

OFFICE OF THE JUDGE PRESIDENT

GAUTENG DIVISION OF THE HIGH COURT OF SOUTH AFRICA
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18 April 2019

To:-

1. The Rules Board for Courts of Law
2. The General Council of the Bar of South Africa
3. The National Bar Council of South Africa
4. National Forum for Advocates
5. The Pretoria Society of Advocates
6. North Gauteng association of Advocates
7. The Johannesburg Society of Advocates
8. Pan African Bar Association of South Africa (PABASA)
9. Church Square Association of Advocates
10. Advocates for Transformation
11. Law Society of South Africa
12. Law Society of the Northern Provinces
13. Black Lawyers Association
14. National Association of Democratic Lawyers
15. Gauteng Attorneys Association
16. West Rand Attorneys Association
17. Pretoria Attorneys Association
18. Johannesburg Attorneys Association
19. The Chief Registrar & Registrars - Gauteng Division of the High Court of South Africa (Pretoria and Johannesburg).

JUDGE PRESIDENT'S PRACTICE DIRECTIVE **Re: Applications in terms of Rule 46(11)**

The purpose of this Directive is to ensure compliance with the recently amended Rule 46A of the Uniform Rules of the High Court and the Full Court authorities issued in the Gauteng and Western Cape Divisions of the High Court relating to foreclosures and the sale in execution of properties.

It is therefore directed that:

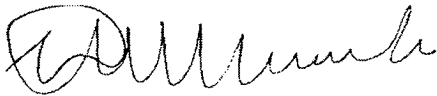
1. All applications in terms of Rule 46(11) shall no longer be dealt with by a Judge in chambers.
2. These applications shall be referred to and/or set down in the interlocutory court.
3. In all cases, where the Sheriff wishes to resell the property and where no reserve price was previously set by the Court, or where a reserve price was previously set, but the execution creditor wishes to amend same, the execution creditor shall, at least five days prior to the hearing, file an affidavit with the Registrar of the Court, in terms of Rule 46A(5)(a) to (e).

4. The affidavit shall comply with the requirements set out in Absa Bank Ltd v Mokebe and related cases 2018 (6) SA 492 (GJ); see also Standard Bank of South Africa Limited v Hendricks and various other applications (11294/18; 15134/18; 12777/18; 12285/18; 13809/18; 22263/17; 12365/18) [2018] ZAWCHC 175 (14 December 2018).
5. The affidavit shall include the following details applicable as at the date of the hearing:
 - 5.1 The market value of the property is R...; Annexure ' ' hereto, page...;
 - 5.2 The local authority valuation of the property is R... Annexure ' ' hereto, page...;
 - 5.3 The amounts owing on mortgage bonds is R... Annexure ' ' hereto, page...;
 - 5.4 The amounts owing to the local authority for rates and other dues is R...; Annexure ' ' hereto, page...;
 - 5.5 The amounts owing to the body corporate for levies is R...; Annexure ' ' hereto, page...;
 - 5.6 The following are other relevant factors which the court may have regard to in terms of Rule 46A(8), which includes any information relevant to the considerations in Rule 46A (9)(a) and (b);
 - 5.7 The property is / is not subject to a claim by a preferent creditor/s, being (insert details).
 - 5.8 In accordance with Rule 46(5), service has been effected on the entities referred to in Rule 46(5). The returns of service are annexed hereto as ' ', '...', '...'. The relevant entities have been informed that within 10 days of (insert date), they are to stipulate a reserve price or to agree to a sale in writing without reserve, as appears from Annexure '...' hereto. The applicant has provided proof of such responses to the Sheriff as per Annexure '...' hereto;
 - 5.9 There has been compliance with Rule 46A(3) and (4) as appears from para...page...

Annexed hereto is an example of a Draft Order to an application in terms of Rule 46(11) that is brought in line with the provisions set out in this Practice Directive.

This Directive comes into operation with immediate effect i.e. 18 April 2019.

Sincerely,



D MLAMBO
JUDGE PRESIDENT OF THE GAUTENG DIVISION OF THE
HIGH COURT OF SOUTH AFRICA

ANNEXURE TO PRACTICE DIRECTIVE

DRAFT ORDER: CANCELLATION OF SALE IN EXECUTION [RULE 46(11)]

REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2019/00000

In the matter between:
THE SHERIFF OF JOHANNESBURG EAST
and
xxxxx
In re:
.... BANK LIMITED
and
xxxxxxx

Applicant
Respondent/Purchaser
Plaintiff/ Judgment Creditor
Defendant/ Judgment Debtor

ORDER

....., J:

Having read the documents filed of record the following order is made:

1. The sale in execution held on (DATE), in respect of the property referred to in paragraph 2 below is set aside.
2. Subject to prayers 4,5,and 6 below, the applicant is authorised to again sell in execution the immovable property, known as "the property" for the reserve price of R......
3. The deposit paid shall be retained by the applicant, in trust, pending the quantification of loss sustained and the granting of judgment in relation thereto in terms of rule 46(11)(b), provided that if no claim for loss sustained has been lodged within a period of 120 days from the date of cancellation of the sale, such deposit shall be refunded to the purchaser.
4. A copy of this order is to be served personally on the Judgment Debtor, as soon as is practicable after the order is granted, but prior to any future sale in execution.
5. The Judgment Debtor is advised that, as a result of the order referred to in paragraph 1, the provisions of section 129(3) and (4) of the National Credit Act 34 of 2004 ("the NCA") apply to the judgment granted in favour of the Judgment Creditor. The Judgment Debtor may prevent the sale of the property referred to in paragraph 2 above if he pays to the Judgment Creditor all of the arrear amounts owing by the Judgment Debtor to the Judgment Creditor together with all enforcement costs and default charges, prior to the property being sold in execution.
6. The arrear amounts and the enforcement costs referred to in paragraph 5 above may be obtained from the Judgment Creditor. The Judgment Debtor is advised that the arrear amount is not the full amount of the Judgment debt, but the amount owing by the Judgment Debtor to the Judgment Creditor, without reference to the accelerated amount.

BY ORDER OF THE COURT

REGISTRAR