IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Reportable: Yes

Of interest to other judges: Yes

In the ex parte application for the voluntary surrender of the estate of: **CASE NO:**

TANYA IRIS REGGIORO **66537 /14**

Identity No: […]

DANIELLE ROBINSON **21414 /15**

Identity No: […]

YOLISWA ARETHA MAGCWEKWANA **21415 /15**

Identity No: […]

RUDENECIA ALLISTACIA KRAAL **23068 /15**

Identity No: […]

LOURINE FERREIRA **23076 / 15**

Identity No: [..]

ANDREA TOBIAS VAN HEERDEN **25733 / 15**

Identity No: […]

GESINA CAROLINA LERM **25741 / 15**

Identity No: […]

ASHWELL MORNE OPPERMAN **39697 / 15**

Identity No: […]

TRACEY NEL **23403 / 15**

Identity No: […]

JUDGMENT

MAKHUBELE AJ

INTRODUCTION

[1] All these matters and four others came before me in the unopposed roll of 23 June 2015. I stood them down to allow counsel to submit written heads of argument to address certain concerns that I had. The heads of argument were apparently submitted within the agreed date[1], however, they were only brought to me sometime towards the end of October 2015.

The applications appear to comply with the procedural requirements in terms of Section 4 of the Insolvency Act, Act 24 of 1936 ("the Act") , as amended. However, when I perused the affidavits, and indeed the Statements of Debtors' Affairs that lay for inspection, there was a common trend that worried me and led me to ask a question as to whether there has been a full and frank disclosure of all material facts that would enable me to exercise my discretion in favour of granting the relief sought.

[1] I stood the matters to 08 August 2015. The heads of argument are dated 03 July 2015.

[2] Except for Tracey Nel (Case number 23403 /15) all other applicants are represented by one firm of attorneys, Francois Uys Incorporated. The same counsel though, Ms L. Jansen, appeared in all applications.

[3] The trend that worried me is that there is no proof to support allegations relating to income, expenses and liabilities. All applicants who are employed did not attach proof of income, as such; I do not know whether the income disclosed is gross or nett salary. If it is the latter, I do not know what kind of deductions are there and whether they are of a voluntary or statutory (compulsory) nature.

[4] Allegations were made about creditors having issued summonses and letters of demand, but nothing was attached as proof. Long lists of creditors, some of whom appear to be financial institutions and micro lenders were drawn, but no further explanations were provided. There is basically no evidence to enable me to consider not only existence of such debts, but also when and circumstances under which they were incurred and the nature of the credit facility. In some instances, allegations are made about indebtedness relating to water and lights, school fees and medical aid for instance. However, no documents were attached to prove the existence of such debts.

THE ISSUES RAISED WITH COUNSEL

Whether there has been a full and frank disclosure of material facts

[5] I referred counsel to the judgment of Bertelsmann J in the matter of Ex Parte: E and Another (55075/2014) [2014] ZAGPPHC 919; 2015 (1) SA 540 (GP) (15 October 2014)[2] where the learned judge has referred extensively to several decisions to re-iterate the problems that courts encounter with voluntary sequestrations.

One of the issues the learned judge raised was the duty that rests on the applicants to act openly and honestly toward the court in every respect (para.6).

[6] In paragraph 7, Bertelsmann J quoted several passages3 in the judgment of Gorven J in the matter of **Ex Parte Arntzen (Nedbank Ltd as Intervening Creditor) 2013 (1) SA 49 (KZP)**

[2] Reported in the SALAR as **Ex Parte Erasmus and Another 2015 (1) SA 540 (GP)**

'5. Courts have long required an applicant in voluntary surrender applications to make a full and frank disclosure.[3] *This arises at least in part from the stringent test referred to above. It is quite clear that without a full and frank disclosure, the court cannot be 'satisfied' as to the above two criteria in particular. The required high level of disclosure is also affected. in no small measure, by the fact that the application is ordinarily brought on an ex parte basis, as is the present one. There is ample authority that applications brought on that basis require the utmost good faith.*[4] *The principles were succinctly stated by Le Roux J in Schlesinger v Schlesinger*[5] *in a rescission application as follows:*

> *'(1) in ex parte applications all material facts must be disclosed which might influence a Court in coming to a decision;*
>
> *2. the non-disclosure or suppression of facts need not be wilful or mala fide to incur the penalty of rescission; and*
>
> *3. the court, apprised of the true facts, has a discretion to set aside the formal order or to preserve it.*
>
> *…*
>
> *11. Voluntary surrender applications have begun to proliferate in this division. A fledgling cottage industry has reared its head. As was the situation with 'friendly ' sequestrations in Mthimkhulu, many of these take a standard form with almost identical averments and are drafted by a small set of attorneys who have chosen to specialise in such applications. In most cases the estate is small, as is the case in the present application. In many of them, confronted by the requirement that all the costs of sequestration must be defrayed from the estate and it must still be shown that sequestration would be to the advantage of creditors, a formula has arisen to reduce these costs. The applicant states that a friend or relative has undertaken to pay the costs of the*

[3] Footnotes omitted.

applicant's attorney and that the attorney concerned will not look to the estate for his or her costs. Just such on averment is mode in the present application.

12. I take the view that there is an even greater risk of abuse and a risk that the interests of creditors will be undermined in voluntary surrender applications than in 'friendly ' sequestration applications. Therefore the need for full and frank disclosure and well founded evidence concerning the debtor's estate is even more pronounced. There are a number of reasons for this, some of which have been foreshadowed in the discussion above. I shall mention only some. First, the applicant tends to focus on the formal requirements of s 4 of the Act and does not seem to appreciate the need to satisfy a more rigorous test than for sequestration applications at both provisional and final stages as regards advantage to creditors. Secondly the court must perforce, in most instances, rely on the founding papers. This brings into play the peculiar characteristics mentioned above of voluntary surrenders being brought as ex parte applications. Thirdly, no collusion between friendly creditor and debtor is necessary since it is the debtor who is the applicant and has a more direct interest in the application succeeding and understanding of the genuine position than the friendliest of creditors. Voluntary surrender applications therefore require an even higher level of disclosure than do 'friendly' sequestrations if the court is to be placed in a position where it can arrive at the findings and exercise the discretion set out in s 6(I) of the Act.'

[7] In all applications from Francois Uys Incorporated, the averments relating to letters of demand, summonses, why the applicants did not subject themselves to debt review processes are similar. a sort of cut and paste from the same source document. The only difference is numbering of paragraphs in some instances. For example, with regard to letters of demand and summonses, this standard paragraph appears in all applications:

"10

It is my submission that it will be to the advantage of all my creditors as a *whole if my application for voluntary surrender of my estate is granted, especially for the following reasons:*

10.1 I am not in a financial position to pay my debt and I have already received letters of demand and summonses from my creditors.

10.2 I expect that the rest of my creditors will also issue summons. The legal costs that will be incurred will have a further negative impact on my financial position if estate is not sequestrated.

10.3 If a curator is appointed, he will be able to sell my assets and divide the proceeds amongst my creditors which will have the effect that all the creditors will be treated equally'

[8] On whether applicants should subject themselves to debt review processes, they all declared, in similarly worded paragraphs numbered either 16 or 17 that:

"*16*

My legal representative advised me on the legal process of debt review in terms of the National Credit Ac t, Act 34 of 2005.

My situation is of such a nature that debt review would not be applicable to me, due to the fact that I cannot afford to pay the required monthly installment to the creditor. I have also already received letters of demand in terms of Section 129 of the National Credit Act 34 of 2005 from other creditors. I wish to proceed with this application of voluntary surrender of my estate"

[9] None of the applicants has provided meaningful explanations or attached proof of (a) income earned, (b) alleged letters of demand and summonses received, (c) emolument orders granted against the salary, (d) expenditure such as water and lights account, medical, phone and groceries and (e) existence of debt as indicated in the List of Creditors (Annexure IV to the Statement of Affairs) , how and when it was incurred, the original amount and the purpose for which it was incurred.

[10] The only difference in these applications is the identity and amount owed to the alleged creditors in the list of expenses as well as Annexure IV of the Statement of Affairs.

I proceed to quote from selected applications what has been declared with regard to expenses and creditors (Annexure IV to their statement of Affairs).

Tanya Iris Reggioro (Case number 66537/15)

[11] The applicant has listed the following expenses in her founding affidavit.

1. Rental	3 800.00
2. Water and electricity	600.00
3. Groceries	1 500.00
4. School fees	600-00
5. Travelling expenses	500-00
6. Insurance	520-00
7. Telephone	150-00

[12] Her creditors are listed in Annexure IV to the Statement of Affairs as follows:

Name and address of	Nature and value of security for	Nature of Claim	Amount of Claim
1. Nedbank	None	Money lent and advanced	20 002-02
2. African Bank	None	Money lent and advanced	11 967-32
3. First National Bank	None	Money lent and advanced	18 733-65
4. Real People	None	Money lent and advanced	6 666-67
5. Balance Your Bond	None	Services rendered	1 550-25
6. Wonga	None	Money lent and advanced	1 433-33
7. Motor Finance Corp.	None	Money lent and advanced	0 -00
8. SA Multi Loans	None	Money lent and advanced	1 000-10
9. Nashua	None	Services rendered	1 933.33
10. Somerset Hospital	None	Services rendered	1 000.56
11. Edgars	None	Goods delivered	1 766.67
12. Foshini	None	Goods delivered	666.67
13. Lewis Stores	None	Goods delivered	7 000.12
			TOTAL: 73 720.69

Danielle Robinson (Case number: 21414)

[13] She earns a salary of R12 000.00 and her monthly expenses are as follows:

1 . Rental	5200-00
2. Medical	4 400-00
3. Groceries	2 000-00
4. School Fees	2 500-00
TOTAL	**R14 100-00**

[14] She listed her creditors in Annexure IV as follows

Name and address of creditor	**Nature and value of security for claim**	**Nature of Claim**	**Amount of Claim**
1. Nedbank	None	Money lent and advanced	44 446-81
2.Direct Axis	None	Money lent and advanced	697=49
3. Wesbank	None	Money lent and advanced	4 450-60
4. Woolworths	None	Goods delivered	14 536-34
5. Sanlam	None	Money lent and advanced	6 899-22
6. Nedbank	None	Money lent and advanced	7 242-75
7. Standard Bank	None	Money lent and advanced	4 718-22
8. Sterns	None	Goods delivered	122-87
9. First National Bank	None	Money lent and advanced	77 514-12

10.Absa	None	Money lent and advanced	2 950-86
11. Edgars	None	Goods delivered	4 075-72
			TOTAL: 167 655-00

<u>Yoliswa Aretha Magcwekwana (case number: 21415 / 15)</u>

[15] She earns a salary of R7 400-00 from her job as an Administrator. She does not mention who her employer is and whether this is a nett or gross salary. As stated above, there is no salary slip from where I could discern this and other relevant information such as deductions of a voluntary and or statutory nature.

Her expenses are:

1. House	5 000-00
2. Water and electricity	500-00
3. Groceries	I 000-00
NO ITEM 4	
5. School Fees	800-00
6. Transport	I 000-00
TOTAL	**8 300-00**

[16] Her list of creditors (Annexure IV to the Statement of Affairs) reads as follows:

Name and address of creditor	Nature and value of security for claim	Nature of Claim	Amount of Claim
I. Nedbank	Bond	Money lent and advanced	240 786-94
2. African Bank	None	Money lent and advanced	39 570-26
3. OK	None	Money lent and advanced	32 916-86
4. African Bank	None	Money lent and advanced	44 781-73
5. Nedbank	None	Money lent and advanced	10 396-12
			TOTAL: 368 481-93

<u>Rudinecia Allistacia Kraal (Case number 23068 / 15)</u>

[17] She is currently unemployed. However, she has failed to give further particulars with regard to the period of, her last salary and prospects of future employment.
Her expenses are:

1. Rental	3000-00
2. Water and electricity	800.00
3. Groceries	1 000-00
4. School Fees	900-00
5. Medical	500-00
TOTAL:	**6.200**

[18] Her creditors are listed in Annexure IV to the Statement of Affairs as follows:

Name and address of creditor	**Nature and value of security for claim**	**Nature of Claim**	**Amount of Claim**
1. Standard Bank	Bond	Money lent and advanced	96 900-00
2. Foschini	None	Goods delivered	3 279-98
3. Truworths	None	Goods delivered	5 842-69
4. Home Choice	None	Goods delivered	5 527-28
5. Mr Price	None	Goods delivered	805-90
6 Autopage	None	Services rendered	1 548-75
7. Absa Personal loans	None	Money lent and advanced	5 027.66
8. FNB	None	Money lent and advanced	8137.88
9. NONE			
10. Nedbank Credit	None	Money lent and advanced	10 852.19
11. Nedbank	None	Money lent and advanced	28 250.25
12. MTN	None	Services rendered	2 986.60
13. Damelin	None	Services rendered	10 960.18
14. Bayport	None	Money lent and advanced	22 647.66
15. Brom Finance	None	Money lent and advanced	1 719.35
16. Absa	None	Money lent and advanced	18 166.95
			TOTAL: 222 653.32

Lourine Ferreira (Case number: 23076 /15

[19] She earns R10 213 from her job as Personal Assistant in a Quantity Surveying firm. Like every one of the applicants, this is all the information that has been provided about her income.

Her expenses are listed as follows:

1. Rent	2 500.00
2.Water and electricity	1 600-00
3. Groceries	2 400-00
4. Clothing	1 700-00
5. Medical Aid	2 100-00
TOTAL	**10 300·00**

[20] Her creditors are listed in Annexure IV to the Statement of Affairs as follows:

Name and address of creditor	Nature and value of security for claim	Nature of claim	Amount of claim
1. Absa	Bond	Money lent and advanced	42 716.21
2. African Bank	None	Money lent and advanced	9 034.39
3. African Bank	None	Money lent and advanced	16 686.39
4. African Bank	None	Money lent and advanced	14 373.19
5. African Bank	None	Money lent and advanced	12 628.44
6. African Bank	None	Money lent and advanced	10 147.37
7. African Bank	None	Money lent and advanced	8 563.68
8. African Bank	None	Money lent and advanced	9 215-46
9. Call Direct		Money lent and advanced	27 663-61
10. Consumer Friends RCS	None	Money lent and advanced	4 714-37
1 1. Edgars	None	Goods delivered	4 086-20
12. First National Bank	None	Money lent and advanced	l 829-07
13. Gerrie Groenewald Attorneys	None	Services rendered	1 850-00
14. Izwe Loans	None	Money lent and advanced	3 308-24
15. Wonga	None	Money lent and advanced	2 607-41
16. Nedbank	None	Money lent and advanced	20 682-20
			TOTAL: 190 106-68

[21] The remaining applications[4] from the office of Francois Uys Inc are not different from the others that I have already discussed above. It will serve no purpose for me to reproduce their list of expenses and creditors.

Tracey Nel (Case Number: 23403/15)

[22] This is the only application that does not come from Francois Uys Incorporated, however, it is not different from the rest with regard to lack of disclosure of basic information such as proof of income, expenses, debts, when they ere acquired, the original amount, arrears thereto and purpose for which they were incurred.

The National Credit Act, Act 34 of 2005 ("the Credit Act")

[23] The only averments with regard to compliance with the National Credit Act, 34 of 2005 ("the Credit Act") are what I have already quoted from paragraphs 16 or 17 of the founding affidavits of the first eight applications where the applicants have declared that they would not qualify for debt counseling because they will not afford to pay the costs, and furthermore, that they have already started to receive letters of demand in terms of section 129.

[24] In addition to the issues I have raised above, I also enquired from counsel for the applicants whether the debts disclosed in the list of creditors (Annexure IV to their Statement of Affairs) are not credit agreements that would probably be subject to the provisions of the Credit Act that I will refer to hereunder and also whether the applicants should have followed the prescribed processes to manage their debt instead of Insolvency proceedings.

[25] Section 80 of the Credit Act titled "*Reckless credit*" reads as follows:

> *(1) A credit agreement is reckless if, at the time that the agreement was made, or at the time when the amount approved in terms of the agreement is*

[4] Gesina Carolina Lerm (Case number: 25741 I 15). Ashwell Morne Opperman, Case number: 39697 I 15) and

increased, other than an increase in terms of section 1 19(4)-

(a) the credit provider failed to conduct an assessment as required by section 81 (2), irrespective of what the outcome of such an assessment might have concluded at the time; or

(b) the credit provider, having conducted an assessment as required by section 81 (2), entered into the credit agreement with the consumer despite the fact that the preponderance of information available to the credit provider indicated that-

(i) the consumer did not generally understand or appreciate the consumer's risks, costs or obligations under the proposed credit agreement; or

(ii) entering into that credit agreement would make the consumer over-indebted.

(2) When a determination is to be made whether a credit agreement is reckless or not, the person making that determination must apply the criteria set out in subsection { 1J as they existed at the time the agreement was made, and without regard for the ability of the consumer to-

(a) meet the obligations under that credit agreement; or

(b) understand or appreciate the risks, costs and obligations under the proposed credit agreement, at the time the determination is being made.

(3) When making *a* determination *in terms of this* section, *the value of-*

(a) any credit facility is *the* credit *limit at that time* under *that credit*

facility;

(b) any pre-existing credit *guarantee* is-

(i) the settlement value of *the* credit *agreement that* it *guarantees, if the guarantor has been* called upon *to honour that guarantee;* or

(ii) the settlement value of the credit *agreement that it guarantees, discounted by a* prescribed *factor;* and

(c) any new credit guarantee is the settlement value of the credit agreement that it guarantees, discounted by a prescribed factor.

[26] Section 85 of the Credit Act prescribes the powers of the court when a credit agreement is being considered and it reads as follows:

*" **85. Court may declare and relieve over-indebtedness***

Despite any provision of law or agreement to the contrary, in any court proceedings in which a credit agreement is being considered, if it is alleged that the consumer under a credit agreement is over-indebted, the court may-

(a) refer the matter directly to a debt counsellor with a request that the debt counsellor evaluate the consumer's circumstances and make a recommendation to the court in terms of section 86(7); or

(b) declare that the consumer is over-indebted, as determined in accordance with this Part, and make any order contemplated in section 87 to relieve the consumer's over-indebtedness.

[27] In terms of section 86, a consumer may apply to a debt counselor to be declared over-indebted before a credit provider takes steps to recover the debt in terms of section 130.

[28] It is settled law that proceedings under the Insolvency Act such as what is before me fall within the category of proceedings contemplated in Section 85 of the Credit Act and that Iwould be entitled to act in terms of the remedial provisions thereof.

See: Ex Parte Ford, Ex Porte Venter; Ex Porte Botes (21084/08, 1034/09, 1035/09) [2009] ZAWCHC 24; 2009 (3) SA 376 (WCC) (5 March 2009)[5] (para [12] at 381F-H)

APPLICANTS' SUBMISSIONS

[29] Ms Jansen's starting point to each and every question I have raised is that a duty to disclose a fact depends on whether it is a material fact or not and whether its disclosure would make a difference to the success of the application.

[30] I have already quoted the relevant paragraphs from some of the judgments[6] she relied on in her submissions and in fact, the issues I raised with her in court emanates from these decisions. As a result I will not repeat the principles arising therefrom.

[31] In summary, Ms Jansen submitted that:

[31.1] Creditors are given an opportunity to consider the applications and have an election to intervene should they wish to do so.

[31.2] The facts deposed to in the affidavits were sworn to under oath.

[31.3] Corroboration of what has been sworn to by submission of documents such as payslips, statements and vouchers is not necessary, and if a particular court deems it necessary, the application may be stood down to afford an applicant an opportunity to supplement the papers.

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[5] Reported in the SALR as: Ex Parte Ford and Two Similar Cases 2009 (3) SA 376 (WCC)

[31.4] The applications have been prepared over time to ensure that all necessary allegations are made and the court should not be burdened by voluminous bundles of corroborating evidence. Furthermore, attaching corroborating evidence would increase the costs of the application and take the court's time.

[31.5] It is difficult to find evidence to corroborate certain expenses, for example, travelling costs, petrol and groceries.

[31.6] Applicants who are unemployed would find it difficult to provide salary advices and as such it is difficult to comprehend how they could satisfy this requirement.

[31.7] Providing corroboration would be of no real and evidentiary value.

[31.8] Attaching bank statements and credit card accounts could compromise the privacy of the applicants because this information will be subject to public scrutiny. The court must, in the absence of opposition, assume that the amount indicated in the Debtors' Statement of Affairs is correct. An aggrieved creditor may apply for rescission of judgment even after the estate has been sequestrated.

[31.9] The debt review processes would apply to those applicants who are earning a salary. The court is in a position to determine or draw a conclusion whether an applicant would be able to satisfy at least 803 of each creditor's claim's minimum payment by taking into account the salary earned and the expenses listed.

[31.10] Attaching letters of demand and summonses would be an administrative burden for those who prepare the applications. It would also be a burden on the court because *"there are hundreds of these applications brought every week in a given division and it is for this reason that I believe that a pro forma standard index should exist"*.

[31.1 1] The court must accept the surrender of an estate once satisfied that there

[6] Bertelsmann J in the matter of Ex Porte Erasmus, supra and Gorven J in the matter of

has been compliance with procedural and substantive requirements, that there is no opposition from the creditors and the dividend calculations is in order.

[31.12] In certain instances, the applicants do not have the luxury of time to source corroborating evidence because they suddenly find *“themselves at a point of no return”*

ANALYSIS OF THE EVIDENCE

[32] It is unfortunate that Ms Jansen chose to approach my concerns from a humorous point of view to an extent that her submissions, to a large extent, bordered on sarcasms. This deprived her of an opportunity to make real submissions that could have assisted me. For example, it was never my intention to insist that applicants who are not employed should submit salary advices. In fact, only one applicant[7] is allegedly unemployed. The questions I raised with regard to her application are appropriate for her situation and relevant.

The concerns I raised were not intended to convey a message that the valuator of an immovable property should *"count and list the light bulbs in a property other than and except for a valuable chandelier which could be considered to be an investment or add value to such a property"*

[33] Had Ms Jansen approached my concerns on a serious note and considered the purpose for which the information is required, she would have seriously applied her mind to the issues in the context of (a) proof of insolvency and (b) whether or not there has been compliance with the provisions of the Credit Act and, if not (c) the powers of the court.

I had a reasonably lengthy exchange with Ms Jansen before I stood the matters down, however, at no stage did she request that the matters be postponed to allow the applicants an opportunity to address the issues I raised. In any event, I did not consider that as an option because there is no basic information in the founding

[7] Ex Parle RA Kraal, Case Number 23068/15

affidavits to even begin any enquiry in terms of either Section 6 of the Act (whether or not the applicants are insolvent) and the Credit Act (to convert the proceedings to an enquiry to establish whether or not the applicants are over-indebted).

[34] I stated in the introductory parts of this judgment that the applicants have simply stated that they earn a certain amount of money, without even bothering to indicate the nature of deductions and whether they are of a voluntary or statutory nature and whether the amount indicated is a gross or nett salary. Clearly, an applicant who gives such basic information would to a greater extent have discharged the duty to disclose (even without attaching a salary advice/ payslip) than one who simply states that he/she earns R10 000.00.

[35] It would be ludicrous of me to accept the suggestion that I should simply accept an allegation that an applicant owes money to a school, hospital, municipal service provider, etc without a shred of evidence.

[36] In the context of the Credit Act, questions such as when the debt was incurred, original amount, and existence of other debts when the new one was incurred are relevant. I can accept the omission in the Statement of Affairs because one may argue that the form is standardized and does not make provision for other information than what is requested, however, all applicants did not elaborate on this issue in the founding affidavit. In fact, they simply referred to the relevant part of the Statement of Affairs.

[37] The court in the matter of **Ex Porte Ford and Two Other Similar matters**[8] at least had a luxury of some basic information relating to the circumstances of the applicants, such as deductions that were being made in their salaries, hence the Learned judge was able to evaluate the indebtedness of the applicants taking into account what they had disclosed. The court stood the matter down to allow the applicants an opportunity to explain certain things arising from what was before it.
In these matters, I have nothing, just bare copied allegations from one application to the next.

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[8] supra

[38] It is only when a court is in possession of this basic information that it can even begin to venture into the questions contemplated in section 85 of the Credit Act or even to answer the question of whether or not the applicants are insolvent.
In these applications, all I have is long lists of creditors. I do not know whether the debts were incurred on the same day and whether each one of the creditors was aware of the existence of the other one when credit was extended.

[39] I am aware of what Ms Jansen refers to as hundreds similar applications that pass through the courts on a weekly basis. However, I do not agree with her submission that the *"preparation,* compilation *and preparation"* of these applications should be a mere administrative function on the part of the attorneys to an extent that they simply fill in a "pro forma *standard index"* that is just a copy and paste of conclusions of law without laying a factual foundation that pertains to the specific circumstances of each individual applicant.

[40] I have also, in my short stint as an Acting Judge[9] come across many such similar applications and where necessary, I have allowed the matters to stand down for the applicants to supplement their papers to address a specific concern[10] that I had or to address me on a point of law[11].

[41] I am also aware of several decisions of the High Courts where the courts have expressed concerns with the content of voluntary surrender of estates applications. Some of these problems were highlighted in the judgment of Bertelsmann J in the Ex Porte Erasmus and Another[12] matter.

I have also observed improvements in that legal practitioners have heeded some of

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[9] since 2013
[10] I was once confronted with several applications where the value of the estate was calculated on the basis of a valuation of personal effects. The matters stood down for the applicants to explain how they were going to survive without such basics. [judgment of Landman J in the matter of ...
[11] My judgment in the matter of Ex Parte Van Dyk (1869/2015) [2015] ZAGPPHC 154 (26 March 2015) I dealt with the question of whether surrender of an estate should be accepted under circumstances where the dividend that would accrue to the creditors from the residue of the estate amounted to "O cent per Rand", but under circumstances where the applicant was prepared to pay a monthly contribution to his insolvent estate over a period of about 4 years in terms of section 23(5) of the Insolvency Act.
[12] Supra

those concerns. Valuation reports, calculation of dividends and procedural requirements to a large extent are no longer an issue.

[42] However, in my experience, the issues that I have raised remain a problem, and more so because one would, like I did, be confronted with more than ten (10) applications that are based on the same "pro forma" affidavit. The applications say nothing about the circumstances of each individual.

[43] Counsel for the applicant appears to suggest that the courts should be part of what she refers to as administrative functioning in the whole scheme of voluntary surrender of estates. If this were to be allowed, there would be no need to refer the applications to an open court. The Office of the Registrar would be best suited to check compliance with procedural requirements, tick the appropriate boxes and accept surrender of the estates.

[44] I have noted the decisions[13] that have been attached to Ms Jansen's heads of argument to support her contention that the court should accept the amounts listed in the applicants' Statement of Affairs as correct and that applicants have proved that they are insolvent.

Keightley AJ was confronted with an opposition from the bank on the basis that the court should not use the market value of the property to determine whether the applicants were insolvent or not. The other grounds of opposition related to whether the valuation of the property was correct or not and the effect of overstating indebtedness to the bank. None of these issues arise from the matters before me.
Furthermore, there is nothing in the judgment to indicate that the Learned Judge was faced with the same problems that I have in this matters, namely, lack of basic information for me to begin to assess whether, on the facts, the applicants are solvent or not and whether there has been compliance with the debt management provisions of the Credit Act, and if not, whether I should act in terms of the remedial provisions thereof.

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[13] Judgment of Keightley AJ in the matter of Ex parte Leon Rudolph Lochenberg and Another (Absa Bank intervening), Case number 61888/13 and the judgment of Hiemstra AJ in the matter of Ex Porte Adele Ackerman { Absa Bank intervening) , Case number 61678 I 13

Similarly, Hiemstra AJ was faced with the question of whether the court should take into account the market value of a property or forced sale to consider the issue of solvency. That is not what I am dealing with here.

[45] Standing the matters down to allow the applicants an opportunity to supplement their papers would not, under the circumstances be an appropriate order because as I have stated already, there is nothing in the founding affidavits about the circumstances of each applicant. Counsel for the applicants has urged me to accept the scanty allegations, mainly because there is no opposition from creditors. I do not agree that absence of opposition constrains the exercise of the discretion that I have.

[46] I am not in a position to assess whether objectively, the applicants are insolvent or not and whether, I should invoke any of the provisions of the Credit Act.

[47] Accordingly, I make the following orders,

[47.1] In the matter of **TANYA IRIS REGGIORO, Case number 66537 /14,** the application for voluntary surrender of the estate is refused.

[47.2] In the matter of **DANIELLE ROBINSON, Case number 21414 /15,** the application for voluntary surrender of the estate is refused.

[47.3] In the matter of **YOLISWA ARETHA MAGCWEKWANA,** Case Number 21415/1 5, the application for voluntary surrender of the estate is refused.

[47.4] In the matter of **RUDENECIA ALLISTACIA KRAAL, Case Number 23068 /15**, the application for voluntary surrender of the estate is refused.

[47.5] In the matter of **LOURINE FERREIRA, Case Number 23076 /15,** the application for voluntary surrender of the estate is refused.

[47.6] In the matter of **ANDREA TOBIAS VAN HEERDEN, Case Number 25733 /15,** the application for voluntary surrender of the estate is refused.

[47.7] In the matter of **GESINA CAROLINA LERM, Case Number 25741 /15,** the application for voluntary surrender of the estate is refused.

[47.8] In the matter of **ASHWELL MORNE OPPERMAN, Case Number 39697 / 15,** the application for voluntary surrender of the estate is refused.

[47.9] In the matter of **TRACEY NEL, Case Number 23403 / 15,** the application for voluntary surrender of the estate is refused.

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TAN MAKHOBELE AJ
Acting Judge of the High Court

DATE HEARD: 23 June 2015 and stood down to 08 August 2015.

APPEARANCES:

Advocate L Jansen

1-8 applicants: instructed by Francois Uys Incorporated, Centurion,

PRETORIA

9th applicant: instructed by Cassie Fourie Attorney, Moreleta Park,

PRETORIA