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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: 12503/2021

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

DATE **25 February 2025**

SIGNATURE

In the matter between:

INVESTEC BANK LIMITED

Execution Creditor

and

T[...] R[...] L[...]

First Judgment Debtor

M[...] D[...] R[...] L[...]

Second Judgment Debtor

In re:

INVESTEC BANK LIMITED

Applicant

and

T[...] R[...] L[...]

First Respondent

M[...] D[...] R[...] L[...]

Second Respondent

JUDGMENT

CRUTCHFIELD J

- [1] This is an opposed application in terms of Rule 46A(9). The applicant, Investec Bank Ltd, seeks the reduction of the court determined reserve price of R2 000 000.00 to zero, alternatively an amount less than R2 000 000.00. The existing reserve price was determined by way of an order of this court on 17 February 2022.
- [2] The first respondent, T[...] R[...] L[], opposes the application and seeks that the reserve price of R2 000 000.00 not be amended. The first respondent appeared in person at the hearing of the application.
- [3] The second respondent, M[...] D[...] R[...] L[], abides the decision of this court and filed papers supporting the applicant in this application. Furthermore, the second respondent briefed an attorney to appear on her behalf at the hearing.
- [4] Initially, the application was allocated to be heard virtually on Thursday, 20 February 2025. The first respondent, upon the application being called for hearing, was unable to join the virtual Court hearing and the application stood down for a hearing in physical Court on that day at 14h00, at which time I heard the application in person.
- [5] The first and second respondents are married in community of property and currently engaged in divorce proceedings from one another.
- [6] The immovable property that is the subject of the Rule 46A(9) application is described as Erf 1[...] K[...] Estate Ext 1[...] Township, Registration Division

J.R., the Province of Gauteng measuring 715m² held under deed of transfer T123423/2006 (“the immovable property”).

- [7] Investec Bank, the applicant, (“Investec” / “the applicant”), during March 2022, instituted proceedings against the first and second respondents pursuant to their non-compliance with their obligations in terms of a home loan held with the applicant and secured by registration of a mortgage bond over the immovable property. in favour of Investec. The immovable property is an asset in the respondents’ joint estate.
- [8] The first respondent resides in the immovable property, the second respondent having vacated the immovable property. The first respondent is unemployed and unable to pay the municipal account and the homeowner’s account. As stated, the first respondent resisted the reduction of the extant reserved price, arguing that in the light of the market value of approximately R2 800 000.00 in respect of the immovable property, it was fair to all parties that the existing reserve price not be reduced. The first respondent relied on the need to protect the respondents’ equity in the immovable property as well as their constitutional right to adequate housing.
- [9] The facts relevant to the determination of the reserve price on 17 February 2022 included the arrears on the home loan as at 17 December 2020, being an amount of R117 804.49, the outstanding rates and taxes of R280 065.04 as at 4 December 2020 and outstanding levies to the homeowners’ association of R2 012.76 as at 1 January 2022. The market value of the immovable property at that stage was R2 600 000.00, being 17 December 2022, and the municipal value was R2 415 000.00.
- [10] Pursuant to the order of 17 February 2022, the immovable property sold at auction on 27 June 2023 to the highest bidder for a purchase price that was lower than the reserve price, being an amount of R1 750 000.00. The purchaser paid a deposit of 10% and signed the conditions of sale. The sale was subject to these proceedings.

[11] Initially, the applicant sought an order that this court authorise the sale of the immovable property despite the reserve price not being met.

[12] However, the purchaser no longer proceeds with the sale and this court cancelled the sale by way of an order granted in terms of rule 46(11) dated 21 November 2024. This court authorised the applicant to sell the immovable property at a sale on auction in terms of the order dated 21 November 2024.

[13] The sale on 27 June 2023 by way of auction attracted 34 registered bidders. That was approximately 18 months ago when the outstanding municipal and homeowners arrears were far lower than they are at this stage. In the interim, the equity available in the immovable property has reduced as will become apparent hereunder.

[14] The respondents are not paying the monthly municipal account or the homeowners' account. As at the date that I heard the application, approximately R497 499.00 is outstanding on the municipal account and R90 663.42 is outstanding on the homeowners' account, totalling debt of almost R600 000.00. Any potential purchaser of the immovable property will need to pay the debts to the municipality as well as to the homeowners' association in order to obtain transfer of the immovable property. The respondents' indebtedness to the applicant stands at R1 524 000.00 at the date that I heard the application.

[15] The forced sale value of the immovable property is approximately R1 800 000.00. The average of the forced sale value and the market value is R2 310 000.00, less the outstanding municipal and homeowners accounts, it is an amount of R1 710 000.00.

[16] The highest bid at auction approximately 18 months ago, when the debt against the immovable property was significantly lower at R282 000.00 approximately, was R1 750 000.00. The outstanding municipal and homeowners accounts have risen significantly in the interim to approximately R600 000.00, being an increase or an escalation of approximately R320 000.00.

- [17] It does not assist any of the parties to this application for the immovable property to remain unsold. The longer the immovable property is unsold, the higher the debt, being the outstanding municipal account and the outstanding homeowners' association account as well as the amount that the respondents owe to the applicant, the more difficult it becomes to sell the immovable property at a price that is palatable to prospective purchasers on auction, whilst simultaneously covering the debt to the applicant. The higher the debt on the immovable property, the less likely it is that the immovable property will sell on auction at a price that covers the debt to the applicant.
- [18] The purpose of a sale in execution is to satisfy the judgment debt, being the debt owed by the respondents to the applicant. The purpose of Rule 46A, however, is to ensure that execution against a judgment debtor's primary residence does not occur in a manner inconsistent with section 29 of the Constitution. See in this regard *Standard Bank of South Africa Ltd v Tchibamba & Another*¹.
- [19] The applicant previously gave the respondents an opportunity to sell the immovable property by way of a private sale on the open market. As a result, the applicant cancelled the first auction date of 29 November 2022. The respondents received a first offer to purchase the immovable property at a price of R2 600 000.00 on the open market. The first respondent rejected the offer of R2 600 000.00 despite the second respondent accepting it. Subsequently, during November 2022 or thereabouts, a second private offer to purchase the immovable property was received at a price of R2 400 000.00. The respondents both accepted the offer but the first respondent thereafter failed to sign the transfer documents, resulting in the potential sale failing.
- [20] The outstanding arrears on the municipal account and the homeowners account will continue to increase until the immovable property is transferred to a buyer. The total amount owed to the applicant by the respondents will escalate until transfer to a buyer. The respondents will find themselves with an outstanding

¹ *Standard Bank of South Africa Ltd v Tchibamba & Another* 2022 (6) SA 571 (WCC) at [48].

balance to the applicant that they are obliged to pay, if the immovable property does not sell on auction at a price sufficient to cover the debt to the municipality and the homeowners' association as well as the respondents' indebtedness to the applicant.

- [21] The first respondent relies on *Firststrand Bank Limited v Meyer*,² that a realistic price should be set such that the interests of both the applicant and the respondents are protected and the respondents are protected from undue loss caused by the sale of the property at an unrealistically low price. The first respondent submits that the reserve price of R2 000 000.00 achieves the purpose set out in *Firststrand Bank Limited v Meyer* more effectively than a lower or reduced reserve price.
- [22] The first respondent fails to take into account, however, that the highest bid received on auction approximately eighteen months ago, when the outstanding municipal account and the outstanding homeowners' account stood at R320 000.00 less than they stand currently, was an amount of R1 750 000.00.
- [23] Whilst the market value has increased by R200 000.00 to approximately R2 800 000.00 in the interim, the outstanding municipal and homeowners' accounts have increased by approximately R320 000.00 as stated above.
- [24] If I accept the price of R1 750 000.00 as a benchmark and take into account the increase in market value of approximately R200 000.00 and the increase in debt over the immovable property to be paid by any prospective purchaser of R320 000.00, the price of R1 750 000.00 stands to be reduced to R1 630 000.00 approximately.
- [25] The applicant submitted that a reserve price of R1 570 000.00 was the most appropriate given the escalation in the debt on the immovable property and notwithstanding the increase in the market value. In the event that the reserve price is set higher than is palatable to prospective purchasers on auction, the

² *Firststrand Bank Limited v Meyer* [2022] ZAECKMHC 3.

immovable property will remain unsold whilst the debt against the immovable property escalates and the amount owing to the applicant escalates in addition.

- [26] The first respondent referred to the fact that Rule 46A serves to protect homeowners against the sale of their property at prices that represent an undervalue of those properties. He also referred to the constitutional protection to adequate housing in terms of section 26 of the Constitution. That right however does not protect ownership of a home but only adequate housing which may be met by way of rental accommodation.
- [27] Fairness, also relied upon by the first respondent, operates equally in favour of all parties, the applicant who holds a debt of R1.5 million approximately as well as the respondents who have an interest in maintaining and preserving the equity in the immovable property. The longer the immovable property is unsold with no payments being made towards the liabilities against the immovable property, the lower the respondents' equity in the immovable property will become and the greater the prospect that the respondents will have to pay the applicant in respect of the home loan that is not covered by the purchase price. In other words, if the purchase price is not sufficient to cover the outstanding debt to Investec, the respondents will be obliged to pay the difference.
- [28] The first respondent referred to *Absa Bank Limited v Lekhethoa*³ in respect of homes not being sold at extremely low prices. The first respondent also referred to *Firststrand Bank Limited v Armugam*⁴ in respect of fixing a reserve price that is fair and takes into account the market value of the house.
- [29] I have referred already to the market value, the increase in that market value and the debts owing against the immovable property. I have also referred to the danger to the respondents of the immovable property remaining unsold whilst payment of the debts is not being made. The determination of a reserve price cannot ever be an exact science. It is a balancing exercise that aims to ensure a price that is palatable to potential purchasers on auction and serves to cover

³ *Absa Bank Limited v Lekhethoa* [2023] ZAGPJHC 967.

⁴ *Firststrand Bank Limited Ltd v Armugam* [2023] ZAGPJHC 900.

the outstanding debt to the applicant as well as permit payment by the prospective purchaser of the outstanding municipal account as well as the homeowners' association account. Absent payment to the municipality and homeowners' association of the outstanding amounts due to them, transfer cannot be effected to a prospective purchaser.

[30] I am of the view that taking into consideration the factors referred to above and attempting to balance them as best as possible so as to meet the needs of all parties to this application, a reserve price of R1 600 000.00 is appropriate in that it meets the requirements referred to above.

[31] The reduction of the reserve price from R2 000 000.00 to R1 600 000.00 is justified by the increase in the outstanding debt against the property and simultaneously takes into consideration the increase in market value of the immovable property. R1 600 000.00 is a fair price in the circumstances of this matter.

[32] The second respondent incurred costs in supporting the application and opposing the first respondent's attempts to prevent the reduction of the reserve price. In the circumstances, the second respondent is entitled to payment of her costs out of the first respondent's share of the joint estate as and when the estate is divided between them.

[33] The applicant is entitled to its costs of the application on an attorney and client scale from the first respondent only.

Accordingly, I grant the following order:

1. The immovable property known as Erf 1[...] K[...] Estate Ext 1[...] Township, Registration Division J.R., the Province of Gauteng measuring 715m² (seven hundred and fifteen square meters) held by deed of transfer T123423/2006 subject to the conditions therein contained and especially subject to the rules and regulations imposed by the homeowners' association, having physical address Unit 4[...] K[...] R[...], W[...] Avenue, K[...] (hereinafter referred to as "the immovable property") is to be sold at a sale in execution. The

immovable property is to be sold as a sale in execution at a reserve price determined by this Court as R1 600 000.00.

2. The applicant's costs on an attorney and client scale are ordered for the account of the first respondent only and excluding the second respondent.
3. The second respondent's costs of the application are for the account of the first respondent out of his share of the joint estate.

CRUTCHFIELD J
JUDGE OF THE HIGH COURT

For the Applicant: Adv CJ Welgemoed instructed by Delberg Attorneys.

For the First Respondent: Mr Lekate in person.

For the Second Respondent: Attorney Q Sosibo instructed by Sosibo Attorneys INC.

Date of hearing: 20 February 2025.

Date of Judgment: 25 February 2025.