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IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO. 2018/10826

In the matter between:-

FIRSTRAND BANK LTD

APPLICANT

and

MOXHOSABA : LUMKILE SIMON

1ST RESPONDENT

Identity number [...]

MOXHOSANA : NOZIQI ESTHER

2ND RESPONDENT

Identity number [...]

In re:

FIRSTRAND BANK LTD

EXECUTION CREDITOR

and

MOXHOSABA : LUMKILE SIMON

1ST EXECUTION DEBTOR

Identity number [...]

MOXHOSANA : NOZIQI ESTHER

2ND EXECUTION DEBTOR

Identity number [...]

JUDGMENT

VORSTER, LI AJ:-

1. This is an application for declaring immovable property attached in terms of an order of Court executable in terms of Rule 46A. The Respondents oppose the application.
2. After the Respondents have filed an opposing affidavit the Applicant filed a lengthy replying affidavit which sets out the background and history to this case in some detail. It appears that since 2013 the Respondents fell in arrears with their instalments payable to the Applicant in respect of a home loan granted to them and which they used to purchase the property which is the subject of this application. It is neither necessary, nor feasible to deal in detail with the history which ultimately culminated in a default judgment granted to the Applicant for payment of the amounts owing in terms of the agreement. I have no doubt that a writ of execution should be issued in respect of the immovable property hypothecated by the bond as it appears that a writ of execution against movable property had already been issued and proceeded with. The amounts represented by the goods attached falls substantially short of the amounts needed. The Applicant, after having dealt with the relevant facts in this respect, suggests a reserve price of R386 932,95. I agree with that reserve price.

3. It follows that the Applicant is entitled to succeed with its application in terms of Rule 46(A) and I make the following order:-

1. *Declaring the immovable property known as:*

Erf [...] [...] TOWNSHIP , REGISTRATION DIVISION I.Q., THE PROVINCE OF GAUTENG, MEASURING 316 SQUARE METERS AND HELD BY DEED OF TRANSFER NO. [...] SUBJECT TO THE CONDITIONS THEREIN CONTAINED AND ESPECIALLY TO THE RESERVATION OF RIGHTS TO MINERALS to be specially executable and to this end, that a Writ of Execution be issued as envisages in terms of Rule 46(1)(a) of the Uniform Rules of Court.

2. *An order in terms of Rule 46A(8)(i), that in the event that a reserve price is said in terms of Rule 46A(8)(e) at R386 932,95, and if this reserve price is not achieved at the first sale in execution, then and in that event, the immovable property described may be sold at any subsequent sale in execution to the highest bidder without a reserve price.*
3. *Costs of suit on the scale as between attorney and client."*

LIVorster AJ
13 April2021

Counsel: Appl D . Strydom