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IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

JUDGMENT

Reportable

Case No.: A39/2026

Court a quo Case No: 1938/2024

In the matter between:

ALBERTUS JACOBUS SNYMAN	First Appellant
RONEL RAUTENBACH	Second Appellant
And	
MARIUS ALEXANDER JOOSTENBERG	First Respondent
DANREE CATHERINE JOOSTENBERG	Second Respondent
NEDBANK LIMITED	Third Respondent
DRAKENSTEIN MUNICIPALITY	Fourth Respondent

Coram: Francis J et Mthimunye AJ

Heard: 30 September 2026

Delivered: 3 November 2026

ORDER

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1. To the extent that condonation is required, the appellants' failure to apply for a date of hearing within the period prescribed by Uniform Rule 50(4)(a) is condoned.

2. The application to adduce further evidence is granted under s 87(c) of the Magistrates' Courts Act 32 of 1944 read with s 19(b) of the Superior Courts Act 10 of 2013. The affidavit of Albertus Jacobus Snyman dated 2 April 2026, with its annexures, and the municipal valuation, bond statement and municipal rates statement furnished after the hearing, are admitted as part of the record on appeal.

3. The appeal is upheld.

4. The order of the Magistrates' Court for the District of the Cape Winelands, sub-district Drakenstein, held at Paarl under case number 1938/2024 on 21 October 2025, including its order as to costs, is set aside and replaced with the following:

   "(a) The immovable property described as the Remainder of Erf 1[...] Paarl, in the Drakenstein Municipality, Division Paarl, Province of the Western Cape, measuring 535 (five hundred and thirty-five) square metres, held by Deed of Transfer No. T[...], also known as 4[...] K[...] P[...] Avenue, Klein Parys, Paarl, is declared specially executable in satisfaction of the unpaid balance of the judgment granted against the first respondent on 12 December 2024 under case number 1938/2024, together with interest and costs recoverable under that judgment, after crediting all payments received.

(b) A reserve price of R1 000 000.00 (one million rand) is set for the sale in execution.

(c) The property may be attached, and the steps preparatory to a sale in execution may be taken, but no sale in execution of the property shall take place before 1 March 2027.

(d) The clerk of the court is authorised to issue a warrant of execution against the property, subject to paragraphs (b) and (c) and to rules 43 and 43A.

(e) Any party, including the third and fourth respondents, may on notice to all other parties, and before a sale in execution takes place, apply to this court for the reserve price to be reconsidered in the light of updated information as to the amounts owing under the mortgage bond registered over the property and to the local authority in respect of rates and other dues.

(f) If the reserve price is not achieved at the sale in execution, rule 43A(9)(c) to (e) shall apply.

(g) The first respondent shall pay the applicants' costs of the application on the party and party scale."

5. There is no order as to the costs of the condonation application.

6. The first respondent shall pay the appellants' costs of the appeal, including the costs of the application to adduce further evidence, on the party and party scale, with counsel's fees on scale B.

7. Paragraph 2 of this Court's order of 28 August 2026, concerning the wasted costs occasioned by the postponement on that date, remains operative. Those costs shall not be recovered again under paragraph 6 of this order.

JUDGMENT

FRANCIS J (MTHIMUNYE, AJ concurring):

Introduction

[1] This appeal is against the whole judgment and order of the Magistrates' Court for the District of the Cape Winelands, sub-district Drakenstein, held at Paarl. The order was made on 21 October 2025 and written reasons followed on 18 November 2025. The magistrate dismissed the appellants' application to have the first and second respondents' home declared specially executable.

[2] The property is the Remainder of Erf 1[...] Paarl, also known as 4[...] K[...] P[...] Avenue, Klein Parys, Paarl. The first and second respondents are married in community of property. They own the property jointly and live in it. The judgment debt arises from a settlement agreement concluded on 24 June 2024, under which the first respondent undertook to pay the appellants R165 000 by 15 August 2024. He did not pay, and the court granted default judgment against him on 12 December 2024 for R165 143.50, with interest and costs. The judgment was taken against the first respondent alone. Because the spouses are married in community of property, the property forms part of their joint estate. Where a debt is recoverable from a joint estate, s 17(5) of the Matrimonial Property Act 88 of 1984 permits the spouse who incurred it to be sued alone. The second respondent is not a judgment debtor. She was joined because the home in which she lives, and in which she holds an undivided half share, is the property against which execution is sought. Her interests are directly affected, and I give them throughout the same weight as her husband's.

[3] The Court heard two interlocutory applications with the appeal. The first seeks condonation for the late prosecution of the appeal. The second is for leave to adduce further evidence on appeal, namely the respondents' payment history after the order

under appeal. In this judgment, ‘the respondents’ means the first and second respondents unless the context shows otherwise.

[4] The appeal was first set down for 28 August 2026. The respondents' attorneys had withdrawn on 22 January 2026. The matter was postponed to 30 September 2026 to allow the respondents to obtain legal representation, with the respondents ordered to pay the wasted costs of the postponement. On 30 September 2026, the respondents appeared in person. They had not secured representation and elected to proceed on their own. We explained the nature of the appeal, the two interlocutory applications and the order the appellants sought, and we heard them in full. The third respondent, Nedbank Limited, and the fourth respondent, Drakenstein Municipality, have recorded in writing that they do not oppose the relief sought. No relief is sought against either of them.

[5] The property is a primary residence. Section 26 of the Constitution, as interpreted in *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), requires judicial oversight before a home is sold in execution. That duty does not lessen because the debtors are unrepresented. It is, if anything, more exacting, because no legal representative was there to test the creditors' account of the facts. I have read the record with that in mind.

[6] The first respondent, Mr Joostenberg, represented both respondents at the hearing. He admitted the debt. He said that he and the second respondent live at the property with their two children, aged 9 and 11. He expects his mother to also come to live with them but is waiting for a hospital report before that can be decided. He is unemployed. The second respondent is employed and earns R22 000 a month, of which R12 000 remains after deductions. He asked the Court to consolidate all his debts and work out a repayment plan. He put forward no figure of his own.

[7] During the hearing, we asked for documents showing the property's current municipal valuation, the balance owing on the mortgage bond, and the state of the rates account. They were furnished after the hearing. The appellants and the respondents each provided the municipal valuation of R1 425 000. The respondents provided the municipal rates statement, and the third respondent's quarterly home loan statement dated 31 August 2026. The rates statement shows that the account is up to date. The bond statement shows an outstanding balance of R236 614.89, after interest debited on 1 September 2026. It records a monthly instalment of R3 979.46, interest at 12.25% per annum, 129 months remaining on the loan term, and no arrears. I deal below with the basis on which these documents are received.

[8] I deal in turn with condonation, the further evidence, the merits, the reserve price and costs.

Condonation

[9] The notice of appeal was served and filed on 3 December 2025. On Sunday 1 February 2026, the appellants' correspondents uploaded the documents initiating the appeal on the Court Online portal under reference HCGS894663. The appellants filed the documents in hard copy on 13 February 2026.

[10] Uniform Rule 50(1) requires a civil appeal from a Magistrates' Court to be prosecuted within 60 days after it is noted, failing which it is deemed to have lapsed. Rule 50(4)(a) requires the appellant to apply in writing to the registrar for a hearing date within 40 days of noting the appeal. If the appellant does not, rule 50(4)(b) permits the respondent to apply at any time before the 60-day period expires. Rule 50(5)(a) forbids the registrar to assign a date until the provisions of rule 50(7)(a) to (c) concerning the

record have been complied with. Rule 1 defines a ‘court day’ and provides that only court days are counted when computing any period expressed in days in the Uniform Rules.

[11] Counting only court days from 3 December 2025, and excluding the public holidays on 16, 25 and 26 December 2025 and 1 January 2026, the 40-day period ended on Tuesday 3 February 2026. That is the date the appellants worked to. The 60-day period ended on Tuesday 3 March 2026. The appellants would have more time if the count excluded the days from 16 December to 15 January. They are not left out. Rule 1 excludes only Saturdays, Sundays and public holidays. If the rule-maker meant to exclude the December recess as well, it would have said so: rule 19(1) does so for the notice of intention to defend, and rule 26 for the delivery of pleadings. Rule 50 has no such provision. In *Coetzee NO and Another v Saldanha Bay Municipality* [2025] ZAWCHC 434 para 14, this Division computed the 60-day period excluding the recess, but only to show that the appeal was out of time even on the more generous count. The Court did not decide the point, and the rules do not support the exclusion. The 1 February 2026 upload fell within the 40-day period. The hard-copy filing on 13 February 2026 fell eight court days outside that period, but well within 60 days.

[12] The next question is whether an appeal lapses when the appellant misses the 40-day period in rule 50(4)(a) but applies for a date within the 60 days in rule 50(1). Other Divisions have answered it differently. In *Spamer v Olivier* [2024] ZANWHC 236 paras 30-33, the North West Division held that the deeming provision in rule 50(1) is triggered only when 60 days pass without prosecution, and that an appellant who misses the 40 days does not lose the appeal on that account. In *Dique and Another v De Jager and Another* [2026] ZAMPMHC 21 paras 15 and 18, the Mpumalanga Division held rule 50 to be peremptory and struck an appeal from the roll in which the appellants had applied for a date on day 47. Neither decision binds this Court, and this Division has not decided the point. In *Cape Cobra (Pty) Ltd v Landman* [2007] ZAWCHC 57 paras 1 to 5, the appellant applied for a date some six and a half months after noting the appeal, long

after both periods had expired. The Court treated the matter as one of condonation and had no occasion to consider whether the 40-day period has consequences of its own.

[13] I prefer the approach in *Spamer*, for three reasons. First, rule 50(1) attaches lapsing to one period only, the 60 days. Rule 50(4)(a) imposes a duty and says nothing of lapsing. Second, rule 50(4)(b) allows the respondent to apply for a date at any time before the 60 days expire, and rule 50(4)(c) then deems the appeal duly prosecuted. Those provisions assume that the appeal is still alive after the 40th day. An appeal that died on day 41 could not be duly prosecuted on day 50. Third, that rule 50 is peremptory, as *Dique* rightly holds, does not tell us which consequence attaches to which period. With respect, *Dique's* conclusion does not follow from its premise. The appeal did not lapse, and no reinstatement was needed. What remains is whether the appellants complied with rule 50(4)(a). That turns on whether the 1 February 2026 upload was effective. The record does not show when the notice excluding lower-court appeals from the portal was published, or on what terms the portal was then accepting such appeals. I therefore assume, against the appellants, that the upload was ineffective and that they applied for a date eight court days late. That is a non-compliance this Court may condone.

[14] This Court may condone any non-compliance with the Uniform Rules on good cause shown (rule 27(3)). The relevant considerations are the degree of lateness, the explanation for the lateness, the prospects of success, and any prejudice (*Melane v Santam Insurance Co Ltd* 1962 (4) SA 531 (A) at 532C-F).

[15] The explanation is satisfactory. The portal accepted the upload on 1 February 2026 and issued a confirmation. Hearing nothing further, the correspondents made enquiries. On or about 13 February 2026, they learnt from a notice posted at the High Court that, for the time being, the electronic system excluded appeals from the lower courts, which had to be filed in hard copy. They filed that day. A practitioner who files on a portal that

accepts the filing and confirms receipt cannot fairly be blamed for not anticipating an exclusion published only on a notice board.

[16] The appellants were also trying to agree the amount of security for the respondents' costs of appeal with the respondents' then attorneys, Faure & Faure Inc. Rule 51(4) of the Magistrates' Courts Rules, as it then read, required an appellant to enter into good and sufficient security before lodging the record, unless the respondent waived it or the court released the appellant from that obligation. The amount was left to agreement, failing which the registrar or clerk of the court would fix it. Faure & Faure advised on 21 January 2026 that they would withdraw and did so the next day. That added to the difficulty, though it is not the main explanation. The appellants subsequently filed a Deed of Security for R1000 (the historic norm) on 13 February 2026, without any apparent objection by the respondents.

[17] The prospects of success are good for the reasons set out below. An eight-day delay has not prejudiced the respondents. They did not oppose condonation or, at the hearing, suggest that the delay affected them. Refusing condonation would penalise the appellants for a feature of a transitional filing system they were not told about.

[18] Good cause has been shown. To the extent that condonation is required, the appellants' failure to apply for a date within the period in rule 50(4)(a) is condoned. Had I concluded that the appeal lapsed, I would have reinstated it on the same considerations.

The further evidence

[19] The appellants seek to place before us an affidavit by the first appellant dated 2 April 2026, with annexures. It records the following payments by the respondents into the appellants' attorneys' trust account: R3 500 on 30 November 2025, R1 500 on 28 December 2025, R3 000 on 30 January 2026, R3 000 on 27 February 2026, and R3 000 on 30 March 2026. The attorney confirms on oath that no other payment was received by any means during that period. The total is R14 000 over five months, an average of R2 800 a month.

[20] Section 87(c) of the Act empowers this Court, sitting on appeal, to order the parties to produce such further proof as it considers necessary or desirable. Section 87(b) permits remittal where the record is insufficient, and s 87(d) permits any other course that leads to a just, speedy, and inexpensive settlement of the case. Section 19 of the Superior Courts Act 10 of 2013 gives a Division exercising appeal jurisdiction the power to receive further evidence, remit, and confirm, amend or set aside the decision under appeal. Those powers are conferred "in addition to any power as may specifically be provided for in any other law". Section 19 therefore applies of its own force alongside s 87, and not through it.

[21] These powers are used sparingly. An appeal is ordinarily decided on the record that was before the court below. Further evidence is admitted only in special circumstances. The applicant must generally provide a reasonably sufficient explanation for not leading it earlier, that it is credible and preferably incontrovertible, that it is materially important to the outcome, and that its admission must not unfairly prejudice the other side (*Staatspresident en 'n Ander v Lefuo* 1990 (2) SA 679 (A) at 692A-D.

[22] The appellants ask us to hold that the magistrate erred on the tender because of the respondents' actions after he ruled. That would mean judging a decision by facts that did not exist when it was made. If the application rested there, it would fail.

[23] It does not rest there. The magistrate proceeded on the premise that a tender of R7 500 a month, rising to R10 000, was a reasonable alternative to execution. That premise was already unsound on the record. The tender was premised on the first respondent's employment. The respondents undertook to prove it was permanent but never did. The first respondent’s employment contract was time-limited and ended by effluxion of time on 20 October 2025, a day before the order was made. The income on which the tender depended had ceased by the time judgment was handed down. At the hearing, Mr Joostenberg confirmed that he remains unemployed. Nor could the tender be met from what remained of the joint estate’s income, which after 20 October 2025 was the second respondent’s salary alone. On her net salary of R12 000 a month, less a bond instalment of about R4 000, a payment of R7 500 would leave about R500 a month for a family of four, and R10 000 would exceed what remains. The further evidence introduces no new, unrelated facts. It confirms, from the objective record, a defect already apparent.

[24] No earlier opportunity existed to lead the evidence. It records payments made only after judgment.

[25] The evidence is credible. It consists of trust account records of payments made by the respondents themselves, verified on oath by the attorney who received them.

[26] It is material. It goes directly to the factual premise of the order under appeal.

[27] Its admission causes the respondents no unfair prejudice. The payments are their own and are within their knowledge. They have known of the application since 2 April 2026 and filed nothing in answer. At the hearing, the first respondent admitted the debt. He did not dispute the payments recorded in the affidavit. The affidavit does not fix the

balance owing. The order I propose directs that every payment received be credited, so that the respondents suffer no prejudice if a payment has been overlooked.

[28] I have considered whether the evidence should rather be remitted to be led below under s 87(b) of the Act or s 19(c) of the Superior Courts Act. Remittal is appropriate where further evidence is disputed or needs testing in cross-examination. This evidence is documentary, verified on oath, and known to both sides. Remitting it would only add delay and cost.

[29] The documents furnished after the hearing stand on a different footing. We called for them under s 87(c) of the Act because a reserve price cannot properly be fixed on figures more than a year old. Both sides relied on the municipal valuation, and it is common cause. The bond statement and the rates statement came from the respondents themselves, and the figures in them are within their own knowledge. Only the municipal valuation came from the appellants, and it is the same figure the respondents supplied. No party has questioned any of these documents. They are received under s 87(c) of the Act and s 19(b) of the Superior Courts Act.

[30] The further evidence is admitted. It does not point only one way. It shows that the tender has not been met at anything like the promised rate. It also shows that the respondents have paid something from their own resources every month. Both points bear on proportionality.

The merits: the approach on appeal

[31] Rule 43A(2)(a) of the Magistrates Court Rules requires a court considering an application of this kind to establish whether the property is the judgment debtor's

primary residence, and to consider alternative means by which the debtor could satisfy the judgment debt. Rule 43A(2)(b) provides that the court shall not authorise execution against a primary residence unless, having considered all relevant factors, it considers execution warranted. Rule 43A(8) sets out the orders the court may make. These include condoning a failure to provide documents required by rule 43A(5), ordering execution where no other satisfactory means can satisfy the debt, setting a reserve price, postponing the application on terms, and refusing it if it lacks merit.

[32] That is a discretion in the true sense because the court below has a wide range of equally permissible options. This Court may not interfere merely because it would have decided differently. It may interfere only if the discretion was not exercised judicially, was influenced by a wrong principle or a misdirection on the facts or led to a result that a court properly directing itself could not reasonably have reached (*Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa Ltd and Another* 2015 (5) SA 245 (CC) paras 85 and 88).

[33] The magistrate dismissed the application on four grounds. First, the tendered payment plan appeared reasonable, and the purpose of proceedings under s 65A of the Act was to test its viability. Second, the court had not fully explored execution against movables, given that the respondents had accepted personal service. Third, the application was defective because it lacked the exact bond balance and the latest municipal account. Fourth, the appellants were not interested in a supervised payment plan, and the respondents were not given a proper opportunity to settle before the court targeted their home. I address each finding in turn.

The payment plan

[34] The first ground is internally inconsistent. A tender is reasonable only if it can be performed. To hold the tender reasonable while holding that whether it could be performed was a question for another statutory process is to make a finding and decline to test its foundation in the same breath.

[35] The strongest argument for the magistrate's approach draws on *Jaftha* para 59. There, the Constitutional Court said the judicial officer must always keep in mind the practicability of payment by instalments, that the inquiry is not all-or-nothing, and that execution should be a last resort. I accept all of that. But considering an instalment proposal means testing it. Rule 43A(2)(a)(ii) requires the court itself to consider alternative means of satisfying the judgment debt. That requires looking at the debtor’s income, its security, the debtor’s other debts, and whether the proposal will discharge the debt within a reasonable time. A proposal that cannot do so is not an alternative means of satisfying the debt. It only postpones execution.

[36] The magistrate had the material for that inquiry. The second respondent's bank statements, annexure "RA7", show debit orders returned unpaid and defaults on existing credit. The first respondent's employment contract ended on 20 October 2025. The respondents' own income and expenditure summary, annexure "RA6", understates their expenses and omits debts that appear on their bank statements. The addendum to the home loan agreement shows that the bond arrears were capitalised, increasing the capital owing to R253 633.99 as at 20 March 2025.

[37] The payments since the order point the same way. Against a tender of R7 500 a month from August 2025, the respondents paid an average of R2 800 over the five months after the order under appeal. On the amortisation schedules before us, the judgment debt stood at R189 904.97 on 31 March 2026. Those schedules apply interest to the judgment debt at 11.25% a year. That is not the 12.25% rate referred to in paragraph [7], which governs the bond, a different debt. At R2 800 a month, the

judgment debt would take about nine years to discharge, and at R3 000 a month about eight. The record shows no payments after March 2026. Even if payments of about R3 000 a month continued, they would reduce the capital by only about R1 220 a month, because interest absorbs some R1 780 of each payment: a month's interest at 11.25% of R 189 904.97 comes to R1 780.36.

[38] The first respondent's evidence confirms it. He has no income. The household lives on the second respondent's net salary of R12 000 a month. From that, they must support two children, pay a bond instalment of R3 979.46 a month, and pay the appellants about R3 000. That leaves about R5 000 a month for everything else a family of four needs, including the rates. He did not suggest that the household can pay more. Instead, he asked the Court to consolidate his debts and devise a plan. This Court cannot do that on appeal. Nothing in this judgment prevents him from seeking whatever relief the law provides for over-indebted debtors. But a request that a plan be devised is not itself an alternative means of satisfying the judgment debt.

[39] I accept that the respondents may have paid what they could. Ordinarily, that attracts sympathy. But the question under rule 43A(2)(a)(ii) is not whether the debtors are doing their best. It is whether a viable alternative to execution exists. On the objective record, no such alternative exists.

[40] The magistrate held that a financial inquiry under s 65A was the 'exact purpose' of testing a tender of this kind. If he meant that such an inquiry must precede relief under s 66, he misdirected himself. The two provide parallel remedies. Section 65A allows a creditor to examine a debtor's means to obtain an instalment order. Section 66, read with rule 43A, governs execution against property. Nothing in s 66, rule 43A or the authorities makes one a condition of the other. The Act gives a debtor who can pay reasonable instalments a remedy of his own: s 73 allows him to apply to suspend

execution. That remedy is for the debtor to invoke and to make out. It is no legal basis for the court hearing a Rule 43A application to assume a tender to be good.

[41] If the magistrate meant only that a s 65A inquiry is the better forum, the reasoning still cannot stand. Rule 43A places the inquiry on the court hearing the application. A court may not defer it to another process and treat the tender as good in the meantime. To do so grants an open-ended stay of execution on an untested premise. It inverts the balance struck in *Gundwana* para 54, where the Constitutional Court held that execution is not odious in itself but part of normal economic life, and that alarm bells ring only when the means used to exact payment are disproportionate to the other means available. If there are no other proportionate means, execution may not be avoided.

[42] The contrary approach produces unacceptable results. A debtor could shield immovable property indefinitely by tendering instalments no court ever examined. A debtor with assets but little income could never be made to realise property, however large the debt and however hopeless the proposal. *Jaftha* para 57 recognises the widely accepted legal and social value of debtors paying the debts they incur, and para 40 cautions that what seems trifling to an affluent observer may not be trifling to a poorer creditor.

[43] The first ground of dismissal cannot be sustained.

Execution against movables

[44] Section 66(1)(a) makes a money judgment enforceable against movable property and against immovable property “if there is not found sufficient movable property to satisfy the judgment or order, or the court, on good cause shown, so orders”. In *Jaftha*

paras 64 and 67, the Constitutional Court read in words requiring a court to order execution after considering all relevant circumstances. In para 62, it explained that the good cause route already involves judicial oversight, because only a court can order execution on that basis. The two routes are disjunctive. The existence of movables does not by itself bar execution against immovable property where good cause is shown.

[45] The Sheriff made five attempts to execute against movables, as the returns of non-execution show. He could not gain access. There was no intercom or bell at the gate, and the telephone numbers given went to voicemail. Counsel confirmed that no order authorising forced entry was sought.

[46] Five attempts without gaining access show that execution against movables has not been, and is not likely to become, a practical route to satisfying this debt within a reasonable time. They do not show that the respondents own no movables of value, and I do not treat them as if they did. The failure to seek an order for forced entry does not defeat the application. Forced entry is a serious step. It would have been an odd use of it against debtors who were legally represented and negotiating a payment plan at the time.

[47] The respondents have never identified a single movable asset capable of attachment, and the first respondent did not do so at the hearing. They are best placed to know what they own. In motion proceedings, a real and genuine dispute of fact exists only where the party raising it has seriously and unambiguously addressed the fact said to be disputed (*Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* 2008 (3) SA 371 (SCA) para 13). A bare assertion that movables have not been exhausted does not meet that standard. In *Nkola v Argent Steel Group (Pty) Ltd t/a Phoenix Steel* 2019 (2) SA 216 (SCA) para 11, the Supreme Court of Appeal held that neither the common law nor the rules oblige a creditor to execute against movables the debtor has not pointed out and made available. The ordinary contents of a family home would in

any event be largely protected. Section 67 of the Act protects from attachment the necessary beds, bedding and clothing of the debtor and family, and necessary furniture and household utensils up to a value fixed by the Minister.

[48] *Nkola* contains a qualification that must be addressed. At para 17, the court said that ‘or’ need not be read as ‘and’ in the corresponding High Court rule, except where a debtor is indigent, has insufficient assets to satisfy the debt, and risks losing a primary residence. Para 15 explains why. A poor person at risk of losing a home should not be put in jeopardy without properly considering their circumstances. The respondents risk losing their home, and their income is modest. It is no answer that they own a valuable house, because the house is the very asset the qualification protects. The answer lies elsewhere. The qualification does not oblige a creditor to search for movables the debtor will not identify; para 11 of *Nkola* holds the opposite. Para 15's protection requires full consideration of the debtor's circumstances before putting a home at risk. Rule 43A requires exactly that, and this judgment undertakes it. It examines the alternatives to execution in paragraphs [34] to [42] and [69], and weighs proportionality and the children's interests in paragraphs [56] to [70]. It sets a reserve price to preserve the family's equity, defers any sale, and leaves in place the requirement of a court order before any eviction. Reading ‘or’ as ‘and’ would add nothing of substance to that protection. It would only require a further attempt at execution against movables that the respondents have not identified and that s 67 would largely protect.

[49] The reliance placed by the court below on the respondents' acceptance of personal service was misplaced. Accepting a document at the gate is not the same as letting the Sheriff in to take an inventory of the house.

[50] Good cause within the meaning of s 66(1)(a) has been shown. It is unnecessary to decide separately whether sufficient movable property was not found. The second ground fails as well.

The bond balance and the municipal account

[51] Rule 43A(5) requires every application to be supported, where applicable, by documents evidencing the market value of the property, its local authority valuation, the amounts owing on mortgage bonds, the amount owing to the local authority for rates and other dues, levies owing to a body corporate, and any other factor needed to give effect to subrule (8). A proviso adds that the court may call for any other document it considers necessary. The magistrate held the application defective for want of the exact bond balance and the latest municipal account.

[52] Compliance with rule 43A(5) is not a formality. The rule exists so the court can assess equity in the property, set a just reserve price, and give proper weight to preferent creditors. But it must be read for what it can sensibly require. Information about the bond and the rates account lies with the bondholder, the municipality, and the debtor. A judgment creditor who is a stranger to both accounts has no right to demand it. The rule recognises as much. The proviso to rule 43A(5) allows the court to call for further documents, and rule 43A(8)(c) allows it, on good cause shown, to condone a failure to provide any document referred to in rule 43A(5).

[53] The appellants put before the magistrate the best information reasonably available to them: the registered bond amount of R219 377 from the Deeds Registry, this Court's order of 26 April 2024 in the third respondent's foreclosure proceedings reflecting the bondholder's claim at that time, and the most recent municipal statement available to them, dated March 2024, for R7 431.30. The respondents themselves produced the addendum to the home loan agreement, reflecting a restructured capital amount of R253 633.99 as at 20 March 2025. The bondholder and the municipality were both served. Neither opposed, nor did either suggest that the financial picture was wrong.

[54] If the magistrate thought a document was missing, the rule told him what to do. He could call for it under the proviso to rule 43A(5), order the municipality to furnish the rates due under rule 43A(8)(b)(i), or decide whether to condone its absence under rule 43A(8)(c). He did none of these. He did not raise the point with the parties. He relied on it for the first time in his written reasons as a ground to dismiss the application outright. That was a misdirection. The proper response to a gap the creditor cannot fill is to ask those who can fill it, not to dismiss without warning.

[55] This Court has now done what the rule contemplated. The documents called for at the hearing and furnished afterwards show the current municipal valuation, the bond balance and the state of the rates account. To the extent that any rule 43A(5) document remains outstanding, there is good cause to condone its absence under rule 43A(8)(c). This Court exercises that power under s 87(a) of the Act and s 19(d) of the Superior Courts Act. The third ground fails.

Proportionality

[56] Rule 43A(2)(b) forbids an order for execution unless the court, having considered all relevant factors, considers execution warranted. That is a fact-bound inquiry into proportionality. Any measure that deprives a person of existing access to adequate housing limits the right in s 26(1) of the Constitution (*Jaftha* para 34). Where the rules have been complied with, and there is no other reasonable way to satisfy the debt, an order authorising a sale will ordinarily be appropriate, unless it would be grossly disproportionate. This is so if the creditor's interest in payment is significantly less than the debtor's interest in security of tenure, particularly if the sale is likely to render the debtor and his or her family completely homeless (*Jaftha* para 56).

[57] The relevant factors include the circumstances in which the debt was incurred, the debtor's attempts to pay it, the parties' financial position, the amount of the debt, whether the debtor has a source of income, and any other factor relevant to the facts (*Jaftha* para 60). The list is not closed. *Gundwana* para 53 adds that if the debt can be satisfied in a reasonable manner without such drastic consequences, the court should first consider that course. In the context of the reserve price, rule 43A(9)(b)(vi) directs attention to who occupies the property and the circumstances of their occupation. Where children live in the home, s 28(2) of the Constitution applies. A child's best interests are of paramount importance in every matter concerning the child.

[58] The magistrate did not conduct this inquiry, because he treated the tender as a sufficient answer. His fourth ground, that the respondents had not properly been given an opportunity to settle, rests on the same premise and falls with it. The misdirections identified above open the discretion to reconsideration within the limits set by *Trencon*. This Court is as well placed as the court below to conduct the inquiry. The record is documentary and complete, and it is supplemented by further evidence, Mr Joostenberg's submissions, and documents furnished after the hearing.

[59] I begin with how the debt arose, which *Jaftha* para 58 describes as a factor of great importance. The judgment rests on a settlement agreement that the first respondent failed to perform. The agreement arose from a contract for construction work at the appellants' house that the respondents failed to complete, used defective building materials, left certain works defective, and failed to remove their building equipment and rubble. The appellants say they paid for the construction from a family loan of R220 000 which they are still repaying at R5 000 a month. They also say the first respondent left their house's roof sagging and without gutters. Two things follow. The first favours the respondents. They never offered this house as security for the appellants' claim, so *Jaftha* para 58 on debtors who pledge their homes does not help the appellants. Their claim is unsecured and warrants closer scrutiny. The second cuts the other way. This is not the kind of debt *Jaftha* addressed. A debt of R189 904.97 is not trifling (*Jaftha* para

57). Mr Joostenberg admits it. He owes it under a compromise he negotiated, chose the payment date for, and then broke.

[60] Weighing against execution are the following. The property is the family home. Two children, aged 9 and 11, live there, and their interests are paramount. The respondents have kept their bond up to date. They pay the appellants something every month from their own resources, however inadequate. The debt is modest when compared with the value of the property. A sale will uproot the family.

[61] The following weigh in favour of execution. The respondents have repeatedly failed to honour their undertakings. The first respondent did not pay the settlement amount by 15 August 2024, a date he himself proposed. The respondents twice offered to sell the property privately and twice withdrew. They failed to provide proof of permanent employment, which they undertook to provide. They have not paid what they tendered in their answering affidavit. Their financial disclosure was incomplete and omitted debts that appear on their own bank statements. The household now depends on a single net income of R12 000 a month, of which about R4 000 goes to the bond, and the record shows a capacity to pay the appellants about R3 000 a month at most. At that rate, the debt will not be paid off within a decade, while interest runs. The appellants are private individuals, not a financial institution, and they service a family loan of R5000 a month. That directly affects the weight of the creditor's interest, which *Jaftha* para 56 weighs against the debtor's interest in security of tenure. It also engages the caution in para 40 that not all creditors are affluent. And the two preferent creditors, who would be paid first from a sale, do not oppose.

[62] The bond account is another matter. The capital owing was R253 633.99 when the bond was restructured in March 2025. It now stands at R236 614.89. The respondents paid each instalment of R3 979.46 in the quarter to 31 August 2026, and the statement reflects no arrears. On a single income, the respondents have kept their home loan

current while paying the appellants something each month. That counts in their favour. It shows a family that has kept faith with the bank, and it means the property's equity is substantial and not being eroded. But it does not supply an alternative means of satisfying this judgment debt. The same statement shows where the household's money goes. Once the bond is paid, little remains, and nothing in the record suggests the appellants can find more.

[63] The third respondent's position must be recorded, because it affects what a declaration of executability will and will not change. On 26 April 2024, this Court, per Mapoma AJ, granted judgment in the foreclosure proceedings the third respondent instituted. The Court declared the property specially executable at a reserve price of R700 000. That order has not been rescinded. The bond was later restructured by the 20 March 2025 addendum. The inference is that the bank obtained its order, reinstated the loan, and has not acted on the order. Since then, the family's security of tenure has depended on keeping the restructured bond current. On the statement now before us, they have done so. The bank's order remains extant, however, and I bear it in mind in framing the order of this Court. Two consequences follow. A declaration in the appellants' favour neither enlarges nor diminishes the bank's rights under its own order. And the bank's preferent claim is protected in any sale at the appellants' instance. Section 66(2) of the Act forbids the sale of property subject to a preferent claim unless the preferent creditor has been notified, and the proceeds are sufficient to satisfy its claim in full, or it confirms the sale in writing. The reserve I fix is about four times the bond balance. The bank has been served in these proceedings and has recorded that it does not oppose. Whether it will at some future time act on its own order is a matter between it and the respondents, and for the court that granted that order.

[64] I turn to the children and to the risk of homelessness. Their interests require me to ask two questions: whether a sale will leave them without a home, and whether the manner and timing of execution can be shaped to limit the harm to them.

[65] On the first question, the answer lies in the equity. The current municipal valuation is R1 425 000, and the Lightstone market value on 11 March 2025 is R1 680 000. Against that, the bond stands at R236 614.89, the judgment debt (including interest and costs) is roughly R190 000 to R200 000, and execution costs will apply. The rates account is up to date. A sale at the reserve price I set below would, after paying the bond and the judgment debt, leave about R560 000 before those costs. The family would also no longer have to pay the monthly bond instalment of R3 979.46. The record contains no evidence of what alternative accommodation in the area would cost, and I make no finding about it. But a family with about half a million rand in hand, a net income of R12 000 a month, and no bond to service is not rendered homeless. Nothing in Mr Joostenberg's evidence suggested otherwise. The evidence does not show that a sale will render the children homeless. It shows that the family will have to move and will have the means to do so. The disruption of a move, and its effect on the children's schooling, is real. It is addressed by the timing of any sale, to which I turn in paragraph [68].

[66] Mr Joostenberg’s hope that his mother may come to live with the family depends on a hospital report that has not yet been received. I take it into account as a possibility. It is not a present circumstance of occupation, and it does not alter the balance.

[67] On the second question, the procedure itself affords protection. Notice of the attachment must be served, and no sale may take place until it has been advertised and conducted as the rules prescribe. If the reserve is not achieved, the Sheriff must report, and the court must decide how execution is to proceed (rule 43A(9)(c) to (e)). A sale in execution does not, of itself, remove the family from the house. If they do not leave after the transfer, the court may evict them from their home only by an order made after considering all relevant circumstances (s 26(3) of the Constitution). That court will also consider the children’s interests. Sections 62(3) and 73 of the Act also remain available

to the respondents in the court *a quo*. In *Jaftha* paras 47 to 49, the court held that those sections do not substitute for judicial oversight because indigent debtors are unaware of them. These respondents were legally represented in the court below, have now litigated in two courts and appeared before us. This judgment draws those remedies to their attention.

[68] I am nonetheless persuaded that the timing of the sale should be fixed with the children in mind. A family with school-age children should not be pressed into a move without time to plan. Rule 43A(8)(a) permits the court to include in the conditions of sale any condition it considers appropriate, and rule 43A(8)(i) permits any other appropriate order. I therefore direct that no sale in execution take place before 1 March 2027. Attachment and the steps preparatory to a sale may proceed in the meantime. Transfer after a sale will itself take further time. That gives the respondents several months from the delivery of this judgment to arrange alternative accommodation and, if need be, schooling. It also gives them the chance to sell the property themselves, if they can, at a better price than a sale in execution is likely to achieve. This is not the open-ended stay I declined to countenance in paragraph [41]. It is a fixed, limited period tied to the children's interests, after which execution proceeds. The cost to the appellants of a few months' further delay is modest by comparison.

[69] I have considered the less drastic alternatives. The second respondent’s net salary is R12 000 a month. An emoluments attachment order under s 65J of the Act would, after any permissible deductions, yield no more than the respondents already pay and would further strain a household with two children. A garnishee order under s 72 has nothing to attach. There is no evidence of any debt owed to the respondents by a third party. Making the tender an order of court, with a warrant to issue on default, would be an empty formality. The tender has been in default for over a year, and the income it depended on no longer exists. Even if it were performed at R7 500 a month, it would take about 30 months while interest ran. This appeal cannot accommodate Mr

Joostenberg's request for a consolidated repayment plan, for the reasons given in paragraph [38].

[70] Weighing these matters and giving the children's interests the weight s 28(2) requires, execution against the property is warranted within the meaning of rule 43A(2)(b), and good cause exists under s 66(1)(a). The court *a quo* erred in holding otherwise. The reserve price, the deferral of the sale, and the requirement of a court order before the family can be evicted protect the children's interests.

The reserve price

[71] Rule 43A(9)(a) requires the court to consider whether a reserve price is to be set. Where a primary residence is declared executable, and the facts call for it, one should be set (*Body Corporate of Le Grande Bernard Sectional Scheme v Van der Linde* [2022] ZAGPJHC 16 para 25). The facts here call for one. Rule 43A(9)(b) lists the matters to be considered. They include the market value, the amounts owing as rates and on registered bonds, the equity that may be realised between the reserve and the market value, the reduction of the debtor’s indebtedness, the occupants and the circumstances of their occupation, the likelihood that the reserve will not be realised, and the prejudice any party may suffer if it is not achieved.

[72] The appellants seek a reserve of R700 000, or alternatively that the reserve be remitted to the court *a quo*. I fix the reserve in this Court. In my view, a court that authorises execution against a home should not leave the protective element of its order to be settled elsewhere, and the material is now before us.

[73] A reserve of R700 000 is too low on the present facts. It is the figure set out in the bank's April 2024 foreclosure order. According to Mr Joostenberg, it was based on the land's unimproved value. It is less than half the municipal valuation and about 42% of the Lightstone market value. A sale at that figure would pay the bond of about R237 000 and the judgment debt of about R200 000. It would leave the family with about R263 000 before execution costs, roughly R300 000 less than the reserve I set below. Rule 43A(9)(b)(iv) requires me to consider the equity that may be realised between the reserve and the market value. Here, that equity is what will rehouse the children. A reserve that lets most of it pass to a buyer at auction does not protect them.

[74] I fix the reserve at R1 000 000. That is about 70% of the current municipal valuation and about 60% of the Lightstone market value. No forced-sale valuation is before us, and the property’s condition is not in evidence. I have therefore set the reserve well below both measures of value rather than near them. On the documents before me, it covers the bond and the judgment debt in full, which rule 43A(9)(b)(v) makes relevant, and should leave the family about R560 000 before the costs of execution. Rule 43A(9)(b)(vii) and (viii) require a court to weigh the risk that the reserve will not be achieved and the prejudice that would follow. At this level, the risk is real but moderate. If it materialises, the appellants' prejudice is delay and further cost, not the loss of their claim. Rule 43A(9)(c) to (e) then requires the Sheriff to report and the court to reconsider how execution should proceed and permits a sale to the highest bidder. The respondents' prejudice from a reserve set too low would be the permanent loss of the equity they need to rehouse their children. That asymmetry favours the figure I have chosen.

[75] Balances will have moved by the time of any sale. The order therefore allows any party, including the third and fourth respondents, to approach this court on notice before a sale to reconsider the reserve on updated figures. I make no order compelling the third or fourth respondent to produce anything. No relief was sought against them; they recorded only their non-opposition, and neither has been heard on any such obligation.

Costs

[76] The magistrate ordered each party to pay its own costs. That order formed part of the dismissal and falls away with it. Costs lie in the discretion of the court of first instance, and an appellate court interferes only where that discretion was not exercised judicially (*Trencon* paras 85 and 88). Where the order under appeal is set aside, the costs order made on the strength of it must be reconsidered. Section 87(e) of the Act empowers this Court to make such order as to costs as justice may require.

[77] Costs ordinarily follow the result. The respondents opposed the application and have lost. The appeal has succeeded. In *Le Grande Bernard* para 27, the court treated the appeal process as an extension of the recovery process, part of enforcing the judgment debt, and awarded the creditor its costs even though the appeal was unopposed. The reasoning applies more strongly where, as here, the application was opposed. Clause 7 of the settlement agreement provides for costs on the attorney-and-client scale, and the first respondent twice tendered the appellants' reasonable costs in his answering affidavit. The appellants nevertheless seek only party and party costs, and only against the first respondent. I make that order and no more. Counsel's fees on appeal are allowed on scale B under Uniform Rule 67A.

[78] The appellants sought condonation as a precaution and do not ask for its costs. Whether it was needed depends on the effect of the 1 February 2026 upload, which I have not decided. There will be no order as to those costs.

[79] This Court dealt with the wasted costs of the postponement on 28 August 2026 in paragraph 2 of its order of that date. That order stands, and those costs are not recoverable again under the costs order on appeal.

Order

[80] I grant the following order:

1. To the extent that condonation is required, the appellants' failure to apply for a date of hearing within the period prescribed by Uniform Rule 50(4)(a) is condoned.

2. The application to adduce further evidence is granted under s 87(c) of the Magistrates' Courts Act 32 of 1944 read with s 19(b) of the Superior Courts Act 10 of 2013. The affidavit of Albertus Jacobus Snyman dated 2 April 2026, with its annexures, and the municipal valuation, bond statement and municipal rates statement furnished after the hearing, are admitted as part of the record on appeal.

3. The appeal is upheld.

4. The order of the Magistrates' Court for the District of the Cape Winelands, sub-district Drakenstein, held at Paarl under case number 1938/2024 on 21 October 2025, including its order as to costs, is set aside and replaced with the following:

   "(a) The immovable property described as the Remainder of Erf 1[...] Paarl, in the Drakenstein Municipality, Division Paarl, Province of the Western Cape, measuring 535 (five hundred and thirty-five) square metres, held by Deed of Transfer No. T[...], also known as 4[...] K[...] P[...] Avenue, Klein Parys, Paarl, is declared specially executable in satisfaction of the unpaid balance of the judgment granted against the first respondent on 12 December 2024 under case number 1938/2024, together with interest and costs recoverable under that judgment, after crediting all payments received.

(b) A reserve price of R1 000 000.00 (one million rand) is set for the sale in execution.

(c) The property may be attached, and the steps preparatory to a sale in execution may be taken, but no sale in execution of the property shall take place before 1 March 2027.

(d) The clerk of the court is authorised to issue a warrant of execution against the property, subject to paragraphs (b) and (c) and to rules 43 and 43A.

(e) Any party, including the third and fourth respondents, may on notice to all other parties, and before a sale in execution takes place, apply to this court for the reserve price to be reconsidered in the light of updated information as to the amounts owing under the mortgage bond registered over the property and to the local authority in respect of rates and other dues.

(f) If the reserve price is not achieved at the sale in execution, rule 43A(9)(c) to (e) shall apply.

(g) The first respondent shall pay the applicants' costs of the application on the party and party scale."

5. There is no order as to the costs of the condonation application.

6. The first respondent shall pay the appellants' costs of the appeal, including the costs of the application to adduce further evidence, on the party and party scale, with counsel's fees on scale B.

7. Paragraph 2 of this Court's order of 28 August 2026, concerning the wasted costs occasioned by the postponement on that date, remains operative. Those costs shall not be recovered again under paragraph 6 of this order.

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M FRANCIS

Judge of the High Court

S MTHIMUNYE

Acting Judge of the High Court

Appearances:

For Appellant: Adv Arina Du Toit

Instructed by: Snyman Attorneys

First and Second Respondent in person.