

SOUTH AFRICA / JUDGMENT

Firststrand Mortgage Company (Rf) (Pty) Ltd v Tani (1342/2023) [2025] ZAFSHC 180 (18 June 2025) [2025] ZAFSHC 180

COURT

Free State High Court, Bloemfontein

BEFORE

Van Zyl

CASE / FILE NUMBER

1342/2023

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IN

THE HIGH COURT OF SOUTH AFRICA

FREE

STATE DIVISION, BLOEMFONTEIN

Not

Reportable

Case

no: 1342/2023

In

the matter between:

FIRSTRAND
MORTGAGE COMPANY (RF) (PTY) LTD
Applicant
and
MPUSANA
BRUCE
TANI
Respondent
Neutral
citation: FirstRand
Mortgage Company (RF) (Pty) Ltd v MB Tani
(1342/2023) [2025] ZAFSHC
180 (18 June 2025)

Coram:

Van Zyl, J

Heard:

23 January 2025

Delivered:

18 June 2025

Summary:

Application to declare immovable property specially executable – sufficient that respondent is advised of section 129(3) of the National Credit Act 34 of 2005 in the summons and particulars of claim. Sworn valuation for setting of reserve price accepted in form of supplementary affidavit.

ORDER

1. The

respondent`s immovable property known as ‘A unit consisting of:

(a)

Section

No. 22 as shown and more fully described on the Sectional Plan No.

SS182/2011, in the scheme known as Park Avenue in respect of the land

and building or buildings situate at Bloemfontein Extension 181,

Mangaung

Metropolitan Municipality, of which section the floor area,

according to the said Sectional Plan, is 73(seventy-three) 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. S[...]

is hereby

declared specially executable.

2. The

Registrar of the Court is authorised to execute a Warrant of

Attachment in respect of the aforesaid immovable property.

3. The

sale of the aforesaid immovable property by the Sheriff will be

subject to a reserve price of R460 000.00

4. The

respondent is ordered to pay the costs of this application on a scale as between attorney and client.

JUDGMENT

Van Zyl, J

[1] ST2783/2020 This is an application in terms of Uniform Rules 46(1) and 46A to declare the respondent's immovable property

especially executable. The said immovable property, which I shall hereinafter refer to as 'the property', is described in the application as follows:

'A unit consisting of:

- (c) Section No. 22 as shown and more fully described on the Sectional Plan No. SS182/2011, in the scheme known as Park Avenue in respect of the land and building or buildings situate at Bloemfontein Extension 181, Mangaung Metropolitan Municipality, of which section the floor area, according to the said Sectional Plan, is 73(seventy-three) square metres in extent; and
- (d) 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. S[...]

[2] The applicant is further seeking ancillary relief, which includes, inter alia, that the property may be sold in execution by the sheriff with a reserve price of at least R100 000.00, alternatively for a reserve price as determined by the Court. The applicant is also seeking payment of the costs of the application on an attorney and client scale.

Background:

- [3] On or about 30 January 2020 the applicant and the respondent concluded a written Home Loan Agreement ('the loan agreement') in terms whereof the applicant lent to the respondent the amount of R787 500.00 upon security of a guarantee. The respondent executed an indemnity in favour of the applicant. The respondent's obligations under the indemnity have been secured by the registration of a covering indemnity mortgage bond over the property in favour of the applicant. The property is the primary residence of the respondent.
- [4] The applicant is a duly registered credit provider in terms of the provisions of the National Credit Act, 34 of 2005.

- [5] In breach of the respondent's obligations in terms of the loan agreement, the respondent failed to make punctual payments to the applicant of the instalments due and payable under the loan agreement.
- [6] After having complied with the National Credit Act, the applicant issued summons against the respondent in terms whereof the applicant (as plaintiff) sought payment by the respondent (as defendant) of the total outstanding amount due and payable in terms of the loan agreement, together with interest thereon. The applicant also sought an order declaring the property specially executable with ancillary relief, as well as the payment of costs. On 31 August 2023 default judgment was granted in favour of the applicant against the respondent for payment of the sum of R815 939.50, with interest and costs on an attorney and client scale.
- [7] On 19 September 2024 the applicant issued the present application against the respondent. The respondent is opposing the application and filed an answering affidavit. The applicant thereupon filed a replying affidavit.
- [8] The respondent raised two points in limine in his answering affidavit.

First point in limine: non-compliance with Rule 46A(5)(a):

- [9] In his answering affidavit, filed on 5 November 2024, the respondent stated that Rule 46A seeks to protect home owners by ensuring that their homes are not sold in execution for prices which are not market related. He further averred at paragraph 8 of his answering affidavit as follows:

'I am advised that our courts are called upon to take account of the market value of the property, making a fair determination of what a fair reserve price would be. It is therefore a requirement for an applicant to have a sworn independent evaluation certificate by a property evaluator which in this instance the Applicant does not have. The Applicant has not complied with this requirement. The Applicant used a general valuation which does not give this a true reflection of the market value. I submit that as a result, this application falls to be dismissed.'

- [10] In the founding affidavit deposed to on 6 September 2024, it is averred that the applicant sent an independent valuer to the property to investigate and ascertain the condition and market value of the property, but that the said valuer was not able to gain access to the property and could not obtain the details of the occupants. The applicant thereafter obtained an 'updated external valuation of the property' attached to the founding affidavit as annexure 'RG8', in the amount of R850 000.00 and which valuation date was 6 December 2023.
- [11] The applicant's replying affidavit was subsequently filed on 5 December 2024. In the said replying affidavit, the applicant again referred to the valuation report attached to the founding affidavit as annexure 'RG8'. The applicant then further averred as follows in its replying affidavit:

- ‘11. An immovable property’s market value fluctuates and depends on a number of factors. These values change between the time summons is issued, and at the time the matter ultimately serves before the Court for determination and an order declaring the property specially executable.
12. For this reason, the Applicant adopted the practice of obtaining a new valuation, where necessary, supported by an affidavit by the valuator, closer to the time these applications are set down for hearing, and filed separately in the court file.
13. The purpose of this practice is to ensure that the correct and most recent values are placed before Court for consideration.
14. I confirm that an affidavit by the property valuer will be served and filed containing an updated market value closer to the hearing of this application.
15. It should be noted that the Respondent raised no dispute of the value of the immovable property at all.
16. In the premises it is submitted that the Respondent’s first point in limine should be dismissed.’
- [12] The application was subsequently enrolled for 23 January 2025. On 17 January 2025 the applicant filed a sworn valuation by one Frannie Marais who confirmed under oath that he valued the property on 14 January 2025, that the market value thereof is R800 000.00 and that the estimated forced sale value is R560 000.00. He further stated in his affidavit that he is an independent registered valuer and is not an employee of the applicant. The applicant instructs him from time to time to attend to valuations of immovable property on its behalf, for which he is then remunerated at an agreed tariff. He is registered with the South African Council for the Property Valuers Profession (SACPVP), as well as with the South African Institute of Valuers (SAIV), in accordance with the provisions of the Property Valuers Profession Act, Act no. 47 of 2000.
- [13] Mr Ngombane, who appeared on behalf of the respondent, referred in the respondent’s heads of argument to the general rule and well known authority that normally there are only three sets of affidavits allowed in motion proceedings. He submitted that the respondent will suffer prejudice should the supplementary affidavit be accepted into evidence, since the respondent will not have the chance to respond to the supplementary affidavit.
- [14] Rule 46A(2)(b) determines as follows:
- ‘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.’
- [15] Rule 46A(5) provides as follows:
- ‘Every application shall be supported by the following documents, where applicable, evidencing:

- (a) the market value of the immovable property;
- (b) the local authority valuation of the immovable property;
- (c) the amounts owing on mortgage bonds registered over the immovable property;
- (d) the amount owing to the local authority as rates and other dues;
- (e) the amounts owing to a body corporate as levies; and
- (f) any other factor which may be necessary to enable the court to give effect to sub-rule (8):

Provided that the court may call for any other document which it considers necessary.'

[16] In terms of Rule 46A(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;

(c) on good cause shown, condone –

(i) failure to provide any document referred to in sub-rule (5); or

(ii) delivery of an affidavit outside the period prescribed in sub-rule (6)(d);

(d) order execution against the primary residence of the 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 merits;

(h) make an appropriate order as to costs, including a punitive order against the party who delays the finalization of an application under this rule; or

(i) make any other appropriate order.'

[17] In *Absa Bank Ltd v Mokhebe and Related Cases* 2018(6) SA 492 (GJ) the court held as follows at para 57:

'... It is thus incumbent upon the bank or bondholder to place "all relevant circumstances" before the court when it seeks an order for execution. This, in our view, includes a proper valuation of the property (under oath), the outstanding arrears, municipal accounts and like information. This is not to thwart the mortgagee's right to execution, to which it may be entitled, but to secure a just and equitable outcome.'

[18] In *Nedbank Ltd v Mzizi and Related Cases* 2021(4) SA 297 (GJ) at para 20 the court held as follows:

‘To my mind, an internal bank valuation is not sufficient in and of itself to establish a reserve value unless it contains or is accompanied by evidence of independent verification as to value. Thus, either independent valuations should be obtained or further information as to value should be used, in addition to the bank’s valuation, to satisfy the court as to the appropriate reserve value. In all instances, the valuation should be proven by an affidavit of a person who is actually conducted the valuation him/herself and who is properly qualified in this respect.’

[19] In *SB Guarantee Company (Pty) Ltd v De Sousa* (2023/035447)

[2024] ZAGPJHC 459; 2024(6) SA 625 (GJ) (6 May 2024) the court held that applications under Rule 46A must include an independent and reliable valuation of the property provided under oath by a qualified expert valuer. The valuations should, in the absence of other evidence which may satisfy a court as to the expertise of the person who has determined that value, be those of an accredited professional valuer registered in terms of the Property Valuers Profession Act, 47 of 2000.

[20] In this matter an unsworn valuation was initially attached to the founding affidavit as annexure ‘RG8’. On a date which is not evident from the papers, an affidavit by the person who performed the valuation, one Rinus Pretorius, was filed, which affidavit is dated 21 February 2024. In the said affidavit Mr Pretorius confirmed the valuation of the property he performed on 6 December 2023 to be R550 000.00. He further confirmed that he is an independent registered valuer, not an employee of the applicant and registered in accordance with the provisions of the Property Valuers Profession Act, 47 of 2000.

[21] Although this affidavit, read with the valuation previously referred to, now constitutes a valuation under oath, it is not evident whether this affidavit was served upon the respondent’s attorney.

[22] Even if it had been served upon the respondent’s attorney, the fact remains that it was a valuation dated 6 December 2023, whilst the application was heard only on 23 January 2025. It was thus outdated. In the circumstances the supplementary affidavit with the updated valuation performed on 14 January 2025, which was indeed served on the respondent’s attorney, constitutes an updated and reliable document for purposes of my adjudication of the application and more pertinently for purposes of determining a reserve price. Had the applicant not placed the said supplementary, updated valuation before me *mero motu*, I would have postponed the application with an order that the applicant places an updated valuation before me.

[23] The respondent at no point disputed the market value of the property and there is no evidence to suggest that the values, especially the updated valuation, is incorrect and unreliable. It will consequently also serve no purpose to postpone the application for the respondent to obtain a valuation.

[24] The first point in limine can consequently not be upheld.

Second point in limine: defective notice of motion

[25] According to the respondent the applicant is enjoined to have the following statement in its notice of motion:

‘The defendant’s (or respondent’s) attention is drawn to Section 129(3) of the National Credit Act 34 of 2005 that he/she may pay to the credit grantor all amounts that are overdue together with the credit provider’s permitted default charges and reasonable agreed or taxed costs of enforcing the agreement prior to the sale and transfer of the property and so revive the credit agreement.’

[26] The respondent averred in its answering affidavit that the applicant failed to discharge the aforesaid duty, that the notice of motion is therefore fatally defective and the that application consequently falls to be dismissed.

[27] For purposes of the aforesaid argument, Mr Ngombane relied on Absa Bank Ltd v Mokebe and Related Cases 2018(6) SA 492 (GJ) at 527 D – E where the court found as follows regarding the aforesaid statement:

‘Any document initiating proceedings where a mortgage property may be declared executable must contain the following statement in a reasonably prominent manner . . .’

[28] Mr Steenkamp, who appeared on behalf of the applicant, correctly pointed out during his oral argument that at p.3 of the summons issued in the present matter, under the heading in bold and capital letters ‘THE DEFENDANT IS SPECIFICALLY REFERRED TO THE CONTENTS OF THE PARAGRAPHS HEREIN BELOW’, the following paragraphs appear:

‘(e) The Defendant’s attention is drawn to Section 129(3) of the National Credit Act, Act 34 of 2005 that Defendant may pay to the credit grantor all amounts that are overdue together with the credit provider’s permitted default charges and reasonable agreed or taxed costs of enforcing the agreement prior to the sale and transfer of the property and so revive the credit agreement;

(f) The default charges and costs of enforcing the agreement mentioned above in paragraph (e) must be paid before the credit agreement will be re-instated. The amount of default charges and enforcement costs can be obtained from Plaintiff’s attorneys on (0[...] with reference: L[...].’

[29] Two paragraphs with similar wording were repeated at paragraphs 10.7 and 10.8 of the particulars of claim.

[30] The particulars of claim attached to the summons claimed payment of the total amount due and payable by the respondent to the applicant in terms of the loan agreement, as well as declaring the property specially executable.

[31] Mr Steenkamp submitted that the aforesaid directive issued by the court in Absa Bank Ltd v Mokebe requires that the document ‘initiating’ proceedings where property may be declared executable must contain the said statement. In this regard he submitted that in the present

matter the applicant initiated legal proceedings against the respondent by way of summons and the particulars of claim, both of which indeed contain the relevant statement in respect of Section 129 of the National Credit Act. This submission is confirmed by the following statement at paragraph 14 of Absa Bank v Mokebe:

‘In our view the money judgment is an intrinsic part of the cause of action and inextricably linked to the in rem claim for an order for execution, the latter which is non-existent without the money judgment. The default of the debtor and the money judgment are a pre-condition for the entitlement of the mortgagee to foreclose.’

[32] The second point in limine can consequently also not be upheld.

Conclusion

[33] When considering all the applicable factors that need to be taken into consideration when deciding whether a writ should be issued, I am of the view that the property is to be declared specially executable. The respondent raised no defence to the merits as such.

[34] In order to secure a just and fair outcome, I am also of the view that I am to determine a reserve price based upon all the relevant circumstances placed before me.

[35] The following values are relevant for purposes of determining a reserve price:

1. The updated market value of the property is R800 000.00’
2. The municipal value of the property is R830 000.00.
3. The average value of the property is R815 000.00.
4. The combined outstanding amount due to the local authority and body corporate levies is approximately R111 000.00.
5. The reserve price is therefore to be calculated 70% of the average value of the property, which is R815 000.00, less the outstanding rates, taxes and levies, which equates to the rounded figure of R460 000.00.

Request for suspension/postponement of order

[36] Mr Ngombane indicated that it is his instructions to request that should I decide to declare the property specially executable, I should suspend or postpone the issuing of the order for four months so as to grant the respondent an opportunity to pay the outstanding

arrears, interest and costs on the outstanding loan

[37] The monetary judgment in this matter was granted on 31 August 2023 already. The writ of execution against the respondent’s moveable property was served on the respondent personally on 4 September 2024 and the total of the movable goods attached by the Sheriff was approximately R16 319.00 and thus wholly insufficient to satisfy the judgment debt.

[38] The respondent will in any event have another approximately four months' opportunity before the property will be sold in execution. In this regard I refer to paragraph 84 of the founding affidavit:

'An order authorising a writ of execution against the immovable property of the Respondent is not the proverbial end of the road for the Respondent in that at least 4 months will lapse before the property may be sold in execution, during which time the Respondent could make arrangements for the repayment of the arrear amount due, which may include the possibility to reinstate the credit agreement in terms of section 129 of the National Credit Act, Respondent may sell the property privately, make use of Applicant's Quick sell program or conclude a special arrangement with Applicant.'

[39] In the circumstances I am not willing to postpone the issuing of the order.

Costs

[40] The parties agreed at paragraph 2.16.2 of the loan agreements that costs will be payable on attorney and client scale. There is no reason why such an order should not be granted.

Order

[41] The following order is issued:

1. The respondent's immovable property known as
 - (e) Section No. 22 as shown and more fully described on the Sectional Plan No. SS182/2011, in the scheme known as Park Avenue in respect of the land and building or buildings situate at Bloemfontein Extension 181, Mangaung Metropolitan Municipality, of which section the floor area, according to the said Sectional Plan, is 73(seventy-three) square metres in extent; and
 - (f) 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.

C. VAN ZYL, J

Appearances:

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