed the matter from the roll to allow the applicants to regularize their account. They did not do so.

[9] The bank re-enrolled the application for default judgment for 8 May 2023. The notice was served on the first applicant personally on 25 April 2023, and he accepted service on behalf of the second applicant. The applicants did not appear. On 8 May 2023, Mudau J granted the order now sought to be varied, having been furnished with the information required by rule 46A.

[10] The court issued a writ of execution on 14 June 2023, and the property was attached. The notice and conditions of sale were served on the applicants personally. At the sale in execution on 8 December 2023, the reserve price was not achieved. The highest bid was R890 000.00.

[11] On 17 April 2024, the bank applied under rule 46A(9) for reconsideration of the reserve price. The applicants, represented by their present attorneys, opposed that application and delivered an answering affidavit on 12 June 2024. Their attorneys withdrew on 4 July 2024 and were reappointed on 8 July 2025. On 21 July 2025, after hearing argument in the opposed application, Carrim AJ lowered the reserve price to R709 336.05 and ordered that, if it is not attained, the property may be sold to the highest bidder.

[12] Some three weeks later, on 13 August 2025, the applicants launched this application. The bank delivered its answering affidavit on 28 August 2025. The applicants swore their replying affidavit on 2 December 2025 and delivered it on 30 December 2025.

[13] The indebtedness has grown substantially. According to the bank's certificate of balance of 15 August 2025, the applicants owed R3 406 951.05, of which R1 667 383.77 was in arrears, and the current monthly instalment was R32 512.43. A further certificate of balance dated 22 June 2026 records an outstanding balance of R3 710 352.09, arrears of R1 992 508.07 and the same monthly instalment of R32 512.43.

*Condonation*

[14] The applicants do not identify the source of the power on which they rely. Whatever its source, the application is subject to time constraints. A defendant who seeks to set aside or vary a default judgment under rule 31(2)(b) must apply within 20 days after acquiring knowledge of the judgment. An application under rule 42(1), or under the common law, must be brought within a reasonable time. A replying affidavit must be delivered within 10 days of service of the answering affidavit (rule 6(5)(e)).

[15] Rule 27(3) provides that the court may, on good cause shown, condone any non-compliance with the rules. Condonation is an indulgence. It is not to be had for the mere asking. The party in default must apply for it, and must give a full, reasonable and acceptable explanation that covers the entire period of the delay.[1]

[16] The relevant factors are usually the degree of lateness, the explanation, the prospects of success, the importance of the case, and the respondent's interest in the finality of its judgment. They are interrelated and not individually decisive, "*save of course that if there are no prospects of success there would be no point in granting condonation*."[2] Without a reasonable and acceptable explanation for the

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[1] *Van Wyk v Unitas Hospital and Another (Open Democratic Advice Centre as Amicus Curiae)* 2008 (2) SA 472 (CC) para 22; *Grootboom v National Prosecuting Authority and Another* 2014 (2) SA 68 (CC) paras 22–23; *eThekwini Municipality v Ingonyama Trust* 2014 (3) SA 240 (CC) para 28.
[2] *Melane v Santam Insurance Co Ltd* 1962 (4) SA 531 (A) at 532C–F.

delay, the prospects of success are immaterial; and without prospects of success, no matter how good the explanation, condonation should be refused.[3]

[17] The order was granted on 8 May 2023. The application was launched on 13 August 2025, some 27 months later.

[18] The applicants knew of the proceedings and of the order throughout. The notice of set down for 8 May 2023 was served on the first applicant personally. The writ, notice of attachment, and conditions of sale were served on them. The applicants' own chronology records that they became aware of the default judgment in 2023 and consulted their present attorneys in April 2024. On 30 April 2024 those attorneys entered an opposition to the rule 46A (9) reconsideration application, and on 12 June 2024 the applicants delivered an answering affidavit in it. In reply, the first applicant says that when the court granted default judgment, he "*had to helplessly watch the legal process unravel*". Even if time is measured from 30 April 2024, the application was launched more than 15 months later. Measured against the 20-day period in rule 31(2)(b), or against any reasonable time, the delay is grossly excessive.

[19] No application for condonation was brought. The founding affidavit does not acknowledge the delay, let alone explain it. It says nothing about what the applicants did between 8 May 2023 and 13 August 2025 to challenge the order. The bank raised this point squarely in its answering affidavit, yet the applicants still did not seek condonation. The replying affidavit does not address the delay, save to say that the first applicant had no income and could not afford a lawyer when judgment was granted. That does not explain why nothing was done after the applicants instructed attorneys in April 2024, or why they opposed the reconsideration application but brought no challenge to the order itself.

[20] The applicants' conduct points to one conclusion. The applicants brought the variation application not because of any defect in the order, but because Carrim AJ

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[3] *National Union of Mineworkers v Council for Mineral Technology* [1998] ZALAC 22 para 10, applied in Nair v Telkom SOC Ltd and Others [2021] ZALCJHB 449 para 14.

lowered the reserve price on 21 July 2025 and a sale in execution became imminent. The delay is unreasonable. It is wholly unexplained.

[21] The bank delivered its answering affidavit on 28 August 2025. The replying affidavit was due within 10 court days, by 11 September 2025. It was sworn on 2 December 2025 and delivered on 30 December 2025, more than three months out of time and some four months after the answering affidavit. Again, they sought no condonation and gave no explanation.

[22] The applicants were legally represented throughout this application. Their failure to seek condonation, after the bank had raised the issue in its answering affidavit, cannot be excused. Without an application under rule 27(3), and without any explanation for the delay, there is no basis to find good cause. The delay alone justifies dismissal of the application.

[23] For completeness, and because the prospects of success are central to any condonation inquiry, I turn to the merits. As will appear, the applicants have no prospects of success. That confirms that, had they sought it, the court would have refused condonation.

*Prospects of success*

[24] Once a court has duly pronounced a final judgment or order, it has itself no authority to correct, alter or supplement it. It is *functus officio*. The exceptions are narrow. The court may supplement an order in respect of accessory matters it overlooked, clarify an ambiguous order, or correct a clerical, arithmetical or other error in expressing its true intention, provided the sense and substance of the order is not altered.[4] Rule 42(1) permits the rescission or variation of an order erroneously sought or erroneously granted in the absence of a party affected, an order containing an ambiguity or a patent error or omission, or an order granted as a result of a mistake common to the parties.

[4] *Firestone South Africa (Pty) Ltd v Genticuro AG* 1977 (4) SA 298 (A) at 306F–307G.

[25] None of these grounds is present or even alleged. The order of 8 May 2023 is clear and unambiguous. It was sought and granted on a valid cause of action, after proper service, and on the information required by rule 46A. In deciding whether an order was erroneously granted, the court is confined to the record before the court that granted it.[5] Nothing on that record suggests any error. The applicants do not suggest otherwise.

[26] What the applicants seek is not a variation at all. They ask the court to suspend the executability order indefinitely, keep them in occupation, and compel the bank to accept R200 000.00 and monthly instalments in place of the judgment debt. That would alter the substance of the order and impose on the bank a repayment arrangement it has not agreed to. A court has no power to rewrite the parties' agreement, or a final order, in that way.

*No bona fide defence*

[27] At common law a judgment may be rescinded on sufficient cause shown. That requires a reasonable and acceptable explanation for the default, and a bona fide defence which, prima facie, carries some prospect of success.[6]

[28] The applicants have no defence to the bank's claim. They admit the loan agreement, the mortgage bond, their default and indebtedness. The first applicant states in the founding affidavit that he ran into arrears with the home loan. In reply, he further alleges that, at all material times hereto, his legal representatives informed him that he had no substantive defense to the claim, which culminated in the foreclosure order. He is "*merely bringing this application with the hope that the Court will exercise its discretion to shield me and my family from a perpetual financial ruin*." He also accepts that he "*cannot be able to satisfy all the requirements*" for relief of this kind. These concessions are fatal.

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[5] *Bakoven Ltd v GJ Howes (Pty) Ltd* 1992 (2) SA 466 (E) at 471E–G.

[6] *Chetty v Law Society, Transvaal* 1985 (2) SA 756 (A) at 764I–765E; *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills (Cape)* 2003 (6) SA 1 (SCA) para 11.

[29] A change in financial circumstances is not a ground to vary the order. The applicants' case rests on a single contention that the first applicant has since found employment and can now afford the bond repayments. That is not a valid ground in law for varying or setting aside a final order.

[30] The order was correctly granted on the facts as they stood on 8 May 2023. The applicants were then in material breach, and the bank was entitled to judgment and to the executability order. A subsequent improvement in a judgment debtor's finances does not retrospectively invalidate the debt, cure the original default, or render erroneous an order that was properly granted. If it were, otherwise, no executability order would ever be final, and every judgment debtor whose fortunes improved could reopen the judgment against him. The principle of finality of judgments does not permit that.

[31] In any event, the evidence of financial recovery is thin. The first applicant attaches three payslips from Dingco Trading (Pty) Ltd reflecting a gross salary of R75 000.00 and a net salary of R53 883.55 per month from April 2025. One of them, for July 2025, bears the words "*DUMMY PAYSLIP*". No explanation is given. The attached bank statement is for a business account, S L Catering, which ran in overdraft for most of the period. Even accepting the payslips at face value, the current monthly instalment of R32 512.43 would consume some 60 per cent of the first applicant's net salary, before any payment towards arrears of almost R2 million. Nothing is said about the second applicant's income.

[32] No tender to reinstate the agreement under s 129(3) of the National Credit Act. The applicants rely on *Nkata v FirstRand Bank Ltd and Others.*[7] The passage they quote, from para 59, is from the minority judgment of Cameron J. The majority, per Moseneke DCJ, held that a consumer may reinstate a credit agreement in default, at any time before the credit provider has canceled it, by paying all amounts that are overdue, together with the credit provider's permitted default charges and reasonable costs of enforcing the agreement up to the time of reinstatement.[8]

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[7] 2016 (4) SA 257 (CC).

[8] Paras 100, 104–105 and 107–108.

Reinstatement occurs by operation of law, without the consent of the credit provider (para 105). Under s 129(4), reinstatement is not possible after the property is sold in execution.

[33] *Nkata* does not assist the applicants. On the contrary, it shows that the NCA already gives them a remedy that needs no court order and no co-operation from the bank. They may pay the full arrears and the enforcement costs before the sale. They have not done so, and they do not tender to do so. Their tender is R200 000.00, which they say is held in their attorneys' trust account and will be paid only once they reach an agreement with the respondent. That is some 12 percent of the arrears of R1 667 383.77 as at August 2025, and some 10 percent of the arrears of R1 992 508.07 as at June 2026. Partial payment of the arrears does not reinstate a credit agreement. The NCA does not oblige the bank to accept it in settlement, and this court cannot compel the bank to do so.

[34] Even if the application were treated as one to suspend execution under rule 45A, the result would be the same. The court will suspend execution where real and substantial justice requires it, for example where the underlying causa of the judgment is in dispute or where execution would cause irreparable harm without good reason.[9] Here the causa is admitted, there is no realistic prospect that the arrears will be paid, and the applicants seek an open-ended suspension on terms the bank has rejected. Real and substantial justice does not require keeping the bank from its security any longer.

*The right to access adequate housing*

[35] The applicants invoke s 26(1) of the Constitution, *Jaftha v Schoeman and Others*; *Van Rooyen v Stolz and Others* and *Gundwana v Steko Development CC and Others.*[10] Those cases require judicial oversight before a person's home is sold in execution. They do not hold that a home may never be executed against. *Gundwana* emphasizes that constitutional considerations do not challenge the principle that a

[9] *Gois t/a Shakespeare's Pub v Van Zyl and Others* 2011 (1) SA 148 (LC) para 37.
[10] *Jaftha v Schoeman and Others; Van Rooyen v Stoltz and Others* 2005 (2) SA 140 (CC) and *Gundwana v Steko Development CC and Others* 2011 (3) SA 608 (CC).

judgment creditor may execute against a judgment debtor's assets to satisfy a judgment debt sounding in money (para 53). *Jaftha* recognizes that execution is not unjustifiable in every case, and that creditors' interests must not be overlooked (paras 41–42).

[36] The judicial oversight that *Jaftha* and *Gundwana* require has been exercised twice. Mudau J considered rule 46A factors when declaring the property executable and setting a reserve price. Carrim AJ reconsidered the reserve price in opposed proceedings in which the applicants were represented and heard. The applicants' complaint that the property may be sold for less than its market value, leaving a shortfall, was a matter for the rule 46A(9) reconsideration (see *SB Guarantee Company (RF) (Pty) Ltd v Hlongwane*, case no 17048/2021, Gauteng Division, Pretoria, full court, 4 December 2024). It has been decided. It cannot be reopened in a variation application.

[37] Section 26(1) confers a right of access to adequate housing. It does not confer a right to remain in a particular home of one's choice while the debt secured by it goes unpaid. *Jaftha* and *Gundwana* were concerned with indigent debtors at risk of losing modest homes over trifling debts. This case is very different. The property is a substantial residential home on a 1 000 square meter erf in Roodekrans, against which the court set a reserve price of R1 570 000.00. It is, by any measure, a luxury home. The debt is R3.7 million, of which almost R2 million is in arrears. The first applicant, on his own version, earns R75 000.00 gross per month. On the applicants' own version, they also vacated the property at one stage and leased it out for income. They can afford more modest alternative accommodation. Their wish to keep this particular house does not engage s 26 in a way that could justify depriving the bank of its security.

[38] I conclude that the applicants have no prospects of success on the merits. The right to access adequate housing does not avail them.

*Costs*

[39] Costs follow the result. The bank asks for costs on the attorney and client scale, relying on clause 1.2.3.1 of the mortgage bond, which provides for such costs where enforcement steps are taken. These proceedings form part of the bank's enforcement of its security. Moreover, there is no reason the bank should be out of pocket for opposing an application brought 27 months late, without condonation, and on the applicants' own admission, without any defence. The applicants' request that the bank pay their costs because it declined their settlement proposal is without merit. The bank was entitled to decline it.

**Order**

[40] In the result, I make the following order:

1. Condonation for the late institution of the application for variation, and for the late delivery of the applicants' replying affidavit, is refused.

2. The application for the variation of the order granted on 8 May 2023 under case number 2020-9130 is dismissed.

3. The applicants are ordered, jointly and severally, the one paying the other to be absolved, to pay the respondent's costs of the application on the scale as between attorney and client.

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**MMP Mdalana-Mayisela**
**Judge of the High Court**
**Gauteng Division, Johannesburg**

This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail and by uploading it to the electronic file of this matter on CaseLines. The hand-down date is deemed to be **30 October 2026**.

Date of hearing: 11 August 2026

Appearances

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|---|---|
| Counsel for the Applicants: | Adv N Raji |
| Instructed by: | Matojane Malunga Inc |
| Counsel for the respondent: | Adv M Rakgoale |
| Instructed by: | Vezi& De Beer Incorporated |