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

CASE NO: 37695/2021

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES

Date: 23 January 2023

In the matter between:

LELOKO HARTEBEEESPOORTDAM ASSOCIATION NPC APPLICANT

And

R[...] E[...] L[...]

RESPONDENT

JUDGMENT

ALLY AJ

[1] This is an opposed application for the provisional sequestration of the Respondent.

[2] An interesting aspect of this case is that whilst the Respondent herself did not depose to an answering affidavit in this application, a notice of intention to oppose was filed.

[3] The answering affidavit is deposed to by the Respondent's father who, as it appears from the papers has been in communication with the applicant. As such this matter is somewhat *sui generis* in that the applicant "accepted" the answering affidavit as opposition to the application although technically speaking such answering affidavit cannot serve as opposition to the application.

[4] Ms Dubazana who appeared on behalf of the Respondent at the hearing of this application informed the Court that her only brief was to apply for a postponement. However, no substantive application for a postponement was launched and, in any event, the Applicant was opposed to such request for a postponement.

[5] In light of Applicant's opposition to a postponement on the basis of no substantive application, the Court heard submissions from both Ms Dubazana for the Respondent and Mr Roos for the Applicant. After hearing such submissions, the Court denied the request for a postponement.

[6] The matter then proceeded without further submissions from Ms Dubazana although Heads of Argument had been filed by the 'Respondent'.

[7] The Applicant's case is based on Section 8 through 12 of the Insolvency Act of 24 of 1936, as amended [hereinafter referred to as 'the Act'].

[8] Specifically, the Applicant alleges that the Respondent owes the Applicant an amount of R144 609 – 50 [one hundred and forty-four thousand six hundred and nine rand and fifty cents] which amount is in excess of the minimum amount of R100-00 [one hundred rand] required for the sequestration of the Respondent in terms of 'the Act'.

[9] The amount of R144 609-50 mentioned above, as alleged by the Applicant, represents an amount owing in respect of levies for the property of the Respondent situate at Erf 8[...], K[...], E[...] 7 T[...], N[...] W[...] P[...].

[10] The Applicant obtained a default judgment against the Respondent in the amount of R67 624 -77¹ [sixty-seven thousand six hundred and twenty-four rand and seventy-seven cents] and sought to execute on this judgment through the Sheriff. The amount sought in execution of the judgment is less than the amount granted in the default judgment, namely, R63 124-77 [sixty-three thousand one

¹ Caselines: 009-104, Annexure "LH11"

hundred and twenty-four rand and seventy-seven cents]. In my view, this is of no consequence because it still represents an amount in excess of R100-00 [one hundred rand].

[11] The Sheriff returned a *nulla bona* return². In other words, the Sheriff could not find movable assets to satisfy the amount of R63 124-77.

[12] The effect of the *nulla bona* return is an act of insolvency in terms of Section 8(b) of 'the Act'.

[13] With regards to Section 10 of 'the Act', this Court is satisfied that the Applicant has reached the threshold to warrant a provisional order of sequestration against the Respondent.

[14] In the result and for the reasons outlined above the Applicant must succeed in the provisional sequestration of the Respondent.

Accordingly, the following Order shall issue:

² Caselines: 009-105, Annexure "LH12"

- a). the Estate of the Respondent is placed under provisional sequestration;
- b). the Respondent is called upon to advance reasons, if any, why the Court should not order final sequestration of the said estate on **25 January 2023** at 10H00 or so soon thereafter as the Court may deem meet;
- c). that the Applicant's Attorneys cause a copy of this Order to be:
 - i). furnished to the Master of the High Court;
 - ii). furnished to the South African Revenue Services
 - iii). furnished to all known creditors by prepaid registered post;
 - iv). published in the Government Gazette; and
 - v). published in the Pretoria News newspaper.
- d). Costs of this application shall be costs in the administration of the sequestration.

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION OF THE HIGH COURT, PRETORIA

Electronically submitted therefore unsigned

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal

representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 23 January 2023.

Date of virtual hearing: 26 October 2022

Date of judgment: 23 January 2023

Appearances:

Attorneys for the Applicant: **LINDA ESRASMUS ATTORNEYS**

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Counsel for the Applicant: **Adv. Roos**

Attorneys for the Respondent: **DUBAZANA ATTORNEYS**

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Counsel for the Respondent: **Ms Dubazana**