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NOT REPORTABLE

**IN THE HIGH COURT OF SOUTH AFRICA
(EAST LONDON CIRCUIT LOCAL DIVISION)**

CASE NO. 623/2021

In the matter between:

FIRSTRAND BANK LIMITED

Applicant

and

THABISILE BRIGID MARIA ZIKALALA

Respondent

JUDGEMENT IN RESPECT OF RULE 46A APPLICATION

HARTLE J

[1] The applicant, in whose favour a bond is registered over the respondent's immovable property, applied pursuant to the provisions of Uniform Rule 46A for an order declaring the property specially executable.

[2] The application was opposed by the respondent who appeared in person.

[3] Default judgement was granted against the respondent for payment to the applicant of the amount of R2 107 618.27 together with interest and costs as provided for in the mortgage loan agreement when the matter came before me on 8 February 2021. On this date too she appeared in person and pursuant to representations made by her at the hearing concerning her adverse, but not hopeless, financial situation I

added a *proviso* to the order that the bank should not enrol any application in terms of Rule 46 A arising from the judgement before 9 May 2022.

[4] When the matter fortuitously came before me again she indicated that her intention was not to frustrate the applicant's entitlement to execute, but she requested a further extension of at least six months to meet her arrears based on her reasonable expectation that she will be able to raise funds to bring the money in.

[5] In its founding affidavit dated 23 May 2022 (unfortunately somewhat dated in relation to the date when the matter was heard), the applicant recorded the arrear amount to be in the sum of R317 798.64 and the monthly instalment in the sum of approximately R21 851.05. At the time the respondent was said to be 14.54 months in arrears with the payment of her normal monthly instalments.

[6] I had hoped for an updated figure because whereas the respondent gave the impression that she had been making payments of what she could afford since then, Mr. Tarr who appeared for the applicant however suggested the opposite.

[7] The history of the matter is water under the bridge so to speak but the respondent's woes are the common tale of the average South African consumer battered by the ravages of a severe economic turnaround and aggravated as a result of the COVID pandemic. She says that she fell into arrears with her bond repayments in 2017 already though when her salary was reduced by 50%. She responsibly applied for debt review but was subsequently retrenched in 2019. Apart from a small monthly pension that she currently receives she has over the years supplemented her income as best she can. She applied her UIF payments towards the bond and also sold some of her furniture. Her property has three dwelling units on it which she presently lets for a combined sum of R14 500,00 per month. This income stream was substantially reduced during the pandemic but is presently available to ply towards the payment of the arrears.

[8] Her son assisted her to buy a small second hand vehicle which she uses for E-Hailing (Bolt). She enjoyed a good income from this venture for at least two months

during which time she paid R20 000.00 per month off on the bond, but the motor vehicle broke down. It is currently undergoing repairs. Once it is fixed she will hire a male driver to assist her so that she can be on the road even at nighttime. This should, so she confidently projects, enable her to increase her monthly payments.

[9] Most significantly she has undergone training as solar installer and was expected to sit for the exam in June 2023. With certification she explained that she will be a regulatory approved solar installer increasing her chances for employment.

[10] She is a pensioner who even at the time of making application for the bond was already 59 years of age. She however appears to be in good health and is physically agile (as is especially evidenced in photographs depicting her carrying out solar panel installations on rooftops).

[11] The property is the primary residence of the respondent which she occupies together with her major son (aged 29 years) and two of her deceased brother's children, aged 21 and 18 years. The children are at college and school respectively. Her son is employed as a reservist in the South African Defence Force who works only for a limited number of days in the month. He assists her financially as is indicated by his acquisition of the motor vehicle for the E-hailing business.

[12] The property is also an important source of income for the respondent since it boasts three dwelling units on it which she lets out.

[13] She points out that if she is forced to dispose of the property (a recent acquisition which has little equity in it at present) she will unlikely be able to obtain affordable alternative accommodation for her and her dependents with her limited pension income and will in any event be liable to pay a shortfall on the bond.

[14] She is in arrears with the rates on the property but has reduced these from R79 000. 00 to R35 000.00.

[15] Mr. Tarr made the standard submissions regarding the applicant's entitlement to execute on its security. These cannot be gainsaid.

[16] He argued however that the promises and projections made by the respondent are simply not good enough and are not going to cover the amounts owing in terms of the judgement debt. The respondent agreed with me that it was counterintuitive to press an argument that the applicant had been reckless in extending the loan to her in the first place, but the thought occurs to me that this is exactly the kind of matter in which the applicant should be considering a possible restructuring of the credit agreement.

[17] Although Mr. Tarr indicated that his firm instructions were to move for the order prayed, he fairly conceded that it would not be inappropriate for this court to suspend the operation of the order sought for a limited period to enable the respondent to pursue her PV Green Card Certification.

[18] Having considered the parties' submissions, I am inclined to grant such an order. The respondent has shown considerable mettle in the face of an enormous struggle to keep her and her family's heads above water straddling a period of 4 years. She strikes me as having a committed plan, an impressive business acumen, and ambition to carry out her desires. She has also shown a commitment to appearing in court personally to plead her case on numerous occasions and evidences a sense of responsibility for her obligations as a credit consumer and respect for legal processes.

[19] The order which I make below will take into account the delay in the delivery of my judgment herein.

[20] I issue the following order:

1. The immovable property as hereinafter described and specially hypothecated under Mortgage Bond B23[...], is declared specially executable:

ERF 6[...] EAST LONDON BUFFALO CITY METROPOLITAN
MUNICIPALITY DIVISION OF EAST LONDON PROVINCE OF THE
EASTERN CAPE

IN EXTENT: 1106 SQUARE METRES

HELD BY VIRTUE OF DEED OF TRANSFER T 43[...],

for the sum of R2 107 618.27 together with interest at the rate of 8.99% per annum, calculated daily and compounded monthly from 1 May 2021 to date of payment, both days inclusive, in terms of the default judgement order of this court dated 8 February 2022.

2. The Registrar is authorised to issue a writ of attachment.
3. The Sheriff of this court is authorised to execute the warrant of attachment.
4. The immovable property of the respondent shall be sold in execution by the Sheriff subject to a reserve price of R1 800 000.00.
5. In the event that the indicated reserve price is not achieved at the first sale in execution then and in that event the immovable property of the Respondent may be sold at any subsequent sale in execution to the highest bidder without a reserve price.
6. The operation of the order outlined in paragraphs 1 - 5 above shall be suspended until 1 November 2023.
7. The respondent is liable to pay the attorney and client costs of the application.

B HARTLE
JUDGE OF THE HIGH COURT

DATE OF HEARING: 26 April 2023

DATE OF JUDGMENT : 17 August 2023

Appearances:

*For the Applicant: Mr. B Tarr instructed by Bate Chubb & Dickson
Attorneys, East London (ref. M1195/MAT55401.*

For the Respondent: In person (Email address t[...]@gmail.com)