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

**CASE NO: 6692/2015**

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED

**DATE 19 November 2024**

**SIGNATURE**

**In the matter between:**

THE STANDARD BANK OF  
SOUTH AFRICA LIMITED  
(Registration Number: 1962/000738/06)

APPLICANT/PLAINTIFF

And

S'THEMBISO MOTHA

FIRST RESPONDENT/DEFENDANT

(Identity Number: 7[...])

MATLHOGONOLO PETUNIA MOTHA

SECOND RESPONDENT/DEFENDANT

(Identity Number: 8[...])

This judgment is issued by the Judges whose names are reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on CaseLines by the Senior Judge's secretary. The date of this judgment is deemed to be 19 November 2024.

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### **JUDGMENT**

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COLLIS J

#### **INTRODUCTION:**

[1] The Applicant (Plaintiff) before this Court, applies for Default Judgment against the Respondents (Defendants) in terms of the provisions of Rule 31(5) of the Uniform Rules of Court.

[2] The Applicant applies for Default Judgment on the basis, *inter alia*, that the Respondents are in default of delivery of a Notice of Intention to Defend.

[3] In January 2015 the Applicant issued summons against the Respondents for its monetary claim and executability of the immovable property jointly owned by the Respondents.<sup>1</sup>

[4] The Applicant's case against the Respondents is premised on a Home Loan Agreement concluded between the parties during January 2009 with the mortgage bond registered in respect of the immovable property on 27 March 2009. Thereafter the

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<sup>1</sup> CaseLines 01-1 to 01-5.

Respondents fell behind with their bond repayments. The Mortgage Bond under these circumstances authorizing the sale of the immovable property in case of default.

[5] The summons was served on the Respondents during January and February 2015 respectively.<sup>2</sup> Subsequent thereto and during May 2017 an order was granted in terms of the provisions of Section 130(4)(b) of the National Credit Act, 34 of 2005 (“NCA”), in terms of which the Applicant was authorized to serve the notice in terms of Section 129(1)(a) of the NCA, at the Respondents initial address (1[...] M[...] Street, Centurion), their portal address and via email.<sup>3</sup>

[6] The Applicant duly complied with this order of the Court, in terms of Section 130(4)(b) and proceeded to file an affidavit in confirmation thereof.<sup>4</sup>

[7] The Respondents failed to enter an Appearance to Defend and in April 2016, the Applicant applied for Default Judgment in terms of the provisions of Rule 31(5), read with the provisions of Rules 45 and 46.<sup>5</sup>

[8] As per the issued Notice of Motion, the Applicant sought relief along the following terms:

“1. Payment of the sum of R1 161 118.43;

2. Interest on the sum of R1 161 118.43 at a rate of 8.100% per annum, calculated daily and compounded monthly in arrears from the 14<sup>th</sup> day of October 2014 to date of payment, together with monthly Insurance Premiums of R0.00 and Assurance Premiums of R.00 from the date of the said date, both dates inclusive;

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<sup>2</sup> CaseLines 01-61 to 01- 62.

<sup>3</sup> CaseLines 02-18 to 02-19.

<sup>4</sup> CaseLines 02-24 to 02-48.

<sup>5</sup> CaseLines 03-1 to 03-33.

3. An order declaring:

**A UNIT CONSISTING OF:**

(a) SECTION NO.2 AS SHOWN AND MORE FULLY DESCRIBED ON SECTIONAL PLAN NO. SS169/2009, IN THE SCHEME KNOWN AS VISTA 2[...] IN RESPECT OF THE LAND AND BUILDING OR BUILDINGS SITUATE AT ERF 2[...] RUA VISTA EXTENSION 9 TOWNSHIP, LOCAL AUTHORITY: CITY OF TSHWANE METROPOLITAN MINUCIPALITY, OF WHICH SECTION THE FLOOR AREA, ACCORDING TO THE SAID SECTIONAL PLAN, IS 148 (ONE HUNDRED AND FORTY-EIGHT) SQUARE METRES IN EXTENT; AND

(b) AN UNDIVIDED SHARE IN THE COMMOM PROPERTY IN THE SCHEME APPORTIONED TO THE SAID SECTION IN ACCORDANCE WITH THE PARTICIPATION QUOTA AS ENDORSED ON THE SAID SECTIONAL PLAN;

HELD BY DEED OF TRANSFER NO. ST16050/2009, MORE SPECIFICALLY SUBJECT TO THE CONDITIONS IMPOSED BY THE THATCHFILED HOME OWNERS ASSOCIATION

Specifically, executable;

4. An order authorizing the Plaintiff to execute against the said mortgaged Immovable Property as envisaged in Rule 46(1)(a)(ii) of the Uniform Rules of Court;

5. An order authorizing the Sheriff to execute the Writ of Execution;

6. An order for Costs on Attorney and Client.”

[9] As previously mentioned, the Respondents before Court failed to file a Notice of Intention to Defend the action, but only opposed the Application to declare the property specially executable.<sup>6</sup> As such, the Applicant will be entitled to Default Judgment for the monetary portion of its claim as no defense has been raised by the Respondents. This Court is therefore satisfied that the Applicant has met all the requirements for default judgment on the monetary portion of the claim to be granted.

[10] The opposition to the application therefore, at best can be in relation to the executability of the immovable property, as provided for in Rule 46 of the Uniform Rules of Court and, particularly the reserve price to be set for the sale in execution.

#### COMMON CAUSE FACTS

[11] The following appears to be the common cause facts between the parties:

11.1 The conclusion of the Home Loan Agreement on which the Applicant relies;

11.2. The registration of the Mortgage Bond, which represents Applicant's security for its claim; and

11.3 the fact that the Respondents failed to comply with their repayment obligations in terms of the Agreement.

#### GROUND IN OPPOSITION

[12] The Respondents in their Opposing Affidavit<sup>7</sup> alleges that the builders who erected their immovable property (or at least the building(s) thereon) contravened the provisions of the National Building Regulations and Building Standards Act (103 of 1977) and that

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<sup>6</sup> CaseLines 03-37 to 03-38.

<sup>7</sup> Opposing Affidavit 03-158.

thy went to the Centurion Lifestyle Standard Bank branch and asked them to fax a letter to the Applicant's home loan branch to inform them of the contravention.

[13] They further allege, that the building erected on the immovable property offends the mentioned Act and that the Tshwane Metropolitan Municipality refused to relax the regulations or excuse the contravention.

[14] In addition, they further assert that they also reported the dispute to the Banking Ombudsman, whereby the matter was withdrawn before the Ombudsman at the instance of the Applicant, this for the matter to be resolved inter partes. They assert that at various instances, they made attempts to have the property sold in the open market, but that all such steps taken by then was without any success.

[15] In essence, it is their contention that they asked the Applicant not to register the bond, on 24 March 2009, this after they received a contravention notice from the Municipality on 5 March 2009. The Respondents however, provides no particularity as far as these contentions are concerned, such as who they spoke to and what undertaking if any, was given by this person(s).

[16] In their Opposing Affidavit, they proposed that the immovable property is returned to the Applicant without any cost to them and to have the immovable property 'deregister' from the Deeds Office.<sup>8</sup>

[17] In this affidavit they also propose that the Applicant cancels the contract and that they are not listed on any credit bureau.<sup>9</sup>

## APPLICANTS CONTENTION

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<sup>8</sup> Opposing affidavit, paragraph 10, CaseLines 03-160.

<sup>9</sup> Ibid.

[18] On behalf of the Applicant it was argued, that the relevant Home Loan Agreement was concluded in January 2009 and the Mortgage Bond was registered on 27 March 2009.

[19] That neither prior to registration of the bond or at any stage thereafter, has there ever been an amendment of the Home Loan Agreement.

[20] The Home Loan Agreement<sup>10</sup> in this regard specifically provides:

20.1 That it remains the responsibility of the Respondents to ensure that the structures to be erected at the immovable property are correctly positioned and that they do not constitute an encroachment;<sup>11</sup>

20.2 That a clearance certificate by a professional engineer registered with the Engineering Council of South Africa for the rational design, inspection of building work and stability of the entire structure system must be submitted to the Applicant;<sup>12</sup>

20.3 Any agreed changes to the agreement will be made in writing and signed by both parties.<sup>13</sup>

[21] It is alleged by the Applicant that after the Home Loan Agreement was advanced to the Respondents, that they proceeded to make payments in terms of the Home Loan although sporadically at times until May 2015.<sup>14</sup>

## COMPLIANCE WITH THE PROVISIONS OF RULE 46A

[22] Rule 46A requires a court, considering an application in terms of Rule 46A to:

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<sup>10</sup> CaseLines 01-38 to 01-59.

<sup>11</sup> CaseLines 01-42.

<sup>12</sup> CaseLines 01-43.

<sup>13</sup> CaseLines 01-57.

<sup>14</sup> See Annexure "MA4", history statement, CaseLines 03-77 to 03-86.

22.1 Establish whether the immovable property sought to be executed against is the primary residence of the Judgment debtor;<sup>15</sup>

22.2 Consider any alternative means by the judgment debtor of satisfying the judgment debt, other than execution against the judgment debtor's primary residence.

22.3 In the present matter it is common cause that there is no other way for the judgment debtors to satisfy the judgment debt. In the affidavit filed in support of the Rule 46A application, the Applicant asserts that several steps were implemented to rehabilitate the arrear account of the Respondents prior to implementing legal action. These steps proved all to be in vain.<sup>16</sup>

[23] The Applicant before Court has further complied with the provisions of Rule 46A (3) in that:

23.1 The Application is substantially in accordance with Form 2A of schedule 1 to the Uniform Rules of Court;

23.2 The Respondents and the Municipality has received notice of the Application;

23.3 The Application, and the supplementary affidavits were all served on the judgment debtors personally; and

23.4 The Application is supported by the affidavits setting out the reasons for the Application and the grounds on which it is based.

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<sup>15</sup> In this case it is common cause that the immovable property is the primary residence of the Respondents.

<sup>16</sup> CaseLines 01-13 para 13.



[24] The Application further complied with Rule 46A (5) in that the Application is supported by documents evidencing:

24.1 The market value of the immovable property;<sup>17</sup>

24.2 The local authority valuation of the Immovable Property to be R 1,2 million;<sup>18</sup>

24.3 The amount owing by the Respondents, jointly and severally, to the Applicant at the time of the filing of the supplementary affidavit (April 2023) R 2, 197,724.91 with interest thereon at the rate of 9.6% per annum from 3 March 2023 to date of final payment;<sup>19</sup>

24.4 The amount owing to the Local Authority as rates and other dues amounting to R 25, 193.27;<sup>20</sup>

24.5 The amount owing to a body corporate as levies;<sup>21</sup>

24.6 Any other factor which may be necessary to enable the court to give effect to Rule 46A (8).

[25] On behalf of the Applicant it was submitted that there is no other satisfactory means of satisfying the judgment to be granted against the Respondents, other than by execution against the immovable property. In the absence of any rebuttal evidence being presented before this Court, I am satisfied, that the immovable property is to be sold in execution.

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<sup>17</sup> Supplementary affidavit, Annexure "MA2", Caselines 03-127 to 03-131, in the valuation the market value of the immovable property is stated to be R 1,5 million.

Annexure "MA3" to the mentioned affidavit (an authorized valuation) states the valuation to be R 1,750, 000.00.

<sup>18</sup> Annexure "MA3" to the last supplementary affidavit, CaseLines 03-132 to 03-138, See also Annexure "MA6" to the mentioned affidavit, CaseLines 03-150.

<sup>19</sup> Annexure "MA4" to the mentioned affidavit, CaseLines 03-139.

<sup>20</sup> Annexure "MA6" to the last supplementary affidavit.

<sup>21</sup> Ibid.

[26] Rule 46A(8)(e) further empowers a Court to set a reserve price, once an order is made of special executability. In the present instance, it seems to set a reserve price given the totality of factors to be considered in the current circumstances would be inappropriate. This notwithstanding that the immovable property is the primary residence of the Respondents. It is for this reason that no reserve price is set given the prevailing circumstances.

## ORDER

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

27.1 Default Judgment is granted in terms of Rule 31(2), Rule 46 and Rule 46A in favour of the Applicant/Plaintiff against the First and Second Respondents/Defendants, jointly and severally, the one paying the other to be absolved for:

27.1.1 Payment of the amount of R1 161 118.43.

27.1.2 Payment of Interest on the amount of R1 161 118.43 at the rate of 8.100% per annum, calculated daily and compounded monthly in arrears from 14 OCTOBER 2014 to date of payment both dates, together with Monthly Insurance Premiums of R0.00 and Assurance Premiums of R0.00 from the said date, both dates inclusive.

27.1.3 That the Immovable Property described as

A UNIT CONSISTING OF –

(a) SECTION NO 2 AS SHOWN AND MORE FULLY DESCRIBED ON SECTIONAL PLAN NO. SS000000169/2009 IN THE SCHEME KNOWN

AS VISTA 2[...] IN RESPECT OF THE LAND AND BUILDING OR BUILDINGS SITUATE AT ERF 2[...] RUA VISTA EXTENSION 9 TOWNSHIP, LOCAL AUTHORITY: CITY OF TSHWANE METROPOLITAN MUNICIPALITY OF WHICH SECTION THE FLOOR AREA, ACCORDING TO THE SAID SECTIONAL PLAN, IS 148 (ONE HUNDRED AND FORTY-EIGHT) SQUARE METRES IN EXTENT; AND

(b) AN UNDIVIDED SHARE IN THE COMMON PROPERTY IN THE SCHEME APPORTIONED TO THE SAID SECTION IN ACCORDANCE WITH THE PARTICIPATION QUOTA AS ENDORSED ON THE SAID SECTIONAL PLAN.

HELD BY DEED OF TRANSFER NO. ST16050/09

MORE ESPECIALLY SUBJECT TO THE CONDITIONS IMPOSED BY THE THATCHFIELD HOME OWNERS ASSOCIATION.

("the Immovable Property").

be declared executable for the aforesaid amounts.

27.1.4 An order authorizing the issuing of a writ of execution in terms of Rule 46 as read with 46A for the attachment of the Immovable Property.

27.1.5 That the property be sold in execution without a reserve price.

27.1.6 Costs of suit on attorney and client scale.

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C.COLNIS

JUDGE OF THE HIGH COURT  
GAUTENG DIVISION, PRETORIA

APPEARANCES:

Counsel on behalf of the Applicant: Adv. R. Raubenheimer  
Instructed By: Vezi and De Beer Incorporated

Appearance on behalf of the First Respondent: Mr. S Motha (In Persona)  
Appearance on behalf of the Second Respondent: Ms. M.P Motha (In Persona)

Date of hearing: 20 May 2024  
Delivery of judgment: 19 November 2024