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HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case No. 11262/2021

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE:

SIGNATURE:

In the matter between:

EBRAHIM GOOLAM MAHOMED AMOD Applicant

(Identity number: 6[...])

and

ABU BAKER JOOSUB Respondent

(Identity number: 8[...])

and

Case no. 046669/2023

In the *ex parte* application of:

ADRIAAN WILLEM VAN ROOYEN NO. First Applicant

SAFIYAH EBRAHIM COOK NO. Second Applicant

(In their capacities as the provisional trustees in the insolvent estate of ABU BAKER JOOSUB)

JUDGMENT

The judgment and order are *published and distributed electronically.*

VAN NIEKERK PA, AJ

[1] In matter no. 11262/2021 Applicant applies for urgent relief framed as follows in the Notice of Motion:

> *"1. That condonation be granted for the non-compliance with the Uniform Rules of Court and that the matter be heard as one of urgency in terms of Rule 6 (12)(a);*
>
> *2. That the provisional sequestration order in terms of which the Respondent's estate was provisionally sequestrated on 9 March 2021 be re-instated;*
>
> *3. That the provisional sequestration order be made final;*
>
> *4. That the costs of the application be costs in the sequestration*."

[2] The background to the aforesaid relief sought on an urgent basis can conveniently be summarised as follows:

[2.1] On 16 November 2016 the Applicant in this matter obtained a provisional sequestration order against the Respondent in this matter under Case no. 47463/2016 whereafter First Applicant in the application under Case no. 046669/2023 together with a certain Mr Masango were appointed as the

provisional trustees. This provisional sequestration order lapsed and it is averred in the Founding Affidavit that the order was never made final as the Applicant's previous attorney of record in the application under Case no. 47463/2016 failed to take any further steps;

[2.2] Applicant thereafter appointed another attorney who brought a second sequestration application under Case no. 11262/2021 (the case number of the present application) and on 9 March 2021 a (second) provisional order of sequestration was granted by this Court in terms whereof the Respondent in this application was provisionally sequestrated. Subsequent to the aforesaid order, the two Applicants in the *ex parte* application under Case no. 046669/2023 was appointed as the provisional trustees;

[2.3] The attorney acting on behalf of Applicant at that time allegedly again failed to take the required steps to obtain a final order, and the Applicant avers in the Founding Affidavit that he was *"recently informed by Mr van Rooyen who is the provisional trustee who is attending to the administration of Respondent's insolvent estate …"* that again no further steps were taken to obtain a final order for sequestration of the Respondent's estate;

[2.4] On 4 May 2023 Mr van Rooyen, one of the appointed trustees as set out *supra*, informed the Applicant that the trustees received an offer to purchase an immovable property of the Respondent which offer to purchase was received as long ago as 18 October 2017. Applicant further avers that Van Rooyen informed him that the purchaser of the aforesaid property sent a letter to him informing him that he is going to cancel the agreement if he does not receive confirmation within 30 days that the transfer of the property is proceeding;

[2.5] In paragraph 19 of the Founding Affidavit the following is stated by Applicant:

> *"Mr van Rooyen also informed me that the purchaser has paid a deposit of R85,000.00 into the insolvent estate's bank account at the time the offer was made and that the Bondholder, Standard Bank has authorised the trustees to accept the offer. The hold-up however is the fact that a final sequestration has not been grante*d."

[3] Based on the aforesaid averments, it is then stated in the Founding Affidavit that the matter is urgent because *"… the administration of the insolvent needs to proceed without delay*. *If the final order is not granted, the purchaser will withdraw his offer to purchase"* and *"… the property will be sold on execution which will prejudice the concursus creditorum."*

[4] The initial application for sequestration of the Respondent's estate was based on a written Acknowledgement of Debt which the Respondent signed in favour of the Applicant. In that application it was stated that the Respondent has committed a deed of insolvency, which entitled the Applicant to a provisional sequestration order of the Respondent. On a perusal of such application, *prima facie* it appears that the application was a so-called *"friendly sequestration"* application and Counsel who acted on behalf of the Applicant in this matter conceded this.

[5] After the first provisional sequestration order referred to *supra* lapsed, the second provisional sequestration order granted on 19 March 2021 under the same case number as the present application was granted on the same grounds which the Applicant relied on in the previous application under Case no. 47463/2016.

[6] In the present application for "*reinstatement*" of the provisional sequestration order which was granted on 9 March 2021, no new or additional grounds upon

which the Applicant relies for a final order for sequestration of the Respondent's estate is disclosed.

[7] The application under Case no. 046669/2023 seeks to extent the powers of the trustees originally appointed pursuant to the provisional sequestration order granted on 9 March 2021 to enable such trustees to accept and enter into a Deed of Sale of an immovable property which vests in the estate of the Respondent. The relief which the Applicants under Case no. 046669/2023 seek is therefore dependent on the Applicant under Case no. 11262/2021 being granted the relief which is sought in the Notice of Motion in that application.

[8] It is trite law that the discretion of a Court to grant an order for the sequestration of a person's estate is a discretionary order which the Court will only make if the Court is satisfied that such order is to the benefit of the *concursus creditorum*.

[9] I am not satisfied that the relief which the Applicant seeks in the application under Case no. 11262/2021 will be to the benefit of the *concursus creditorum*, and I am not prepared to exercise a discretion to grant the relief as claimed in the Notice of Motion namely reinstatement of the previous provisional sequestration order made under Case no. 11262/2021 which lapsed and grant a final order for the sequestration of Respondent's estate, for the following reasons:

[9.1] The grounds upon which the Applicant relies constitutes an alleged deed of insolvency committed during 2016, some 7 years ago. There is no information contained in the present application why the Applicant should be entitled to rely on an alleged deed of insolvency which was committed 7 years ago;

[9.2] Save for a bald allegation, there is no factual information which enables me to determine whether or not the relief as sought in the Notice of Motion will be to the benefit of the *concursus creditorum*. There is no information

pertaining to the assets and liabilities of the Respondent, and whereas it appears from the Founding Affidavit in the present urgent application that a financial institution (Nedbank) apparently has no objection to an immovable property which vests in the estate of the Respondent being disposed of, this application was not served on Nedbank who is clearly a creditor of the estate of the Respondent;

[9.3] There is no explanation in the present application of any change which may have occurred in the financial position of the Respondent from 2016 to the present time and it is highly improbable that the Respondent's financial position would have remained exactly the same as it was when the previous provisional orders for sequestration were granted.

[10] I therefore make the following order:

1. The application under Case no. 11262/2021 is dismissed;

2. The application under Case no. 046669/2023 is dismissed.

P A VAN NIEKERK

ACTING JUDGE OF THE GAUTENG DIVISION, PRETORIA

CASE NUMBER:	11262/2023
HEARD ON:	30 May 2023
FOR THE APPLICANT:	ADV. D. BROODRYK
INSTRUCTED BY:	DLBM Incorporated Attorneys

DATE OF JUDGMENT:	1 June 2023
CASE NUMBER:	046669/2023
HEARD ON:	30 May 2023
FOR THE APPLICANTS:	ADV. D. BROODRYK
INSTRUCTED BY:	DLBM Incorporated Attorneys
DATE OF JUDGMENT:	1 June 2023