

SOUTH AFRICA / JUDGMENT

Body Corporate Silver Stream v Mathibela (97703/2015) [2025] ZAGPPHC 101 (31 January 2025)

[2025] ZAGPPHC 101

COURT

North Gauteng High Court, Pretoria

BEFORE

L.A. Retief

CASE / FILE NUMBER

97703/2015

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IN

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG

DIVISION, PRETORIA)

Case No: 97703/2015

(1)

REPORTABLE: (2)

OF INTEREST TO OTHER
JUDGES: (3)REVISED: DATE
31 JANUARY 2024
SIGNATURE

In the matter between:

THE
BODY CORPORATE SILVER STREAM
Applicant
and
NOMVULA
FREDA MATHIBELA
(Identity
No: 4[...])
Respondent
This
judgment is prepared and authored by the Judge whose name is
reflected as such and is handed down electronically by circulation
to the parties / their legal representatives by email and by
uploading it to the electronic file of this matter on CaseLines.
The date for handing down is deemed to be 31 January
2025.

JUDGMENT

INTRODUCTION

- [1] The body corporate of Silverstream [the applicant] brings an application to declare an immovable property specifically executable and for an order authorising the issuing of a writ of execution against such immovable property in accordance with the provisions of rule 46 and 46A of the Uniform Rules of Court. The property is known and described as Unit 1[...] in the Sectional Title

Scheme Silver Stream, Scheme No. 854/2004, Halfway Gardens, Extension 23, 1270, Registration Division IR, Gauteng Province, held by deed of transfer ST 5127/2009 [the property] [attachment and execution relief].

- [2] This application is brought for the respondent's failure to pay her monthly levies in respect of the property to the applicant. Default judgment for the judgment debt was sought and granted in terms of Uniform Rule 31(5) on the 22 July 2016. This is almost a decade ago. Judgment was granted for the capital sum of R81 396.95 [capital], together with interest at a rate of 9% per annum from the date of the summons to date of final payment and costs of R200.00 plus Sheriff's fees. The applicant, prior to launching this attachment and execution relief sought to sequester the respondent's estate. However, Fourie J discharged the provisional order based on an argued point in limine raised by the respondent's daughter, Ms Pearle Mathibela, a lack of authority point. Notwithstanding this outcome, the respondent has to date not attempted to rescind the default judgment, nor to stay and set aside the warrant of execution against her movable assets nor has the full outstanding capital, let alone the accrued interest and costs been settled. In consequence, the default judgment and the fact that the respondent did not possess sufficient cash or movables to pay the judgment debt stands. These jurisdictional facts remain undisturbed.

[3] As a result of the litigious history, this application was both served on the respondent's erstwhile attorneys Sambo-Mlahleki Attorneys [respondent's attorneys] and on Ms Pearl Mathibela. Out of an abundance of caution it too was served on the respondent personally via sheriff on the 9 February 2024. Both the Local Municipality and Standard Bank, the preferential creditor, received notice of the

application in July 2022 via Sheriff. All the parties received notice of the date of the hearing.

[4] The respondent did not appear at the date of the hearing, but her daughter, Ms Pearl Mathibela's appeared acting in person.

THE PROCEDURAL LANDSCAPE OF THE APPLICATION BEING PLACED ON THE OPPOSED ROLL

[5] The notice of motion initiating this application, indicated that if no intention to oppose the application was received, the matter would be enrolled on the unopposed roll for the 22 August 2022. On the 18 August 2023, two (2) days prior to the matter being heard on the unopposed roll, the respondent attorneys formerly delivered a notice to oppose the application. Such notice, indicated to the applicant that they were acting on behalf of the respondent and that, all further documents and pleadings relating to this application, could be served at their offices. Other than this procedural step, the record demonstrates that the respondent's

attorneys only authored an email to the applicant's attorneys in which they stated the following:

"We refer to the above matter and transmit herewith our client's notice of intention to oppose (the respondent only-own emphasis)."

Given the history of this matter and the serious consequences of the order sought, it has taken longer than initially anticipated to finalise the opposing papers. Nonetheless we expect to be in a position to deliver the papers by the end of the week or at the beginning of next week (own emphasis). We trust that in the meantime you will remove the application from the unopposed roll."

[6] The respondent attorneys did not, as a fact, file opposing papers at all, let alone on behalf of the respondent. Nor were any opposing papers delivered by the end of the that week (22 August 2022) nor the beginning of the following week by them. This email appears to be the last step taken by the respondent's attorneys in the furtherance of the respondent's interests in this application. Notwithstanding no formal withdrawal has been served, no a practice note, joint minute nor heads of argument were served in accordance with this Divisions directive. By design or by instruction the respondent herself failed to depose to any evidence pertaining to the subject matter of this application. This would include deposing to a confirmatory affidavit to support any other evidence that may pertain to her, and which would be relevant. Notwithstanding, the applicant's attorney served all the papers relating to this matter on their offices, including the notice of set down for the date of the hearing of this application. This procedural

inaction requires further enquiry.

[7] Now, that it has been established that the respondent's attorneys were not, as they maintained, finalising opposing papers on behalf of the respondent, what did transpire during their inaction? On the 20 August 2022, Ms Pearl Mathibela. deposed to an affidavit which headed "RESPONDENT'S EXPLANATORY AFFIDAVIT (REMOVAL OF THE APPLICATION FROM THE UNOPPOSED ROLL TO THE OPPOSED ROLL)". The affidavit was uploaded without proof of service. Be that as it may, although the explanatory affidavit is headed "RESPONDENT'S EXPLANATORY AFFIDAVIT", the heading is misleading in that the content was not confirmed by the respondent under oath in so far as its content related to her. It therefore simply was an affidavit by Ms pearl Mathibela.

[8] At this juncture it is important to note that the respondent's attorney have never come on record and do not act for Ms Pearl Mathibela. In the explanatory affidavit, Ms Pearl Mathibela states that she is a duly admitted Advocate in private practice and the daughter of the respondent. The purpose of the explanatory affidavit was set out and three reasons were provided, therefore. The first reason proffered was to confirm that the application was opposed, and reference was made to the notice to oppose. The second reason proffered was to confirm that the process of finalising the opposing papers was currently underway, implying underway as at the 20 August 2022, ostensibly placing the applicant at ease that the notice to oppose by the respondent was not a ruse and that an answer to the claim would be forthcoming. Lastly, Ms Pearl Mathibela stated that she wished to safeguard her mother's

rights specifically as they related to the costs of the Court appearance on the unopposed roll for Monday, 22 August 2022. No further rights of the respondent were alluded to. In this way, Ms Pearl Mathibela requested that the cost be reserved for the

determination of the main application. The importance of this affidavit lies therein that the ownership of the property is confirmed as being that of the respondent, and that Ms Pearl Mathibela merely occupied the property. In paragraph 5 of the explanatory affidavit she states:

"5. The home sought to be declared specifically executable is in fact my home – although registered in my mother's name (own emphasis - the respondent) as I have said, my mother has never had any dealings with the cited applicant or its managing agent, Pretor Group. I am responsible for all levies and charges lawfully raised by the Body Corporate and have been so responsible since 2009."

[9] Curiously, Ms Pearl Mathibela who confirms that she is liable for the levies, ostensibly as a result of an inter partes arrangement with the respondent, never acted in the respondent's interests by challenging the default judgment taken in her mother's absence based on her admission of liability nor, did she attempt to entered into any payment arrangement with the applicant through their attorneys to pay, at least, the capital in full nor, has she tried to provide movables or disposable property of her own for realisation to satisfy the warrant to assist the respondent, her mother. This inaction to pay a debt she states she is responsible for, at the cost of the respondent, her mother speaks to her bona fides.

- [10] Further foreshadowed in paragraph 8 of this affidavit, Ms Pearl Mathibela states that she will depose to the opposing affidavit and the necessary condonation in the matter as she possesses the personal knowledge relating to the facts arising. Unfortunately, an affidavit opposing the attachment and execution relief was only uploaded onto CaseLines the following year in June 2023. No proof nor manner of service was forthcoming. However as appears, the objective to have the application removed from the unopposed roll to the opposed roll and not at the respondent's cost, was achieved.

UNIFORM RULE 7 NOTICE

- [11] The applicant contended in argument that the uploading of the of the opposing papers triggered it to file a Uniform rule 7 notice [rule 7 notice] on the respondent. Counsel for the applicant submitted that if the date of the opposing papers, the 4 June 2023 is considered then, the applicant had complied with the provisions of rule 7(1). The veracity of this submission must borne out on the papers. The difficulty the Court has is that the rule 7 notice is dated the 1 June 2023, a date prior to the 4 June 2023. As no other date was provided for the applicant's knowledge of the opposing papers, the 4 June 2023 was accepted by this Court. In consequence the submission can't be correct.
- [12] The rule 7 notice was served personally on the respondent. The content of the notice challenged Ms Pearl Mathibela's authority to act on behalf of the respondent and called upon Ms Pearl Mathibela to provide proof of her authority to act on behalf of the respondent. Considering the heading of the opposed papers being referred to as "THE RESPONDENT'S OPPOSING AFFIDAVIT" and due to the absence of any affidavit concerning a response by the respondent to the attachment and execution relief, one understands the confusion caused by the papers filed.
- [13] However, Ms Pearl Mathibela does not state under oath that she acts on behalf the respondent but that the facts are in her personal knowledge and that she deposes to the same as a party affected. Uniform rule 6 makes provision for any person to file papers.
- [14] The respondent nor Ms Pearl Mathibela answered the rule 7 notice. Having regard to the above the challenge cannot be sustained and must fail.

CONDONATION

- [15] As foreshadowed in the explanatory affidavit, Ms Pearl Mathibela seeks condonation for the late filing of the opposing papers in terms of uniform rule 46A(8)(c). Moving from the allegations she made under oath in the explanatory affidavit that opposing papers "would be filed shortly", shortly translated into approximately 10 (10) months before the papers were delivered. The reasons for the delay and explanation set out to enable this Court to understand how it really came about, during that time and to assess the conduct and motive of Ms Pearl Mathibela, alternatively the respondent, was set out and explained in a single paragraph, paragraph 89. The thrust of the explanation, being the time, she spent to "unearth the deceptive accounting employed by Pretor Group", the time it took to respond to

both the summons and a summary judgment application in the Randburg Regional Court, a matter too relating to outstanding levies of the same property and, on loadshedding. Notwithstanding, she stated under oath that the process, the process of responding to the summons and the summary judgment as well as the process relating to the deceptive unearthing

of the Pretor Group, was completed in September 2022. No further explanation is set out to explained the further and continued delay from September 2022 to June 2023, let alone with any particularity. This failure not only makes it impossible to ascertain, with any certainty whatsoever what the reason for the delay was. It also, precludes the Court of being in a position to exercise its discretion based on any facts for that period. A period of delay for approximately 9 (nine) months therefore remains unexplained. The unexplained delay period is an unreasonable period.

[16] Condonation is not for the taking and the reasons must be properly explained with sufficient particularity, covering the entire period of delay[1]. It is further trite that good cause must be shown for the question of prejudice to arise.[2] To ascertain whether good cause has been demonstrated this Court considered the content the opposing papers as a whole to ascertain

whether a triable defence existed which Ms Pear Mathibela wished to prosecute in earnest and found that, notwithstanding the many

aggravances raised by Ms Pearl Mathibela and accepting her own version, her grievance was with the Pretor Group and their accounting methods. Notwithstanding during that period of 9 (nine) months, Ms Pearl Mathibela, who alleged under oath that she was an admitted advocate and in consequence not a layman at sea in a litigation had not joined the Pretor Group nor herself as an interested party. The Court finds that that such inaction demonstrates a lack to bring this matter to finality.

[17] Furthermore, none of the jurisdictional facts entitling the applicant's entitlement to the attachment and execution relief was disturbed. As to the authority point raised in limine from the bar, such was ill conceived as the oral submissions did not deal with the point of authority but rather possible hearsay evidence. Be that as it may, the deponent to the founding papers clearly stated under oath that she possessed personal knowledge of the facts, unless otherwise expressed. Such 'otherwise expressed' was by reference to phrases like, "I have been advised...". It too, is common cause that that only the following payments were made by Ms Pear Mathibela subsequent to the default judgment being granted since default judgment being granted, namely:

17.1. 8 December 2016 R 4,000.00

17.2. 9 December 2016 R 5,000.00

17.3. 4 July 2017 R 500.00

17.4. 26 July 2018 R10,272.92

totalling payments R19,772.92

[18] In consequence, as at the date of the hearing the undisputed fact that the outstanding capital sum claimed by the applicant was still outstanding and that the veracity of Ms Mathibela's submissions in the record that she could not make payments to Pretor due to their accounting system was highly diluted, particularly by on her own concessions. Considering all the facts no triable defence to the attachment and relief application was demonstrated as against the unreasonable and unanswered delay. This Court furthermore took into account that Ms Pearl Mathibela nor the respondent had made any further payment arrangements with the applicant's attorneys nor did either one of them tender payment into any attorney's trust account to show any good faith and or a willingness to at least pay the judgment debt. Considering all the facts and taking all the oral submissions into account, condonation was not granted. This Court made the ruling, read certain of the reasons into the record at that time so that the matter could proceed. Such reasons are amplified by the reasons in this judgment. Ms Pearl Mathibela immediately required reasons for the ruling. The

Court explained that the reasons were read into the record and that a copy of the record would be transcribed. The court encouraged Ms Pearl Mathibela as a person affected by the attachment and execution relief to remain in Court and explained that she could make further submissions to assist the Court with the adjudication of the relief. She remained in Court and made further submissions at the relevant time.

[19] An application to strike certain paragraphs of such opposing affidavit for want of relevance, was brought by the applicant. As a result, that such affidavit was not admitted into evidence due to late filing, the need to entertain the application was absent. This Court now considers the attachment and execution relief having regard to the founding papers, the explanatory affidavit and the oral submissions made by both the applicant and Ms Pearl Mathibela, including further documents called for.

ATTACHMENT AND EXECUTION RELIEF

[20] On the common cause facts, the property is residential property and as such the provisions of Uniform Rule 46A (1). It is an undisputed fact that the judgment debtor, the respondent is the registered owner of the property and that the property is not her primary residence. The respondent resides in Groblersdal, a property owned by Ms Pearl Mathibela. Such fact submitted into the record during argument by Pearl Mathibela. The property is occupied by Ms Pearl Mathibela who considers the property her home. Flowing from the respondent's ownership,[3] section 3(1)(f) of the Sectional Titles Schemes Management Act, 8 of 2011 [Title Schemes Act] applies. The application of the section was not disputed. In consequence, the applicant is entitlement to raise levies and the owner's statutory obligation to pay undisputed. This is stated notwithstanding any inter partes arrangement the respondent may have with Ms Pearl Mathibela.

[21] Applying the reasoning of the Constitutional Court's [CC] in the Bestbier matter[4] in respect of residential property when the judgment debtor is the owner but does not occupy the property the Court's enquiry in respect of rule 46A does not include sub-rule 46A(2)(a)(i), 46A(2)(b) and 46A(8)(d)[5]. The CC further re-iterated that the remaining provisions apply including, sub-rule 46A(3)(b). It is for this purpose that this Court considered the submission of Ms Pearl Mathibela, as a party that may be affected by the sale in execution. At this juncture this Court records that it was a grave pity that the voice of the respondent was not specifically heard as she, notwithstanding personal service of the application, in that she did not: prosecute her opposition in any way nor by confirming any evidence proffered by Ms Pearl Mathibela, nor did she provide any evidence in terms of sub-rule 46A(6), nor did she make any submissions in respect of the Rule 46A relief to assist this Court and, nor did she attempt to bolster the submissions made by her daughter, including the terms of the inter partes agreement relating to her of her daughter's right to occupy the property. The respondent's voice in respect of this application remains silent.

[22] Be that as it may for clarity the relevant provisions of Uniform rule 46A are repeated:

"(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); and

(ii) consider alternative means by the judgment debtor of satisfying the judgment debt, other than execution against the judgment debtor's primary residence (own emphasis).

(b)

(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.

(3) Every notice of application to declare residential immovable property executable shall be –

(a) ...

(b) on notice to the judgment debtor and to any other party who may be affected (own emphasis) by the sale in execution, including the entities referred to in rule 46(5)(a):
Provided that the court may order

service on any other party it considers necessary.

- (c) supported by affidavit which shall set out the reasons for the application and the grounds on which it is based; and
- (d) served by the sheriff on the judgment debtor personally: Provided that the court may order service in any other manner.
- (6)
- (a) A respondent (own emphasis), upon service of an application referred to in subrule (3), may –
 - (i) oppose the application; or
 - (ii) oppose the application and make submissions which are relevant to the making of an appropriate order by the court; or
 - (iii) without opposing the application, make submissions which are relevant to the making of an appropriate order by the court.
- (8) A court considering an application under this rule may –
 - (a) of its own accord or on the application of any affected party, order the inclusion in the conditions of sale, of any condition which it may consider appropriate.
 - (b) order the furnishing by –
 - (i) a municipality of rates due to it by the judgment debtor; or
 - (ii) a body corporate of levies due to it by the judgment debtor.
 - (d) order execution against the primary residence of a judgment debtor if there is no other satisfactory means of satisfying the judgment debt.
 - (e) set a reserve price.
 - (f) postpone the application on such terms as it may consider appropriate.
 - (g) refuse the application if it has no merit;
 - (h) make an appropriate order as to costs, including a punitive order against a party (own emphasis) who delays the finalisation of an application under this rule; or
 - (i) make any other appropriate order.
- (9)
- (a) ...
- (b) In deciding whether to set a reserve price and the amount at which the reserve is to be set, the court shall take into account -

- (i) ...
- (ii) ...
- (iii) ...
- (iv) ...
- (v) reduction of the judgment debtor's indebtedness on the judgment debt and as contemplated in subrule (5)(a) to (e), whether or not equity may be found in the immovable property, as referred to in subparagraph (iv).
- (vi) whether the immovable property is occupied, the persons occupying the property and the circumstances of such occupation.
- (vii) the likelihood of the reserve price not being realised and the likelihood of the immovable property not being sold;
- (viii) any prejudice which any party may suffer if the reserve price is not achieved; and
- (ix) any other factor which in the opinion of the court is necessary for the protection of the interests of the execution creditor and the judgment debtor."

[23] Considering Ms Pearl Mathibela's circumstances of occupancy and her Constitutional right to adequate housing in terms of section 26 of the Constitution, this Court again turns to paragraph 64 of the Bestbier matter, in which the CC reminded litigants that:

"[64] When one has regard to the facts of Jaftha[6] and Gundwana[7] and the reference of the Court to section 26 of the Constitution, it must be accepted that rule 46A aims to protect and entrench the right of access to adequate housing. This Court in Jaftha has concluded that section 26(1) is not triggered in every execution against immovable property. The Supreme Court of Appeal in Saunderson[8] endorsed this principle and further expanded on the adequacy aspect of the right:

'But Jaftha did not decide that the ownership of all residential property is protected by section 26(1); nor could it have done so bearing in mind that what constitutes 'adequate housing' is necessarily a fact-bound enquiry. One need only postulate executing against a luxury home or a holiday home to see that this must be so, for there it cannot be claimed that the process of execution will implicate the right of access to adequate housing at all.'

[24] Ms Pearl Mathibela on her own submissions is a legal practitioner who owns another property in Groblersdal. She is therefore not an indigent litigant and on the facts. This matter therefore does not concern the deprivation of adequate housing for the poor. Applying the facts of this case and the submissions made, Ms Pearl Mathibela, other than referring to her rights enshrined in section 26, failed to advance any reasons or provide any facts to this Court to substantiate why her right to adequate housing would be

infringed by the attachment and execution relief. It was almost as if, by mere reference to the Court's Constitutional obligation

to consider the provisions of section 26, the protection became established by her. This is not the case as considered by our Courts.

Both the respondent and Ms Pearl Mathibela who had received notice of the application would have been made aware of their right in terms of section 26 as the founding papers make extensive reference thereto.

[25] Ms Pearl Mathibela may have made the property her home, as one does, but this does not translate into her ability not to have access to adequate housing whether factually or financially. Factually she possesses access to another home, her own property in Groblersdal and she possesses the ability to afford adequate housing elsewhere, if need be, as no other evidence to the contrary was presented. The respondent who does not reside on the property too, will not be deprived of housing. No other submissions or facts were presented to consider. The respondent nor Ms Pearl Mathibela require the protection of section 26 of the Constitution.

[26] During the hearing this Court required a more recent valuation of the property to consider protecting the rights of the respondent. The matter stood down for such purpose without objection. An updated sworn valuation was obtained by CMV Valuations. Mr Koop De Vries Styger, an appointed appraiser was provided. The properties forced sale value was determined at R 900 000.00 and its market value at R 1 100.000.00. Ms Pearl Mathibela handed up a copy of the rates and taxes owing to the local municipality in the sum of R 2 894.93. The applicants did not object to the documents nor the veracity of its content. The remaining concern was a proper

calculation of the interest still outstanding which has not adequately been tendered into evidence. However, this Court does accept that such amount maybe substantial having regard to the failure to make payment. It is for this reason that balancing both the rights of the applicant and the respondent, a reserve price will be set and the execution of any order to be made will be suspended

for a specific period allowing for a proper calculation to be made setting out the capital sum, less the payments made and the interest calculation including recoverable costs as per Court order. The remaining dispute which Ms Pearl Mathibela may have with the Pretor Group relating to their charges and interest thereon, is not to be entertained in this matter nor a bar for the execution of the order.

[27] Having regard to the above a reserve price translating into the forced sale price at this stage is fair and reasonable, being R 900 000.00.

[28] The applicant succeeds with its attachment and execution relief.

COSTS

[29] Costs are in a Court's discretion. The applicant moves for attorney client costs against the respondent. This Court accepts that the respondent having received notice of the application and the set down date has elected not to participate herself. This is evident from her own attorney's supine inaction. It too is abundantly clear that Ms Pearl Mathibela did not want to be cited as a party to this matter as, if she wanted to, she would have. The consequences thereof, is to the prejudice of the respondent and the applicant. Such is clear as, it is only the applicant or the respondent who attracts a judgment, whose property is attached and who attracts an adverse cost order. It is for this reason that the Court is not inclined to mulch the respondent with a punitive cost order. These reasons must be considered as weighty factor in this matter in respect of further delays at the cost of both cited parties.

The following order:

1. The application for the condonation of the late filing of "THE RESPONDENT'S OPPOSING AFFIDAVIT" duly commissioned on the 28 March 2023 is dismissed.

2. The immovable property of the respondent, known as:

UNIT 1[...] IN THE SECTIONAL TITLE SCHEME SILVER STREAM

SCHEME NUMBER 854/2004, HALFWAY GARDENS

EXTENSION 23, 1270

REGISTRATION DIVISION J.R.

GAUTENG PROVINCE

IN EXTENT OF 112 (ONE HUNDRED AND TWELVE) SQUARE METRES

HELD BY DEED OF TRANSFER NUMBER ST15127/2009

["the property"] is declared specifically executable;

3. The Registrar is authorised to issue a writ of execution against the property in terms of Rule 46(1)(a)(ii) read with Rule 46A(2)(c).
4. The property of the respondent shall be sold by the Sheriff subject to the reserve price in the amount of R 900 000.00 (nine hundred thousand rand).
5. The execution of the property referred to in prayers 3 and 4 is suspended for a period of 5 (five) months from date of this order so that a proper debatement of the account in favour of the applicant can be done reflecting only the outstanding capital, the payments made, the interest thereon and recoverable costs as granted on the Court order of the 22 July 2016 and on condition that the full payment of the reconciled amount is made within such period of 5 (five) months .
6. The respondent to pay the costs of the application on a part and party scale taxed at scale B.

L.A. RETIEF

Judge of the High Court

Gauteng Division

Appearances:

For the Applicant: Adv Rousseau van Schalkwyk Cell: 071 549 4013 Email: rvs@rsabar.com

Instructed by attorneys: Kirkcaldy Pereira Inc Tel: 012 991 6180 Email: lee@kpinc.co.za Ref: LVDL/MAT 2653 For the Respondent No appearance Affected person: Pearl Mathibela Date of hearing 28 January 2025 Date of Judgment 31 January 2025

[1] Van Wyk v Unitas Hospital (Open Democratic Advice Centre as Amicus Curiae)

[2007] ZACC 24; 2008

(2) SA 472 (CC) at 477E-G.

[2] Standard General Insurance Co Limited v Eversafe (Pty) Ltd 2000 (3) SA 87 (W).

[3] In terms of the Sectional Titles Schemes Management Act, 8 of 2011, an “owner” means, “in relation to a unit or a section or an undivided share in the common property forming part of such unit, means, subject to subsection

(5), the person in whose name the unit is registered at the deeds registry in terms of the Sectional Titles Act or in whom ownership

is vested by statute, including the trustee of an insolvent estate, the liquidator of a company or close corporation which is the owner, the executor of an owner who has died, or the representative of the owner, who is a minor or of unsound mind, recognised by law, and “owned” and “ownership” shall have the corresponding meaning.”

[4] Bestbier and Another v Nedbank Limited

[2024] ZACC 2.

[5] Supra at [76].

[6] Jaffha v Schoeman, Van Rooyen v Stoltz

[2004] ZACC 25; 2005 (2) SA 140 (CC) ; 2005 (1) BCLR 78 (CC).

[7] Gundwana v Steko Development CC

[2011] ZACC 14, 2011 (3) SA 608 (CC); 2011 (8) BCLR 792 (CC).

[8] Standard Bank of South Africa v Saunderson

[2005] ZASCA 131; (2006) 2 SA 264 (SCA); 2006 (9) BCLR 1022(SCA).

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