FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Application No: 1097/2013

The *ex parte* application of:

GEORGE ANTHONY RADOV CLOETE APPLICANT

JUDGMENT: DAFFUE, J

HEARD ON: 28 MARCH 2013

DELIVERED ON: 5 APRIL 2013

INTRODUCTION

[1] On 18 March 2013 the applicant, a 39-year-old divorced male person residing in Virginia and employed as an engine driver, lodged an application for the acceptance of the surrender of his estate.

[2] The application was set down for hearing on 28 March 2013 in the unopposed motion court. Once arguments were advanced on behalf of applicant I reserved judgment.

ALLEGATIONS CONTAINED IN THE FOUNDING AFFIDAVIT AND ANNEXURES THERETO

[3] The following are evident from applicant's application:

3.1 He is resident in Virginia in the Free State Province, whilst his attorney, Mr Cassie Fourie, practises in Pretoria, Gauteng. The Bloemfontein attorneys are Messrs De Lange & Du Plessis.

3.2 There is only one asset in applicant's estate, to wit a 2008 Daihatsu Terios motorvehicle valued in the amount of R130 000,00 by a certain D J H Kotze of Auctions Extreme in Simonstown, Western Cape.

3.3 Standard Bank of South Africa Limited is the only creditor. Applicant has four separate accounts with the bank, three in respect of monies lent and advanced and the fourth in respect of an instalment sale agreement pertaining to the aforesaid vehicle. The total debt amounts to R170 560.55, leaving a deficiency of R40 560.55.

3.4 Applicant's reasons for insolvency can be summed up as follows: (i) his loss of employment in 2009 and consequent unemployment for a certain period whereafter he obtained new employment, but at a much lower salary; (ii) he and his wife separated in 2011 and after a hotly contested legal battle for care over their child, a decree of divorce was granted; (iii) applicant was forced to sell all his furniture and other assets, save for his motor vehicle; (iv) his mother stays with him and he and his child utilise her furniture and household equipment; (v) he applied for debt review, but he could not afford it any more as his debts increased instead of decreased.

3.5 On his version and as calculated under oath by his Pretoria attorney the probable dividend payable to concurrent creditors will be 20 cents in the Rand.

MATERIAL FACTSNOT CONTAINED IN THE APPLICATION

[4] The following material facts which should have been included to show utmost good faith and which are vital for adjudication of this application are missing from the papers:

4.1 Full details of applicant's employment, especially pertaining to the identity of his employer, his gross income, deductions and net income and whether he is entitled to a thirteenth cheque and overtime;

4.2 Details of applicant's monthly expenditure;

4.3 How applicant financed the contested divorce litigation with specific reference to the total legal costs and full details in respect of assets sold as alleged in order to settle his costs;

4.4 Whether his vehicle is insured and if so with which insurance company and in particular whether the vehicle is in safety storage or used on a daily basis pending finalisation of this application;

4.5 Why he did not sell the vehicle by private treaty and use the proceeds to enter into a compromise with his only creditor, Standard Bank, and if that being unsuccessful, why such proceeds could not be paid into the Master's Guardian Fund with the launch of these proceedings;

4.6 What the relationship is between him (from Virginia in the Free State) and his Pretoria attorney or between his attorney and the valuator and why was it necessary to instruct a Simontown's valuator to do a valuation in Virginia, some 1 200km away, whilst there are many valuators andexperienced second hand carsalesmen in the Free State Goldfields that could have been instructed to perform a valuation to assist the court;

4.7 Why a proper calculation was not made of the sequestration costs, particularly bearing in mind that two firms of attorneys are employed, as well as the liquidation and distribution costs with reference to not only the Master's and trustee's fees, but also costs such as in respect of security, advertisements,postage and the like;

4.8 Whythe valuator who undertook a trip of 2400 kilometres(if that was indeed the case) charged a mere R500 for his valuation;

4.9 On what basis the valuator's valuation was undertaken insofar as he allegedly relied on a"direct comparison approach", but did not provide any details in this regard. Furthermore there is no evidence pertaining to the condition of for example the tyres of the vehicle, the exterior or interior of the vehicle, or of any extras such as radio and air-conditioning. There is also no indication that the valuator has considered the trade-in and retail prices of the vehicle;

4.10 There is no indication as to the date on which the balances owing to the creditor in respect of the four accounts were obtained and/or whether interest since then was taken into account;

4.11 It is alleged that summons was issued against applicant without providing the court with further information. It is unknown in respect of which account. It is possible that the creditor has already taken judgment and attached the only asset in execution, but applicant failed to take the court in his confidence and disclose any further information in this regard;

4.12 Applicant failed to explain when was the debt review application made, whether the magistrates' court made an order and if so, when, who the debt counsellor was, for how long he was under debt review and when was the debt review terminated.

LEGAL REQUIREMENTS FOR ACCEPTANCE OF SURRENDER OF AN ESTATE

[5] An applicant for the acceptance of the surrender of his estate must comply with certain procedural and substantive requirements. The procedural requirements are set out in section 4 of the Insolvency Act, 24 of 1936 ("the Act") while the substantive requirements are found in section 6 of the Act.

[6] The procedural requirements are the following;

6.1 Before presenting his application in terms of section 3 of the Act, an applicant shall cause a notice of surrender in the prescribed form to be published in the Government Gazette as well as in a newspaper circulating in the district in which he resides (or if he is a trader, in the district in which his principal place of business is situated);

6.2 This notice shall be published not more than 30 days and not less van 14 days before the date upon which application will be made to the court for acceptance of the surrender of his estate;

6.2 Within 7 days after publication for the said notice the applicant must deliver or post a copy of the notice to every creditor whose address he knows or can ascertain;

6.3 The notice must also be furnished by post to the registered trade union representing any of the debtor's employees and the employees should be notified byaffixing a copy to any notice board to which the employees have access inside the applicant's premises, alternatively to the front gate of the premises;

6.4 A similar notice should also be posted to the South African Revenue Service;

6.5 A statement in duplicate of the applicant's affairs in the form set out in the first schedule to the Act shall be lodged at the office of the Master and if the debtor resides or carries on business as a trader in any district where there is no Master's office, the said statement shall also be lodged at the office of the magistrate of the district in which he resides or carries on business;

6.6 In both cases the statement of affairs shall lie open for inspection of any creditor for a period of 14 days from the date mentioned in the notice of surrender.

[7] The substantive requirements are the following:

7.1 That the estate of the applicant is insolvent;

7.2 That the applicant owns realizable property of a sufficient value to defray all costs of the sequestration which will in terms of the Act be payable out of the residue of his estate; and

7.3 That it will be to the advantage of the applicant's creditors if his estate is sequestrated.

[8] The test to establish that it is to the advantage of creditors of the estate to be sequestrated is more stringent in cases of voluntary surrender than in sequestration applications. In terms of section 6 the court must be satisfied that it will be to the advantage of creditors that the estate is sequestrated, while in terms of sections 10 and 12 dealing with provisional and final sequestration respectively, a court may make an order sequestrating the estate of the debtor provisionally if it is *prima facie* of the opinion that there is reason to believe that it will be to the advantage of creditors if the estate is sequestrated and in the case of final sequestration if the court is satisfied that there is reason to believe that it will be to the advantage of creditors.

ABUSE OF PROCESS

[9] Although section 4 of the Act requires a certain measure of notice to creditors, an application for voluntary surrender of an estate is in essence an *ex parte* application and that being so, an applicant in these applications should make full and

frank disclosure as the utmost good faith is required. See ***Ex Parte*Arentzen** (Nedbank Limited as intervening creditor) 2013 (1) SA 49 (KZP), para [5] with referenceto the old established principles and case law cited in footnotes 3, 4 and 5.

[10] It has become fashion to launch applications for acceptance of surrender of debtors' estates, as is the case with the so-called "friendly sequestrations" with the main purpose to be to the advantage of debtors, but with the unfortunate disadvantage of creditors. This could not be what the legislature had in mind. Holmes J, (as he then was) stated many decades ago:

> "The machinery of voluntary surrender was primarily designed for the benefit of creditors, and not for the relief of harassed debtors."

See ***Ex Parte* Pillay; Mayet v Pillay**1955 (2) SA 309 (N) at 311 E.

[11] I have encountered several similar applications in the unopposed motion courts in the recent past. In several cases the attorneys of first instance were from outside the Free State and particularly from Pretoria. In many cases the estates consisted of either one fixed property, or an asset such as a motor vehicle. Some of these applications I dismissed and others have been postponed at the request of the legal representatives of the applicants in order to

supplement the papers, the eventual outcome of which is unknown to me as these were considered by my colleagues doing motion court duty at the time.

[12] In many of these cases the valuations of the assets were either doubtful, or the sequestration costs and the administration costs pertaining to the liquidation and distribution of the estates were incorrectly calculated, presenting a false picture of the actual costs and the probable dividends payable to concurrent creditors.

[13] Several judgments from various High Courts in South Africa have warned over the years against an abuse of process pertaining to friendly sequestrations as well as applications for voluntary surrender. I believe that it is necessary for the Free State High Court to add its voice to those voices in the other High Courts trying to prevent debtors from abusing the system to the detriment of creditors and especially concurrent creditors who rely on the courts to ensure that the requirements of the Insolvency Act are met without the necessity of them intervening and opposing these kinds of applications. It is not surprising that intervening creditors are in by far the majority of cases banks or other secured creditors. Concurrent creditors and especially creditors with relatively small claims are not prepared to enter into a legal battle that may cost them more than the amount of their claims.

[14] Generally speaking parties resorted to "friendly sequestrations"in this division in order to achieve the sequestration of a debtor and voluntary surrender procedure was seldom utilised. Recently I have noted from personal experience an increase in voluntary surrender applications in this court. Apparently there is a much greater concern in KwaZulu Natal and this caused Gorven J to comment as follows:

> "[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 applicant's attorney and that the attorney concerned will not look to the estate for his or her costs. Just such an averment is made in the present application."

[15] In these applications, "friendly sequestrations" included, there is often doubt, or an uneasiness, as to the relationship between the attorney and valuator or between the debtor and the valuator. In *casu* the valuator's business is located in

Simontown, the attorney is from Pretoria and the debtor is resident in between in the Goldfields town of Virginia. Such factors should raise the eyebrows, especially where the valuator's fee is alleged to be R500,00 only and his report is of no assistance to the court.

[16] I am in full agreement with the *dicta* of Gorven J in ***Ex Parte* Arentzen***loc cit* at paras [12] and [13] to the effect that voluntary surrender applications require an even higher level of disclosure than "friendly sequestrations" and that it is appropriate at the very least to require compliance with those guidelines set out in **Mthimkhulu v Rampersad**(**BOE Bank Ltd**, **Intervening Creditor**) [2000] 3 All SA 512 at 517b-h. Although the court in Mthimkhulu dealt with a "friendly sequestration", the guidelines can be applied in voluntary surrender applications as well, but also bearing in mind what is stated *infra.*

[17] In **Craggs v Dedekind and three similar applications**, 1996 (1) SA 935 (C) at 936 H, Conradie J referred with approval to the following remarks of Curlewis JP in **Kerbel v Chames** 1925 WLD 72 at 76-77:

> "… and one has a strong suspicion that in a very large number of sequestrations in this court, these sequestration proceedings are not for the benefit of the creditors, but are entirely for the benefit of the insolvent and are very often instituted by a friend to help the debtor out of his difficulties."

Conradie J went onat 936J to 937A to refer to the fact that courts have warned over many years against neglecting the interests of creditors, but notwithstanding that, even then (in 1995) it was still a legitimate concern which should continue to engage the attention of the courts. Although the court dealt with" friendly sequestrations", the concerns pertaining to voluntary surrender applications are exactly the same.

[18] In ***Ex Parte* Anthony en 'n Ander en 6 soortelyke aansoeke**2000 (4) SA 116 (C) Blignaut J dealt with seven separate applications for voluntary surrender. In all seven cases each estate consisted of one mortgaged immovable property and a few movables. The court's main concern was the advantage to creditors and Blignaut J, writing for the full bench, found that notwithstanding valuations obtained by the applicants in each case, they failed to prove that the valuations would be achieved in the event of forced sales. The court relied on the judgment of Leveson J in **Nel v Lubbe** 1999 (3) SA 109 (W) where the learned Judge was also confronted with a valuation which was nothing more but "a bold assertion of value".

[19] In **Nel v Lubbe***loc cit*, Leveson J made it clear that a court will look to the guidance of an expert when it is satisfied that it is incapable of forming an opinion without it, but that the court is not a rubber stamp for the acceptance of the expert's opinion. It is important that evidence must be placed before the court of the facts relied upon by the expert for his opinion

as well as the reasons upon which it is based. The learned Judge went further:

> "The court will not blindly accept the assertion of the expert without full explanation. If it does so its function will have been usurped." (at 111G)

The manner in which expert evidence must be placed before the court is nothing new. Wessels JA put it as follows in **Coopers (SA) (Pty) Ltd v Deutsche Gesellschaft** 1976 **(**3**)** SA 352 (A**)** at 371G-H:

> "As I see it, an expert's opinion represents his reasoned conclusion based on certain facts or data, which are either common cause or established by his own evidence or that of some other competent witness. Except possibly where it is not controverted, an expert's bald statement of his opinion is not of any real assistance. Proper evaluation of the opinion can only be undertaken if the process of reasoning which led to the conclusion, including the premises from which the reasoning proceeds, are disclosed by the expert."

[20] In ***Ex parta* Ogunlaja and others** [2011] JOL 27029 (GNP), Bertelsmann J endorsed the approach by Levenson J in **Nel v Lubbe**and went further to explain the applicable requirements regarding expert testimony in paras [15] and [16]. It is apposite to emphasise the following warnings in paras [35] to [39]:

> "[35] It is necessary to add that the nature of the valuation report is such that, in the absence of a reliable method of calculation of the value of the immovable properties,

the court is left with the uncomfortable impression that the valuator and the applicants, or the applicants' legal representatives, are too close to one another to allow the preparation of an independent expert's report. The thought is difficult to dismiss in these applications, and in many others the court has seen over the past two to three years, that the valuator is fully aware of the value that needs to be certified for assets in every individual insolvent estate to ensure that the papers reflect the conclusion that an advantage to creditors is assured if the surrender is accepted …

[36] If this impression is correct, it is clear that the process of voluntary surrenders is being abused. …

[37] If the suggestion is allowed to take hold that certain valuators manipulate the true value of assets upward to persuade the court to accept applications such as the matters under consideration, the result must be a deep suspicion on the part of the court of any valuation report prepared by the valuators concerned.

[38] To prevent such an uncomfortable situation from arising, valuators should certify under oath that they prepared every valuation without any knowledge of the facts of the relevant application. In addition, proof of physical inspections of immovable properties ought to be provided by way of photographs and a detailed description of the physical condition in which each property was found, as well as the effect that the physical appearance of the property has upon the valuation thereof.

> [39] The applicants themselves and the attorney acting for them should likewise confirm that the valuator was not made privy to the value that the assets in the estate must realise in order to constitute an advantage to creditors."

Although the learned Judge referred to valuation of immovable properties only, I am of the view that photographs and a detailed description of the physical condition of movable property and motor vehicles in particular, property that are used on a daily basis, should be obtained as well.

[21] In **Smit v Absa Bank Ltd** [2011] JOL 27973 (GNP), Southwood, J also found that the applicants' valuation was completely defective as it did not comply with the requirements laid down in the case law. In para [7] the court also frowned upon the allegation that the applicants' estate consisted of one immovable property only and mentioned the following:

> "It is also difficult to believe that the applicants own no other assets. The overall impression is that the applicants have not taken the court into their confidence."

Southwood, J in **Ex Parte Mattysen *ed uxor*** 2003 (2) SA 308 (T) adjudicated upon an application for voluntary surrender and made two relevant observations, one pertaining to the valuation of the immovable property and the other pertaining to the failure to make full disclosure pertaining to the sale of that property. Regarding the valuation the court foundat p 316A that the affidavit of the valuator did not contain relevant facts or reasons, did not assist the court in any way and was nothing but “an exercise in futility”. With reference to the failure to make full disclosure the court stated the following at 316E:

> “Here it appears that there has been a deliberate misrepresentation of the facts. The probability is overwhelming that this was done with the assistance of the applicants’ attorney. By the time the applicants’ affidavit was made on 3 July the applicants would have been served with the summons, the warrant of execution/notice of attachment would have been served on them and the notice of sale in execution would have been published. Without an explanation it is highly improbable that they would not have known about this and informed their attorney accordingly.”

THE COSTS OF SEQUESTRATION AND ADVANTAGE TO CREDITORS

[22] For several years it has been accepted as a rule of practice in the Free State High Court that sequestration and administration costs as a general rule be accepted in the amount of R20 000,00 in order to calculate the concurrent dividend payable to concurrent creditors. This has to be reconsidered as I have recently established from the Registrar that taxed sequestration costs in unopposed sequestration applications vary between R18 000 and R21 000,00. Further enquiries indicated that it can be as high as R25 000.00 and that the costs of voluntary surrender

applications are in line with these costs. Obviously if more than one firm of attorneys is involved, which is often the case, the costs are higher. In order to establish the total costs to be paid out of the free residue of an insolvent estate, (that is including the costs of administration of the insolvent estate), the trustee's and Master's fees, advertising costs, security costs, the auctioneer's fees and expenses, postage and diverse items must be added. The administration costs of a small estate with unencumbered movable assets of R200 000.00 can be as high as R35 000.00 to R40 000.00 if the trustee's fees of 10% on R200 000.00 plus VAT and the other costs referred to above are added. Iftaxed sequestration costs of R22 000.00 only is added, the total costs to be paid from the free residue may be as high as R62 000.00 in this example which is much higher that the amount accepted as a general rule in this division. Obviously, this will have a huge effect on the dividend payable.

[23] There has been a further long standing practice in this division pertaining to advantage to creditors. Once it is established that a dividend of 10 cents in the Rand will be payable to concurrent creditors in so-called "friendly sequestrations" or applications for voluntary surrender, an advantage to creditors has been proven. If the position in the North Gauteng High Court is considered it appears as if a dividend of 10 cents in the Rand is too negligible a dividend. I am fortified in my view if applications for rehabilitation are considered. It is too frequently evident from these

applications that no or much smaller dividends than anticipated were paid out to concurrent creditors notwithstanding the fact that many concurrent creditors often do not even prove claims against insolvent estates. I am of the view that this division should follow the guidelines in North Gauteng where the court has laid down that advantage to creditors requires a dividend of at least 20 cents in the Rand. See **Smit v Absa Bank Ltd***loc cit* para [3] and **Ex ParteOgunlaja and others***loc cit* at para [9]. In the last mentioned judgment the minimum dividend of 10 cents in the Rand has been regarded as insufficient and a dividend of 20 cents in the Rand was regarded as the minimum benefit that would have to be established before an application for surrender of an estate or compulsory sequestration will be granted.

DEBT REVIEW IN ACCORDANCE WITH THE NATIONAL CREDIT ACT, 34 OF 2005 (NCA)

[24] Insofar as the four claims by Standard Bank against the applicant fall within the ambit of the NCA and applicant averred that he had referred his debt for debt review, it was incumbent upon him to provide an adequate explanation why he failed to properly avail himself to the available remedies. He should have informed the court as to when he applied for debt review, who the debt counsellor was, what the total debts were at that stage, whether the application for debt review was referred to the magistrate's court and if so, whether the application was successful, how many payments were made during the period of debt review and what the

outstanding balances were when he decided to walk away from debt review. There is a view point that debt review under the NCA is not the debtor's saviour that many people, the legislature included, thought it would be. However it was for applicant to explain in detail with a sufficient factual foundation why he was dissatisfied with debt review *in casu.* This he failed to do. My view is that all debtors, especially those with small and medium sized estates, should as a starting point embrace the protection of the NCA if the claims against them fall within the ambit of that Act. See also **Ex parte Ford and two similar cases**2009 (3) SA 376 (WCC). Insolvency must always be the last resort. As a general rule it is not acceptable that debtors utilise the expensive machinery of the Insolvency Act to get rid of creditors to the disadvantage of the last-mentioned.

ADJUDICATION OF APPLICANT'S APPLICATION

[25] Applicant's failure to disclose his income and expenditure is highly relevant, particularly insofar as the total of the concurrent claims is relatively small. If the income and expenditure were fully disclosed, it might have had an effect on considerations pertaining to the advantage to creditors. If a sufficient amount was available for the trustee to be appointed to utilise section 23(5) of the Insolvency Act to apply such excess income, I might have been persuaded to grant the application on condition that applicant could also overcome my difficulties with the other apparently insurmountable problems referred to herein. However there is a dearth of evidence in this regard.

[26] I find it highly improbable that applicant would go so far to sell his and his child's beds and other household properties, but failed to sell the very asset that is on his version worth much more than the outstanding balance due to the bank. The circumstances cry out for frank and candid disclosure.

[27] As mentioned this is a typical situation where the applicant should have utilised the benefits of the NCA in order to settle his debts in a constructive manner in accordance with a court order obtained from the magistrate's court. In such a way he would be protected against harassment by creditors while creditors on the other hand would eventually receive full payment of their claims. Contrary to such a factual scenario, granting of the application for voluntary surrender will benefit applicant only to the detriment of his creditors.

[28] Something must be said about the calculations of the applicant's attorney pertaining to the costs and the dividend payable to concurrent creditors. The total costs of sequestration is calculated to be just over R9 000,00. This is less than half the usual sequestration costs for applications of this kind where one firm of attorneys is involved. In *casu* there are two sets of attorneys which will have a serious negative effect on the sequestration costs. In any event value added tax have to be added to several of the costs items. With reference to the administration costs of the insolvent estate, the 10% fee of the trustee together with tax has been taken into consideration, but no other costs such

as in respect of advertisements, security, auctioneer's fees, postage and other diverse items associated with the administration of an insolvent estate. My impression of the attorney's attitude is that he manipulated the valuation of the vehicle and the costs in order to arrive at a dividend of 20 cents in the Rand which is the minimum laid down by the North Gauteng High Court in Pretoria where he practises.

[29] The valuation of Mr Kotze relied upon is really an exercise in futility. There is absolutely no reference to Mr Kotze's experience and training. He alleges that he is a member of the SA Institute of Auctioneers, but if the valuation is considered, I have serious doubts. The report and so-called sworn affidavit are riddled with spelling and some textual mistakes. Mr Kotze tries to show what the definition of market value is, i.e. being the estimated amount for which the item would exchange on the date of the valuation between a willing buyer and a willing seller after proper marketing thereof. This might be so, but he also acknowledges that he had to consider what the forced sale value of the vehicle was. He refers to the direct comparison approach as being the most suitable valuation method in determining market value, but then totally neglects to follow his own approach. There is no indication that he considered the valuations or sales of comparable vehicles and in particular, there is no indication that he has considered the authoritative booklet used by the motor industry to establish the trade-in and retail prices of vehicles. I would have expected him to take pictures of the vehicle and to show on

his valuation report the condition of the tyres, the interior, the exterior and whether or not the vehicle was fitted with extras such as radio and air-conditioning. There is no evidence that he established, for example by studying the registration papers of the vehicle, that it was indeed a 2008 "model". To the best of my knowledge, and after having studied the latest prices of vehicles in the Volksblad newspaper of 4 April 2013, the Daihatsu Terios comes in nine different models. There is a significant difference between the cheapest and most expensive model. The valuator has not informed us which of the different models he has valued. The allegation that the vehicle is in a fairly good condition is of no assistance whatsoever. Mr Kotze has failed to provide a proper factual foundation and cogent reasons for his conclusions in clear and logical terms. The so-called sworn affidavit does not comply with the statutory requirements for affidavits, but it is not even necessary to deal with technical aspects to reject his evidence. It is clearly untenable.

PROCEDURAL REQUIREMENTS

[30] The application should be dismissed as the substantive requirements of section 6 have not been met, but it is necessary to mention various procedural defects. The documents presented to me are riddled with mistakes. Applicant, a male person, is referred to as a female in prayer 1 of the Notice of Motion as well as in the notice to creditors. He is resident in the well-known suburb Merriespruit in Virginia, but throughout the application and in the advertisements reference is incorrectly made to Medispruit.

The notices in the Government Gazette and the Citizen appeared on 22 February 2013, more than 30 days prior to the hearing of the application on 28 March 2013. The statement of affairs is incomplete insofar as his ex-wife's particulars are not contained therein. Furthermore, it is unclear whether applicant deposed to the document under oath or whether he merely confirmed the correctness of the contents thereof. There is no compliance with the statutory requirements. The certificate of the Head of the Judiciary in Virginia is wrong insofar as it is stated therein that the first liquidation and distribution account in the estate late GAR Cloete laid for inspection. Surely Mr Cloete is still well and alive and secondly no liquidation and distribution account lied for inspection, but applicant's statement of affairs. The notice to creditors and especially annexure "E", which is stated to be a draft, is notification to Standard Bank with account reference number 040270793. It appears from the statement of affairs that four different account numbers have been allocated to applicant by the Standard Bank in respect of the various agreements. There is no indication that the other account numbers have been inserted on the other notices apparently sent to the bank. However, insofar as I am of the view that the application should be dismissed due to non-compliance with substantive requirements, it is not necessary to consider whether these procedural problems might have been condoned in a suitable case. The application should be dismissed on the basis that I am not satisfied that an advantage to creditors has been shown to exist.

ORDER

[31] The following order is issued:

31.1 Applicant's application for the voluntary surrender of his estate is dismissed.

J.P. DAFFUE, J

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