IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION PRETORIA

Case Number: 81830/2018
REPORTABLE: NO
OF INTEREST TO OTHER JUDGES: NO
REVISED: YES
DATE:10/5/2021

THINAMANO MUKHININDI	First Applicant / Judgment Debtor
NDICHUWO MUKHININDI	Second Applicant / Judgment Debtor
and	
CEDAR CREEK ESTATE HOMEOWNERS ASSOCIATION	First Respondent / Judgment Creditor
THE SHERIFF OF THE HIGH COURT (RANDBURG WEST)	Second Respondent

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JUDGMENT

H G A SNYMAN AJ

INTRODUCTION

[1] This is an application by the applicants in terms of the common law to review and set aside an order obtained by the first respondent ("*the estate*") against them on 24 March 2018 and for ancillary relief.

[2] Only the estate opposes the application. There was no appearance on behalf of the second respondent ("*the Sheriff*")

[3] The order the applicants seek to be reviewed and set aside is an order by this court in terms of rule 46A of the Uniform Rules of Court (respectively *"the rule 46A order"* and *"the rules"*). In terms of the rule 46A order their residential property known as Erf […], […] Ext […], Registration Division IQ, Gauteng, measuring 830 m^2 held by deed of transfer number [….] ("*the property*"), in which they currently still reside, was declared specially executable. This was for a judgment debt the estate obtained against them in the Magistrates' Court for the Magisterial District of Johannesburg North, held at Randburg ("*the Magistrates' Court*") under case number 2018/12653 for an amount of R48,924.06 (*"the Magistrates' Court order"*). This Court is at a disadvantage since copies of neither the rule 46A order nor of the Magistrates' Court order form part of the papers before me.

BACKGROUND

[4] On or about 11 September 2008, the applicants bought the property in which they currently still reside.

[5] The applicants became liable to pay levies and contributions as determined from time to time to the estate in respect of maintenance, upkeep and/or related expenditure. The applicants allege that they paid the levies up to the end of 2016, when they allegedly encountered unforeseen circumstances which circumstances they allege are not unique to the applicants, but do occur. What exactly this means is not explained. The estate alleges that they stopped paying long before that.

[6] When the applicants fell in arrears and on or around 7 June 2016, the estate commenced legal proceedings against them by issuing summons against them out of the Magistrates' Court. The amount claimed by the estate from the applicants was an amount of R48,924.06.

[7] On or about 14 July 2016 and allegedly unbeknown to the applicants, according to the founding affidavit, the estate obtained default judgment against the applicants for the amount of R48,924.06 in the Magistrates' Court. The applicants contend that they dispute this judgment amount, which they allege was "*unreasonably excessive and unreasonably inflated*". Moreover it is alleged as part of the founding papers that since or about 2016 the estate has been charging them "*excessive interest and related charges*". It is alleged that this resulted in an unreasonably excessive and unreasonably inflated amount outstanding to the estate as at current.

[8] It is alleged that it is necessary for a review of the excessive charges by the estate, in order for the applicants to extinguish the correct amount due to the estate within a reasonable period without any further prejudice to either

party.

[9] It is also alleged by the applicants that they are not in possession of their levy statements from inception of occupation in order for them to determine the actual outstanding balance due and payable by them to the estate. As part of the application it is therefore alleged that the estate should be compelled to provide same.

[10] It is alleged that the applicants have contracted the services of a financial consultant in order to determine the actual liability. It is stated that the financial consultant concluded "*an interim report / findings (analysis)*". It is alleged that the financial consultant requires further information, but that there has been interim discrepancies already established. What exactly these discrepancies are, are not identified. It is also not identified exactly who this financial consultant is. A confirmatory affidavit by the alleged financial consultant is also not attached to the founding affidavit. A copy of the financial consultant's interim report findings is attached to the application.

[11] It appears from the founding affidavit that the outstanding amount on the applicants' levy account by now amounts to R186,295.74. They allege that they do not deny liability for a reasonable amount to the estate, but that the current amount outstanding is unreasonable. They allege that these charges ought to be assessed for reasonableness in terms of the memorandum of incorporation of the estate under the Companies Act, Act 71 of 2008 ("*the Companies Act*") and the Regulations and/or the

Conventional Penalties Act, Act 15 of 1962 ("*the Conventional Penalties Act*"). The applicants neither attach a copy of the memorandum of incorporation of the estate to their application, nor do they identify exactly on which provisions of the Companies Act they rely, nor on what provisions of the Conventional Penalties Act they rely.

[12] They allege that the property is their primary residence as well as that of their children and elderly persons. They allege that in terms of the decision in **First Rand (unclear) Limited v Folscher and another, and similar matters 2011 (4) SA 314 (GNP)** at paragraph 30, judicial oversight has to be exercised before this property may be executed against.

[13] The applicants allege that the property is worth R3,850,000 and they attach the report of a professional valuator in support of this to their founding affidavit.

[14] In so far as the summons in the Magistrates' Court is concerned, which resulted in the Magistrates' Court order, they allege that they did not receive the summons commencing the action proceedings. They state that the return of service only states that the summons was served by fixing a copy thereof to the outer or principal door of the property.

[15] I point out that nothing is said as part of the applicants' papers about what transpired as part of the application for the rule 46A order, including why the applicants did not oppose that application and why it was allowed for that order to be granted against them by default.

[16] The estate in its answering affidavit, raises two points *in limine* to which a third one was added in the heads of argument filed on its behalf. The first point *in limine* is that the applicants' prayers 4 and 8 in the notice of motion are bad in law as it envisages this court becoming a party to the interactions between the applicants and the estate's dispute by fixing time periods for payment, etc. The second point *in limine* is that the application is bad since it does not include relief that the Magistrates' Court order be rescinded. It is alleged that in light thereof, the applicants cannot seek an order prohibiting the enforcement of the judgment debt without asking for it to be rescinded. Therefore, it is said that prayers 2 and 3 are bad and ought to be dismissed with costs. The third point *in limine* is that the applicants failed to comply with the requirements for condonation in that they failed to show good cause in their application for their non-compliance to be condoned.

[17] It is alleged that the applicants only made payments amounting to R18,924 in respect of the estate's levies since 27 May 2014 up to date. It is stated that the last time the applicants' account was up to date was on 28 July 2014. The estate also denies that the charges are unreasonable and unfair. It is alleged that the interim report annexed to the founding affidavit actually shows that the applicants were undercharged by an amount of R3,641.75. It is stated that it is completely inappropriate for the applicants to reside in a R3,850,000 house, and then as per the annexure to their founding affidavit it appears that they only paid levies in the amount of R18,924 since 27 May 2014 up to date. Counsel for the estate took me through the report in detail

at the hearing, showing exactly how the amount was made up. *Prima facie*, as I see it, the report does not show anything unreasonable or unwarranted if the applicants' payment history is taken into account. What it does show is that the applicants simply do not make payment in respect of their levy account. It was in this regard submitted that the applicants have in fact admitted their indebtedness by attaching the said report to their answering affidavit. Counsel for the estate also pointed out that on the outstanding levy account, it is apparent that no costs in relation to the rule 46A order or in relation to the Magistrates' Court order is included as part of the levy statement.

[18] According to the estate, during this entire period the applicants and their family have been defaulting on their obligations resulting in the other owners in the estate having to carry them. It is alleged that based on a return of service annexed to the answering affidavit, that on 2 August 2019, the writ of attachment for the immovable property, based on the rule 46A order and the notice of attachment was served upon Ntombi Ncube, who is an employee of the applicants. Yet it is stated that it took them five months following that, namely up to 22 January 2020 to launch the present application of rescission of judgment. According to the estate, why the applicants do not fully explain the delay in bringing the application is because their attorney previously served similar applications with identical paragraphs on the estate. Attached to the answering affidavit as "**MS4**" are copies of what is said to be the relevant pages from another application for rescission under case number 4499/2020. No details are, however,

provided exactly what transpired in this regard.

RESCISSION OF A JUDGMENT IN TERMS OF THE COMMON LAW

[19] The general, well-established rule is that once a court has duly pronounced a final judgment or order, it has itself no authority to set it aside or to correct, alter or supplement it. See **Van Loggerenberg, Erasmus: Superior Court Practice RS 15, 2020 at D1-561**.

[20] It is also trite that an order of a court of law stands until set aside by a court of competent jurisdiction. Until that is done, the court order must be obeyed even if it may be wrong. There is a presumption that judgments are correct. See **Van Loggerenberg, Erasmus: Superior Court Practice RS 15, 2020 at D1-561**.

[21] The inherent jurisdiction of the High Court does therefore not include the right to interfere with the principle of finality of judgments, other than in the circumstances specifically provided for in the rules or the common law.

[22] A judgment or order of the High Court could be set aside under section 23A of the Superior Courts Act, Act 10 of 2013, rule 42, rule 31(2)*(b)* and (6), on appeal, on common-law grounds or in the exercise of its inherent jurisdiction by the High Court. A judgment or order could also be abandoned, in whole or in part, under rule 41(2).

[23] At common law a judgment can be set aside on grounds of fraud; *justus*

error (on rare occasions); in certain exceptional circumstances when new documents have been discovered; where judgment had been granted by default; and in the absence between the parties of a valid agreement to support the judgment, on the grounds of *justa causa*.

[24] In the present matter the application is brought in terms of the common law on the basis that it was granted by default. In order to succeed with such an application, the applicants must show good or sufficient cause. This generally entails that the applicant must:

[24.1] give a reasonable (and obviously acceptable) explanation for his default;

[24.2] show that his application is made bona fide; and

[24.3] show that on the merits he has a bona fide defence which prima facie carries some prospect of success.

[25] It is trite that in considering an application like this, this court retains a discretion to grant the order, which discretion must be exercised after a proper consideration of all the relevant circumstances.

[26] In **De Wet v Western Bank Ltd 1979 (2) SA 1031 (A) at 1042**, a case referred to in argument before me by counsel for the estate, it was held at **1042G** that:

"Thus, under the common law, the Courts of Holland were, generally speaking, empowered to rescind judgments obtained on default of appearance, on sufficient case shown. This power was entrusted to the discretion of the Courts. Although no rigid limits were set as to the circumstances which constituted sufficient cause (cf examples quoted by Kersteman (op cit sv defaillant) the Courts nevertheless laid down certain general principles, for themselves, to guide them in the exercise of their discretion. Broadly speaking, the exercise of the Court's discretionary power appears to have been influenced by considerations of justice and fairness, having regard to all the facts and circumstances of the particular case. The onus of showing the existence of sufficient cause for relief was on the applicant in each case, and he had to satisfy the Court, inter alia, that there was some reasonably satisfactory explanation why the judgment was allowed to go by default. It follows from what I have said that the Court's discretion under the common law extended beyond, and was not limited to, the grounds provided for in Rules 3 and 42 (1), and those specifically mentioned in the Childerley case."

[27] The Appellate Division in the above matter at 1044D refused to exercise its discretion in favour of the applicants for a rescission of judgment since they were: "*The authors of their own problems and it would be inequitable to visit the other party to the action with the prejudice and inconvenience flowing from such conduct.*"

THE RELIEF SOUGHT BY THE APPLICANTS

[28] In terms of the notice of motion the relief sought by the applicants includes the following:

[28.1] For this court to condone the late service / filing of their application;

[28.2] That the rule 46A order, i.e. the order granted by this court on 14 March 2018 under this same case number declaring the property

specially executable, be rescinded and set aside;

[28.3] Interdicting the estate and the Sheriff from proceeding with the sale in execution of the property on auction, which auction was set to take place on or around January 2020;

[28.4] That the applicants be granted a period of three months within which to appoint an accredited third party auditor in order to determine the actual outstanding balance due and payable by them to the estate as per the interim report compiled on behalf of the applicants;

[28.5] That the estate be compelled to provide the applicants with access to the estate's levy statements from inception of occupation in order for the applicants to determine the actual outstanding balance due and payable by the estate;

[28.6] That the estate be compelled to apply for the taxation and/or other assessment of the legal and/or related costs charged to the levy account of the applicants since inception of the legal action proceeding against the applicants from or about June 2016 until current, for determination of reasonableness;

[28.7] That the termination be made whether the interest charged by the estate is reasonable in terms of the memorandum of incorporation unique to the estate under the Companies Act and the Regulations

and/or the Conventional Penalties Act;

[28.8] In the interim that the applicants extinguish the actual full outstanding arrear levy amount within a period of 12 months in equal instalments pending determination of this application; and

[28.9] Directing that those respondents who oppose this application pay the costs thereof.

[29] The applicants are therefore not seeking an order that the Magistrates' Court order be set aside (not finding that they could have done this before this court), which order forms the basis of their indebtedness to the estate, upon which the estate applied for and was granted the rule 46A order for the property to be specially declared executable, based upon which the estate caused the writ of execution to be issued.

CONDONATION

[30] Rule 27 of the rules provides as follows:

> "*(1) In the absence of agreement between the parties, the court may upon application on notice and on good cause shown, make an order extending or abridging any time period prescribed by these rules or fixed by an order extending or abridging any time for doing any act or taking any step in connection with any proceedings of any nature whatsoever upon such terms as to it seems meet.*

(2) *Any such extension may be ordered although the application therefor is not made until after expiry of the time period prescribed or fixed, and the court ordering any such extension may make such order as to it seems meet as to the recalling, varying or cancelling of the results of the expiry of any time so prescribed or fixed, whether such results flow from the terms of any order or from these rules.*

(3) *The court may, on good cause shown, condone any non-compliance with these rules.*

(4) *…*"

[31] An applicant in an application in terms of rule 27 must therefore show good cause. This gives this court a wide discretion and it has been found that not only must the delay be explained, but regard must be had to the merits of the matter seen as a whole.[1]

[32] In **Dalhouzie v Bruwer**[2] Bakers AJ considered the development of the requirements for "*good cause*" as envisaged in rule 27 of the rules, and found as follows:[3]

> "*In the light of the foregoing, I am of opinion that the present Rule, i.e. Rule 27 (1) and (3), should, subject to certain qualifications, be interpreted as was Transvaal Rule 33: that is to say, that it requires defendant to say on oath that he has a good defence, and requires him further to set out sufficient information to enable the Court to come to the conclusion that the defence is bona fide and not put up merely for the purpose of delaying satisfaction of the plaintiff's claim. The defendant does not, as a rule of law, necessarily have to set out the nature of his defence nor does he necessarily have to make out a prima facie defence in his affidavit. There may be occasions, however, when he will be obliged to do one or the other or even both, in order to satisfy the Court that he is bona fide in his intention to defend; whether he will be so obliged or not will depend*

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1 **Gumede v Road Accident Fund** 2007 (6) SA 304 (C) at 307C-308A; **Du Plooy v Anwes Motors (Edms) Bpk** 1983 (4) SA 212 (O) at 216H-217A.

2 **1970 (4) SA 566 (C)**.

3 At **574H – 575C**.

upon, inter alia, the amount of information which the Court can abstract from the pleadings which may be before it. The conclusion to which I have come seems to be in conformity with the result in ***Paterson, N.O v Standard Bank of S.A. Ltd****., 1967 (4) SA 524 (E), a case decided under the Uniform Rules. In that case the delay in entering appearance was adequately explained and the Court was satisfied that there was a good and bona fide defence. There is no statement in the report as to whether details were given to explain what the defence actually was; but the Court did not in terms say that it required them.*"

[33] The court found in **Benade v Absa Bank Limited**[4] that three requirements have been crystallised concerning the requirement of "*good cause*" in rule 27(1) of the rules:[5]

[33.1] An applicant should file an affidavit satisfactorily explaining the delay. The applicant must at least "*furnish an explanation of his or her default sufficiently fully to enable the Court to understand how it really came about and to assess his or her conduct and motives.*"

[33.2] The applicant must, under oath, satisfy the Court that his or her defence "*is not patently unfounded and that it is based upon facts, which, if proved, would constitute a defence.*"

[33.3] The plaintiff must not be prejudiced in such a way that cannot be compensated for by a suitable order as to postponement and costs.

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4 **2014 JDR 1155 (WCC)**.
5 At **[10]**.

[34] In this matter, seeing that the rule 46A order was granted on 14 March 2018 and that this application to review and set aside the order was served on the estate only on 22 January 2020, the delay that the applicants were required to sufficiently fully explain to enable this court to understand how it really came about and to assess their conduct and motives is a period of nearly two years. (This is if it is ignored that the Magistrates' Court order upon which the rule 46A order was obtained, was already granted nearly a year and a half before the rule 46A order.)

[35] In paragraphs 7.1 and 7.2 of the founding affidavit applicants attempt to explain that they were not in wilful default. It is explained in this regard that:

> "*The Applicants has (sic) not been able to defend the action proceedings and place their personal circumstances before the Honourable Court in defence of the execution of the property. This is due to the fact that they were unaware of the action proceedings from inception. Further, the Applicants as a diligent residences (sic) of the association, cannot be subjected to excessive, exorbitant and unreasonable charges that have the consequence of severe prejudice.*"

[36] This of course does not explain why they were in default when the rule 46A order was granted against them.

[37] In paragraph 7.3 under the heading "*CONDONATION*", it is stated that:

> *"The Applicants' reasons for not opposing the application comprehensively at the first instance and the Applicants' reasons for not applying for relief at an earlier stage were because, the Applicants were unaware of the action proceedings from inception; further the Applicants naturally had financial constraints that resulted in the Applicants unable to properly instruct legal representation timeously and/or at the given period of knowledge/awareness. Hence*

the Applicants; as individual persons, only recently after securing the necessary legal resources (fees); and further after engaging their legal representation and receiving the necessary advice have launched this application. This is in order for them to finally place relevant and concrete facts before the Honourable Court."

[38] It is then in paragraph 7.4 of the founding affidavit concluded that:

> "*The values of fairness and equity dictate that each and every matter be considered according to its merits or personal circumstances. As such the Applicant (sic) has attempted to explain to the Honourable Court the background regarding the judgment debt.*"

[39] In paragraph 8.2 of the founding affidavit it is stated under the heading "*SUMMARY OF APPLICANTS CONTENTION*" that:

> "*To the extent that it may be necessary, I ask this court to condone the late bringing of this application as the basis for the lateness has been explained in the body of the affidavit and further because no prejudice will be suffered by any party as a result of that lateness.*"

[40] As I see it, the applicants' explanation for their default is wholly insufficient to explain their delay in this matter. They for instance do not even say when they became aware of the Magistrates' Court order granted on 14 July 2016, i.e. approximately a year and a half before the rule 46A order and why they have still not done anything in an attempt to set that order aside. They also do not attempt to make out a case that that order ought to be set aside by that court. It was submitted before me by counsel for the applicants that they first have to apply for the rule 46A order to be set aside as it "*trumps*" the Magistrates' Court order. It was submitted that they would deal with the Magistrates' Court order at a later stage because it does not

trump the order of this court.

[41] In any event, since the Magistrates' Court order further charges and levies accrued to their account, which by the time this application was instituted amounted to R186,295.74. The applicants do not deny liability for a reasonable amount to the estate. However, they contend that the R186,295.74 is an unreasonable amount.

[42] It appears, however, that the estate has not yet instituted action to recover the amount for which they are indebted over and above the judgment debt of the Magistrates' Court order.

[43] As I see it (accepting that this is without having the benefit of seeing the Magistrates' Court order, the rule 46A order, or for that matter the warrant in execution), the order declaring the property executable could only have been for the R48,924.08 amount of the Magistrates' Court order, together with perhaps interest and costs at that stage.

[44] The applicants also fail to explain exactly when they became aware of the rule 46A order, which they now ask this court to rescinded and set aside.

[45] It was submitted by counsel for the applicants before this court that the period that had to be explained was a period of only approximately four months counted from 2 August 2019 when a writ was obtained and served upon the applicants. It was submitted that the applicants had issues with finances. They approached their attorneys, but they were only really

informed about the order by 28 September 2019 through an email sent to the applicants. It was submitted that it was only then that they applicants approached their attorneys to set the ball in motion. It was submitted that at that point finances were still "*a bit of a problem*". It took time to really get to a point where the attorneys could really come on board and really get down to the business of assisting in the consultations and in the drafting of papers. It was submitted that the explanation is simply to say that there was some back and forth regarding how the applicants will service the instructing attorneys and that it took four months to really get finalised and to get the papers drafted by the attorneys. All of this is of course not explained in the applicants' papers. As I see it, the delay is simply left unexplained. Even on the applicants' version it is not explained why it took them four or five months after they allegedly became aware of the order, to launch their application.

[46] As I see it, the applicants therefore failed to furnish this court with an explanation of their default sufficiently fully to enable this court to understand how it really came about to assess their conduct and motives. On the face of it, they merely let this whole matter lie since 2016 when the Magistrates' Court order was obtained against them and only jolted into action when it became clear that the estate caused a writ to be issued and for the property to be sold on execution and an auction arranged for January 2020.

[47] As I see it, the applicants have also failed to satisfy this court under oath

that their defence is not patently unfounded and that it is based upon facts, which, if proved, would constitute a defence.

[48] It is important in this regard to remember that the Magistrates' Court order formed the basis of the rule 46A order, which declared the property specially executable, and then of the writ of execution served on the applicants.

[49] The applicants make out no case that they were not indebted to the estate for at least the judgment debt of R48,924.00 together with possibly interest and legal charges, which was ordered against them by the Magistrates' Court. The high water mark of their case seems to be that the outstanding fees funning up to R186,295.74 are unreasonable. However, the further added amounts to the account are obviously not relevant in so far as the execution process is concerned. Coupled with this is of course the admission on behalf of the applicants that they know they are indebted to the estate, but dispute the extent of that indebtedness. On no version would that indebtedness be lower than the execution debt obtained against them in terms of the Magistrates' Court order.

[50] In the result, the applicants have not made out a case that their defence is not patently unfounded and that it is based upon facts, which, if proved, would constitute a defence.

[51] On the third requirement, namely that the estate must not be prejudiced in such a way that cannot be compensated for by a suitable order as to

postponement and costs, the applicants have also failed to make out a case. The estate has by now been struggling to obtain payment from the applicants since at least 2014. As I see it, they ought not to be prejudiced any further.

[52] Under the circumstances, in my view, the applicants' failure to bring their application timeously ought not to be condoned.

[53] The applicants are, in the words of Trengove AJA, as he then was, in the matter of **De Wet and others v Western Bank Limited** *supra*:

> "*The authors of their own problems and it would be inequitable to visit the other party to the action with the prejudice and inconvenience flowing from such conduct.*"

THE SETTING ASIDE OF THE RULE 46A ORDER

[54] Even if I am wrong not to grant condonation, the considerations above apply equally in the exercise of my discretion not to set the rule 46A order aside.

[55] In my view, the applicants have failed to give a reasonable (an obviously acceptable) explanation for their default. They have also not showed that their application is made *bona fide*; and they failed to show that on the merits they have a *bona fide* defence, which *prima facie* carries some prospect of success.

[56] The applicants failed in this regard to show that this court granting the rule 46A order did not properly consider all the considerations they now, for the first time, raise as part of their founding papers.

[57] No case is even attempted to be made out that the Court granting the rule 46A order was not perfectly correct in granting the order. Under the circumstances of this matter it is clear that this court was correct in granting that order.

THE TEMPORARY INTERDICT WHICH THE APPLICANTS SEEK

[58] It was accepted at the hearing by counsel for the applicants that in order for the applicants to succeed with the interdict they apply for against the estate and the Sheriff from proceeding with the sale in execution, and the ancillary relief for their levy account to be scrutinised and abated, the applicants have to satisfy the requirements of an interim interdict.

[59] It is trite that the requirements for an interim interdict, which need to be satisfied by an applicant, are as follows:[6]

[59.1] A *prima facie* right;

[59.2] A well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually

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[6] **Setlogelo v Setlogelo 1914 AD 221 at 227** and **Erikson Motors (Welkom) Ltd v Protea Motors Warrenton and Another 1973 (3) SA 685 (A) at p 691**. Also see Prest, **The Law & Practice of Interdicts**, Juta, at pp 50 and 51.

granted;

[59.3] A balance of convenience in favour of the granting of the interim relief; and

[59.4] The absence of any other satisfactory remedy.

[60] The applicants have not expressly addressed any of the above requirements as part of their papers. In any event, as I see it, they have clearly not established that they have a *prima facie* right. Such a right under the circumstances would have had to entail that they have a *prima facie* right for the rule 46A judgment to be set aside. They have failed to show this. In addition, they should have showed a *prima facie* right to challenge the correctness of their outstanding account of R186,295.74 (to some extent not made up of the judgment debt), with levies and interest and costs that accrued since the Magistrates' Court order was granted against them in 2016. As I see it, they also failed to do this. The high water mark of their allegations in this regard is that they have appointed an expert to scrutinise the account, a copy of whose report is attached to their affidavit, but the conclusion then being that the expert requires more information. There is no supporting affidavit by the alleged expert to show on a *prima facie* basis that the account is for any significant amount made up of unreasonable amounts.

[61] Although the applicants may have a well-grounded apprehension of irreparable harm, if the interim relief is not granted, i.e. that they may lose

their residential home, this does not suffice. The balance of convenience is clearly in favour of the estate in that the applicants have now not paid their levies due for years.

[62] They obviously also have another satisfactory remedy, namely to pay the judgment debt and then in the normal course attempt to sort out their arrears account.

[63] They can obviously also dispute their indebtedness in accordance with the levies account, over and above the judgment debt, if the estate institutes action against them for recovery of the amounts over and above the Magistrates' Court order amount. As part of any such further action, they can also call upon the estate to discover all the relevant statements and levy accounts, which they can then test with their alleged expert for reasonableness.

COSTS

[64] I see no reason why costs should not follow the event.

[65] Under the circumstances the following orders are made.

ORDER

1. The applicants' application is dismissed with costs.

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H G A SNYMAN
Acting Judge of the Gauteng High Court
Pretoria

Virtually heard: 24 February 2021

Electronically delivered: 10 May 2021

Appearances:

For the applicants:	Adv NM Ncube, instructed by CSM Attorneys
For the first respondents:	Adv Christiaan Jooste, instructed by Jukes Malekjee & Associates