IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 44669/2020
REPORTABLE: ~~YES~~/NO
OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
REVISED: NO
DATE: 13/6/2023

In the matter between:

ADVOCATE RONNEY MAPEA	Applicant
And	
M.A. SELOTA ATTORNEYS	First Respondent
MAMOLATELO ALFRED SELOTA	Second Respondent

JUDGMENT

*This matter has been heard via teams and is otherwise disposed of in terms of the Directives of the Judge President of this Division. This Judgment is made an Order of the Court by the Judge whose name is reflected herein and duly stamped by the Registrar of the Court. The judgment and order are accordingly published and distributed electronically. The date for hand-down is deemed to be **13 June 2023**.*

BADENHORST AJ

Introduction

[1] This is an opposed application to declare the first and second respondents'

immovable property specially executable in terms of rule 46A of the Uniform Rules of Court.

[2] The applicant, a practicing advocate, instituted an action against the respondents under case number 44669/2020 for outstanding fees for professional services rendered. The applicant obtained judgment against the respondents on 18 October 2021 for R271,000.00. The first and second respondents are jointly liable for payment of the judgment debt.

[3] To date the respondents have not fulfilled the judgment amount and their default is the result of this application being launched for the execution of their immovable property.

[4] The applicant is seeking the following relief:

> [4.1] That the immovable property also known as Erf 9[…] G[…] E[…] Extension 1[…], Registration Division JR, Province of Gauteng, held by Deed of Transfer T10[…], be declared specially executable;
>
> [4.2] That the Registrar of the above Honourable Court be authorised to issue a warrant of execution in respect of the immovable property.
>
> [4.3] That the respondents pay for the cost of this application on the scale of attorney and client.

[5] Before the court dealt with the merits, Mr. Mabilo, counsel for the applicant, raised a point *in limine*.

Condonation

[6] The first and second respondents' brought an Application for Condonation dated 27 July 2022. The respondents pray for condonation for the late filing of their opposing affidavit and costs, in the event of opposition. This application is opposed

by the applicant in the Rule 46A Application. Both these applications are before the court. For convenience, I will refer to the parties as cited in the main application, being the Rule 46A Application.

[7] Mr. Mabilo, raised a *point in limine* that the respondents filed their answering affidavit out of time without a timeous application, condoning the late filing of same.

[8] Mr. Mabilo further argued that the respondents filed an application for condonation only *after* the replying affidavit was filed raising the issue of non-compliance with the Uniform Rules. Mr. Mabilo reiterated that the respondents should have complied with Rules and not wait for the applicant to raise the issue in reply.

[9] Mr. Mabilo argued that the respondents should have complied with Rule 27 and incorporated the application for condonation with its answering affidavit. It was further argued that the respondents' default resulted in an additional set of affidavits which incurred unnecessary costs for the applicant.

[10] Mr. Mabilo submitted that the Court should show its displeasure with how the respondents treat the rules of court and that the Court should dismiss the application for condonation and grant a punitive cost order against the respondents.

[11] The applicant in essence asks this court to adjudicate the Rule 46A Application as if the respondents are in default of appearance.

[12] Mr. Mashitoa, the attorney appearing for the respondents, argued that the Court should apply its judicial weight and the Court can regulate its own process.

[13] The court is asked to decide *in limine* whether the respondents' answering affidavit should be allowed. In determining whether the condonation application should be granted, I deal briefly with the factual background against which the application for condonation should be evaluated.

[14] The founding affidavit to the condonation application, is deposed to by the respondents' previous attorneys of record. BR Rangata Attorneys withdrew as attorneys of record on 7 March 2023.

[15] The Notice of Intention to Oppose was served on the applicant's attorneys on 8 June 2022. In terms of the Notice of Motion the respondents had ten days from filing its notice of intention to oppose, to file their answering affidavit.

[16] The answering affidavit therefore had to be filed on or before 22 June 2022.

[17] Since the delivery of the Notice of Intention to Oppose the attorneys of record exchanged correspondence. From the correspondence it seems that there was a suggestion to hold a meeting and to try and solve the issue.

[18] On 30 June 2022 the applicant's attorneys formally requested the respondents' attorneys that the answering affidavit should be filed within 7 days.

[19] The respondents' attorneys explained that on the 4th of July 2022 a consultation was held between the attorney, the second respondent and counsel. The second respondent was requested to submit further documentation in order to deal with all the allegations contained in the founding affidavit.

[20] The respondents' attorneys then informed the applicant's attorneys on 5 July 2022 that they are waiting for their clients to provide them with documentation.

[21] On 6 July 2022 the respondents' attorneys of record served a notice in terms of Rule 35(12) and (14) on the applicant's attorneys. On 7 July 2022 the applicant's attorneys replied to the notices.

[22] on 10 July 2022 the outstanding documentation was obtained from the respondents. The respondents attorneys received a draft answering affidavit to the Rule 46A application on 11 July 2022 from their counsel and same was sent to the second respondent for perusal and for providing further information.

[23] The signed and commissioned answering affidavit was served on the applicant's attorneys of record on 15 July 2022.

The law pertaining to condonation

[24] In summary it was stated by Boshoff J in ***Evander Caterers (Pty) Ltd v Potgieter 1970 (3) SA 312 (T)*** at 316 that condonation should not be lightly refused if the delay did not prejudice the other party in respect of the merits or in the conduct of his case, other than the procedural advantage gained by him owing to the existence of the time-limit. Everything should be done to secure a fair trial between the parties in the litigation so that the disputes and questions between them may be settled on their merits. The court also held that it is a fundamental rule that justice cannot be done to a person without having given him an opportunity to present his case.

[25] The Constitutional Court in **Ferris v FirstRand *Bank Ltd* 2014 (3) SA 39 *(CC)*** at 43G–44A has laid down that lateness is not the only consideration in determining whether condonation may be granted and that the test for condonation is whether it is in the interests of justice to grant it.

[26] The factors generally considered by a court determining whether condonation should be granted were restated in ***Turnbull-Jackson v Hibiscus Coast Municipality 2014 (6) SA 592 (CC) [2014] ZACC 24*** at par 23:

> *"In this court the test for determining whether condonation should be granted or refused is the interests of justice. Factors that the court weighs in that inquiry include:*
>
> - *The length of the delay;*
> - *The explanation for, or cause of, the delay;*
> - *The prospects of success for the party seeking condonation'*
> - *The importance of the issues that the matter raises;*

- *The prejudice to the other party or parties; and*
- *The effect of the delay on the administration of justice."*

[27] In ***Melane v Santam*** **1962 (4) SA 531 (A)** par 532 in summary, it is well settled that in considering applications for condonation the court has a discretion, to be exercises judicially upon a consideration of all the facts. Relevant considerations may include the degree of non-compliance with the rules, the explanation therefore, the prospects of success on appeal, the importance of a case, the respondent's interest in the finality of the judgment, the convenience of the court, and the avoidance of unnecessary delay in the administration of justice, but the list is not exhaustive. The court further stated that these factors are not individually decisive but are interrelated and must be weighed against the other. A slight delay and good explanation for the delay may help to compensate for prospects of success which are not strong."

[28] Uniform Rule 27 provides that:

[28.1] In the absence of agreement between the parties, the court may, upon application on notice and on good cause shown, make an order extending or abridging any time prescribed by these rules or by an order of court, or fixed by an order extending or bridging any time for doing any act or taking any step in connection with any proceedings of any nature whatsoever, upon such terms as to it seems meet.

[28.2] Any such extension may be ordered although the application thereof is not made until after expiry of the time prescribed or fixed, and the court ordering any such extension may make such order as to it seems meet as to recalling, varying or cancelling of the results of the expiry of any time so prescribed or fixed, whether such results flow from the terms of any other order or from these rules.

[28.3] The court, may on good cause shown, condone any non-compliance with these rules.

[29] In the matter of ***Grootboom v National Prosecuting Authority and Another*** **2014 (2) SA 68 (CC)** at para 20, the Constitutional Court stated that:

> "*It is axiomatic that condoning a party's non-compliance with the rules or directions is an indulgence. The court seized with the matter has a discretion whether to grant condonation."*

[30] At paragraph 50, the court further reiterated that:

> *"In this court the test for determining whether condonation should be granted or refused is the interest of justice. If it is in the interests of justice that condonation be granted, it will be granted. If it is not in the interest of justice to do so, it will not be granted."*

[31] Turning to the Rule 46A Application before me.

[32] The respondents brought their Application for Condonation only after the applicant addressed the issue of late filing in his replying affidavit.

[33] In terms of Rule 27 any extension by be ordered although the application therefore is not made until after the expiry of the time prescribed.

[34] The applicant's attorneys of record demanded delivery of the answering affidavit on 30 June 2022 and indicated that the answering affidavit should be served within 7 days.

[35] It is my view that by delivering the letter of demand on 30 June 2022, the applicant condoned the respondents' default prior to 30 June 2022.

[36] in terms of the letter of demand the respondents had to file their answering affidavit on or before 11 July 2022 but they only served same on 15 July 2022, effectively three days late.

[37] The explanation given by the respondents for their default, in my view, cover the entire period of the delay from the letter of demand dated 30 June 2022 to delivery of the affidavit on 15 July 2022.

[38] The respondents addressed the prospect of success on the merits and the issue of prejudice which ties into whether it is in the interests of justice to grant condonation.

[39] Mr. Mabilo argued that bringing the Application for Condonation only after the answering affidavit, is a procedural flaw in law and the condonation application should be dismissed with punitive costs.

[40] With due consideration of the case law and Rule 27, I am of the view that no prejudice was brought about as a result of the failure to launch the application for condonation timeously as there is no indication that the position would have been different had the notification being received in time.

[41] As was stated in **Evander Caterers (Pty) Ltd v Potgieter** referred to above, *'condonation should not be lightly refused if the delay did not prejudice the other party.'*

[42] It is trite that usually prejudice can be cured by a cost order against the party asking for the indulgence.

[43] The applicant submitted that given the history of the matter the respondents have not put-up sufficient facts and have not shown good cause as to why the answering affidavit should be allowed by the court.

[44] The application before this court is brought in terms of Rule 46A and the property sought to be declared specially executable, is the second respondent's primary place of residence.

[45] The court must consider the requirements set out under Rule 46A of the Uniform Rule. The Rule is peremptory and the matter must be properly ventilated, hearing both parties, to enable the court to exercise judicial oversight in adjudicating a Rule 46A application.

[46] It will be in the interest of justice to condone the late filing of the answering affidavit.

[47] Should condonation not be granted, the prejudice suffered by the respondents would most likely outweigh the prejudice suffered by the applicant, should I grant condonation.

[48] I am of the view that a reasonable explanation with the necessary proof is provided for the respondents default.

[49] On the issue of costs it was argued that a cost order against the respondents will not cure the prejudice the applicant is suffering, and the respondents' conduct must be stopped. Mr. Mabilo argued that should the court grant condonation it should be on an attorney and client scale.

[50] The Notice of Motion for the Application for Condonation prayed for costs in the event of opposition.

Punitive cost orders

[51] Ordinarily, in applications for condonation for non-observance of court procedure, a litigant is obliged to seek the indulgence of the court whatever the attitude of the other side and for that reason, will have to pay the latter's costs if it does oppose.

[52] The leading case on awarding costs on a punitive scale is ***Nel v Waterberg Landbouwers Ko-operatieve Vereeniging 1946 AD 597***.

[53] Tindall JA stated that *"a court in certain circumstances may deem it just, by means of a punitive order. An award of attorney and client costs cannot be justified merely as a form of compensation for damages suffered."*

[54] The Court held that a court may order attorney and client costs when there is dishonesty, improper, vexatious and fraudulent conduct.

[55] I am of the view that a punitive costs order is not justified in this Application for Condonation. The case of ***Nel v Waterberg Landbouwers*** cited above made it clear that a punitive cost award cannot be justified merely as a form of compensation for damages suffered.

[56] I accept that a separate set of affidavits were deposed to in the Application for Condonation, but even if the respondents brought the application prior filing its answering affidavit, the applicants would have answered thereto. I am of the opinion that a cost order would cure any prejudice suffered by the applicant.

[57] Therefore, condonation is granted to the respondents for the late filing of their answering affidavit and the first and second respondents are ordered to pay the applicant's costs pertaining to the Condonation Application.

The present Rule 46A application

[58] It is common cause that the first respondent is the owner of Erf 5[…] G[…] E[…], Extension 1[…], Gauteng Province and the property is not a bonded or mortgaged property.

[59] It is further common cause that the respondents have not fulfilled the judgment nor made any attempt to do so.

[60] The applicant prays for an order declaring the immovable property specially executable and that the court authorise a warrant of execution to be issued.

[61] A warrant of execution against the respondents' movable assets was issued on 22 November 2021. The sheriff of Kempton Park could not serve this warrant of execution on the respondents. It is evident from the papers before me that on 23 March 2022 the sheriff made only one attempt to serve the warrant of execution and no one was present at the business premises.

[62] Mr. Mabilo argued that the second respondent is not an indigent individual. It was further argued that there exists no possibility that the respondents' liability to the applicant may be liquidated within a reasonable period without the applicant having to execute against immovable property.

[63] It was also argued that the applicant will suffer severe prejudice if execution against the immovable property were to be refused and the immovable property is the applicant's only way of recovering any funds from the respondents.

[64] Mr. Mabilo referred the court to the matter of ***Nkola v Argent Steel Group (Pty) Ltd*** **2019 (2) SA 216 (SCA**) at par 11 where the court held that the common law and the uniform rules of court allowed a judgment creditor to levy execution against the immovable property of the judgment debtor if the latter claims of movables to satisfy the judgment debt but fails to point them out and make them available.

[65] Mr. Mabilo acknowledged that despite a creditor having unsuccessfully attempted execution against a debtor's movable property, the immovable property of a debtor can only be declared specially executable after the necessary judicial oversight in terms of Rule 46A.

[66] Mr. Mabilo submitted that the provisions of rule 46A are only applicable where the property sought to be declared specially executable is the primary residence of the respondents. The second respondent declared in its answering affidavit that the property sought to be sold on auction is his and his family's primary place of residence. Therefore, the court must consider all the factors set out in Rule 46A before granting the order prayed for.

[67] Mr. Mabilo explained that the Legal Practice Council obtained an Order on 17 February 2020 against the second respondent in respect of which the second respondent was suspended from practicing and a *curator bonis* was appointed to administer and control the trust accounts of the first respondent. The applicant attempted to submit its claim for payment with the *curator* but due to certain requests by the *curator*, the matter was not resolved.

[68] Pertaining to the costs, Mr. Mabilo argued that the respondents have not made any plans to satisfy the judgment debt and neither did they show any intention of payment to the plaintiff and that the Court should allow punitive costs against the respondents.

[69] Mr. Mabilo referred to court to a deed search attached to the papers indicating that the respondents have other properties situated in Limpopo and Tembisa and that the respondents can always move into one of the other properties and make same their primary residence.

[70] It is the applicant's case that the attempt to serve the warrant of execution to attach the movables of the respondents, was sufficient given the history of the matter and the respondents unwillingness to satisfy the debt.

[71] Mr. Mashitoa for the respondents argued that the applicant ought to have exhausted other ways of satisfying the debt and not bring the rule 46A application. Mr. Mashitoa held that the applicant has failed to comply with the rules as envisaged in Uniform Court Rule 46A.

[72] It is the respondents' case that the applicant has failed to disclose the necessary information to enable the court to exercise its discretion to set a reserve price as the immovable property is the second respondent's primary residence.

[73] Mr. Mashitoa argued that the applicant should have approached the *curator bonis* of the Legal Practice Council to lodge a claim for his services rendered,

because the second respondent was suspended from practice on 17 February 2020. This order has the effect that the *curator bonis* administers and controls the trust accounts and the second respondent is prohibited from handling or operating the trust accounts.

[74] The respondents' case is further that the applicant cannot choose which of the judgment debtor's properties is their ordinary home as defined in the matter. I was referred to ***First Rand Bank Ltd v Folscher and Another, and similar matters*** **2011 (4) SA 314 (GNP)**.

[75] In terms of Rule 46A, the court must consider alternative means by the respondents of satisfying the judgment debt other than execution against the second respondent's primary residence. During argument, Mr. Mashitoa mentioned several movable assets owned by the respondents which are not listed in the answering affidavit. Mr. Mashitoa held that the applicant could attach these movable assets to satisfy the judgment debt.

[76] Mr. Mashitoa held that there are movable and disposable assets at the first respondent's offices, situated at number 74, Commissioner Street, Kempton Park as well as at the second respondent's primary residence, that can be attached in satisfaction of the judgment.

[77] The applicant referred the court to ***Nkola v Argent Steel Group Pty Ltd*** **2019 (2) SA 216 (SCA)**.

[78] In para 6 of this judgment the court held that in executing a judgment, a debtor's movable property must be attached and sold to satisfy the debt before the creditor can proceed to execute against immovable property. Only if they are insufficient to fulfil the debt may a creditor proceed against immovable property.

[79] In terms of Rule 46(1)(a)(i) a writ of execution against immovable property shall not be issued until the return of service stipulates that the debtor does not have sufficient movable property to satisfy the writ.

[80] Mr. Mabilo referred to the judgment of ***Silva v Transcape Transport Consultants and Another*** **1999 (4) SA 556 (W)** at 562 where it was held that in the instances where the debtor refused or failed to point out the movable property, frustrated the creditor's attempts to execute against the debtor's movable property and acted in a tricky manner, the court has a general discretion under the common law to declare immovable property executable.

[81] In the answering affidavit the second respondent has pointed out that there are movable assets that the applicant could attach to satisfy the debt. The respondents' legal representative made submission from the bar that there are movable assets to the value of approximately R3.5 million which include furniture and a luxury motor vehicle which the applicant can attach to and execute to satisfy the debt.

The general approach regarding execution of movable and immovable property

[82] Execution is governed by rules 45, 46 and 46A of the Uniform Rules of Court.

[83] Rule 45(3) requires that when a sheriff is required to raise a sum of money by a process of court he must proceed to the dwelling or place of employment of such person and demand satisfaction of the writ. Failing satisfaction of the said writ, he must demand that so much movable and disposable property be pointed out as he may deem sufficient to satisfy the writ. Should the person fail to point out property, the Sheriff shall search for property.

[84] In terms of Uniform Rule 46(1), a writ of execution against the immovable property of any judgment debtor must only be issued if:

> [84.1] a return has been made of any process issued against the movable property of the judgment debtor from which it appears that the said person has insufficient movable property to satisfy the writ; or

[84.2] such immovable property has been declared to be specially executable by the court.

[85] When a court hears an application in terms of Rule 46A, the court must do two things. The court must first establish whether the property is the primary residence of the judgment debtor and second, whether the judgment debtor can offer alternative means by which he can pay the debt, other than by execution against the primary residence.

[86] The reason for seeking alternative is that the sale in execution of a primary home will only be constitutionally justifiable if it is the last resort.

[87] The matter of ***Nkola v Argent Steel Group (Pty) Ltd t/a Phoenix Steel (2) SA 216 (SCA)*** the Court had to consider a situation where a judgment debtor, who has sufficient moveable property as well as immovable property, refused to assist and/or frustrates the process of the sheriff when the sheriff wanted to execute against the movable property.

[88] The Court held that it is trite that when executing a judgment, a judgment debtor's movable property must be attached first and sold to satisfy the judgment debt before the judgment creditor can proceed to execute against immovable property. The judgment debtor may only proceed to execute against the immovable property of a judgment creditor when the movable property is insufficient to fulfil the debt.

[89] The SCA further held that in terms of the common law and the Uniform Rules of Court a judgment creditor can execute on immovable property where a judgment debtor has failed to point out and make it available.

[90] The SCA referred with approval to ***Silva v Transcape Transport Consultants and Another 1999(4) SA 556 (W)***. The Court held that when a judgment debtor is behaving in a tricky manner and deliberately frustrates the judgment creditor's efforts to obtain payment, execution should proceed against the

judgment debtor's immovable properties. The Court however held that if execution is in respect of the debtor's primary place of residence, Judicial oversight is required.

[91] The requirement of judicial oversight is regulated by Rule 46A of the Uniform Rules of Court.

[92] In the matter before me the Applicant attached a return of non-service on the business premises of the Respondents. I cannot infer from the return of service that the respondents do not own sufficient movable property to satisfy the debt.

[93] In the **Silva-matter** the debtor did not point out movable property that was available to satisfy the judgment debt, and the debtor deliberately frustrated the creditor's efforts to obtain payment. The Court also held that judicial oversight is required if the property is the primary residence of the creditor.

[94] Mr.Mabilo for the Applicant argued that the Respondents are behaving in a tricky manner and deliberately ignoring the Judgment for payment granted.

[95] In a full bench judgment of this division it was held in ***First Rand Bank Limited v Folscher and Another* 2011 (4) SA 314 (GNP)** at para [42] it was held: *"If a creditor's claim is opposed, the debtor will ordinarily be in the best position to advance any contentions he may wish to make and will be able fully to inform the court of any aspect that should be taken into account."*

[96] ***NPGS Protection and Security Services CC and Another v FirstRand Bank Ltd* (314/2018) [2019] ZASCA 94; [2019] 3 All SA 391 (SCA); 2020 (1) SA 494 (SCA) (6 June 2019)** [55] "*…there is an onus on the debtor, at the very least, to provide the court with information concerning whether the property is his or her personal residence, whether it is a primary residence, whether there are other means available to discharge the debt and whether there is a disproportionality between the execution and other possible means to exact payment of the judgment debt."*

[97] It was held in the full bench matter ***ABSA Bank v Mokebe and Related Cases 2018 (6) SA 492 (GJ) (12 September 2018)*** that it is incumbent upon a Plaintiff to set out all relevant facts as stipulated in Rule 46A in these applications to enable the court to exercise its discretion properly when an order for execution is sought.

[98] Uniform Rule 46A deals with execution against residential immovable property. The Rule reads as follow:

> (1) This rule applies whenever an execution creditor seeks to execute against the residential immovable property of a judgment debtor.
>
> (2) (a) A court considering an application under this rule must—
>
> (i) establish whether the immovable property which the execution creditor intends to execute against is the primary residence of the judgment debtor; and
>
> (ii) consider alternative means by the judgment debtor of satisfying the judgment debt, other than execution against the judgment debtor's primary residence.
>
> (b) A court shall not authorise execution against immovable property which is the primary residence of a judgment debtor unless the court, having considered all relevant factors, considers that execution against such property is warranted.
>
> (c) The registrar shall not issue a writ of execution against the residential immovable property of any judgment debtor unless a court has ordered execution against such property.

[99] In terms of Rule 46A(8)(f) a court considering an application under this rule may postpone the application on such terms as it may consider appropriate and may make any other appropriate order.

[100] In terms of Rule 46A and the cited case law, the respondents have the onus to place before the Court, on affidavit, sufficient information whether there are other means available to discharge the judgment debt.

[101] Considering the ***Folscher-case*** referred to above, the respondents will be in the best position to fully inform the Court of any aspect that should be considered. However, in the matter at hand, the respondents only mention vaguely all the movable assets owned in their answering affidavit. The respondents, in opposing this Rule 46A application, need to place details before the Court to assist the Court to exercise its judicial discretion.

[102] Considering the ***Mokebe-case*** referred to and Rule 46A, it is incumbent upon the applicant to set out all relevant facts as stipulated in said Rule to enable the court to exercise judicial oversight when an order for execution of a primary residence is sought.

[103] The applicant attaches to its papers only one return of service by the Sheriff, stating that the writ could not be served. This return of service is not sufficient proof that the respondents do not have movable assets to satisfy the judgment debt.

[104] As already stated, Mr. Mashitoa made mention of several movable assets and a paid-off Range Rover motor vehicle which the Applicant can attach. These submissions were however made from the bar and were not contained in the answering affidavit.

[105] The court is bound by Rule 46(1)(a)(ii) which stipulates that no writ shall be issued unless the court, having considered the relevant circumstances, orders execution against such property.

[106] I am of the view that an appropriate order would be that the applicant must first attempt to execute the movable assets of the respondents before the court can grant an order for the execution of the second respondent's primary residence.

[107] I believe it will be in the interest of justice that both parties are granted leave to supplement their papers to enable the court to exercise its judicial oversight as envisaged in Rule 46A.

Costs

[108] All that remains is the issue of costs.

[109] Mr. Mabilo argued for the relief as set out in the Notice of Motion including punitive costs. Mr. Mashitoa argued that the application should be dismissed and each party should pay its own cost.

[110] The Court has a wide discretion regarding granting cost orders. Given the fact that both parties are granted leave to file supplementary affidavits and approach the Court on the same papers, duly supplemented, I find it fair and reasonable that costs should be costs in the cause.

Order

[111] In the result the following order is made:

1. The First and Second Respondents' Application for Condonation for the late delivery of their Answering affidavit, is hereby granted;

2. The First and Second Respondents are ordered to pay the Applicant's costs relating to the Condonation Application;

3. The Application in terms of Rule 46A is postponed *sine die*;

4. The Applicant must first attempt to execute on the movable assets of the First and Second Respondents to satisfy the judgment debt;

5. The Applicant is granted leave to approach this Court on the same papers, duly supplemented, should the movable assets of the First and Second Respondents be insufficient to satisfy the judgment debt, *alternatively*, that the Sheriff could not find any movable assets to satisfy the judgment debt;

6. The First and Second Respondents are granted leave to supplement its papers by answering to the supplementary affidavit referred to in paragraph 5 above, within 15 (fifteen) days of receipt thereof;

7. Costs to be costs in the cause.

_____

L BADENHORST
Acting Judge of the High Court
Gauteng Division, Pretoria

Attorneys for applicant:	Boshego Attorneys
Counsel for applicant:	Adv PA Mabilo
Attorneys for respondents:	TML Mashitoa Inc
Attorney appearing for respondents:	Mr TML Mashitoa (with right of appearance)

Date of Hearing: 22 May 2023
Date of Judgment: 13 June 2023