



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

CASE NO: 2024-094824

- | | |
|-----|---------------------------------|
| (1) | REPORTABLE: NO |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED. |

11 November 2024

Date

K. La M Manamela

In the matter between:

TAURUS CAPITAL FINANCE GROUP (PTY) LTD

Applicant

and

MASHUDU FORTUNATE MUZILA

Respondent

DATE OF JUDGMENT: This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time of hand-down is deemed to be 10h00 on **11 November 2024**.

JUDGMENT

Khashane Manamela, AJ

Introduction

[1] The applicant, Taurus Capital Finance Group (Pty) Ltd ('Taurus'), is a bridging financier or provider of the so-called 'bridging financial solutions' to attorneys and their clients, mostly claimants of compensation relating to motor vehicle accidents. The respondent, Mashudu Fortunate Muzila ('Ms Muzila'), is a legal practitioner and attorney of this Court. Until 13 August 2024 she was practising under the name Muzila Attorneys Incorporated ('Muzila Inc'), a personal liability company as envisaged in section 8(2)(c)¹ of the Companies Act 71 of 2008 ('CA 2008'), when she was suspended from practising as a legal practitioner and attorney by an order granted by Justice Millar of this Division at the instance of the South African Legal Practice Council ('LPC').² The order by Millar J (conveniently - with respect - henceforth referred to as the 'Millar Order') was obtained on an interim basis pending the final outcome of the LPC application. Muzila Inc is the second respondent in the LPC application. A *curator bonis* was appointed to administer and control the trust account of Muzila Inc in terms of the Millar Order. Ms Muzila is said to have misappropriated millions of rands in trust funds.

[2] In this application before me, Taurus seeks urgent relief only against Ms Muzila, that her estate be placed under provisional sequestration in the hands of the Master of this Court. The application is opposed by Ms Muzila. Muzila Inc is not cited. The matter came before me on 04 September 2024. Mr P Lourens appeared for Taurus whilst Mr O Leketi appeared for Ms Muzila. I reserved this judgment after listening to oral submissions by counsel. I also requested, after the hearing, that counsel file supplementary submissions on specific issues which largely surfaced during the hearing or argument. This judgment, gratefully, benefitted from the written

¹ Section 8(2), CA 2008 reads in the material part: 'A profit company is ... (c) a personal liability company if (i) it meets the criteria for a private company; and (ii) its Memorandum of Incorporation states that it is a personal liability company'.

² Founding affidavit ('FA'), annexure 'G', CaseLines: 002-82 to 002-92.

submissions by counsel the last of which was filed on 26 September 2024. Mr Lourens for Taurus even complained about a potential overreach in the supplementary submissions filed by Mr Leketi for Ms Muzila as he viewed some of the material to stray outside of ‘the ambit of the questions posed to the parties by the Court’. But Mr Lourens, to his credit and that of his client, dealt nevertheless with the issues he considered an overreach by the respondent and did not seek a jettisoning of same. I will consider all material filed.

Brief background

[3] Ms Muzila appears to have practised as the sole director of Muzila Inc. But in both the founding and replying affidavits filed by Taurus the matter was approached from the perspective that Ms Muzila practised under the corporate form of a sole proprietorship. This was one of the issues I directed counsel for the parties to address the Court on by way of supplementary submissions. I will revert to this below.

[4] Taurus provided Muzila Inc and its clients with upfront cash payments against fees relating to matters or claims by clients of Muzila Inc against the Road Accident Fund (‘the RAF’). This, according to Taurus, enabled the law firm to render services to its clients. Taurus provided finance for, among others, the contingency fees of Muzila Inc; the funding of medico-legal disbursements, and upfront cash payment to clients of Muzila Inc awaiting settlements of their awards from the RAF for finalised matters. These arrangements or transactions are premised on three sets of agreements involving Taurus, Muzila Inc and each of the affected clients of Muzila Inc. More on the terms and conditions of these agreements, below.

[5] Taurus provided two lists of clients of Muzila Inc (as annexures ‘A’ and ‘B’ to the founding papers) whose plight is relevant to this matter. These persons are victims of accidents who mandated Muzila Inc, as attorneys, to act for and on their behalf in the pursuit and prosecution of their claims against the RAF. The contents of these lists and what they purport

to represent appear to be common cause between the parties or if not – in my view – not effectively challenged by Ms Muzila.

[6] Annexure A reflects clients of Muzila Inc (“the ‘A’ Claimants”) whose claims against the RAF have already been paid out by the RAF. The payments by the RAF were made into the trust account of Muzila Inc on dates and in the amounts reflected on the document. The total amount paid by RAF, according to this document is R19 865 205. From this amount Taurus says R5 788 313 is owing to it comprising of the amounts of R3 596 732 and R2 191 581 due and payable to Taurus by the ‘A’ Claimants and Muzila Inc, respectively.

[7] Annexure B reflects individuals or clients of Muzila Inc (“the ‘B’ Claimants”) whose claims against the RAF have not yet been paid by the RAF. The total amount of the claims under this part is R9 220 000, although the document says only R8 145 000 is expected to be paid by the RAF.

[8] Both the ‘A’ Claimants and the ‘B’ Claimants have sold and ceded to Taurus their right, title and interest in and to their claims in terms of a written sale and cession agreement (‘the Cession Agreement’). A prototype of the Cession Agreement in respect of one of the affected clients or claimants also forms part of the Taurus founding papers.³ The affected clients signed identical agreements, Taurus told the Court.

[9] Taurus says on the basis of what is stated above - and as more fully set out in the material agreements - it is a creditor of Ms Muzila in the amount of R5 788 313. Interest is accruing on the amount with effect from 23 May 2024 until date of payment.

[10] Essentially, Taurus’ case is that by virtue of the applicable law: (a) the debt owing to it by Muzila Inc is payable by Ms Muzila; (b) Ms Muzila has failed to make payment, and,

³ FA, annexure ‘C’, CaseLines: 002-50 to 002-64.

therefore, (c) Taurus is entitled to apply for sequestration of Ms Muzila's estate due to liabilities exceeding assets in her estate. Most of these are denied by Ms Muzila. I deal with the respective cases of the parties and submissions made on their behalf, next.

Taurus' case (including submissions)

General

[11] As stated above, Ms Muzila is currently under suspension from practising as an attorney since 13 August 2024. The suspension followed accusations of her misappropriation of trust account monies of her law firm, Muzila Inc.

[12] In this application Taurus contends that Ms Muzila is insolvent and therefore her estate ought to be sequestrated. Taurus primarily relies on three agreements including the Cession Agreement, referred to above.

Agreements relied upon by Taurus

[13] In terms of the Cession Agreement, Muzila Inc, as the 'Attorney' (as defined in the Cession Agreement) was appointed as the agent for recovery of the amounts paid by the RAF in favour of the 'A' Claimants and 'B' Claimants; to make necessary payment to the claimants as 'Client[s]' (also defined), and thereafter pay to Taurus what is due to Taurus in respect of the advances or payments made by it to Muzila Inc and/or the clients.

[14] In terms of the Cession Agreement the ownership of and benefits attached to the funds received from the RAF in respect of the affected claimants (i.e. the 'A' Claimants and 'B' Claimants) would have passed from the affected claimants to Taurus against compliance by Taurus with its obligations to pay/advance the agreed amounts.

[15] In order to secure its rights as to payment, Taurus ensured in terms of the Cession Agreement that, until such time that it receives payment all rights of enforcement attached to

the claims against the RAF will vest in Taurus and Taurus will have the sole right of such enforcement in such manner as it deems fit.

[16] The Cession Agreement also stipulates events of default to include Muzila Inc and/or a claimant failing to pay any amount payable to Taurus on the due date or Muzila Inc and/or a claimant, generally, doing something that may prejudice the rights of Taurus in terms of the Cession Agreement.

[17] Muzila Inc, as represented by Ms Muzila, also signed what is referred to as attorney acknowledgement and undertaking ('the Attorney Acknowledgement'), which served as confirmation of receipt of notice of the sale and cession of the claims by the affected claimants to Taurus. And, as with the other documents relating to the individual claimants involved in this matter, only one copy or example of the agreements concluded with all affected individuals, is included.

[18] In addition to the Attorney Acknowledgement, Taurus and Muzila Inc concluded an agreement in respect of each of the 'A' Claimants and 'B' Claimants with Taurus.

Breach of the agreement(s) by and indebtedness or liability of Muzila Inc (as alleged by Taurus)

[19] According to Taurus it complied with the terms and conditions or its obligations in terms of the agreements, including by making advances or payments to the claimants, and to Muzila Inc.

[20] Subsequent to payments or advances by Taurus and in the course of time, Taurus states that the RAF made payment to the 'A' Claimants through payments of their claim amounts into the trust account of Muzila Inc. From the payments made, Taurus says R5 788 313 is payable to it in terms of one or more of the above agreements.

[21] The amount of R5 788 313 was paid in various separate or individual amounts by the RAF between 15 September 2023 and 28 March 2024 in respect of the following 'A' Claimants and their claims: Mr Lucas Ntuli (i.e. R950 000); (b) Mr Thanyani Mabata (i.e. R80 139), and (c) Mr David Tladi (i.e. R9 986 648). Muzila Inc was obliged to receive and pay over agreed amounts to Taurus. For example, from the amount of R9 986 648 payable to Mr Tladi an amount of R1 454 951 is payable to Taurus. This means that Muzila Inc has misappropriated the funds paid by the RAF which were meant for the 'A' Claimants, such as Mr Tladi, and Taurus.

[22] Ms Muzila is said to have admitted or acknowledged her indebtedness or that of Muzila Inc to Taurus at a meeting held with Taurus' representatives, Ms Eleni Gavrielides (i.e. deponent to the founding affidavit) and Mx Tebogo Tsotetsi. Apparently, the meeting was convened to discuss the indebtedness of Muzila Inc/Ms Muzila to Taurus around Pretoria on 18 April 2024. Ms Muzila is said to have also informed Taurus' representatives that she was unwell and that the claimants or clients had called her numerous times asking for payment of their funds after Taurus had contacted them and informed them that the RAF had paid their claims.

[23] A breach of the agreements has occurred as, Muzila Inc, and Ms Muzila have, despite demand, failed and/or refused to make payment of the amount to Taurus. Taurus attributes the cause of the non-payment to Taurus by Muzila Inc to include the misappropriation of the claimants' funds from the trust account of Muzila Inc, which precipitated the Millar Order suspending Ms Muzila from practising as an attorney.

[24] Further, Taurus says that payment of the amount of R8 145 000 by the RAF, due in favour of 'B' Claimants, to Muzila Inc is imminent. Taurus has established this from the LPC.

Assets and liabilities

[25] Ms Muzila is said to have provided Taurus with details of her personal debts. She also apparently requested for more time to raise funds to settle debts owing to Taurus and the 'A' Claimants, whose money has been misappropriated.

[26] Taurus says from bank statements (in respect of Muzila Inc's trust account) there is no hope the funds are available in the trust account to settle the 'A' Claimants or Taurus. Also, nothing has materialised from the undertakings by Ms Muzila. Taurus had also placed Muzila Inc on terms regarding settlement of the liability or indebtedness to Taurus in May 2024 already, but in vain. The LPC proceedings and this application ensued. Taurus had complained to the LPC about Ms Muzila's conduct. Engagement with the RAF regarding the 'imminent' payments of 'B' Claimants did not bear fruit as the RAF refused to a block payments to Muzila Inc for fear of acting contrary to the law.

[27] According to Taurus, the financial position of Ms Muzila is dire. She has only few assets and significant liabilities which Taurus could identify. The assets include an immovable property, which appears to be in a sectional title scheme (purchased for R1 550 000 in November 2022 and bonded for the amount of R1 818 000) and two motor vehicles. Ms Muzila is said to have mentioned that she is in default of her payment obligations in respect of the two vehicles. The value attributed by Taurus to these assets is R2 million, excluding the vehicles probably encumbered in favour of financiers.

[28] Taurus says - in addition – it has a contingent debt owing by Ms Muzila and/or Muzila Inc in the amount of approximately R4.1 million in respect of the 'B' Claimants. The amounts owing to the individual claimants should also be included in Ms Muzila's liabilities, Taurus urges the Court. Also, there may be additional payments by the RAF to Muzila Inc not included in the figures stated in the matter. These would probably be uncovered through an investigation

by the Curator appointed in terms of the Millar Court obtained by the LPC. In as far as Ms Muzila's personal estate is concerned, it is stated that a trustee appointed will be able to investigate further.

Ms Muzila is factually insolvent

[29] Taurus contends that Ms Muzila is factually insolvent. It is stated that Ms Muzila's liabilities, mainly, with regard to the indebtedness to Taurus in respect of the 'A' Claimants is in the amount of R5 788 313. The liabilities may increase from other possibly misappropriated clients' funds.

[30] According to Taurus, Ms Muzila's liabilities exceed her assets by an amount of approximately R13 million which is obviously far in excess of her debts as identified by Taurus. I interpose that most of these debts including what is owing to Taurus are not directly due by Ms Muzila, but by Muzila Inc. This is where the issue of Muzila Inc as a 'personal liability company' ('PLC') comes in. I will deal with this further, below.

[31] Further, Taurus says it is material that Ms Muzila is not earning any income after her suspension from practising as an attorney since 13 August 2024.

[32] Taurus also says that Ms Muzila's unfulfilled undertakings to obtain a loan elsewhere to repay Taurus; the admission of misappropriation of funds which led to the failure to make payment to Taurus and the individual claimants, justify the only reasonable inference that could be drawn that she cannot make any payment and she is commercially (and factually) insolvent.

Benefit or advantage to creditors

[33] With regard to benefit or advantage to creditors, as one of the requirements to be met for a sequestration order, Taurus appears to emphasise that it is in an 'arms-length' relationship with Ms Muzila. I understand this to mean that Taurus is alluding to not being privy to the

minute details of Ms Muzila's assets and liabilities to be enabled to directly vouch for existence of a monetary advantage or dividend to creditors.

[34] But a realisation of the assets by a trustee appointed following a sequestration order would result in not insignificant dividend to the creditors of Ms Muzila, it is contended. A trustee is required to urgently take control of the assets and liabilities of Ms Muzila and may likely uncover misappropriated funds, dispositions to third parties and/or further assets acquired with the misappropriated funds. This include an investigation into funds likely to have been dissipated by her deceased partner. Taurus holds no security for the indebtedness by Ms Muzila.

Urgency

[35] The matter is said to have been urgent and, thus, deserving to be heard not in the ordinary course due to the need to appoint a trustee to preserve whatever assets that are left in the personal estate of Ms Muzila. The curator appointed at the instance of the LPC does not have powers in respect of the personal estate of Ms Muzila, but limited to the assets and liabilities of the law firm, Muzila Inc.

[36] This urgent application was precipitated by the Millar Order granted on 13 August 2024. This application was launched on 21 August 2024. This, Taurus contends, was without delay. Further, that Taurus complied with the statutory notice and other requirements relating to sequestration applications.

[37] It deserves to be belaboured that the case advanced by Taurus in its papers was primarily that there was no distinction between Ms Muzila and her law firm, described as Muzila Attorneys. Muzila Attorneys was described as a sole proprietorship and, therefore, not distinct from Ms Muzila. Ms Muzila is 'trading as' Muzila Attorneys, was the summation. But,

as would appear later, Taurus has since become aware of its mistake in this regard, including from the case put forward by Ms Muzila, as the respondent.

Ms Muzila's case (including submissions)

[38] The answering affidavit was late in terms of the timelines set in the notice motion. Ms Muzila seeks condonation for its late delivery. She says she was admitted at a health care facility and only discharged on 24 August 2024. The papers were served on 23 August 2024 on her attorneys by email. But, Taurus disputed this date in its reply. According to Taurus the papers were emailed to both Ms Muzila and her attorney on 22 August 2024, before being served on both of them by the sheriff on 24 August 2024. The answering affidavit was due on 27 August 2024.

[39] Ms Muzila says although she was discharged from the facility she was still unwell and recommended for further treatment. She has been of ill-health for some time and Taurus was aware that she was in a health care facility. Communication with the outside world was constrained whilst she was at the facility. This is also disputed by Taurus as Ms Muzila was able to communicate with her attorney for purposes of opposing the LPC's application until at least when the Millar Order was granted on 13 August 2024.

[40] Ms Muzila, further, says she was only able to obtain the documents on Sunday and could only consult with her attorney on Tuesday, 27 August 2024. There were further subsequent health complications. The application for condonation is opposed by Taurus. I deal with it further below, where my ruling on condonation appears.⁴

[41] Ms Muzila thinks Taurus' claim is not 'properly quantified' and does not seem to be a 'legitimate claim'. She disputes the reliance by Taurus on the claim and, actually, the choice

⁴ Par [65] below.

of sequestration by Taurus as a remedy in this matter. Her challenge includes points in *limine*, one of them being that of non-joinder of the LPC and Muzila Inc.

[42] Ms Muzila considers the relief of sequestration to have far reaching consequences for her, her children and other persons with possible claims against her. It should not be considered lightly, given that Taurus' claim is not a liquid claim. Ms Muzila also labels sequestration 'an intrusive process'. Granting of sequestration would essentially mean that Taurus' 'claim is perfected to the detriment of other creditors' not involved in this application.

[43] Ms Muzila also raised a myriad of other issues or defences under what is called summarised salient points. These include the following. No money was ever paid/deposited to her directly by Taurus. There is no personal relationship between Taurus and Ms Muzila. Taurus has a relationship with Muzila Inc. Ms Muzila, though, says she is a 'surety' in respect of Taurus' indebtedness. She should be jointly sued with the law practice. She explored a solution for an alternative remedy with Taurus through legal representatives. The LPC applied for a striking, but the Court only granted a suspension. Once Ms Muzila was suspended Taurus 'reneged from the negotiations' arranged between their respective legal representatives. Also, according to Ms Muzila her legal representatives' attempt to secure a meeting with his counterpart for Taurus to chart the way forward was rebuffed by Taurus. This represents an alternative remedy which could only be rejected on good cause, she further says. Another alternative remedy is for Muzila Inc, as a company, to be placed under supervision and business rescue commenced.

[44] Another aspect emphasised by Ms Muzila and argued on her behalf is the Millar Order and its implications to Taurus' sequestration application. The Millar Order is for winding down of Muzila Inc. The 'winding down' of Muzila Inc involves proving of claims against Muzila Inc. Ms Muzila criticises Taurus for not participating in the 'winding down' process, but opting

to pursue sequestration of her estate. She says that the Court mentioned during the striking/suspension proceedings that persons with claims against Muzila Inc should approach the LPC. Taurus, as a trust creditor, ought to prove its claims in the LPC process.

[45] Overall, Ms Muzila disputes Taurus' claim as aforesaid and including on the following multiple bases. It would be unjust to sequester her estate. Taurus has not established Ms Muzila's true position with regard to assets and liabilities, especially her assets. Sequestration, against Taurus' steadfast refusal to explore alternative remedies, would be to the detriment of Ms Muzila and amount to gross violation of her constitutional rights. There are two fundamental irregularities with regard to Taurus' claim: (a) Taurus claims damages on illiquid claim in urgent motion court proceedings, which is impermissible, and (b) the monies claimed are based on obligations from various contracts when some of these obligations or contracts have been partially or fully met, whilst in some instances the claims are disputed. I have to immediately point out – with respect - that these submissions as with many others on behalf of Ms Muzila were made without any expatiation.

[46] Ms Muzila refers to other legal proceedings or application by Taurus coming up for hearing in November 2024. Without disclosing more Ms Muzila alleges that the proceedings are aimed at proving Taurus' claim. She says that the same debt is now being used by the application in these proceedings for sequestration of her estate. This sounds incomplete, but perhaps one could bear in mind that the heading to this part of the answering affidavit is '[m]atter pending before another court'. Essentially, Ms Muzila finds it impermissible for Taurus to approach this Court after already approaching another Court on the same debt.

[47] There is also purported reliance on the provisions of the National Credit Act 34 of 2005 ('the NCA') with Ms Muzila alleging that Taurus has not proven that it complied with the relevant 'credit regulatory framework', that it has 'not engaged in reckless lending'. It is also

stated that Taurus did not check Ms Muzila's affordability; Muzila Inc's affordability and, possibly the affordability of the affected claimants or clients of Muzila Inc.

[48] Ms Muzila challenges the alleged lack of funds or assets to settle the debts. Claims of some of her other clients or claimants may have been settled in the meantime by the RAF. The monies received could extinguish the currently owing debts or claims. I find solace in the existence of the Millar Order and the appointment of a curator (responsible for any funds received from the RAF) not to shudder as to the implications of what Ms Muzila is alluding to here.

[49] It is Ms Muzila's opinion that this application is Taurus' quest to satisfy the requirement when pursuing a claim with the Legal Practice Fidelity Fund that one ought to have exhausted all other remedies before launching such claim.

[50] In the reply filed by Taurus and submissions on its behalf by counsel it is bemoaned that the answering affidavit fails to reasonably engage the substance of the application and dismally fails in setting out a defence to this application. For that matter, the answering affidavit discloses no defence to the application at all, it is further contended. I will deal with the cases put forward by the parties, immediately after highlighting some legal principles I (gratefully, with substantial aid from counsel's submissions) consider applicable to this matter.

Applicable legal principles

[51] This being a sequestration application the primary legal principles or requirements are those from the insolvency law, particularly the Insolvency Act 24 of 1936 ('IA 1936') and cases generated over the years. But the provisions of the Companies Act 71 of 2008 ('CA 2008') and Legal Practice Act 28 of 2014 ('LPA') are cardinal to the defence raised by Ms Muzila, particularly regarding separate juristic personality of Muzila Inc. The same pieces of legislation are vital for Taurus' points of attack, as asserted during the hearing of this

application of statutory liability of Ms Muzila for contracted debts of Muzila Inc. There will definitely be other legal principles employed by counsel to sway the matter or its outcome this or the other way for the parties.

[52] A point of departure can be marked by section 9(1)-(3), IA 1936 on *locus standi* to apply for sequestration and what is to be contained in such application, which reads as follows in the material part:

(1) A creditor (or his agent) who has a liquidated claim for not less than fifty pounds, or two or more creditors (or their agent) who in the aggregate have liquidated claims for not less than one hundred pounds against a debtor who has committed an act of insolvency, or is insolvent, may petition the court for the sequestration of the estate of the debtor.

(2) A liquidated claim which has accrued but which is not yet due on the date of hearing of the petition, shall be reckoned as a liquidated claim for the purposes of subsection (1).

(3)(a) Such a petition shall, subject to the provisions of paragraph (c), contain the following information, namely

...

(iii) the amount, cause and nature of the claim in question;

(iv) whether the claim is or is not secured and, if it is, the nature and value of the security; and

(v) the debtor's act of insolvency upon which the petition is based or otherwise allege that the debtor is in fact insolvent.

(b) The facts stated in the petition shall be confirmed by affidavit and the petition shall be accompanied by a certificate of the Master given not more than ten days before the date of such petition that sufficient security has been given for the payment of all fees and charges necessary for the prosecution of all sequestration proceedings and of all costs of administering the estate until a trustee has been appointed, or if no trustee is appointed, of all fees and charges necessary for the discharge of the estate from sequestration.

[53] Section 9(1), IA 1936, essentially, provides for a creditor with a liquidated claim of at least R100 against a debtor who has committed an act of insolvency or who is factually

insolvent to apply or petition⁵ for the sequestration of the estate of the debtor. Section 9(2) provides for standing on the basis of a contingent claim.

[54] Section 10, IA 1936 provides for a determination (on the basis of the statutory requirements) by a court seized with an application on whether to grant a provisional sequestration order. It reads in the material part:

If the court to which the petition for the sequestration of the estate of a debtor has been presented is of the opinion that *prima facie*

(a) the petitioning creditor has established against the debtor a claim such as is mentioned in subsection (1) of section *nine*; and

(b) the debtor has committed an act of insolvency or is insolvent; and

(c) there is reason to believe that it will be to the advantage of creditors of the debtor if his estate is sequestrated, it may make an order sequestrating the estate of the debtor provisionally.

[55] Section 12, IA 1936 provides for final sequestration or dismissal of petition for sequestration, as follows:

(1) If at the hearing pursuant to the aforesaid rule *nisi* the court is satisfied that

(a) the petitioning creditor has established against the debtor a claim such as is mentioned in subsection (1) of section *nine*; and

(b) the debtor has committed an act of insolvency or is insolvent; and

(c) there is reason to believe that it will be to the advantage of creditors of the debtor if his estate is sequestrated, it may sequester the estate of the debtor.

(2) If at such hearing the court is not so satisfied, it shall dismiss the petition for the sequestration of the estate of the debtor and set aside the order of provisional sequestration or require further proof of the matters set forth in the petition and postpone the hearing for any reasonable period but not *sine die*.

[56] The requirements from section 12, IA 1936 are for granting of a final order of sequestration and need not concern us for current purposes.

⁵ The petition procedure was abolished and replaced - as a mode to institute proceedings - with notice of motion in terms of Petition Proceedings Replacement Act 35 of 1976 with effect from 1 July 1976. See *Erasmus: Superior Court Practice* RS 23, 2024, D1 Rule 660.

[57] For a provisional sequestration order what needs to be established is that the applicant creditor - on a *prima facie* basis – is entitled to a final order for the sequestration.⁶ It ought to be noted that the granting of a provisional order of sequestration does no lasting injustice to the respondent debtor as, on the return day, she would have and be afforded an opportunity to contest the application on the final relief stage.⁷

[58] Section 19(3), in addition to section 8(2) already referred to above,⁸ both of CA 2008, is also relevant to the issue of Ms Muzila as a director of the PLC or personal liability company, Muzila Inc. It reads as follows in the material part:

If a company is a personal liability company the directors and past directors are jointly and severally liable, together with the company, for any debts and liabilities of the company as are or were contracted during their respective periods of office.

[59] Section 34(7)(c) of the LPA, as mentioned above, is also relevant to the issue of Ms Muzila as a director of Muzila Inc, the commercial juristic entity. It reads as follows in the material part:

A commercial juristic entity may be established to conduct a legal practice provided that, in terms of its founding documents ...

(c) all present and past shareholders, partners or members, as the case may be, are liable jointly and severally together with the commercial juristic entity for—

(i) the debts and liabilities of the commercial juristic entity as are or were contracted during their period of office; and

(ii) in respect of any theft committed during their period of office.

[60] These legal principles ought to be applied to the facts or issues relevant to the determination of this matter.

⁶ *Kalil v Decotex (Pty) Ltd and another* 1988 (1) SA 943 (A) 979 where it was observed that ‘*prima facie case*’ entails that the balance of probabilities on all affidavits favour the granting of the application for provisional liquidation (or sequestration). See also *Afgri Operations Limited v Hamba Fleet (Pty) Limited* (542/2016) [2017] ZASCA 24; 2022 (1) SA 91 (SCA) (24 March 2017) [6].

⁷ *Kalil v Decotex* 1988 (1) SA 943 (A) 979-980.

⁸ Footnote 1 above.

Issues requiring determination

[61] From what appears above and the papers filed, I consider the following as issues to be determined by this Court for the disposal of this matter: (a) condonation of the late delivery of the answering affidavit; points in *limine* raised by Ms Muzila; requirements for granting provisional sequestration; other questions dealt with by way of post-hearing submissions (i.e. implications of the Millar Order to the relief sought, and application of the NCA); compliance with the statutory formalities, and whether matter was urgent.

[62] There may be other issues discussed but not necessarily falling under the above rubrics. Also, there may be overlaps between the issues including with some areas of the material appearing above.

Condonation for late delivery of the answering affidavit

[63] The urgent application was issued on 22 August 2024. The notice of motion required that Ms Muzila deliver a notice of intention to oppose by 23 August 2024, followed by her answering affidavit by 27 August 2024. The application was set down for hearing on 03 September 2024. Ms Muzila only filed her answering affidavit on 31 August 2024. She now seeks condonation for the late delivery. The reasons for her late delivery are set out above.⁹

[64] The application for condonation is opposed by Taurus. Taurus says Ms Muzila was granted ample time to file her opposing papers. Her erstwhile attorney did not inform his counterpart for Taurus of any challenges experienced in complying with the timeframes in the notice of motion. Also, Ms Muzila wasn't constrained by her ill-health from opposing the LPC application. There is simply no candid explanation and reasonable excuse for the delay. Condonation should be refused, Taurus urges the Court.

⁹ Pars [38]-[40] above.

[65] Whilst this type of conduct is unacceptable, especially given that Ms Muzila is an officer of this Court, I will grant condonation in the interests of justice and admit the answering affidavit. The nature and extent of the relief sought warrants such an approach despite the misgivings of the Court about lackadaisical manner of doing things on the part of Ms Muzila and her advisers. This would also allow for exhaustive consideration of the defences raised by Ms Muzila, including by way of points in *limine*, discussed next.

Points in limine

General

[66] Ms Muzila raises six issues referred to as points in *limine*.¹⁰ I agree with the argument by Taurus that a majority of these issues do not constitute points in *limine*.¹¹ I will only deal with the issue of non-joinder of Muzila Inc, a personal liability company, including of the other alleged role-players, and the issue that another matter is spending elsewhere between the parties, as points in *limine*.

[67] The remainder of the issues, in the event the matter survives both points in *limine*, would be dealt with jointly under the catch-all subheading ‘other issues’ towards the end.¹²

Non-joinder

[68] The argument on behalf of Ms Muzila in this regard is that the matter is based on a ‘debt’ which constitutes an ‘arithmetic calculation’ involving three role-players, namely the attorney, the firm and the clients. Therefore, the law firm and the clients ought to have been joined. Their omission as parties from this lawsuit constitutes non-joinder.

¹⁰ The so-called points in *limine* are: (1) misjoinder, actually non-joinder; (2) alternative remedy; (3) prejudice; (4) irregular process; (5) matter pending before another Court, and (6) unproven allegations.

¹¹ The phrase ‘in limine (litis)’ entails ‘(lett. op die drumpel) vooraf; in die aanvangstadium (van die verhoor) initially; at the very outset (of the hearing)’; VG Hiemstra and HL Gonin, *Trilingual Legal Dictionary* (3rd edn, Juta 1992). See also H Daniels, *Beck's Theory and Principles of Pleadings in Civil Actions* (6 ed, LexisNexis, 2002) par 2.5 at 34-35

¹² Par [100] below.

[69] First, the law firm, Muzila Inc, has an interest in the outcome of this matter, it is argued. The estate of Ms Muzila includes Muzila Inc. It would be prejudicial to exclude the law firm when her estate is considered. As Ms Muzila, the attorney, is alleged to be liable for a debt, Muzila Inc, an incorporated law firm, should be joined. Secondly, the affected claimants (i.e. the ‘A’ Claimants) ought to have been joined to this application.

[70] Taurus’ case in the papers before the Court was that Ms Muzila and the law firm, referred to as Muzila Attorneys are one and the same thing. This was objected to by Ms Muzila. She pointed out that the law firm is an incorporated PLC, as also appearing on the Millar Order pivoting Taurus application to some extent.

[71] I think a non-joinder objection is misplaced in a sequestration application. Sequestration is a statutory remedy affecting the status of a person and her estate.¹³ The target of such an application is the estate of the debtor.¹⁴ Where such estate is in the form of a joint estate the persons cited, being the holders of indivisible shares in such estate would be cited as respondents in the application. A typical example in this regard is where parties are married in community of property.¹⁵ All spouses (potentially there could be more than two spouses when dealing with a customary marriage)¹⁶ are to be cited in or joined to the sequestration application.¹⁷ This does not appear to be the case here as Ms Muzila’s marital status is stated as ‘unmarried’ in the citation.

[72] Further, Muzila Inc - even if is an entity contractually indebted to Taurus or liable to Taurus - cannot be joined to this personal sequestration application. This application is not

¹³ Alastair Smith, Kathleen van der Linde and Juanita Calitz, *Hockly’s Law of Insolvency, Winding-Up and Business Rescue* (10 ed, Juta 2022) (‘*Hockly’s Law of Insolvency*’) pars 1.1 to 1.3 at pp 3-9.

¹⁴ *Hockly’s Law of Insolvency* par 1.3.1 at pp 6-7.

¹⁵ *Ibid.*

¹⁶ Section 2 of Recognition of Customary Marriages Act 120 of 1998 recognises that ‘a person [may be] a spouse in more than one customary marriage’.

¹⁷ *Hockly’s Law of Insolvency* par 1.3.1 at pp 6-7; par 3.2.1 at pp 60-61.

about liability to make payment, which would ordinarily require the joinder of Muzila Inc. Also, the ‘A’ Claimants or any other affected claimants or even the LPC cannot be joined as parties to this application. But they are interested parties to whom notice of the application and/or of the provisional order will have to be given. Also, intervention is also possible by persons with direct and substantial interest in the subject matter.¹⁸ Such intervention can be by a creditor.¹⁹ These formalities are discussed below.²⁰ Therefore, the non-joinder preliminary objection, on all its legs, is dismissed.

Another matter is pending before the Court between the same parties

[73] Ms Muzila’s challenge is also on the basis that another matter is pending on same facts before the Court. It is said that minutes of the meeting or a letter recording the meeting between Taurus’ representatives and Ms Muzila, referred to above, show that ‘there is another case pending’.²¹ It is alleged that the matter is ‘pending in another court between the parties on the same set of facts’. This connotes a defence of *lis alibi pendens*. But this is denied by Taurus.

[74] Clearly Ms Muzila has not discharged the onus of alleging and proving the following necessary for the defence: (a) pending litigation, (b) between the same parties or their privies, (c) based on the same cause of action, (d) in respect of the same subject-matter.²² This objection is also dismissed.

[75] I also do not find the LPC process involving the Millar Order worthy of a non-joinder objection, including that creditors are invited to prove claims before matter is finalised.

¹⁸ A party seeking to intervene in proceedings can either do so in terms of rule 12 of the Uniform Rules of Court, or in terms of the common law. See *Levay and Another v Van den Heever NO and others, In re: Van den Heever NO and others v Waterfall Trout Properties (Pty) Ltd* 2018 (4) SA 473 (GJ) [6]-[8].

¹⁹ *First Rand Bank Ltd v Van der Walt (Cargill RSA (Pty) Ltd intervening)* (4918/2017) [2018] ZAFSHC 173 (27 November 2018) [17]-[18]; *Fullard v Fullard* 1979 (1) SA 368 (T) at 371H-372C.

²⁰ Par [101] below.

²¹ Par [22] above.

²² TC Harms, *Amler’s Precedents of Pleadings* (10th ed LexisNexis 2024) 256 and the authorities cited there.

Determination of the material issues (a discussion)

General

[76] What is before the Court for determination is primarily a sequestration application. Mr Lourens for Taurus dealt extensively with the issue of the nature of insolvency proceedings, I think in a quest, to provide context to all issues to be determined or in their background. His submissions included that insolvency proceedings, from a legal point of view, establishes a *concursum creditorum*²³(i.e. ‘gathering of creditors’)²⁴ in respect of a debtor on whose estate the hand of the law is being placed.²⁵

[77] For Taurus to obtain a provisional order of sequestration of Ms Muzila’s estate it ought to primarily establish, that: (a) Taurus, as an applicant-creditor for relief, has a claim of at least R100 against Ms Muzila; (b) Ms Muzila has committed an act of insolvency or is insolvent, and (c) there is reason to believe that sequestration would be to the advantage of creditors of Ms Muzila’s estate.²⁶ The discussion or determination of these issues would significantly dispose of the crux of the matter before the Court.

Is Taurus a creditor with a liquidated debt or claim (otherwise locus standi)

Breach of the three or trilogy agreements

[78] To recap. Taurus says it provided bridging finance in the form of upfront cash payments against fees due to the law firm of Ms Muzila but which were still to be paid by the RAF. The funding by Taurus extended to the law firm is said to have assisted the law firm, among others, to pay for acquisition of medico-legal expert reports. The payments to the affected clients by Taurus were meant to serve as advances on their compensation for claims already settled with

²³ *Fintech (Pty) Ltd v Awake Solutions (Pty) Ltd and others* [2014] 3 All SA 664 (SCA) [17], partly relying on *Walker v Syfret NO* 1911 AD 141 at 166.

²⁴ RC Claassen and M Claassen, *Dictionary of Legal Words and Phrases* (LexisNexis, 2024) ‘Claassen’s Dictionary of Legal Words’.

²⁵ *Fintech v Awake Solutions* [2014] 3 All SA 664 (SCA) [17], partly relying on *Walker v Syfret NO* 1911 AD 141 at 166.

²⁶ Pars [52]-[57] above. See *Hockly’s Law of Insolvency* par 3.1 at pp 41-60.

the RAF or finalised through a court process. All these were achieved in terms of three agreements, as follows:

[78.1] Cession Agreement: in terms of which each of the affected clients individually sold and ceded to Taurus their right, title and interest in and to their claim against the RAF. The agreement also appointed the law firm, represented by Ms Muzila, as the agent of Taurus and the individual clients to recover the claim amounts from the RAF and, pay over what is due to the client and to Taurus.

[78.2] Attorney Acknowledgment: in terms of which the law firm formally acknowledged the Cession Agreement by each affected client concluded with Taurus and agreed to pay over to Taurus monies due in terms of the Cession Agreement after payment by the RAF.

[78.3] Attorney Agreement: in terms of which Taurus provided the upfront cash payments to the law firm against fees due to the law firm also repayable whenever funds are received from the RAF in respect of a particular client's claim and/or costs for the claim.

[79] It is common cause that Taurus complied with its obligations in terms of all three agreements by advancing monies to the affected clients and the law firm. This is borne by annexures A and B to the founding affidavit.²⁷ Quite the contrary, the law firm breached the agreements by failing to make payment to Taurus in respect of the law firm's own obligations and those relating to the 'A' Claimants. The law firm and/or Ms Muzila misappropriated the funds received, hence the suspension of Ms Muzila in terms of the Millar Order.

²⁷ Pars [6]-[7] above.

Creditor, debtor and liquidated claim

[80] In the founding affidavit the case put forward by Taurus was that Muzila practised as an attorney ‘under the name and style of Muzila Attorneys’ (‘Muzila Attorneys’). Further, Muzila Attorneys was described as a ‘sole proprietorship’. I understood Taurus’ case to be that:

[80.1] all three agreements referred to above were concluded with Muzila Attorneys represented by Ms Muzila.

[80.2] should I be correct in my analysis in [80.1], then, the same agreements cannot – without more - apply to Muzila Inc, the PLC.

[80.3] as Muzila Attorneys lacks separate juristic personality the agreements or rights, interests and obligations, accruing from them would be capable of extension to Ms Muzila, the attorney, in her personal capacity. This appears to be the case put forward in Taurus’ affidavits.

[81] The fact that the law firm is an incorporated entity or company was raised by Ms Muzila in her answering affidavit, more so by way of a point *in limine* of non-joinder, dismissed above on other grounds.²⁸ But Taurus nevertheless had not dealt with the issue in its replying affidavit. Quite interestingly it did not deny that the law firm is an PLC. It couldn’t. The objective evidence, mainly *ex facie* the Millar Order,²⁹ is conclusive on the PLC status of the law firm.

[82] But it appears that Ms Muzila accepts that the agreements were validly concluded with Muzila Inc, the PLC and separate entity. This much is unequivocal from both her answering affidavit and heads of argument filed on her behalf.

²⁸ Pars [68]-[72].

²⁹ FA, annexure ‘G’, CaseLines 002-82.

[83] Taurus' case morphed during argument at the hearing of this application. Counsel for Taurus sought to gravitate towards a case significantly relying on possible statutory liability of Ms Muzila in terms of section 34(7), LPA and section 19(3), CA 2008.³⁰ But in the written submissions or heads of argument as filed as at the date of hearing Taurus' case was still that of the law firm being a sole proprietorship.

[84] After the issue of liability of Ms Muzila in terms of section 34(7), LPA and/or section 19(3), CA 2008 was raised during oral argument or the hearing of the matter, I requested post-hearing that the issues be dealt with in terms of specific questions based on the aforesaid statutory provisions. The questions posed in this regard were more of a hypothetical nature than strongly rooted in the issues in the matter. Obviously, the questions were not meant to bolster or weaken any of the parties' case. The onus of proof wherever it existed remained where it was.

[85] In the post-hearing supplementary submissions filed on behalf of Taurus, counsel argued that 'it matters not, and it is legally irrelevant that Taurus contracted with the Company and not Ms Muzila in her personal capacity'.³¹ Counsel advanced two grounds for the submission. First, due to the legal consequences of section 34(7)(c), LPA and section 19(3), CA 2008, rendering Ms Muzila personally liable for the contracted debts owing to Taurus. Secondly, as Taurus' 'second cause of action' is premised on the misappropriation of trust monies ceded to Taurus by the affected clients, by Ms Muzila personally.

[86] I do not – with respect – agree with the submission by Taurus' counsel of the issue being of no consequence. It matters and is 'very legally relevant' who Taurus says it contracted

³⁰ Pars [58] and [59] for a reading of the provisions, respectively.

³¹ Applicant's supplementary HOA, par 8.

with, especially for imputation of personal liability on Ms Muzila. It may be that the argument or discussion is rather circuitous, but it is important to deal with step by step.

[87] The point of departure in this part of the discourse is to accept a durable principle of our company law that a company is distinct from its shareholders and directors.³² A PLC is a company in terms of the CA 2008.³³ The fact that a PLC is also a law firm in terms of the provisions of the LPA do not alter its separate juristic personality. Should the law firm be a PLC, Ms Muzila will only be the attorney, director and shareholder of Muzila Inc, but not Muzila Inc. To alter this one would have to specifically reach for the mechanism in section 19(3), CA 2008 and section 34(7), LPA.

[88] The statutory provisions automatically create a form of statutory piercing of the corporate veil (ordinarily available to directors of other forms of companies) of the directors of PLCs.³⁴ This brings about joint and several liability for the affected directors with their company in respect of ‘any debts and liabilities of the company as are or were contracted during their respective periods of office’.³⁵ For PLCs which are law firms and, therefore, also subject to provisions of section 34(7), LPA, such liability would be for ‘debts and liabilities of the commercial juristic entity as are or were contracted during their period of office; and [to read ‘or’ in my view] ...in respect of any theft committed during their period of office’.³⁶ [underlining added in both instances] I hasten to record my agreement with the submission by Mr Lourens for Taurus that the word or conjunction ‘and’ between section 34(7)(c)(i) and (ii) of the LPA when contextually and purposefully interpreted would be construed ‘or’.³⁷ If it

³² Piet Delport, *Henochsberg on the Companies Act 71 of 2008* (LexisNexis May 2024) (‘*Henochsberg on the Companies Act*’) 82-83 on commentary to s 19, CA 2008.

³³ Footnote 1 above for a reading of s 8(2), CA 2008.

³⁴ *Henochsberg on the Companies Act* at 86.

³⁵ Section 19(3), quoted in par [58] above.

³⁶ Section 34(7), quoted in par [59] above.

³⁷ *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) [18], recently applied in *DB v CB* 2024 (5) SA 335 (CC) [84].

doesn't, then there will be a conflict with section 19(3), CA 2008, generally applicable to PLCs, which does not have the 'theft' qualifier to the director's liability for 'contracted' debts.³⁸ Section 5(4), CA 2008 would resolve such conflict or inconsistency between section 19(3), CA 2008 and section 34(7)(c), LPA in favour of the former.

[89] What is stated in [87]-[88] above essentially means that the provisions are only available in case of a PLC or a 'commercial juristic entity'. No case is capable of being premised on the aforesaid provisions where Ms Muzila is operating her law firm as a sole proprietorship. Therefore, the only case before the Court is the one characterised by Taurus' counsel: Taurus' 'second cause of action'.

[90] Taurus' 'second cause of action' is predicated on the misappropriation of trust monies (ceded to Taurus by the affected clients) by Ms Muzila, personally. This would be irrespective of whether Ms Muzila operates or practices as an attorney in a sole proprietorship or commercial juristic entity. Ms Muzila appears to accept that she is liable for the misappropriated funds even if she thinks this should be approached in a wholesome manner jointly with the law firm. To the extent that she disputes same I am not convinced she has done so in a *bona fide* manner and on reasonable grounds.³⁹ The Millar Order – although it is not yet final – appears to suggest some form of impropriety on the part of Ms Muzila, hence her suspension. Ms Muzila has also admitted being a 'surety' in respect of Taurus' indebtedness.⁴⁰ This would suffice at a *prima facie* basis for provisional sequestration.⁴¹

[91] The amount of R5 788 313 has been certified in terms of the agreement(s) with the law firm. Ms Muzila did not dispute the existence and constitution of the amount. But even if she

³⁸ Par [58] above, for a reading of s 19(3), CA 2008.

³⁹ *Kalil v Decotex* 1988 (1) SA 943 (A) 980C; *Afgri Operations v Hamba Fleet* 2022 (1) SA 91 (SCA) [6].

⁴⁰ Par [43] above. See Eberhard Bertelsmann *et al*, *Mars: The Law of Insolvency in South Africa* (10th ed, 2019) p 404.

⁴¹ *Kalil v Decotex* 1988 (1) SA 943 (A) 956-957.

did, I am satisfied that the amount constitutes a liquidated debt due and payable to Taurus.⁴²

This is so even if based on misappropriation of trust monies.⁴³

[92] Therefore, I am satisfied that Taurus, as a creditor is owed a liquidated debt or claim of more than R100 (i.e. R5 788 313) and, therefore entitled to apply for an order for the sequestration of the estate of Ms Muzila.

Assets are exceeded by liabilities

[93] Probably buoyed by the Millar Order, Taurus contends that Ms Muzila does not possess sufficient funds in her law firm's trust account and her personal estate to satisfy Taurus' claim in the amount of R5 788 313.⁴⁴ I agree. Consequently, I find that Ms Muzila's liabilities, fairly estimated are more than her assets, fairly valued. She is factually insolvent.

Benefit or advantage to creditors

[94] Also, Taurus' case or submissions by its counsel assert that sequestration of Ms Muzila's estate would benefit or advantage the creditors in her estate. I agree that an advantage or benefit to creditors may be availed upon investigation and discovery of assets.⁴⁵ I find Taurus' belief - that sequestration of Ms Muzila's estate would advantage her creditors - reasonable. This completes the requirements for the application, save for the statutory notice and other formalities discussed below.⁴⁶

⁴² The mere fact that a claim is disputed does not render it unliquidated if nevertheless it is capable of easy and speedy proof. See Andre Boraine, Jennifer A Kunst and David A Burdette (eds), *Meskin's Insolvency Law* (LexisNexis, June 2024) at 2.1.

⁴³ *VBS Mutual Bank (in liquidation) v Madzonga* (25057/2018) [2019] ZAGPJHC 273 (23 August 2019) [46]-[48] where the court recognised a claim based on a loss suffered due to the fraudulent conduct which led to the loss as constituting a liquidated claim in terms of s 9(1) and 12(1)(a), IA 1936. See also *Kleynhans v Van der Westhuizen NO* 1970 (2) 742 at 749-751 for another example of instance where the court has sequestered the estate of fraudster or theft.

⁴⁴ Pars [29]-[32] above.

⁴⁵ *Meskin and Co v Friedman* 1948 (2) SA 555 (W) at 559; *Dunlop Tyres (Pty) Ltd v Brewitt* 1999 (2) SA 580 (W); Hannover supra, para 79; Gilfillan t/a Grahamstown Veterinary Clinic and Another v Bowker 2012 (4) SA 465 (ECG), para 39.

⁴⁶ Par [101] below.

Other questions in the post-hearing submissions

[95] Further from what has already been dealt with, there were other questions to do with the implications of the Millar J to the relief sought and whether the NCA finds application in the matter.

Implications of the Millar Order to the relief sought

[96] Counsel for Taurus' submissions were emphatic in submitting that the sequestration application is not affected by the pre-existing Millar order. The Millar Order is 'confined to the parties thereto', namely the LPC, Ms Muzila and Muzila Inc, whereas the sequestration application extends beyond the parties thereto, mainly in the form of creditors of Ms Muzila or her estate. Also, that the Millar Order cannot divest Taurus of its contractual rights and this Court of its jurisdiction.

[97] Mr Leketi for Ms Muzila submitted that the Millar Order, generally, created a consortium of creditors. It rallied all creditors (both trust and business creditors), including Taurus, to lodge their claims with the LPC curator. A creditor may resort to the civil courts only when such creditor's claim is rejected. To act otherwise would undermine the Millar Order. Taurus' attempt to sequester the personal estate of Ms Muzila is premature, counsel concluded. I respectfully disagree. Although, there may be areas of an overlap between the jurisdiction of the trustee which may be appointed for Ms Muzila's personal estate and the LPC curator, the two office-bearers are primarily responsible for two distinct 'estates'.

Does the NCA find application

[98] The multifaceted defence approach adopted by Ms Muzila included that Taurus may have 'engaged in reckless lending' when making the advances in terms of the agreements. Taurus' counsel submits that the NCA finds application in this matter. He pointed out that sequestration proceedings is not directed at the enforcement of a debt or a credit agreement

against a debtor in the position of Ms Muzila⁴⁷ and it brings about an orderly determination of the rights of all affected parties.

[99] Counsel for Ms Muzila says it is evident from the nature and business model of Taurus (i.e. upfront payment of funds to law firms) that the NCA applies to this matter. Taurus is a ‘credit provider’ and its business or transactions are premised on the agreements relied upon which accords with the meaning of ‘credit agreement’ governed by the provisions of the NCA.⁴⁸ Taurus has not complied with the NCA regarding the material agreements and, thus, the agreements are void and cannot be enforced against either Ms Muzila, personally, or Muzila Inc. I disagree. Indeed, sequestration is not enforcement of any agreement, as submitted by counsel for Taurus. The NCA does not oust the jurisdiction to consider the sequestration application.

Other issues raised by Ms Muzila in opposition of the relief sought

[100] There are also issues not particularly relevant when resisting sequestration raised by Ms Muzila or on her behalf. These include the likelihood of ‘business rescue’ (a process which only applies to companies and close corporations, but not natural persons),⁴⁹ and the possibility of further funds being received from the RAF possibly ‘extinguishing’ the current liabilities. The latter averment doesn’t sound proper, but it is also not capable of resisting a sequestration order.

Compliance with the statutory formalities

[101] The attorneys for Taurus confirmed under oath that the application was served in accordance with statutory requirements by hand on the South African Revenue Service and the

⁴⁷ *Investec Bank Ltd & Another v Mutemeri and Another* 2010 (1) SA 265 [12], partly relying on *Naidoo v ABSA Bank Ltd* 2010 (4) SA 597 (SCA) [4]; *Firststrand Bank v Kona & another* 20003/2014 [2015] ZASCA 11 (13 March 2015).

⁴⁸ Section 8(4)(f) of the NCA.

⁴⁹ Section 128, CA 2008.

Master of the High Court. They also stated that the respondent does not have employees, let alone unionised employees, even though they served on the respondent's employees by way of affixing at the respondent's residential address. I am satisfied that there is full compliance in this regard, including the furnishing of security for costs to the Master of this Court.

Urgent relief: were requirements met?

[102] Generally speaking, an applicant for urgent relief is ordinarily required to show that it would not receive adequate substantial redress in a hearing in the normal course of motion proceedings before a Court will entertain its application as one of urgency.⁵⁰ The provisional sequestration stage is however designed to afford a creditor such as Taurus a simple and speedy remedy for preserving the debtor's estate and enforcing its claim.⁵¹ Applications of this nature are inherently urgent.⁵² I agree that on the basis of the facts of and submissions made in the matter, this matter deserved to be heard in the urgent court.⁵³

Conclusion and costs

[103] Taurus has succeeded in its pursuit of a provisional sequestration order against Ms Muzila. Taurus as such will be awarded costs as envisaged by sections 14(2) and 97(3), IA 1936 which costs are to be taxed and include costs of opposition of this application.

[104] The order will obviously be provisional with a return date. To cater for the reflection of the return date in the body of the order I will allow either of the parties to avail a draft order on the exact terms of the order appearing below save that a specific date obtained from the Registrar of this Court shall be substituted for the following words in paragraph 4 of the order below: 'a date to be determined by the Court'.

⁵⁰ *Zoeco System Managers CC v Minister of Safety and Security NO and others* (54447/12) [2012] ZAGPPHC 353; 2013 (2) SACR 545 (GNP) (6 December 2012) [15]; *Luna Meubel Vervaardigers (Edms) Bpk v Makin and another (t/a Makin's Furniture Manufacturers)* 1977 (4) SA 135 (W) 137-138.

⁵¹ *Provincial Building Society of South Africa v Du Bois* 1966 (3) SA 76 (W) at 80.

⁵² *Ex parte Nell and others NNO* 2014 (6) SA 545 (GP) [55].

⁵³ Pars [35]-[37] above.

Order

[105] In the premises, I make the order (which may also appear in a signed draft order as stated in par [104] above), that:

- 1) the application is heard as one of urgency in terms of Uniform Rule of Court 6(12)(a) and the Court condones the applicant's failure to comply with the time limits and forms of service;
- 2) the delivery of the answering affidavit of Mashudu Fortunate Muzila contrary to the timeframes stipulated in the notice of motion is hereby condoned.
- 3) the estate of the respondent, Mashudu Fortunate Muzila (identity number: 830101 1791 088) be and is hereby placed under provisional sequestration in the hands of the Master of the Gauteng Division, Pretoria;
- 4) a rule *nisi* be issued calling on all interested parties to show cause, on a date to be determined by the Court, why the Order in paragraph 3 should not be made final; and
- 5) costs of the application to be costs in the sequestration and they are to include costs of opposition of this application.



Khashane La M. Manamela
Acting Judge of the High Court

Date of Hearing : **04 September 2024**
Date of last Further Submission : **26 September 2024**
Date of Judgment : **11 November 2024**

Appearances:

For the Applicant : Mr P Lourens
Instructed by : Werksmans Attorneys, Johannesburg
c/o DDP Attorneys, Pretoria

For the Respondent : Mr O Leketi
Instructed by : RM Phala Attorneys, Pretoria