FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : 2232/2009

In the *ex parte* application for:-

PHENYO VICTOR MPITSANG Applicant
(Identity Number:)
Unmarried

JUDGMENT BY: MOLEMELA, J

DELIVERED ON: 28 MAY 2009

JUDGMENT

---

[1] This is an unopposed application for voluntary surrender. It appears from the applicant's Statement of Affairs that his debts amount to a total of R637 400,00. The annexure that deals with immovable property reflects an amount of R600 000,00 as being the value of the applicant's house. According to the annexure dealing with movable property, the only movable property that the applicant has is furniture. The furniture has not been itemised and a global figure of R10 000,00 is indicated as being as being the value thereof. According to the

"berekeningsblad" an amount of R3000.00 represents preferent claims and accordingly has to be deducted. No sworn valuations were submitted in respect of any of the assets.

[2] It is trite law that the acid test in determining whether or not to grant an application for any sequestration is: will the sequestration be to the advantage of creditors? Section 6 of the Insolvency Act 24 of 1936 states that "if the court is satisfied that the provisions of section four have been complied with, that the estate of the debtor in question is insolvent, that he owns realisable property of a sufficient value to defray all costs of the sequestration which will in terms of this Act be payable out of the free residue of his estate and that **it will be to the advantage of the creditors of the debtor** if his estate is sequestrated, it may accept the surrender of the debtor's estate and make an order sequestrating that estate." In **EX PARTE MATTYSEN ET UXOR (FIRST RAND BANK LTD INTERVENING)** 2003 (2) SA 308 (T) Southwood J stated as follows at p. 311 – 312:

"It is well settled what an applicant for voluntary surrender must do to prove that his/her sequestration will be to the advantage of creditors. In *Nell v Lubbe* 1999 (3) SA 109 (W) at 111D - G Leveson J stated the position as follows:

'The purpose of furnishing a sworn valuation is therefore to establish the price that is likely to be realised from the sale of the property on what is called a forced sale <u>so that it can be determined that there will be a free residue available for creditors and advantage to creditors is thereby established</u>.... In <u>EX PARTE ANTHONY EN 'N ANDER EN SES SOORTGELYKE AANSOEKE</u> 2000 (4) SA 116 (C) at 124 F – I the Full Court of the Cape Provincial Division expressly endorsed the approach of Leveson J in NELL v LUBBE, *supra*, found it to be equally applicable to applications for voluntary surrender" (my underlining).

[3] In **<u>TRUST WHOLESALERS AND WOOLLENS (PTY) LTD v MACKAN</u>** 1954 (2) SA 109 (N) at 111 the court remarked as follows:

"Whether it is advantages [to the creditor] or not must clearly depend on the circumstance, the value and number of assets available for liquidation, the amount of the claims, the costs of sequestration. "

All the cases mentioned above demonstrate the importance of showing the advantage to creditors.

[4] As stated before, *in casu*, there is no sworn valuation of any nature in respect of both movables and immovable property. This, despite the fact that the Master of the High Court specifically requested same in her report attached as annexure "E" to the application. Section 82(6) of the Insolvency Act exempts certain furniture from realisation. To the extent that the applicant's furniture has not been itemised, there is therefore a good possibility that part of the furniture included under "movable property" is property that cannot be realised and that is therefore of no benefit to the creditors. The effect thereof would obviously be to even further reduce the current estimated value of R10 000,00 in respect of movable property.

[5] The result of the applicant's failure to attach sworn valuations means that the estimated values are of no real significance as the current value of those properties could be far less than those estimates. If the values are indeed less, this aspect would negatively impact not only on the dividend but also on the sufficiency of the costs of sequestration as the latter costs are

obtainable from the free residue of the estate. In the absence of a sworn valuation, I am not satisfied that the applicant has complied with the requirements of section 6 of the Act.

[6] Accordingly, the following order is made:

The application for voluntary surrender is dismissed.

M.B. MOLEMELA, J

On behalf of applicant: Etienne Visser Attorneys
BLOEMFONTEIN

/sp