

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

Case Number: 20773/2016

In the matter between

**THE SHERIFF OF THE HIGH COURT  
PALM RIDGE**

**APPLICANT**

and

**MAHLODI MOKOENA  
(IDENTITY NUMBER: 760401 0351 08 0)**

**FIRST PURCHASER/RESPONDENT**

**CRISJAN WILLIAM MOKOENA  
(IDENTITY NUMBER: 721020 5309 08 2)**

**SECOND PURCHASER/RESPONDENT**

In re:

**THE STANDARD BANK OF SOUTH AFRICA LIMITED  
(REGISTRATION NUMBER: 1962/000738/06)**

**PLAINTIFF**

and

**ADRIAN MITCHELL FARRAR  
(IDENTITY NUMBER: 550802 5198 18 2)**

**FIRST DEFENDANT**

**RYNETTE FARRAR  
(IDENTITY NUMBER: 660801 0027 08 8)**

**SECOND DEFENDANT**

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**FOUNDING AFFIDAVIT**

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I, the undersigned,

**IAN BURTON**

Sheriff of the High Court Palm Ridge do hereby make oath and confirm that:

1.

- 1.1 I am the Sheriff of the High Court for the district of Palm Ridge;
- 1.2 The facts deposed to in this affidavit are within my personal knowledge and belief unless specifically stated otherwise and are true and correct;
- 1.3 I am duly authorised to depose to this affidavit.

2.

By virtue of Warrant of Execution issued by the Registrar of the above Honourable Court on **8 May 2017**, a copy of which is attached hereto marked as **Annexure "A"** and judgments granted against the First and Second Defendants on **4 October 2016** and **7 April 2017**, copies of which are attached hereto marked as **Annexure "B"** and **Annexure "C"**, respectively, the following property was attached:

**ERF 289 MEYERSDAL NATURE ESTATE EXTENSION 2 TOWNSHIP**  
**REGISTRATION DIVISION I.R., THE PROVINCE OF GAUTENG**

**MEASURING 2820 (TWO THOUSAND EIGHT HUNDRED AND TWENTY)**

**SQUARE METRES**

**HELD BY DEED OF TRANSFER NO. T054441/2006**

**SUBJECT TO THE CONDITIONS THEREIN CONTAINED.**

(According to the Local Authority better known as 1 Lourie Close, Meyersdal Nature Estate, Extension 2, Alberton, 1448 and hereinafter referred to as "the property")

3.

On **31 January 2018** and at **14h00** and at the office of the **Sheriff of the High Court – Palm Ridge**, the abovementioned property was sold in execution for an amount of **R 7 250 000.00** (Seven Million Two Hundred and Fifty Thousand Rand) to the First and Second Respondents. All payments in terms of the conditions were honoured but at the signing of the conditions the First Respondent did not have a letter of authority from her husband, the Second Respondent (to which she is married in community of property), to complete the conditions of sale on his behalf. Telephonic contact was made with the Second Respondent and a Proxy Letter was requested from the Second Respondent to allow the First Respondent to complete the said conditions on his behalf. Upon enquiry of the sale price the Second Respondent informed me that the First Respondent over bid on the property and he, the Second Respondent, would not provide the requested proxy. The Second Respondent also instructed the First Respondent not to proceed with the signing of the conditions of sale. The ramifications of the First

and Second Respondents' actions in not honouring their bid were explained to them and their attention was specifically drawn to the content of paragraph 2.3 of the conditions of sale.

4.

As a result of the aforementioned, I ultimately concluded that the sale to the First Respondent (hereinafter referred to as "the first sale in execution") was not binding and that reason existed to hold the second sale.

5.

Following upon the determination that a second auction sale was competent and necessary and after making contact with some of the persons who had been in attendance at the first auction sale and more specifically those persons who were "contactable" and/or "reachable", another auction sale of the same immovable property was held at 17h00 on 31 January 2018 (hereinafter referred to as "the second sale in execution"). It was at this second sale in execution that the immovable property was, ostensibly sold to the Mr Steffen Coetzee. A copy of my return of service confirming the aforementioned, is attached hereto marked as **Annexure "D"**.

6.

Arising from the events which took place at the sale in execution by public auction on 31 January 2018, competing demands were made upon the Plaintiff as a result of which the Plaintiff launched an application for declaratory relief. The Honourable Court was tasked to declare which of the two sales held on 31

January 2018 was valid and binding. The application for declaratory relief was issued under case number 15361/2018 and was set down to be heard on 29 May 2018. As a result of the First and Second Defendants opposing the application for declaratory relief, the application only served before the Honourable Justice Tsoka on 15 October 2018. A copy of the order which was granted on the aforementioned date, together with the conditions of sale therein referred to, are attached hereto marked as **Annexures “E”** and **“F”** respectively. The Honourable Court is also referred to the Confirmatory Affidavit deposed to by Niki Stander, a Professional Assistant in the employ of LGR Incorporated, the Plaintiff’s attorney of record.

7.

The order granted on 15 October 2018 (hereinafter referred to as “the order”) *inter alia* held that:

- 7.1 the first sale in execution (which took place on 31 January 2018, at 14h00), and in terms whereof the immovable property was sold to the First and Second Respondents was valid and had binding force;
- 7.2 I was directed to present the conditions of sale which were settled by myself in respect of the sale in execution of the immovable property on 31 January 2018 (“**the conditions of sale**”), to the First and Second Respondents for signature. For the avoidance of doubt, the conditions of sale which I was directed to present for signature to the First and Second Respondents:

- 7.2.2 was to be completed by myself in respect of those portions of the conditions of sale which required completion by myself upon the fall of the hammer of the first sale in execution, so as to reflect the position in respect of the first sale in execution which presented at the time of the fall of the hammer in the first sale in execution.
- 7.2.3 In this regard I was directed to complete paragraphs 4.8.1 and 4.8.2 as well as paragraph 10 of the conditions of sale and the details immediately following upon paragraph 12.3 as they applied on the fall of the hammer.
- 7.3 the First and Second Respondents were directed to sign the conditions of sale;
- 7.4 the First and Second Respondents were directed to comply with the conditions of sale with effect from the date of service them of the order granted by the Honourable Court declaring the first sale in execution as valid and binding and in the manner, form and time periods set out in the said conditions of sale, save that the time periods provided therein and compliance with the conditions of sale shall run from the date of service of the order upon the First and Second Respondents;
- 7.5 In the event that the First and Second Respondents, did not comply with the conditions of sale within the time periods as set out in the conditions of

sale within the time periods referred to in paragraph 2.3 of the order (“**non compliance**”), I was directed to bring the necessary application as contemplated under Uniform Rule of Court 46(11) within 14 days of the non compliance by the First and Second Respondents to have the first sale in execution set aside together with the consequences ancillary thereto and arising from such cancellation.

8.

- 8.1 On 20 November 2018, I attended to the service of the order upon the First and Second Respondents. The Returns of Service are attached hereto marked as **Annexure “G1”** and **“G2”**.
- 8.2 The First and Second Respondents refused to sign the conditions as referred to in the court order;
- 8.3 The First and Second Respondents also signed a waiver in terms whereof they confirmed that they were not prepared to complete the conditions of sale or to make any payment to satisfy the said conditions. The document further confirmed that the First and Second Respondents have no further interest in the purchase of the said property and that they waive the time period afforded to them to comply with the conditions as per the court order. The waiver is attached hereto marked as Annexure **“H”**.
- 8.4 In the circumstances I am not obliged to afford the First and Second

Respondents 21 days to comply with the conditions of sale as they have indicated that they are not going to comply.

9.

The conditions of sale as referred to in paragraph 7 above, *inter alia* specifically provides:-

- 9.1 in paragraph 4.3, that the balance of the purchase price shall be paid to the Sheriff against transfer and shall be secured by a guarantee issued by a financial institution approved by the execution creditor or its attorney, and shall be furnished to the Sheriff within 21 days after the date of sale or after the date of confirmation of the sale by the Court. Should the purchaser fail to furnish the Sheriff with a bank guarantee or fail to pay the balance of the purchase price to the Sheriff within the stipulated time period, the Sheriff may in his/her sole discretion grant the purchaser a 5 day extension within which to provide the required bank guarantee or make such payment;
- 9.2 in paragraph 8.1, If the purchaser fails to carry out any obligation due by the purchaser under the conditions of sale, the sale may be cancelled by a judge summarily on the report of the Sheriff after due notice to the purchaser, and the property may again be put up for sale.
- 9.3 in paragraph 8.2, the purchaser shall be responsible for any loss sustained by reason of such default, which loss may, on the application of any aggrieved creditor whose name appears on the Sheriff's distribution



account, be recovered from the purchaser under judgment of a judge pronounced on a written report by the Sheriff, after such purchaser has been given notice in writing that such report will be laid before the judge for such purpose.

10.

As a result of the First and Second Respondents' failure to comply with the court order and conditions of sale, I pray for an order as is set out in the Notice of Application to which this affidavit is attached.

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**IAN BURTON**

I certify that the Deponent has acknowledged that he knows and understands the contents of this Affidavit and that he has no objection to taking the prescribed oath. The deponent uttered the following words" "I truly affirm that the contents of this declaration are true". Thereafter the deponent in my presence signed the declaration at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 2018 on which date and at which place I also signed this certificate.

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COMMISSIONER OF OATHS

FULL NAMES:

ADDRESS:

OCCUPATION: