

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

CASE NUMBER: 2022-010359

In the matter between:

ABSA BANK LIMITED

**FIRST PLAINTIFF/
EXECUTION CREDITOR**

**ABSA HOME LOANS GUARANTEE
COMPANY (RF) PTY LTD**

**SECOND PLAINTIFF/
EXECUTION CREDITOR**

and

**KHABAKO PROPERTY DEVELOPMENT
(PTY) LTD**

**FIRST DEFENDANT/
EXECUTION DEBTOR**

MHLANGA, MICHAEL THEMBINKOSI

**SECOND DEFENDANT/
EXECUTION DEBTOR**

**CONDITIONS OF SALE IN EXECUTION
OF IMMOVABLE PROPERTY**

DESCRIPTION OF PROPERTY AND PARTICULARS OF SALE

The property which, will be put up to auction on **27 JANUARY 2026** at **11:00** by the **SHERIFF HALFWAY HOUSE - ALEXANDRA** at **614 JAMES CRESCENT, HALFWAY HOUSE**, subject to a reserve price of R1 148 000.00, consists of:

CERTAIN:

SECTION NO. 47 as shown and more fully described on Sectional Plan no. SS591/2021 in the scheme known as MUNYAKA in respect of the land and building or buildings situate at JUKSKEI VIEW EXTENSION 144 TOWNSHIP, Local Authority: CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY of which

section the floor area, according to the said sectional plan, is 113 (one hundred and thirteen) square metres in extent, and an undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan,

HELD: By Certificate of Registered Sectional Title ST591/2021 (47) (Unit);

SITUATED AT: UNIT 47 MUNYAKA, MAXWELL DRIVE, WATERFALL CITY, MIDRAND.

THE PROPERTY IS ZONED RESIDENTIAL

The property situated at UNIT 47 MUNYAKA, MAXWELL DRIVE, WATERFALL CITY, MIDRAND consists of: Lounge, Dining Room, Kitchen, 2 x Bedrooms, 2 x Bathrooms, 2 x Showers, 2 x Toilets and Swimming Pool (although in this respect nothing is guaranteed);

THE SALE SHALL BE CONDUCTED ON THE FOLLOWING CONDITIONS:-

1. THE SALE

- 1.1 The sale is conducted in accordance with the provisions of Rule 46 and Rule 46A of the Uniform Rules of the High Court, as amended, as well as the provisions of the Consumer Protection Act, no 68 of 2008, the Regulations promulgated thereunder and the "Rules of Auction", where applicable and all other applicable law. These provisions may be viewed at www.acts.co.za (the Act) and www.info.gov.za (the Regulations).
- 1.2 The headings to the clauses are for the purposes of convenience and reference only, and shall not be used in the interpretation of, nor modify, nor amplify the conditions of this sale nor any clause. In these conditions, unless a contrary intention clearly appears, words importing any one gender shall include the other two genders, the singular includes the plural and vice versa, and natural persons include created entities (corporate or otherwise) and vice versa.
- 1.3 Any reference to "days" shall mean business days unless stated otherwise.

- 1.4 The property shall be sold by the sheriff to the highest bidder subject to such reserve price, if any, as may be stipulated by a preferent creditor, local authority or Body Corporate in terms of Court Rule 46(5)(a) or the Court as contemplated in Rule 46A and as is set out in paragraph 13 below.
- 1.5 The Plaintiff shall from date of sale be deemed to have accepted the benefits herein confirmed upon the Plaintiff.

2. MANNER OF SALE

- 2.1. The sale shall be for South African Rands and no bid of less than R1000.00 (one thousand Rand) in value above the preceding bid will be accepted.
- 2.2 The execution creditor shall be entitled to cancel the sale at any stage before the auction has commenced. The execution creditor shall be entitled to bid at the auction.
- 2.3 If any dispute arises about any bid, the property may, at the discretion of the Sheriff, immediately again be put up for auction.
- 2.4 If the Sheriff makes any mistake in selling, such mistake shall not be binding on any of the parties, but may be rectified immediately. If the Sheriff suspects that a bidder is unable to pay either the deposit or the balance of the purchase price, he may refuse to accept the bid of such bidder, or accept it provisionally until the bidder shall have satisfied the Sheriff that such bidder is in a position to pay the deposit and the balance of the purchase price. On the refusal of a bid under circumstances stipulated herein, the property may immediately be put up for auction again.
- 2.5 Should a *bona fide* error be committed by the Plaintiff's Attorney or the Sheriff in respect of the sale in execution of the property, this sale can be cancelled forthwith and the property be put up for auction again. Such error shall not be binding on the Sheriff or the Plaintiff's Attorney or the Plaintiff and neither the purchaser of the immoveable property or any other person shall have any claim whatsoever against the aforesaid parties.

3. OBLIGATIONS OF PURCHASER AFTER AUCTION

- 3.1 The purchaser shall, as soon as possible after the Sheriff announces the completion of the sale by the fall of the hammer, or in any other customary manner, immediately on being requested by the Sheriff sign these conditions of sale.
- 3.2 If the purchaser has bought as an agent for a principal then the sale will also be subject to the following conditions:
- 3.2.1 The purchaser shall disclose the name of the principal the purchaser represents.
- 3.2.2 The principal's address as furnished by the purchaser shall be the address as chosen by the principal as his/her address for the service of all forms, notices and documents in respect of any legal proceedings which may be instituted by virtue hereof (*domicilium citandi et executandi*).
- 3.2.3 If the principal is not in existence at the time of the auction the purchaser shall be the contracting party.
- 3.3 In the event of the purchaser being a Company, Close Corporation or a Trust, a Trustee/Trustees, or any person acting in a representative capacity, then the person signing these conditions of sale shall be deemed to have bound himself/herself/themselves as surety(ies) and co-principal debtor(s) for all the obligations of the purchaser (and, if applicable, jointly and severally with any other persons signing these conditions of sale on behalf of the purchaser), such surety(ies) hereby renouncing the benefits of excussion and division, no value received and errors in calculation, the effect of which he/she/they acknowledges himself/ herself/ themselves to be aware.
- 3.4 The purchaser shall not be entitled to nominate a third party to obtain transfer of the property in his/her/its stead. This clause may not be overruled by adding the words "*or nominee*" or similar wording to the signature of the purchaser or anywhere else.
- 3.5 If the Purchaser is married in community of property such Purchaser shall furnish the Sheriff with the written consent of the other spouse, as required in terms of Section 15(2)(g) of the Matrimonial Property Act 88 of 1984, within 48 hours of the signature of the conditions of sale.

- 3.6 The purchaser shall on demand furnish all documents and information required by the transferring attorneys and sign all necessary transfer and ancillary documents with the transferring attorneys.

4 CONDITIONS OF PAYMENT

- 4.1 The purchaser shall on completion of the sale, pay a deposit of 10% of the purchase price immediately on demand by the sheriff.
- 4.2 Payment shall be made in cash or by way of an electronic funds transfer, provided that satisfactory proof of payment is furnished immediately to the Sheriff.
- 4.3 Should the purchaser fail to pay the deposit and the sheriff's commission on completion of the sale, then the sale shall be null and void and the Sheriff may immediately put the property up for auction again.
- 4.4 The balance of the purchase price together with occupational rental (if not settled monthly in cash as contemplated in clause 6.6) shall be paid to the Sheriff against transfer and shall be secured by a bank guarantee issued by a financial institution, to be approved by the execution creditor or the execution creditor's attorney, which shall be furnished to the Sheriff within 21 calendar days after the date of sale. Should the purchaser fail to furnish the sheriff with a bank guarantee within 21 calendar days after the date of sale, the sheriff may in his/her sole discretion grant the purchaser a 5 calendar days extension within which to provide the required bank guarantee. Should the Purchaser fail to furnish the sheriff with a bank guarantee, which is approved by the Plaintiff's attorney, within the required time, the sale may be cancelled.
- 4.5 The deposit and all other moneys in respect of the purchase price will be deposited immediately by the sheriff into a trust account held in terms of Section 22 of the Sheriffs Act 90 of 1986 and retained as such until transfer has been given to the purchaser.
- 4.6 The purchaser shall be responsible for payment of all costs and charges necessary to effect transfer, including but not limited to conveyancing costs, transfer duty or VAT attracted by the sale and any Deeds Registration Office levies. The purchaser shall further be responsible for payment, within 10 calendar days after been requested to do so by Plaintiff's attorney:

- 4.6.1 of all overdue amounts required by the Municipality for the issue of a clearance certificate to the effect that all amounts due in connection with immovable property for municipal services fees, surcharges on fees, property rates and other municipal taxes, levies and duties; and
- 4.6.2 of all levies due to a Body Corporate in terms of section 37 of the Sectional Title Act, No.95 of 1986 or any Home Owners Association which renders services to the mortgaged property.

4.7 The purchaser is hereby informed of the following charges:

- 4.7.1 All amounts due to the municipality in terms of section 118(1) of the Local Government Municipal Systems Act, Act 32 of 2000, estimated at R86 984,65, alternatively the figure will be announced by the Sheriff at the auction of the property, if available at the time;
- 4.7.2 Arrears charges payable in terms of the Sectional Titles Act, Act 95 of 1996, Not Applicable;
- 4.7.3 Arrear Homeowners Association charges, estimated at R173 351,72, alternatively the figure will be announced by the Sheriff at the auction of the property, if available at the time;

The Sheriff and the Purchaser note that the amounts set forth in this clause are estimates only. Neither the Sheriff, Plaintiff's Attorney or the execution creditor warrants the accuracy of this estimate. The Purchaser shall not be able to avoid its obligations hereunder, nor will it have any claims against the Sheriff, the Plaintiff's Attorney or the execution creditor, arising out of the fact that the arrear rates and taxes and arrear charges payable in terms of the Sectional Titles Act no. 95 of 1986 are greater than the estimated charges set forth herein. The actual amounts owing in respect of arrear rates and taxes or arrears charges payable in terms of the Sectional Titles Act, 95 of 1996 must be paid by the Purchaser within 10 calendar days after being requested to do so by the attorney attending to the transfer.

4.8 The Purchaser shall, immediately on demand by the sheriff, pay the Sheriff's commission calculated as follows:

- 4.8.1 6% on the first R100 000.00;

4.8.2 3.5% on R100 001.00 to R400 000.00; and

4.8.3 1.5% on the balance of the proceeds of the sale thereof,

subject to a maximum commission of R40 000.00 in total and a minimum of R3 000.00.

4.9 If the purchaser pays the whole purchase price and complies with conditions 3.6, 4.1, 4.6, 4.7, and 4.8, within 21 calendar days from the date of sale any claim for interest shall lapse.

4.10 Transfer shall be passed only after the purchaser has complied with the provisions of conditions 3.6, 4.1, 4.4, 4.6, 4.7 and 4.8 hereof.

4.11 If the transfer is delayed by the purchaser, due to the purchaser failing to comply with conditions clauses 3.6, 4.1, 4.4, 4.6, 4.7 and 4.8 and, if applicable condition 6, within the stipulated time frames, the purchaser shall be liable for interest at the rate of **10,50** % per annum, on the purchase price, as from the date of the first delay.

4.12 In the event that the purchaser being the execution creditor who is also a consumer exempted in terms of Section 5(2)(b) from the provisions of the Consumer Protection Act, 68 of 2008, the execution creditor shall be required to pay the commission set out in the clause 4.8, without demand, within 7 calendar days. Such execution creditor shall not be required to make any deposit nor furnish a guarantee as provided for in terms of 4.1 and 4.4, except insofar as the purchase price may exceed the total amount as set out in the warrant of execution. The difference between the purchase price and the total amount as set out in the warrant of execution, is to be paid or secured to the sheriff within 21 calendar days from the date of sale, without demand. Such execution creditor shall at the date of registration of transfer provide the sheriff with satisfactory proof that the defendant's account has been credited accordingly.

5. COMPLIANCE CERTIFICATES

5.1 The purchaser shall at his/her own cost obtain a valid electrical installations certificate of compliance and test report, in the prescribed format, as provided for in the Electrical Installation Regulations, 2009, issued in terms of the

Occupational Health and Safety Act, 1993. The purchaser agrees that this undertaking relieves the Sheriff and the Plaintiff from any duty that may be imposed upon either or both of them in terms of Section 10 of the Occupational Health and Safety Act, 1993. The purchaser accordingly agrees that there is no obligation on the Sheriff or Plaintiff to furnish the said electrical installations certificate of compliance and test report.

- 5.2 The purchaser agrees that there is no obligation on the Sheriff or the Plaintiff to furnish an Entomologist's certificate.
- 5.3 If applicable, the purchaser shall at his/her/its own cost obtain valid gas installation, electric fence installation and plumbing certificates of compliance and test reports.

6. RISK AND OCCUPATION

- 6.1. The property shall be at the risk and profit of the purchaser from the date the purchaser lawfully takes possession, which shall occur only after the signing of the conditions of sale, payment of the deposit, and furnishing of the required guarantee as contemplated in clause 4.4. In the event that the sale is subject to court ratification in terms of Rule 46A(9)(d) or (e), such possession shall only be taken after the court confirms the sale at the ratified purchase price.
- 6.2 The purchaser shall be liable to keep insured all improvements to the property sold for the full value of same from the fall of the hammer and the signing of the conditions of sale and payment of the deposit to the date of transfer, failing which the Sheriff may effect the insurance at the purchasers expense.
- 6.3 The Plaintiff and the Sheriff give no warranty that the purchaser shall be able to obtain personal and/or vacant occupation of the property or that the property is unoccupied and any proceedings to evict the occupier(s) shall be undertaken by the purchaser at his/her/its own cost and expense.
- 6.4 The property is sold as represented by the Title Deeds and diagram and sectional plan and the Sheriff is not liable for any deficiency that may be found to exist. The property is sold as it stands (voetstoots) and without warranty or representation and also subject to all servitudes and conditions specified in the Deed of Transfer, including any real rights reserved in favour of a developer or body corporate in terms of Section 25 of the Sectional Titles Act,

No. 95 of 1986. Notwithstanding anything to the contrary hereinbefore contained, the property is sold free from any title conditions pertaining to the reservation of personal servitudes in favour of third parties and in respect of which servitudes preference has been waived by the holder thereof in favour of the Plaintiff.

6.5 Neither the Sheriff, nor the Plaintiff shall be obliged to point out any boundaries, beacons or pegs in respect of the property hereby sold.

6.6 The purchaser, except in the instance where the purchaser is the execution creditor, shall be liable for payment of occupational rental at the rate of 1% of the purchase price per month, calculated pro rata from the date of lawful occupation (as defined in clause 6.1) until the date of registration of transfer. The purchaser shall pay the occupational rental on due date into the following account and proof of payment must be submitted to the abovementioned Sheriff via electronic mail and to the attorneys for the execution creditor:

| | | |
|-------|-----------------------|---|
| 6.6.1 | Judgment Debtor Name: | KHABAKO PROPERTY DEVELOPMENT (PTY) LTD |
| | Bank Name: | Absa Bank Ltd |
| | Account Number: | 8088878221 |
| | Branch Number: | 6320005 |

7. SALE SUBJECT TO EXISTING RIGHTS

Where the Property is subject to a lease agreement the following conditions apply:

7.1 Insofar as the property is let to tenants and the Sheriff is aware of the existence of such tenancy then:

7.1.1 if that lease was concluded before the Plaintiff's mortgage bond was registered, then the property shall be sold subject to such tenancy;

7.1.2 if the lease was concluded after the Plaintiff's mortgage bond was registered, the property shall be offered first subject to the lease and if the selling price does not cover the amount owing to the Plaintiff

as reflected on the warrant of execution plus interest as per writ, then the property shall be offered immediately thereafter free of the lease.

- 7.2 Notwithstanding any of these provisions, the purchaser shall be solely responsible for ejecting any person or other occupier claiming occupation, including a tenant, at the purchaser's cost. No obligation to do so shall vest in the Sheriff and/or the Plaintiff.
- 7.3 The property is furthermore sold subject to any lien or liens in respect thereof.

8. BREACH OF AGREEMENT

- 8.1. If the purchaser fails to carry out any obligations due by the purchaser under these 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. In such event 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. If the purchaser is already in possession of the property, the Sheriff may on notice to the purchaser, apply to a Judge for an order ejecting the purchaser or any person claiming to occupy the property through the purchaser.
- 8.2 In the event of the sale being cancelled as aforesaid the deposit shall be retained by the Sheriff in trust for such period that is stipulated in the judgment in terms of Rule 46(11) or if no such period is stipulated therein then until such time that the property has been sold to a third party and the Plaintiff's damages have been quantified and judgment has been granted in respect thereof.

9. ADDRESS FOR LEGAL PROCEEDINGS

The purchaser chooses the address set out in Annexure "A" hereunder as his/her/its address for the service of all forms, notices and documents in respect of any legal proceedings which may be instituted following from this sale or its cancellation (*domicilium citandi et executandi*). In the event of the purchaser failing to choose a *domicilium citandi et executandi* hereunder, the property which is the subject matter of the sale will be deemed to be the purchaser's *domicilium citandi et executandi*.

10. CONFIRMATION OF THE PURCHASER

The Sheriff and Purchaser confirm that the property is sold:

- ☐ with lease
☐ without lease

for an amount of:

R.....

(.....)

Which amount excludes the amounts referred to in clauses 4.6, 4.7, 4.8 and 6.6 and accepts all further terms and conditions as set out herein, which acceptance is confirmed by his signature below.

11. JOINT AND SEVERAL LIABILITY

In the event of there being more than one purchaser, they will be jointly and severally liable in terms hereof.

12. TRANSFERRING CONVEYANCER

The Execution Creditor shall be entitled to appoint the conveyancer to attend to the transfer of the property. The conveyancer's details are as follows:

12.1 Name: RACHELLE FREED
12.2 Name of Firm: SMIT SEWGOOLAM INC.
12.3 Tel: 011 646 0006
12.4 E-mail: rachelles@smitsew.co.za or
amanda@smitsew.co.za

13. **SPECIAL CONDITIONS IN TERMS OF RULE 46(8)(a)(ii)**

The purchaser is herewith referred to the following special conditions ordered by the Court, if any:

To sell on public auction to the highest bidder, subject to a reserve price of R1 148 000.00.

I, the undersigned, Sheriff of HALFWAY HOUSE - ALEXANDRA hereby certify that today the 27th day of January 2026 and as advertised, the aforementioned property was sold for R..... to

SHERIFF HALFWAY HOUSE - ALEXANDRA

14 **SHERIFF'S CONTACT AND BANKING DETAILS**

Bank:

Account number:

Branch:

Branch code:.....

Reference: 2022-010359

Proof of payment e-mail to:

I, the undersigned, _____ on this _____ day of _____ 20____ do hereby bind myself as the purchaser of the aforementioned property on the conditions of sale as contained herein

PURCHASER

(and where applicable in terms of these conditions of sale as surety and co-principal debtor)

(and where applicable on behalf of the below mentioned Principal being duly authorised in terms of a power of attorney / mandate which is attached hereto as Annexure B)

FULL NAME OF PRINCIPAL AS PER POWER OF ATTORNEY:

PHYSICAL ADDRESS OF PRINCIPAL:

ANNEXURE "A"

Information for Conveyancer:

1. Full names:.....
2. Spouse's Full Names:
3. Married/Divorced/Widowed/Single:
4. If married – Date:

By Antenuptial Contract / Married in Community of Property
5. Where married:

(husband's *domicilium citandi et executandi* at the time of the marriage)
6. Identity number:
7. Physical address (*domicilium citandi et executandi*):
.....
8. Postal address:
.....
9. Telephone numbers:

Home:Work:.....

Telefax (if any) Cell Number:.....
10. E-mail address:

ANNEXURE "B"

POWER OF ATTORNEY