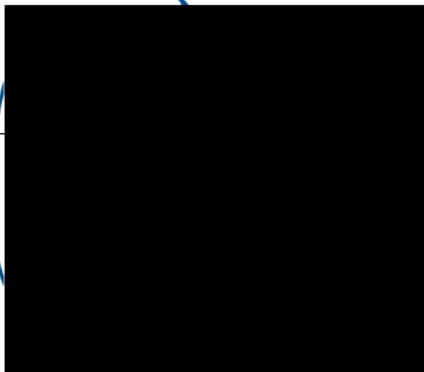


REPUBLIC OF SOUTH AFRICA



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

(1)	REPORTABLE: YES
(2)	INTEREST TO OTHER JUDGES: YES
(3)	REVISED: NO
DATE 06/5/202	



SB GUARANTEE COMPANY (PTY) LTD

Case Number: 2023/035447

Plaintiff/Applicant

versus

DE SOUSA: BOIPELO DANIEL

Defendant/ Respondent

*and*

Case Number: 2023-022259

SB GUARANTEE COMPANY (PTY) LTD

plaintiff /applicant

versus

VALENTINO ASHBY SCOTT

first defendant/respondent

MONIQUE SHARONIQUE SCOTT

second defendant/ respondent

and

Case Number: 2023-028511

THE STANDARD BANK OF SOUTH AFRICA LTD

plaintiff/applicant

versus

FERRIS: JASON QUINTON

defendant/respondent

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## SUMMARY

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In applications under rule 46A brought by the applicant financial institutions the valuations attached for the purposes of establishing the market value, whilst purporting to be under oath were, in fact, not signed in the presence of the commissioner of oaths and the signatures were appended electronically by the deponents.

In *Ferris* the valuation was that of a candidate valuer who appended her signature electronically under circumstances not disclosed and the property, which was in a secure complex, was not inspected; in *de Sousa* and *Scott* the signatures to the affidavits were appended electronically by the valuer in the absence of the commissioner of oaths and the factual details of the reports were compiled by “inspectors” employed by a company which procured the valuations.

*Held:* Applications under rule 46A of the Uniform Rules must include an independent and reliable valuation of the property provided under oath by a qualified expert valuer.

*Held:* All parties involved in providing an expert valuation must set out clearly, on affidavit the source of their knowledge of the facts related to their involvement in the valuation and the basis on which they claim expertise.

*Held:* The valuations should, in the absence of other evidence which may satisfy a court as to expertise of the person who has determined that value, be those of accredited professional valuer registered in terms of the Property Valuers Profession Act 47 OF 2000.

*Held:* The requirement that a deponent sign a declaration in the physical presence of a commissioner of oaths is not met where the signature is appended to the affidavit electronically and not in the presence of the commissioner; the requirements of reg 3(1) governing the administering of affirmation, published under Justices of the Peace and Commissioners of Oaths Act 16 of 1963 not complied with in such circumstances.

*Held:* Substantial compliance with reg 3(1) cannot be relied on where compliance is possible but the parties deliberately set out to choose a non-compliant method of administration of the oath.

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## JUDGMENT

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### FISHER J

#### *Introduction*

- [1] This judgment deals with three similar applications for foreclosure by the applicants. It is sought in each case that there be execution against the residential property of the respondent in terms of rule 46A of the Uniform Rules. The applications were not opposed and were set down by the applicants on the unopposed motion roll.
- [2] The questions arising involve the sufficiency of evidence advanced by the applicants in each instance to establish the market value of the residential properties in the context of the court's duty under rule 46A to consider whether there should be a determination of a reserve and if so, at what price.
- [3] The question of sufficiency of the expert valuation evidence must be considered in the context of the role which such evidence plays in the declaration of executability of a debtor's primary residence.

#### *The nature and role of expert valuation in the context of Rule 46A*

- [4] Execution by force of law must follow a judgment against a person who does not pay his judgment debt. This is a fundamental part of commercial life. A judgment debt not met with due payment entitles the judgment creditor to attach and liquidate assets belonging to the debtor for the purposes of achieving payment. This liquidation has, for centuries, been achieved by legally

sanctioned forced sales by the sheriff on auction to the highest bidder – a so called “fire sale”.

[5] Mercifully, in this age of constitutional composure it has been recognised that certain considerations of fairness and justice are inalienable and should be weighed as part of the process of judicial execution for the common and commercial good and in the interests of justice.

[6] Moseneke DCJ in *Nkata*<sup>1</sup> encapsulated the position thus:

'The [National Credit] Act seeks to infuse values of fairness, good faith, reasonableness and equality in the manner actors in the credit market relate. Unlike in the past, the sheer raw financial power difference between the credit giver and its much-needed but weaker counterpart, the credit consumer, will not always rule the roost. Courts are urged to strike a balance between their respective rights and responsibilities. Yes, debtors must diligently and honestly meet their undertakings towards their creditors. If they do not, the credit market will not be sustainable. But the human condition suggests that it is not always possible — particularly in credit arrangements that run over many years or decades, as mortgage bonds over homes do. Credit givers serve a beneficial and indispensable role in advancing the economy and sometimes social good. They too have not only rights but also responsibilities. They must act within the constraints of the statutory arrangements. That is particularly so when a credit consumer honestly runs into financial distress that precipitates repayment defaults. The resolution of the resultant dispute must bear the hallmarks of equity, good faith, reasonableness and equality. No doubt, credit givers ought to be astute to recognise the imbalance in negotiating power between themselves and consumers. They ought to realise that at play in the dispute is not only the profit motive, but also the civilised values of our Constitution.”

[7] It is in this spirit and with these constitutional imperatives and norms in mind that rule 46A was promulgated in 2017.

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<sup>1</sup> [2016 \(4\) SA 257 \(CC\)](#) at para 94

- [8] By the stage reached in *Nkata* the Constitutional Court had already found in *Gundwana v Steko Development*<sup>2</sup> that the declaration of executability of a debtor's residence was a judicial as opposed to a merely administrative function of the Registrar. This represented an acceptance that the exercise undertaken by a court in making the determination now entails a judicial assessment of proportionality in the debtor/creditor relationship when the home of the debtor is at stake.
- [9] When considering an application under rule 46A the court is obliged to ("must") consider whether a reserve price is to be set<sup>3</sup> and, in making this determination, is required to ("shall") take into account various stated factors starting with market value.<sup>4</sup>
- [10] Rule 46A represents an entrenchment in the execution process of a recognition of the fundamental section 26 rights (the right to adequate housing) and the further rights that flow from this Constitutional right. The spirit of the rule requires that the vested rights of the opposing parties in the property at stake be given their proper and proportional consideration and weight.
- [11] In *Absa Bank Ltd v Mokebe and Related Cases*<sup>5</sup> the Full Court of this Division was tasked, under s 14(1)(a) of the Superior Courts Act<sup>6</sup> with determining the procedures to be followed by financial institutions when foreclosing mortgages on primary residences under rule 46A. The court held in relation to the setting of a reserve price that it was incumbent upon an applicant, as part of its

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<sup>2</sup> *Gundwana v Steko Development* CCT 44/10 [2011] ZACC 14; 2011 (3) SA 608 (CC); 2011 (8) BCLR 792 (CC) (11 April 2011)

<sup>3</sup> Rule 46 A(9)(a)

<sup>4</sup> Rule 46(9)(b)

<sup>5</sup> *Absa Bank Ltd v Mokebe and Related Cases* 2018 (6) SA 492 (GJ)

<sup>6</sup> Act 10 of 2013

obligation under the rule, to place all relevant circumstances before the court including “a proper valuation of the property (under oath)”<sup>7</sup>

- [12] Clearly, the need for such a valuation is not designed to put impediments in the path of a creditor’s attempts at execution. The debtor is not absolved of responsibility in the process. If a debtor fails to place facts before the court despite the opportunity to do so, the court is bound to determine the application without the benefit of the debtor’s input and it should not hesitate to do so.
- [13] Whilst it is, rightly, an expectation of a delinquent debtor that he should muster his resources to state his case, he should also be allowed to accept the veracity of the case put up by the applicant. If the debtor has the comfort of an independent valuation by an expert whose credentials are acceptable, he is able to rely on such valuation in order to administer his affairs, including his approach to the application to declare. It is, after all, unlikely that a distressed debtor would be in a position to challenge a proper expert valuation.
- [14] A court should be placed in a position where it can feel similarly comforted by a reliable valuation.
- [15] The evidence under oath of a person who is shown to be expertly qualified to determine value is a commercial forensic standard. In application proceeding expert valuations are routinely presented as attachments to the application in the form of an affidavit attested to by a valuer whose independence and expertise is disclosed.
- [16] There appears, without more in any given case, to be no reason why this standard should be departed from in the normal course in applications for foreclosure. Provided the sworn valuation is reliable, it serves a chastening purpose: the defendant would be entitled to rely on the valuation and a court would, likewise be confident of in its assessment of the application.

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<sup>7</sup> *Mokebe* op cit n 5 at para 57.

[17] I turn now to the valuations under consideration.

*The valuations in these three cases*

[18] On an assessment as a judge would normally give a document which is held out by the applicant to be a sworn valuation in the unopposed motion court, the valuations in each instance appeared to be attested to under the oath of an expert valuer.

[19] However, on closer inquiry some anomalies emerged from my reading. I thus postponed the applications and invited further information as to the process of the sworn valuations in each instance.

[20] The facts set out below are the product of such further information being provided on affidavit by the applicants and their witnesses.

[21] In *de Sousa and Scott*, the valuations of Mr. Brian Leslie Butler were relied on by the applicant as evidence of the market value in each instance.

[22] Mr. Butler is a professional associate valuer whose services are regularly used by GAP (Pty) Ltd (GAP) which is on the panel of valuers regularly used by the applicants and other financial institutions.

[23] The valuations of Mr. Butler are ubiquitous in this court in applications of this nature. Mr. Eugene Wewege, the valuations manager employed at GAP explained that GAP carries out approximately 300 to 400 valuations for clients and institutions nationally every month. This translates into thousands of valuations conducted by GAP each year. Many of these are handled by Mr. Butler.

[24] Mr. Butler resides in Gqeberha. GAP's head office is also situated there. However, according Mr. Wewege, Gap operates in all nine provinces.

[25] Mr. Butler attests to the fact that work is "sent from regional offices" to be processed at what he refers to as "our head office" in Gqeberha.

- [26] He explains that when he is required to perform a valuation in a province other than Gqeberha (which seems to be the norm) he extends, what he refers to, as “an ad hoc appointment” to various “property inspectors” who are employed by GAP. He concedes that he does not, himself, inspect the property and he does not state the basis on which he is confident to accept the information provided to him by GAP for the purposes of his professional valuation. Thus, these valuations are lent validity by the credentials of Mr. Butler potentially in the absence of a valuation process which properly takes account of the basic requirements of appraisal.
- [27] In *de Sousa*, the property is in Vanderbijlpark. Mr. Butler was appointed by GAP. The person allegedly appointed by Mr. Butler to perform the physical inspection was Mr. Tebogo Faku ; in *Scott* the property is situated in Eldorado Park and Mr. September Dikgake was allegedly appointed by Mr. Butler to conduct the physical inspection.
- [28] There is no indication that there is any contact had between Mr. Butler and the inspectors. The inspectors do not confirm their inspection under oath.
- [29] The format of each of the valuation affidavits is standard. It consists of a printed form which is completed by the inspector and then signed by Mr. Butler in his capacity as sworn expert valuer.
- [30] The manner in which GAP’s standard form is configured is confusing. Both the names and signatures of Mr. Butler and the inspector in each instance appear on the same line immediately above the printed oath. The impression created by this layout is that Messrs. Faku and September have made the affidavits under oath together with Mr. Butler. My inquiries revealed that this is not, in fact, the case. The GAP inspectors do not take the oath but merely compile the information contained in each report.
- [31] Mr. Butler’s process is as follows. What are referred to as “bulk valuations” of Mr. Butler are routinely commissioned by warrant officer (w/o) Mornay van der Berg who is stationed at Humewood police station which is near to where Mr Butler lives and conducts his business.

- [32] W/o van der Berg confirms that he acts as commissioner of oath for “bulk affidavits” for Mr Butler. He says that he commissions up to 30 valuations at a time.
- [33] I have taken notice that in each application in terms of rule 46A that which have come before me in which Mr. Butler is involved as the valuer - and as I have said he is prolific in his valuations in rule 46A applications in this court - I have yet to see a valuation affidavit which is not commissioned by w/o van den Berg.
- [34] I was assured baldly by w/o van den Berg’s affidavit that “all formalities relating to the Justices of the Peace and Commissioner of oaths Act 16 of 1963 were complied with” in the commissioning of Mr. Butler’s oath. This later emerged to be inaccurate.
- [35] It was ultimately conceded by Mr. Butler that it was his habit to append his signature on each valuation form electronically before the oath was administered.
- [36] It was not initially explained by either Mr. Butler or w/o van den Berg how the electronic signature was appended in relation to the oath being taken on the occasion of the attestation of these “bulk affidavits” or indeed that the signature was electronic and the administration of the oath did not follow the usual procedure.
- [37] In *Ferris* the valuation was undertaken by DPP Valuers (Pty) Ltd (DPP). The valuations of this entity are also regularly used in this court to found applications for foreclosure by financial institutions.
- [38] Although the DPP valuation has a different layout to the GAP format, the documents have in common that there is confusion created as to who signed as deponent.
- [39] The affidavit attached to the application in *Ferris* makes provision for the signatures of a candidate valuer and a professional valuer. The oath appears immediately below a space for the signature of a “deponent” and a “valuer”.

- [40] A candidate valuer, Ms. Nombeko Ngengebula apparently appended her signature to DPP's standard valuation form on 12 May 2023. A professional valuer, Mr. Theo Padayachee co-signed the report on the same date. These signatures on the report were not under oath and did not purport to be.
- [41] This document was then apparently commissioned before Mr. Smith of *Eyesure Auditors* some five months later (12 October 2023) on the basis that the signature of Ms. Ngengebula is apparently appended thereto in confirmation of the oath.
- [42] The two signatures of Ms Ngengebula on the original report (i.e. the signature which is not under oath and the signature in respect of which the oath was purportedly taken) are identical and are both patently appended electronically. This is not in dispute. Again, it was not explained how this electronic appending of the signature occurred in the context of the taking of the oath. That the oath was not taken in the usual way was similarly not brought to the court's attention.
- [43] Mr. Padayachee, on the court's inquiry, explained that the report is signed off by him in addition to the candidate as the candidate, although not allowed to sign the valuation report, is permitted to perform valuation inspections. As in the other cases it is stated that the nomination to the candidate is "ad hoc" from Mr. Padayachee.
- [44] Ms. Ngengebula states in her report that an external valuation was conducted with no access gained into the secure townhouse complex where the unit is situated. Furthermore, the property was not visible to her. To her credit, Ms. Ngengebula states that "physical inspection is recommended to determine the value". This recommendation was not followed by the applicant.
- [45] The upshot is that in *Ferris* the document reflects that it was commissioned under oath by a candidate who appended her signature electronically under circumstances which were not disclosed and there was no actual inspection of the property whilst in *de Sousa* and *Scott* the signature to the purported affidavits were appended electronically by Mr. Butler in the absence of the commissioner of oaths and the factual basis on which the report was based

was not compiled by either a valuer or a candidate valuer but by an “inspector” employed by GAP who did not confirm his inspection under oath.

- [46] It is not clear how many other valuers and inspectors are used by GAP to perform the thousands of valuations performed on GAP’s instruction each year.
- [47] GAP and DPP both provide a standard form affidavit. The form is completed with the purpose of the information filled in forming the basis of the valuation report. It is safe to assume that at least some of the information is provided by the applicant. It appears that, in the case of the valuations of Mr. Butler, the inspectors complete the details prompted by fields in the form such as the type of property, number of rooms, square meterage, comparative sales in the area. Most of these details can be obtained without actual inspection.
- [48] As I have said, in all three instances, the court was not told in the application that the signature was appended electronically.
- [49] Clearly, such omission of pertinent information has the potential to create confusion and such a state of affairs may be detrimental to the assessment of the application and the fundamental rights of the homeowner. The manner of the drawing of the report – i.e. compilation of the report by an unqualified person which is then signed off by a professional valuer on the basis of the information provided - is, in my view, open to abuse.

*Issues for consideration*

- [50] The questions for consideration in light of the facts disclosed by the applicants and their witnesses subsequent to the filing of the applications and on the court’s inquiry are the following:
- a) What is the law pertaining to electronic signature of affidavits?
  - b) What form should the sworn valuation take?

*The law pertaining to electronic signature of affidavits*

- [51] This position was examined by Goosen J (as he was then) in *Firststrand Bank Ltd v Briedenhann*.<sup>8</sup>
- [52] This examination occurred in the context of the restrictions of contact arising from Covid pandemic. The fact of the electronic signature was disclosed as part of the application. It was explained under oath on behalf of *Firststrand* that the affidavit had been commissioned by way of a virtual conference conducted, via *Microsoft Teams*, between the deponent and the commissioner of oaths during the course of which the deponent took the prescribed oath and appended his electronic signature to the affidavit and the commissioner in turn appended his. The signature of the affidavit by the valuer thus occurred whilst the commissioner and the deponent were simultaneously on line and visible to each other.
- [53] The question was whether such a “virtual” administration of the oath met the requirements of regulation 3(1) of the Regulations Governing the Administration of an Oath promulgated under Justices of the Peace and Commissioners of Oaths Act<sup>9</sup> (the Oaths Act) which provides, in regard to the oath or affirmation that: “The deponent shall sign the declaration *in the presence of the commissioner of oaths.*”
- [54] *Firststrand* argued, that “presence” may be achieved by sight and sound, and that, thus, the “virtual” presence achieved by the technology used in this case fell within the ambit of the meaning of the phrase “in the presence of” in the regulation.
- [55] The court rejected this argument and found that the plain meaning of the expression did not support such an interpretation. It was held and that, having regard to the language used, read in the context of the regulations as a whole,

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<sup>8</sup> *Firststrand Bank Ltd v Briedenhann 2022 (5) SA 215 (ECGQ).*

<sup>9</sup> Act 16 of 1963,

as well as the purpose of the regulations, being to provide assurance to a court that the signatory of the affidavit had taken the oath, it was required that the deponent append their signature to the declaration in the physical as opposed to virtual presence of the commissioner.<sup>10</sup>

- [56] Whilst acknowledging the role technological developments could play in transforming and improving justice systems, the Judge stressed that adaptation of the process for the commissioning of affidavits through the use of innovative technologies such as video-conferencing applications, was a task — involving as it did questions of policy — best suited to the legislature<sup>11</sup>. I am in respectful agreement.
- [57] It was correctly argued by Ms. Latif who filed submissions on behalf of the applicant in *de Sousa*, that regulations, save where couched in negative terms, are directory and thus that a court has a discretion to admit the affidavits of Mr. Butler and Ms. Ngengebula if it finds that that there has been substantial compliance with the regulations.
- [58] The determination as to whether there has been substantial compliance is one of fact having regard to the circumstances of each case.
- [59] In *Briedenhann* the court exercised this discretion in favour of *Firststrand* and granted default judgment. The basis of the exercise of this discretion was the impossibility of the oath being administered normally because of the Covid restrictions against personal contact. The court was, however, careful to caution that it was not open to a person *to elect* to follow a different mode of oath administration to that which was statutorily regulated.
- [60] The fact that a regulation is directory does not mean that a party may deliberately set out to achieve substantial compliance with such regulation rather than comply with its requirements.<sup>12</sup>

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<sup>10</sup> Id at para 25.

<sup>11</sup> Id at paras 28 and 53 – 55.

<sup>12</sup> Id at para 56 and 59.

- [61] At odds with the *Briedenhann* the electronic signature in all three of the cases before me was not disclosed by the deponents in the application papers.
- [62] It was only when the heads of argument which were filed by Ms. Latif on the court's invitation, that Mr. Butler explained that he habitually signed the affidavits electronically and not in the presence of w/o van den Berg.
- [63] This approach seems to serve the convenience of those who have furnished the valuations. That hundreds of affidavits have been and continue to be commissioned in this chosen manner is of concern to this court.
- [64] I am assured in the heads of argument filed by Ms. Latif that the applicant had no knowledge of the manner that the oath was being administered in a manner that was not consistent with the regulations.
- [65] I would be surprised if such a manner of commissioning were routinely accommodated by the command structures at the Humewood police station.
- [66] I have not been addressed as to the knowledge of the directors of GAP and DPP as to the fact that valuations of valuers used by them are being sworn to in this manner. What is not in dispute by GAP is that it makes use of unqualified and uncertified property inspectors to compile the details as to the reports which are ultimately sworn to under oath. And this brings me to the second question.

*What form should a sworn valuation take?*

- [67] The Property Valuers Profession Act 47 OF 2000 (the Valuers Act) provides for the establishment of a statutory Council of Property Valuers (the Council) to oversee and administer a profession which is recognised, controlled and administered under the Valuers Act and known as the property valuer's profession.
- [68] The Valuers Act, the Regulations promulgated and the Code of Conduct produced thereunder form a legislative scheme which provides for educational norms and standards for the property valuers profession and for a national registration of certified valuers and candidate valuers.

- [69] The Valuers Act closely regulates the activities and conduct of those involved in the valuation of property. This administration is clearly for the purposes of protecting consumers and allowing for commercial certainty.
- [70] The Act empowers the Council to register appropriately qualified persons onto a national data base of professional valuers on their application.
- [71] Registration entails the process of assessment of competency of applicants for registration. It requires that the Council be satisfied that the applicant meets certain criteria as to age (21 and over) residency (ordinarily resident in the Republic) and the passing of prescribed examinations and the acquisition of practical experience in the field of property valuation.
- [72] The Council may refuse to register persons who have been removed from a position of trust, have been convicted of certain crimes and certain unrehabilitated insolvents. All registered persons must comply with the code of conduct drawn and imposed under the Valuers Act and failure to do so constitutes improper conduct.
- [73] The legislative scheme created under the Valuers Act allows for international standing and accreditation of South African valuers by adopting the standards developed and published by the International Valuation Standards Council (IVSC), an internationally recognised independent organisation which develops globally accepted technical and ethical standards for valuations.<sup>13</sup>
- [74] The scheme facilitates the involvement of candidate valuers in the valuation process under the supervision of registered professionals. A candidate is precluded from taking instructions other than from a professional valuer.
- [75] The valuation process is intended to benefit the candidate on the basis that he or she is allowed to gain experience. As Mr Padayachee conceded, a candidate

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<sup>13</sup> See: Rules for the Property Valuers Profession - Department of Public Works -Notice 653 of 2019 Government Gazette no 42902 13 December 2019, 653 Property Valuers Profession Act, 2000

cannot herself produce a sworn valuation under the scheme. And yet in *Ferris* it was sought that this be done.

- [76] The system of candidacy and mentorship is important. It serves as an age-old facility whereby professional skills are transferred by way of a compact between the professional valuers and those they mentor and teach. The professionals are expected to adhere to the standards espoused under the legislative scheme and convey, by example and training, the skills necessary to facilitate the coming into being of a new generation of professional valuers.
- [77] In short, the scheme creates an accountable profession which is statutorily regulated and committed to achieving professional standards so that the valuations of these accepted experts can be relied on forensically.
- [78] The question is thus whether courts should insist on reports of professional valuers when requiring forensic evidence.
- [79] In my view, whilst there may be occasions where a non-professional may be qualified as an expert, would entail evidence of acceptable expertise to be provided under oath. Such a qualification would require disclosure of the fact that the person seeking to be qualified is not a professional valuer and reasons why the expertise and independence of the person should be acceptable to a court notwithstanding that he or she is not statutorily accredited.
- [80] The persons employed by GAP are said to be property “inspectors” but no information is provided as to their credentials or training. The fact that the data collected by them is not provided under oath potentially creates an evidential difficulty.
- [81] Whilst Mr Butler purportedly proposes for the purposes of each valuation that it be accepted by the court and generally that the information provided to him by the employees of GAP is accurate and independently sourced it is in effect, hearsay. As I have said there is no indication of what contact is had between these inspectors and Mr. Butler beyond the fact of the duly completed form and the indication that the property has been inspected.

### *Conclusion*

- [82] If an expert report is a collaboration between two people, only one of whom has the necessary expertise, qualification or credentials, this should be expressly brought to the court's attention.
- [83] All parties involved in the valuation process must set out clearly, on affidavit under oath, the source of their knowledge of the facts related to their involvement in the valuation.
- [84] The valuations should, in the absence of other evidence which may satisfy a court as to expertise of the person who has determined that value, be those of accredited professional valuers registered in terms of the Valuers Act.
- [85] The valuations must be confirmed under oath taken in terms of reg 3(1) of the Oaths Act.
- [86] In the circumstances, I am not satisfied with the valuations in any of the cases under consideration are valid and reliable.

### *Post script.*

- [87] In that the I had only received heads of argument in the *de Sousa* matter, I sent an email extending the opportunity to the other parties to provide submissions should they wish to do so and indicating that I would provide a combined judgment.
- [88] The heads of argument of Ms. Latif were, furthermore, circulated to the other two parties. I point out that Ms. Latif was also briefed in the matter of *Ferris* and by the same attorneys. *Scott* involved the same applicant as *de Sousa* and the issues raised were identical.
- [89] The attorneys in *de Sousa* and *Ferris* then despite having filed Ms. Latif's heads and having dealt with the furnishing of further affidavits in the matter then

delivered notices of withdrawal of the applications for default judgment and application in terms of rule 46A

- [90] In *Scott* the attorneys did not take up the opportunity to furnish any further submissions.
- [91] As to the notices of withdrawal, same purported to have been delivered to the respondents by way of email. There is no indication of any agreement to send process electronically. There is also no indication of any agreement between the parties to withdraw the default judgment and rule 46A applications. The action itself has not been withdrawn.
- [92] Once a matter has been set down for hearing, it is not competent for the party who has instituted such proceedings to withdraw them without either the consent of all the parties or the leave of the court.<sup>14</sup>
- [93] Leave of the court was not sought. To my mind the the interests of justice are not served by a withdrawal. The applicants in all three matters have been given leave to supplement their affidavits with compliant valuations.
- [94] In the absence of such consent or leave, a purported notice of withdrawal is invalid.<sup>15</sup>
- [95] The purported notices of withdrawal are thus set aside.
- [96] It seems to me that the Council of Property Valuers may have an interest in this judgment as may the Command at the Humewood Police Station. I have thus asked the Registrar to deliver copies of this judgment to these bodies.

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<sup>14</sup> *Bondev Midrand (Pty) Ltd v Madzhie* [2017 \(4\) SA 166 \(GP\)](#) at 170E.

<sup>15</sup> *Protea Assurance Co Ltd v Gamlase* [1971 \(1\) SA 460 \(E\)](#) at 465G.

*Orders*

1. Case numbers **2023/035447; 2023/022259 and 2023/028511** are removed from the roll.
2. The applicant in each case is given leave to file fresh valuations under oath and the applications may not be set down again without such valuations.
3. The respondents are to be given notice of set down of the next hearing of the application which service shall be personal save as otherwise directed by this court.
4. There is no order as to costs and the wasted costs of the postponement of the hearings in all the cases are not to be charged to the respondents' account with the applicant.
5. The Registrar is directed to deliver a copy of this judgment to the Council of Property valuers established under the Property Valuers Profession Act 47 OF 2000.
6. The Registrar is directed to deliver a copy of this judgment to the Station Commander: Humewood Police Station Gqbertha.

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**FISHER J**  
**JUDGE OF THE HIGH COURT**  
**JOHANNESBURG**

**This Judgment was handed down electronically by circulation to the parties/their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand-down is deemed to be 06 May 2024.**

**Heard:** 10 October 2023

**Further submissions:** 16 February 2024

**Delivered:** 06/5/2024

**APPEARANCES:**

**Case Numbers: 2023/035447 and 2023-028511**

Applicant's counsel:	Adv N Latif
Applicant's Attorneys:	Stupel & Berman Attorneys
Respondent:	No appearance

**Case Number: 2023-022259**

Applicant's counsel:	Adv M Amojee
Applicants Attorneys:	Tim Du Toit & Co Inc.
Respondent:	No appearance