REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE Number: 2024/026824
(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO
27 May 2025

In the matters between:-

FIRSTRAND BANK LIMITED Applicant
(Registration number: 1929/001225/06)

and

ZOLA JOSEPH MOLUTSI First Respondent
(Identity Number: 7[...])

LINDIWE MOLUTSI Second Respondent
(Identity number: 7[...])

JUDGMENT

H F JACOBS AJ:

[1] The plaintiff claims payment of R2,422,260.66, interest, costs, and an order declaring immovable mortgage property executable due to the first respondent's breach of payment obligations under a loan agreement. The second respondent is a surety for the debt of the first defendant.

[2] The respondents appeared in person at the hearing. I invited both respondents to address me, and they informed me that the first respondent would speak on their behalf. The second respondent confirmed what the first respondent stated in open court.

[3] The respondents do not deny their indebtedness under the contract and their default of payment but challenge the plaintiff's entitlement to payment in these proceedings for the following reasons:

3.1. For want of compliance with section 129 of the National Credit Act;

3.2. Refusal by the applicant to assist them while they were in default of payment during hard times;

3.3. That the relief sought would, if granted, infringe their rights to housing as guaranteed under section 26(1) of the Constitution of 1996; and

3.4. Repayment of the debt should be rescheduled and extended for 5 years, and the arrears added to the rescheduled loan amounts to facilitate settlement by the respondents of their obligations towards the plaintiff as credit provider.

[4] The respondents complain about compliance with section 129 of the National Credit Act. They say that the physical address of the immovable property concerned and their chosen *domicilium citandi et executandi* is "6[…] (8[…]) M[…] Close, Heuwelsig Estate, Celtisdal Ext 20, 0157". They say that the Section 129 notices were sent to the incorrect address and they never received them.

[5] In terms of the loan agreement, the first respondent chose the following address for notices and as his *domicilium citandi et executandi*: "*8[...] H[...] Estate, Molepo Close, Celtisdal Ext 20, Centurion, 0157".* There was more than one set of letters of demand sent to the respondents; the first were sent on 20 December 2023. The respondents admit having received those during January 2024.

[6] Regarding the deed of suretyship, the second respondent (the first respondent's wife) specified the following address as her address for notice and *domicilium citandi et executandi* for the purposes of the suretyship: "*8[...] H[...] Estate, M[...] Close, Celtisdal, 0157."* The letters of demand dated 20 December 2023 were sent to the respondents at the address provided as "*8[...] H[...] Estate,*

M[...] Close, Celtisdal, 0157." The respondents acknowledged receipt of these letters on 9 January 2024 in paragraph 24 of the opposing affidavit when copies of the letters were emailed to them.

[7] The applicant's attorney of record dispatched notices in accordance with section 129 of the National Credit Act to both respondents at the following address: *"NO 6[...] (Erf 8[...]) M[...] Close, Celtisdal Ext 20, H[...] Estate, Centurion, 0157".* The post office provided a report indicating that the physical notification was delivered to the respondents on 31 January 2024. This shows a discrepancy between the correct spelling of the street name of the mortgage property and, consequently, the respondents' chosen *domicilium citandi et executandi*. The applicant does not dispute that the property description used in the notices issued to the respondents was incorrect.

[8] The respondents do not dispute that they received the letters of demand between 20 December 2023 and 9 January 2024, nor do they contest that the section 129 notices were sent to and addressed correctly as far as the stand number within the estate is concerned. They acknowledge that the letters were received by the correct Post Office and that the Post Office issued a notification to the respondents to collect the registered mail letters. However, the respondents claim that they never received the notices as stipulated in Section 129 of the NCA. The applicant further submits that the Section 129 notices were attached to their application (the founding affidavit) and that the respondents received the notices upon service of the application by the Sheriff. It is concluded that the service of the papers, which occurred months before the hearing, afforded the respondents the opportunity to act as the notices under section 129 invited them to do so. The respondents did not seek any directions from the court in accordance with section 130(4)(b)(2) and provide no indication of any prejudice they might have suffered or what actions they would have taken had they received the notices prior to the service of the application. The applicant concludes by asserting that it complied with the provisions of section 129 of the National Credit Act, stating that actual receipt of the notices is not a legal requirement for a valid claim of this nature.

[9] The respondents argue that the arrears ought to be capitalised and the repayment term extended by five years. They assert that this will not prejudice the applicant. The respondents informed me that in 2015, they concluded a facility agreement with the applicant, at which point the monthly instalments were £21,868.87, escalating to R32,495.00 per month (an increase of R10,600.00 per month over five years). The respondents state that this type of proposal is one that the applicant is unwilling to consent to, and for this reason, the application for judgment and ancillary relief should be refused.

[10] Objectively viewed, it is also possible that the respondents could dispose of the dwelling and free themselves from the escalating debt. The value of the property, based on the evidence before me, is between R3,800,000.00 and R3,040,000.00, while the outstanding debt to the applicant is just shy of R2,500,000.00 (as of the end of January 2024). A sale of the property could, therefore, relieve the respondents of the debt owed to the applicant and might even provide them with a substantial excess.

[11] In my view, the respondents cannot insist on a rescheduling of the debt. They cannot afford to pay such a large monthly instalment.

[12] The relief sought does not, in my view, infringe the respondents' right to adequate housing. They occupy the dwelling concerned at the cost of an escalating debt in excess of R20,000.00 per month, for which they have been in default for many months. Surely, the respondents can obtain more modest accommodation at a much lower cost, and I am not prepared to find, on the evidence before me, that the relief sought, if granted, would deny the respondents access to adequate housing that amounts to an infringement of their rights in terms of section 26(1) of the Constitution.

[13] The first respondent was obliged to repay the loan with interest thereon by way of monthly instalments of R21,868.87 over a period of 240 months. By 22 January 2024, the account was in arrears in the amount of R242,184.60 (instalments of 10 months).

[14] By no later than 9 January 2024, the respondents were aware that the applicant had demanded payment of the debt for which they had been in default for 10 months. They are not exceptional consumers requiring special protection under the court-avoident and settlement-friendly processes stipulated by consumer legislation.

[15] Mindful of the principles set out in Kubyana[1], I believe that the applicant has demonstrated that the respondents have been informed and notified of their rights and the process as stipulated by section 129(1)(a) of the National Credit Act.

[16] Under the circumstances I make the following order:

1. Judgment against the first and second respondents is granted, jointly and severally as follows:
    1.1. The amount of R2,422,260.66;
    1.2. Interest on the above amount calculated at the rate of 12.00% per annum, calculated daily and compounded monthly in arrears from 19 January 2024 to date of final payment, both dates inclusive;
    1.3. Costs of the application on the scale as between attorney and client, including the costs of counsel to be taxed, on scale C of the High Court tariff.
2. The first respondents immovable property, mentioned herein below, is declared specially executable:

    ERF 8[...] C[...] EXTENSION 20 TOWNSHIP
    REGISTRATION DIVISION J.R. GAUTENG PROVINCE
    MEASURING 788 SQUARE METRES
    HELD BY DEED OF TRANSFER NUMBER T72191/2008
    ("the property")
3. Authorising the Registrar of the Honourable Court to issue a writ in respect of the above property;
4. That the property mentioned herein above may be sold in execution for a reserve price of R 2,500,000.00;

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[1] *Kubyana v Standard of SA* 2014 (3) SA 56 (CC) at [18] – [54]

H F JACOBS
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Heard on:	12 May 2025
For the Applicant:	Adv AP Ellis Email: alex@gkchambes.co.za
Instructed by:	PDR Attorneys Email: jaco@legaledge.co.za
The Respondents:	In person
Date of Judgment:	27 May 2025