

SOUTH AFRICA / JUDGMENT

SB Guarantee Company (RF) (Pty) Ltd v Hlongwane (17048/2021) [2024] ZAGPPHC 1275; 2025 (3) SA 640 (GP) (4 December 2024) [2024] ZAGPPHC 1275

COURT

North Gauteng High Court, Pretoria

BEFORE

Swanepoel, Neukircher, Retief

CASE / FILE NUMBER

17048/2021

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FLYNOTES:

CIVIL PROCEDURE – Execution
– Reserve price –
Reconsideration –
Inconsistent application of rule and conflicting judgments –
Full court giving guidance on manner
in which Uniform Rule 46A(9)
to be applied – Unless special circumstances exist, matter
to be heard in open court –
Directions for service on
judgment debtor – Powers of reconsidering court –
Where circumstances warrant it, court
is entitled to revisit
entire order, including declaration of executability –
Requires full and relevant information
be placed before it.
IN THE HIGH COURT OF
SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Case number:

17048/2021

Date of hearing: 9 September 2024
Date delivered: 4
December 2024
(1)
REPORTABLE: YES/NO
(2)
OF INTEREST TO OTHERS JUDGES: YES/NO
(3)
REVISED
DATE
SIGNATURE
In

the application of: SB
GUARANTEE COMPANY (RF) (PTY) LTD
Applicant
(Execution
creditor)
and
SIBUSISO
ANTHONY HLONGWANE
Respondent
(Judgment
debtor)

JUDGMENT

SWANEPOEL J: (NEUKIRCHER J AND RETIEF J CONCURRING)

- [1] The application of rule 46A(9), when a Court reconsiders a reserve price on an immovable property has confounded a number of courts resulting in an inconsistent application of the rule and in conflicting judgments, not only in this Division but also in other Divisions. The Judge President has convened this Full Court to give guidance on the manner in which rule 46A(9) is to be applied.
- [2] The following main questions have to be considered:
- [2.1] should an application in terms of rule 46 A (9) be brought in chambers or in open court?
- [2.2] Should the application be brought:
- [2.2.1] on the same papers that served before the court that granted the initial rule 46 A application, but duly supplemented?
- [2.2.2] on an entirely new application? or,
- [2.2.3] by any other method?
- [2.3] What are the powers of a Court reconsidering the reserve price?

[3] The relevant portions of rule 46A read as follows:

“(1) This rule applies whenever an execution creditor seeks to execute against the residential immovable property of a judgment debtor. . . .

(5) Every application shall be supported by the following documents, where applicable, evidencing:

- (a) the market value of the 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 subrule (8):

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

(9)

(a) In an application under this rule, or upon submissions made by a respondent, the court must consider whether a reserve price is to be set.

(b) In deciding whether to set a reserve price and the amount at which the reserve price is to be set, the court shall take into account-

(i) the market value of the immovable property;

(ii) The amounts owing as rates or levies;

(iii) The amounts owing on registered mortgage bonds;

(iv) any equity which may be realized between the reserve price and the market value of the property;

(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 realized 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.

(c) If the reserve price is not achieved at a sale in execution, the court must, on a reconsideration of the factors in paragraph (b) and its powers under this rule, order how execution is to proceed.

(d) Where the reserve price is not achieved at a sale in execution, the sheriff must submit a report to the court, within 5 days of the date of the auction, which report shall contain-

(i) the date, time and place at which the auction sale was conducted;

(ii) the names, identity numbers and contact details of the persons who participated in the auction;

(iii) the highest bid or offer made; and

(iv) any other relevant factor which may assist the court in performing its function in paragraph (c).

(e) The court may, after considering the factors in paragraph (d) and any other relevant factor, order that the property be sold to the person who made the highest offer or bid.”

[4] Having recently heard a number of reconsideration applications, I have found that they are most often brought simply on the assumption that the auction was unsuccessful because the reserve price was too high, and if the reserve were to be lowered or even dispensed with, then a successful sale will follow. Nothing is further from the truth as there may be a number of factors that affect a property’s saleability. Practitioners also tend to take the view that once the decision has been made that the property should be sold in execution, the judgment debtor does not have any further interest in the proceedings. Often the reconsideration application is not served on the judgment debtor or if it is brought to the judgment debtor’s attention, then it is done by email and there is no indication that the email came to the attention of the judgment debtor. In one matter counsel went so far as to submit that the judgment debtor had no further interest in the matter once the initial order of special

executability had been made and that he or she had no right to further participate in the proceedings.

[5] Given this fundamental misunderstanding of the purpose of rule 46A, it is necessary to restate the importance of the rule in balancing the interests of the execution creditor and the judgment debtor. The aim of rule 46A is to provide for judicial oversight whenever an application is brought to declare a residential immovable specially executable. It is there to protect the judgment debtor’s Constitutional right to housing, as well as the right of the execution creditor to recover the debt through execution. In *Bestbier NO and Others v Nedbank Ltd*[1] the purpose of rule 46 A was summarized as follows:

“[8] It is trite that the Constitution of South Africa provides for justiciable socio-economic rights and this includes the right to have access to adequate housing which is enshrined in s 26 of the Constitution. The underlying rationale of rule 46A is to impose procedural rules to give effect to that fundamental right. Rule 46A must therefore be interpreted purposively against the backdrop of s 26 of the Constitution, which grants access to housing.

- [6] In every application to declare a residential immovable property specially executable, the court is obliged to consider whether to set a reserve price for the sale of the property in execution. In *ABSA Bank Ltd v Mokebe and Related Matters*[2] a Full Court of this Divisions considered a number of issues relating to rule 46A. In relation to the setting of reserve prices, the Court said the following:

“[53] The determination of a reserve price is an issue which is provided for in the Uniform Rules of Court. The sale of a property, and in particular of a primary residence, for nominal amounts of money occurs to the detriment of the defaulting homeowner. Such a person, whether the poorest of the poor or otherwise, not only loses his or her home but remains indebted to a mortgagee for a substantial amount- even in cases where the on-sale of the property occurs to buyers at substantially higher prices than the prices realized during the sale in execution. . . .

- [57] The courts’ power and duty to impose a reserve price is founded, inter alia, in s 26 (3) of the Constitution. The process of granting judgment against the homeowner is the first step that may lead to his or her eviction from the property. Thus, a court is to consider all the relevant factors when declaring a property specially executable at the behest of the bondholder. It is thus incumbent upon the bank or bondholder to place ‘all relevant circumstances’ before the court when it seeks an order for execution.”
- [7] The question then arises: if personal service of the application on the judgment debtor is required at the stage of seeking an order to declaring a residential immovable property specially executable, why then is the same not required at the stage of reconsideration? The judgment debtor still has an interest in the setting of a reserve price in that it may have an enormous impact upon his or her level of indebtedness. If the immovable property is sold at a low reserve price or without reserve it may well result in a serious injustice to the judgment debtor.
- [8] What then is the proper procedure that should be followed in order to ensure that the interests of both the execution creditor and the judgment debtor are protected? I now turn to the cases that have considered Rule 46A(9).
- [9] *Sheriff of the High Court, Pretoria East v Dos Reis and Others*[3] came before Windell J in the unopposed motion court on 2 November 2020 by which time the matter had become opposed. Briefly, the facts were the following: when the application to declare the immovable property specially executable was granted by the court, the amount due to the bank was slightly in excess of R 10 million, and some R 348 000 was owed to the local authority. The reserve price for the sale was set at R 9 800 000. The highest bid at the auction was received from one Mr. Naude for R 7 800 000. In the meantime, the judgment debtor had

sold the property privately at a purchase price of R 10 300 000. The private purchaser, Mr. Ntleru, intervened in the proceedings and sought an order sanctioning the private offer. Mr. Naude then increased his bid to equal the reserve price of R 9 800 000, and he sought an order that the execution sale be sanctioned by the Court at that price.

[10] Windell J made the following points that require consideration in this judgment. The learned Judge held:

[10.1] that the consideration of the Sheriff's report and the reconsideration of the reserve price was to be conducted in chambers and not in open court;

[10.2] that no formal application was required to initiate the reconsideration of the reserve price;

[10.3] that the court had a discretion in terms of 46A(9)(e) to order that the property be sold to the person who made the highest offer or bid;

[10.4] that, although the Sheriff was obliged to render a report, it was incumbent on the execution creditor's attorney to ensure that the rules were complied with.

[11] The Court held that the two offers for the property, the bid by Mr Naude and the private offer by Mr Ntleru, were so close in price that it should be left to the execution creditor to decide on whether to accept the auction bid or the private sale offer, and the court declined to make a reconsideration order.

[12] In *Changing Tides 17 (Pty) Ltd N.O. v Kubheka and Another*; *Changing Tides 17 (Pty) Ltd N.O. v Mowasa and Another*; *Changing Tides 17 (Pty) Ltd N.O. v Bucktwar*; *Changing Tides 17 (Pty) Ltd N.O. v Horsley* [4], four matters in which the reserve prices were not achieved at auction were placed before Fisher J in chambers for reconsideration. All four of the matters were fatally defective in one way or another, and the learned Judge refused to make any orders in respect of any of them. However, the Court thoroughly considered the manner in which rule 46A(9) should be applied. In doing so the Court emphasized the importance of the reconsideration process:

"[9] It is immediately apparent that this portion of the rule has not been framed with the same precision as to the process to be adopted. This is regrettable as this part of the process is as important if not more so as to the balancing of rights. The constitutional imperatives which are protected by the enactment of rule 46 A generally and in connection with the determination of the reserve price are fundamental."

[13] The Court pointed to the disparate manner in which the reconsideration process was approached by different practitioners. In some instances, formal applications were brought, either on an ex parte basis and in other cases after service on the judgment debtor. In some cases the papers were served personally on the judgment debtor, in others service was effected by affixing, by email or not at all. The nature of the evidence presented in support of reconsideration differed from one case to the next. In each case before Fisher J the submission was made that a substantive application was not required and that service of the papers upon the judgment debtor was therefore also not required. A further difficulty was

that Fisher J only had sight of the Sheriff's reports and not of the pleadings that had previously served before Court, making

it impossible to form a clear picture of the facts of each case.

- [14] Fisher J held that that the requirement that the Sheriff must report within 5 days of a failed auction leads to the inescapable conclusion that the Rules Board considered the reconsideration to be urgent, and as Fisher J points out[5]:

"This stands to reason. Property values are not static and the vagaries of the market might render the original determination of the sale value of the property unhelpful to the judge who is called on to determine the way forwards when a sale is not obtained at auction if an inordinate time is allowed to pass between the auction and the approach to court.:"

- [15] The Court held that the reconsideration process should be initiated (and the Court's jurisdiction engaged) by a substantive interlocutory application. The filing of the Sheriff's report would trigger the reconsideration application. However, the Court did not say who should bring the application - the execution creditor, the Sheriff or the judgment debtor. The Court was, moreover, of the view that the use of the word "court" in Rule 46A(9) meant that the matter should be heard in open court and not in chambers. Fisher J also elaborated on the information that should be placed before the court reconsidering the reserve price:

[15.1] the deponent should satisfy the Court that the auction was properly advertised, and in accordance with the rules;

[15.2] the deponent should assert that there are, to the best of the deponent's belief, no reasons other than the reserve price being too high which could rationally be said to be a reason for the failure to achieve a bid at the reserve price;

[15.3] the court should be afforded access to all documents in the main application and all other interlocutory matters;

[15.4] the deponent should explain any failure to hold the sale within six months of the handing down of the foreclosure order;

[15.5] the affidavit should place before the Court any additional reliable evidence of the true value which could assist in the reconsideration process, for example information relating to other recent property sales in the area.

- [16] The Court held that the reconsideration papers should be served personally on the judgment debtors. It is notable from the above that the Fisher J judgment in *Changing Tides* differs from the *Dos Reis* judgment in material respects.

- [17] The *Changing Tides* judgment was considered in *Standard Bank of South Africa Ltd v Tchibamba and Another*[6] in which Binns-Ward J also had occasion to consider the practical working of rule 46A(9). The execution creditor had brought an

application for the reconsideration of the reserve price - relief that the Sheriff had already sought in his report. The execution creditor's attorney then sought clarity from the Judge President on how the matter should proceed, and was told that the matter should proceed in open court before a Judge "as soon as possible". The Judge President's response did not clarify which court should consider the matter. After further enquiry, the Judge

President instructed that an application should be brought by the Sheriff. The execution creditor's attorney asked why the

execution creditor could not bring the application. In a final response the Chief Registrar replied that the Judge President required the Sheriff to bring the application, supported by an affidavit by the execution creditor's attorney. The Chief Registrar pointed out to the execution creditor that the court directives required the same Judge that had set the reserve price initially should reconsider the reserve price.

[18] When Binns-Ward J became seized of the matter it had become opposed by the judgment debtors, and was set down on the opposed roll. The judgment debtors took the in limine point that the Sheriff did not have locus standi to bring the application. They also contended that the matter should not be heard urgently and, based on the Changing Tides judgment, that the execution creditors had failed to discharge their onus to prove that the sale had been properly advertised.

[19] The Court pointed to lack of uniformity in the application of rule 46A(9), and made the point that the Rules Board should direct its attention to clarifying the rule. I agree. The learned Judge was, moreover, of the view that rule 46A(9)(c) did not require a formal application by anyone. The court held that the wording of the rule only requires the Sheriff to file a report whereafter the Court is required to reconsider the reserve price. As the learned Judge remarked:

"The rule does not put anyone on terms to institute interlocutory proceedings for the prescribed reconsideration."[7]

[20] The Court was of the view that the reconsideration process was simply an extension of the application provided for in rule 46A(9)(3). I respectfully agree with the learned Judge, that the rule does not envisage the bringing of a formal application. Had the rule-maker required a new application to be brought, it would have said so. The Sheriff did not, therefore, require locus standi as it would have done had it been an applicant in a new application: it does not become a party to the proceedings and only provides

information upon which the Court may reconsider the reserve price. I respectfully agree with Binns-Ward J that the result of this

interpretation is that whereas an application is essentially adversarial in nature, the reconsideration procedure is inquisitorial:[8] the Court is tasked with considering the information placed before it, and if necessary, calling for more information. The reconsideration of the reserve price is thus based on all relevant factors and there is no onus on any party to prove or disprove anything.

[21] The next question is whether the matter must be heard in open court or in chambers. Rule 46A provides that the reconsideration must be carried out by a 'court'. In this regard I respectfully agree with Fisher J and with Binns-Ward J that the matter must be heard in open court. In terms of section 32 of the Superior Courts Act, 10 of 2013 all proceedings of a superior court (in which the definition a High Court is included):

"...must, except in so far as any such court may in special cases otherwise direct, be carried out in open court."

[22] Therefore, unless special circumstances exist (which is improbable in these cases), the matter must be heard in open court.

[23] The failure of rule 46A(9) to provide for the process to be followed leaves a further lacuna as to the exact manner in which the reconsideration is to be brought before Court. Once the Sheriff has reported, then, what is the role of the execution creditor and judgment debtor?

[24] As I have pointed out above, the reconsideration of the reserve price is as important as the initial setting of a reserve price, so that both parties' interests are protected; on the one hand, that of the execution creditor, who wishes to realize as much as possible from a sale in execution as expeditiously as possible, and on the other hand that of the judgment debtor who does not wish to be left holding a massive debt having already lost the immovable property. In order to protect both those interests, the Court requires as much information as possible regarding the reasons for the failure to achieve the reserve price as well as the updated financial figures.

[25] In my view the process should be as follows:

[25.1] the process is initiated by the Sheriff filing his report to the Registrar within 5 days of the auction. The Sheriff must also deliver a copy of his report to the execution creditor and judgment debtor within that period. The report must fully deal with the aspects listed in rule 46A(9)(d). More specifically, the Sheriff must convey any information that may be available relating to the failure to achieve the reserve

price. For instance, if the immovable property is not in a saleable state, or is in such a condition that a lower reserve price would be appropriate, the Sheriff must say so. If the Sheriff is aware of private offers the report must include that information;

[25.2] the execution creditor must then file an affidavit within 10 days thereafter. The supplementary affidavit of the execution creditor must, at a minimum, deal with the following:

[25.2.1] explain the manner in which the sale in execution was advertised;

[25.2.2] explain, if known, any reason why the reserve price could not be achieved, and if the reserve price was too high, the affidavit should say so, propose a lower reserve, and explain how the figure is calculated;

[25.2.3] provide comparative prices for comparable properties for sale in the particular area;

[25.2.4] if there has been an appreciable increase in the municipal charges or monies owing to a body corporate, the new figures should be provided, and if the forced sale value of the property has appreciably changed (for instance due to damage to the property), then that aspect must be dealt with;

[25.2.5] if there have been private offers made before or after the sale in execution that are still open to acceptance, the full details of such offers must be disclosed, as well as an affidavit from the prospective purchaser that he/she is still willing and able to fulfil the obligations arising from the private offer;

[25.2.6] updated figures on the mortgage account balance, and in respect of the arrear instalments;

[25.2.7] any other information that may assist the court in coming to a just decision.

[26] The execution creditor must serve the Sheriff's report, the supplementary affidavit, and a notice of set down for the unopposed motion roll upon the judgment debtor personally.

[27] If personal service is impossible, the execution creditor must make out a case on affidavit for condonation for non-compliance and must explain what alternative steps were taken to bring the reconsideration application to the judgment debtor's attention.

[30] The final aspect for consideration is: what powers does the reconsidering Court have? Rule 46A(9)(c) provides that the reconsidering court must order how execution is to proceed. Rule 46A(9)(e) authorizes a court, after considering the factors in sub paragraph (d), to order that the property be sold to the person who made the highest bid or offer (my emphasis). The latter implies that the reconsidering Court may consider an offer made other than at auction, and sanction it.[9]

[30] The very purpose of rule 46A is to achieve a just outcome between the execution creditor and debtor to protect both parties' interests. The judgment debt continues to attract interest, and it is in everyone's interests to achieve the highest possible price for the property as expeditiously as possible. To interpret the rule otherwise would not result in a purposive interpretation.

[31] It must be borne in mind that the court is not functus officio until the execution sale has been successfully concluded. As a result, where circumstances warrant it, the court is entitled to revisit the entire order, including the declaration of executability. In my view, the reconsidering judge has the widest possible powers to do justice between the parties, and to facilitate an equitable outcome. Obviously, it cannot do so unless full and relevant information is placed before it.

[32] Support for this view is found in *Nedbank Ltd v Mabaso*[10] and *Another* in which the Court said:

“In my view, the scope of Rule 46 A (9) (c), in affording a court a wide discretion to “order how execution is to proceed”, is indeed sufficiently broad to revisit the previously granted orders of special executabilitySuch approach is consistent with the purpose of the Rule, which is to achieve an appropriate balance between the legitimate commercial rights of execution creditors to payment and the equally legitimate rights of indigent debtors to housing under section 26 of the Constitution.”

[33] Support for this view is also found in *Standard Bank (supra)*[11] where the Court said:

“The scheme of the subrule is that the original application continues on the basis of supplemented papers, commencing with the Sheriff’s

report. There is no new application to be instituted. If there were one, one would expect the rule to provide for it. It does not. That does not surprise me. The exercise that it involved is, after all, nothing more than a consideration by the court whether to amend the order that it has already given in the application in terms of rule 46 A (3) so that it can be effectively executed. The reconsideration does not occur in a new matter. Rule 46 A (9) plainly implies that a court that fixes a reserve price in its order is not functus until the contemplated sale has been concluded at or above the determined reserve price.”

[34] I respectfully agree with the above passages.

[35] That brings me to the facts of this particular case. The reserve price was set at R 3 100 000. The highest bid at auction was R 2 100 000, which is R 1 million short of the reserve price. A private offer was made at a purchase price of R 4 500 000. The respondent had accepted the private offer, which is still open, This offer would result in approximately R 3.7 million being available for payment to the execution creditor. Upon enquiry at the hearing of the matter, the Court was advised that the current balance on the loan amounted to R 6 984 625.90, appreciably more than the original purchase price, and the arrears amounted to R 2 094 691.17. The arrear municipal charges now amount to R 284 599.50.

[36] The respondent, who appeared in person, took the stance that he wanted to retain the property. However, no payments have been made on the loan in many months and although the respondent is now employed, there is no evidence that he is able to settle the arrears and costs so that the mortgage bond can be reinstated. The respondent initially suggested that he had no knowledge of the private sale, but this emerged to be untrue.

[37] Unfortunately, there is nothing before us that demonstrates that the respondent is in a position to remedy the situation. Should the bid at auction be accepted, the amount available to the applicant will be substantially reduced, but the respondent will nonetheless be liable to pay the balance on the account. There is also no reason to believe that should a further sale in execution be ordered, a sale price higher than R 4 500 000 would be achieved. In my view, given that the amount bid at auction was R1 000 000 less than the amount offered by the private purchaser, it is unlikely that the private sale price will be reached were the property to be placed on auction again. Thus to order a second sale in execution would not only be fruitless, but would add to the outstanding debt payable by the judgment debtor. It

is thus clear that the private sale is in the interests of both parties.

[38] A matter that requires some consideration is the costs of the application. I am grateful to counsel for the applicant for his submissions on the issues outlined above. However, the need to clarify the manner in which rule 46A(9) is to be applied is not to be laid at the feet of the respondent. For that reason, I propose not to make any costs order.

[37] For the reasons set out above, I propose the following order:

[37.1] The immovable property situated at Erf 2[...] I[...] Ext. 49 Township, Registration Division I.R., The Province of Gauteng ("the property") shall be sold to Frontserve (Pty) Ltd at a purchase price of R 4 500 000, and on the terms and conditions set out in the deed of sale dated 29 January 2024.

[37.2] Reconsideration applications in terms of rule 46A (9)(c) to (e) shall in future be dealt with in the following manner:

[37.2.1] upon a sale in execution of an immovable property not achieving the set reserve price the Sheriff of Court shall, within 5 days, report fully to the Registrar of Court in terms of rule 46A(9) (d);

[37.2.2] the Sheriff's report shall contain all the information required by rule 46 A (9) (d), and shall additionally report on any reasons that may be known to the Sheriff that may have had a bearing on the reserve price not being achieved. The Sheriff shall specifically report on whether any private offers have been received, and, if so, on the terms and conditions attached to such offers. The Sheriff shall also explain the manner in which the sale was advertised;

[37.2.3] the Sheriff shall deliver the aforementioned report to the execution creditor's attorneys and to the judgment debtor within 5 days of the sale in execution;

[37.2.4] the execution creditor must deliver a supplementary affidavit to the Registrar within 10 days of receipt of the Sheriff's report in which the following minimum information must be contained:

[37.2.4.1] information on the manner by which the sale was advertised;

[37.2.4.2] any reason/s why the reserve price could not be achieved, for instance, the condition of the immovable property;

[37.2.4.3] comparative prices for comparable properties that have sold in the area in the recent past;

[37.2.4.4] any appreciable change in the market value of the property, and the reasons for such change, and also any appreciable change in the municipal charges owed on the property;

[37.2.4.5] any other reason why the reserve price may not have been achieved;

[37.2.4.6] submissions on a reduced reserve price and the manner of calculation thereof;

[37.2.5] simultaneously with the filing of the supplementary affidavit, the execution creditor shall serve the Sheriff's report, the supplementary affidavit, and a set down for the unopposed motion court upon the judgment debtor personally;

[37.2.6] in the event that service could not be effected on the judgment debtor personally, condonation should be sought on affidavit, and it must be explained what other methods of communication were used to

bring the reconsideration application to the judgment debtor's attention;

[37.2.7] the judgment debtor may deliver a supplementary affidavit within 10 days of service of the papers being served upon him or her in terms of paragraph 37.2.5 above, in which affidavit the judgment debtor may state whether he/she supports the reconsideration of the reserve price or not, and may make submissions which are relevant to the making of an appropriate order;

[37.2.8] the reconsideration application shall be heard in open court.

[37.3] There is no order as to costs.

SWANEPOEL J

JUDGE OF THE HIGH COURT

GAUTENG DIVISION PRETORIA

I agree and it is so ordered

NEUKIRCHER J

I agree:

RETIEF J

Counsel for the applicant: Adv. Y Coertzen Instructed by: Newtons Inc Appearance for respondent: In person Date heard: 9 September 2024 Date of judgment: 4 December 2024

[1] Bestbier NO and Others v Nedbank Ltd 2023 (4) SA 25 (SCA) at para [8]

[2] ABSA Bank Ltd v Mokebe and Related Matters 2018 (6) SA 492 (GJ)

- [3] Sheriff of the High Court, Pretoria East v Dos Reis and Others [2020] ZAGPJHC 416 (4 December 2020)
- [4] Changing Tides 17 (Pty) Ltd N.O. v Kubheka and Another; Changing Tides 17 (Pty) Ltd N.O. v Mowasa and Another; Changing Tides 17 (Pty) Ltd N.O. v Bucktwar; Changing Tides 17 (Pty) Ltd N.O. v Horsley [2022] ZAGPJHC 59; 2022 (5) SA 168 (GJ)
- [5] At para [22]
- [6] Standard Bank of South Africa Ltd v Tchibamba and Another 2022 (6) SA 571 (WCC)
- [7] At para [33]
- [8] At para [35]
- [9] The Sheriff of the High Court, Pretoria East v Dos Reis (supra); Standard Bank of South Africa v Tchibamba (supra); Hancock and Another v Nedbank Ltd and Others (unreported Free State Division case no. 905/2018 dated 31 October 2019)
- [10] Nedbank Ltd v Mabaso and Another 2023 (SA) 298 (GJ) at para [11]
- [11] At para [38]

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Prepared on 12 October 2026 · Esheria