

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

Case No: 123456

In the matter between:

BANK

Applicant

And

CONSUMER

Respondent

AFFIDAVIT PURSUANT TO CHAPTER 10.17 OF THE PRACTICE MANUAL

I, the undersigned,

ATTORNEY

do hereby make oath and say that:

- A. I am an adult attorney, duly admitted as such, and practicing as such in partnership under the name and style of XYZ Attorneys of (address). I am the attorney of record for the Applicant in this matter.

- B. The facts herein contained are within my own personal knowledge and belief and are true and correct.
- C. I have perused the court file under the above case number wherein the applicant seeks, inter alia, execution where the property appears to be the primary home of the respondent.

Compliance with Chapter 10.17 of the Practice Manual of the South Gauteng High Court

1. As per Chapter 10.17 of the Practice Manual of the South Gauteng High Court I confirm the following:

1.1. I am satisfied that a proper cause of action has been disclosed and that there is not a mere reliance on a security instrument as is evidenced from page ___ para ___ (and pages...where the agreement of loan (and other documents appear));

1.2. I am satisfied that there is compliance with Rule 18(6) as appears at page ___ para ___; alternatively,

1.3. I am satisfied that sufficient facts have been disclosed and set out for a proper cause of action as appears at page ___ para ___;

2. Original Documents

2.1. I have inspected the original documents pertaining to the matter as well as the security documents on which the matter is based and the copies attached to the summons or application, are true copies of the originals.
Alternatively;

2.2. An affidavit from the judgment creditor has been filed setting out the whereabouts of the original documents, which affidavit also sets out the

grounds of the deponent's belief that the documents attached are indeed copies of the originals as appears at page___para _____. (Delete paragraph if 2.1 is applicable).

3. I am satisfied that the application or summons contains the statements referred to in *Saunderson, Jessa and Dawood*:

3.1. The defendant's attention is drawn to s 26(1) of the Constitution of the Republic of South Africa which accords to everyone the right to have access to adequate housing. Should the defendant claim that the order for execution will infringe that right, it is incumbent on the defendant to place information supporting that claim before the Court. This appears at page___para _____;

3.2. The judgment debtor has been advised that he (or she) is entitled to place information regarding relevant circumstances within the meaning of s 26(3) of the Constitution and rule 46(1), before the Court hearing the matter. This appears at page___para _____;

3.3. The judgment debtor has been advised that in terms of Rule 46 (1)(c)(ii) of the Rules of the High Courts of South Africa, no writ of execution shall be issued against his or her primary residence (home), unless a court having considered all the relevant circumstances, orders execution against such property. This appears at page___para_____;

3.4. The judgment debtor has been advised that if he or she objects to his or her home being declared executable, he or she is called upon to place facts and submissions before the court to enable the court to consider them in terms of rule 46 (1)(a)(ii) of the Rules of Court and that a failure to do so may result in an order declaring his/her home specially executable, consequent upon which his/her home may be sold in execution. This appears at page___para_____.

4. Pursuant to the requirements set out in *Mortinson, Folscher and Lekuku*:

- 4.1. The instalments are R_____ per month.
- 4.2. The arrears outstanding under the bond when the latter was called up are R_____ as appears at page____para ____;
- 4.3. The last payment of R____ was made on (date) (as appears at page____para____;
- 4.4. The debtor's payment record is at page____ annexure ____ ;
- 4.5. The amount of the arrears outstanding at the date of the application for default judgment is R____. This appears at page____para____;
- 4.6. The total amount owing in respect of which execution is sought is R_____ and appears at page____para____;
- 4.7. The immovable property which is sought to have declared executable was not acquired by means or with the assistance of a State subsidy. This appears at page____para ____;
- 4.8. The immovable property is occupied/not occupied (delete whichever is not applicable) .This appears at page____para____;
- 4.9. The immovable property is utilised for residential purposes/commercial purposes (delete whichever is not applicable). This appears at page____para ____;
- 4.10. The debt which is sought to be enforced was / was not (delete whichever is not applicable) incurred in order to acquire the immovable property sought to be declared executable. This appears at page____para ____;

- 4.11. That the mortgaged property is the debtor's primary residence, appears at page___para ___;
- 4.12. The circumstances under which the debt was incurred are the following (details) and appear at page___para___;
- 4.13. The relative financial strengths of the creditor and the debtor, are the following (details) and appear at page___para ___;
- 4.14. There is no possibility that the debtor's liabilities to the creditor may be liquidated within a reasonable period, without having to execute against the debtor's residence as appears at page___para ___;
- 4.15. The proportionality of prejudice the creditor might suffer if execution were to be refused, compared to the prejudice the debtor would suffer if execution went ahead with a consequent loss of his home, appears at page___para ___;
- 4.16. A Notice (“the Notice”) in terms of s 129 of the National Credit Act 34 of 2005 (“the NCA”) was sent to the debtor prior to the institution of action on (date), and it appears at page___para ___ (if the Notice was sent by someone other than the deponent, a confirmatory affidavit is required from such person);
- 4.17. The action is founded on an agreement within the meaning of the NCA. The allegation concerning the manner of delivery, which the consumer has chosen for the Notice appears at page___para___ and the Notice was delivered in that manner, as appears at page___para___;
- 4.18. The domicilium address at which delivery of the Notice took place is _____. This appears at page___ of the affidavit and in the agreement annexure _____ at page_____.

4.19. The debtor's reaction to such Notice was (details) as appears at page___para ___;

4.20. The period of time that elapsed between receipt of such Notice and the institution of action is _____ days and appears at page___para ___;

4.21. The property is in fact occupied / not occupied (delete whichever is not applicable) by the debtor or by_____ as appears at page___para ___;

4.22. Whether the debtor will / will not (delete whichever is not applicable) lose access to housing as a result of execution being levied against his home, appears at page___para ___; because_____;

4.23. The creditor has / has not (delete whichever is not applicable) instituted action with an ulterior motive. This appears at page___para ___;

4.24. The position of the debtor's dependants and other occupants of the house are the following (detail each occupants relationship to defendant, gender and age of occupants) as appears at page___para___.

5 Service of the Process

5.1 The process was served personally at (address) as appears at page___para___ which address is the domicilium / residence / work address (delete whichever is not applicable) of the defendant; or

5.2 Service was effected on (date) by (manner) as appears at page___para___ as authorised by the court on (date) as appears at page___para___ (and Annexure___ on page_____); or

5.3 The process was served at the debtors place of employment on (date) or at the property on a Saturday by (manner), as a result of the inability

to effect service in terms of 6.1 or 6.2 above. Such inability is that (detail attempts) as appears from page____ para_____.

6. If the Consumer has chosen for the Notice to be posted – Section 129(1) Notice

6.1. The compulsory Notice pursuant to s 129(1) was delivered to the relevant post office. The post office would, in the normal course, have secured delivery of the registered item notification slip, informing the consumer that a registered article was available for collection. This appears at page___para_____;

6.2. The post-despatch ‘track and trace’ printout from the website of the South African Post Office is attached indicating delivery at the consumer’s post office situated at _____. This appears at page___para_____; or

6.3. The post office reflected on the ‘track and trace’ report, to which the s 129 Notice was sent, is not the same as the post office or town name to which the s 129 Notice was sent, but there is proof (which appears at page___para_____) that the post office reflected on this ‘track and trace’ report, services the address of the consumer, which appears at page___para_____;

6.4. A minimum period of 10 business days of giving the statutory Notice has elapsed before commencement of these legal proceedings. This period is calculated, by having regard to the delivery and service of the process, which took place on (date) as appears at page___para_____. The proceedings were launched on (date);

6.5. Alternatively to 6.1-6.4. The Consumer applied for debt review but Notice of termination of the debt review was given to the consumer, the debt counsellor and the National Credit Regulator at least 10

business days after the consumer applied for debt review. The consumer applied for debt review on (date) which appears at page__para__. The Notice of termination was given on _____ as appears from page_____ para_____ and Annexure_____ on page_____.

7. The return of service reflects that the documents on which the judgment creditor relies, were attached to the process which was served and appears at page__para__.

8. Clause__in the agreement, provides for a costs order other than a party and party costs order or any other justification for a costs order other than a party and party costs order appears at page__para ____.

WHEREFORE I pray that it may please this Honourable Court to grant an order in terms of the draft attached to the Notice of set down marked '**Draft Order**'.

DEPONENT

SIGNED and **SWORN TO** before me, at _____ on this _____ day of 201_, by the Deponent who has acknowledged that he knows and understands the contents of this Affidavit and he has declared that he has no objection to taking the oath, and he regards the oath as binding on his conscience and he has uttered the following words: - "I swear that the contents of this Affidavit are true, so help me God."

COMMISSIONER OF OATHS
FULL NAMES:

ADDRESS:

CAPACITY: