



**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 099263/2024

(1) REPORTABLE: YES
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED.
DATE: 20 MARCH 2025
SIGNATURE

In the matter between:

***EX PARTE:* NATASHA LORRAINE SLABBERT**

Applicant

CASE NO: 099003/2024

***EX PARTE:* ETTIENE CLAUD SWANEPOEL**

First Applicant

HEILA MAGDALENE SWANEPOEL

Second applicant

CASE NO: 098627/2024

***EX PARTE:* JOHANN WILLEM JACOBS**

Applicant

Summary: *Insolvency Law - voluntary surrender – a practice has evolved where parties only disclose so much of their assets as to enable them to achieve the minimum dividend threshold representing an advantage to creditors. The non-disclosure of assets and the contrivance of evidence, including the improper use of incomplete valuations, are impermissible. Applicants also cannot waive the protection afforded them by section 82(6) of the Insolvency Act 24 o 1936. To do so, would infringe on their rights to human dignity and freedom of trade. Despite the protection contemplated in this section, all assets, even those which may be excluded from execution, must be disclosed. Applications for acceptance of voluntary surrender of estates displaying manipulation of dividend calculations or incomplete disclosure of assets should be refused.*

ORDER

The applications for voluntary surrender of the applicants' respective estates in matters 099263/24, 099003/24 and 098627/24 are refused.

JUDGMENT

The matter was heard in open court and the judgment was prepared and authored by the judge whose name is reflected herein and was handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date of handing-down is deemed to be 20 March 2025.

DAVIS, J

Introduction

[1] Substantial portions of each of the daily unopposed motion court rolls in this Division¹ comprise of insolvency-related matters. Of those, a significant number are applications for the acceptance of the voluntary surrender of estates.

[2] The practice in this Division is that, in order to indicate to a court that there would be an advantage to creditors in such applications, a dividend of no less than 20 cents/Rand is expected².

[3] The experience has shown that a surprising number of applicants in applications for the acceptance of the voluntary surrender of their respective estates, irrespective of where they may reside within the area of the Court's jurisdiction and irrespective of the multiple permutations resulting from their differing circumstances, assets, and the number and extent of their creditors, the dividends are almost without fail 20c – 22c in the Rand.

[4] The improbability of these figures always being correct, raises concerns and the three matters in question, illustrate the validity of such concerns.

¹ There are, during term, three unopposed motion courts sitting daily in the Pretoria seat of this Division, with each of the three courts rolls comprising of approximately 40 matters, that is 120 matters per day.

² *Ex pate Ogunlaja* [2011] JOL 27029 (GNP) per Bertelsmann J.

The matters in question

[5] On 24 October 2024 I heard, amongst other matters, applications for the voluntary surrender of the estates of the applicants in the following matters: *Ex parte* N L Slabbert Case no 099263/2024, *Ex parte* E C Swanepoel & Another Case no 099033/2024 and *Ex parte* J W Jacobs Case no 098627/2024.

[6] Due to a number of concerns I had about these matters, I postponed the matters to 13 November 2024. I also directed that the applicants, their attorneys and the valuator³ employed by them, all deliver affidavits dealing with the following aspects: the identity and role of one Ursula Gouws Consulting, being a creditor which featured in all three applications; the similarity in the asset values and dividends in all three applications and why the matters should not be referred to the Legal Practice Council for investigation.

[7] After having received the affidavits referred to above and, after having heard counsel for the parties in all three matters, all three applications for voluntary surrender were refused. I indicated that reasons would be furnished later. This judgment constitutes those reasons.

[8] It is customary in judgments to commence with an exposition of the facts, followed by an exposition of the applicable legal principles and thereafter to apply the law to the facts. In dealing with the reasons for refusing the three *ex parte* applications, I find it more apposite to first set out the legal requirements that the respective applicants had to meet and to thereafter indicate why I found that the applicants' applications weren't up to scratch.

The applicable law

³ For the sake of consistency, I shall use the term "valuator" as used in the papers as opposed to the synonym "valuer".

[9] Applications for the acceptance of the voluntary surrender of estates are regulated by the Insolvency Act⁴ (the Act).

[10] Section 3(1) of the Act provides that “... *an insolvent debtor ... may petition the court for the acceptance of the surrender of the debtor’s estate for the benefit of his creditor*”. For “petition” read “apply to”.⁵

[11] Section 4 of the Act prescribes a number of formalities applicable to applications for voluntary surrender. These pertain to prior notice of the application, both by publication and registered mail to creditors as well as the availability for inspection of the applicant’s statement of affairs at the Master and, where applicable, the local Magistrates office.

[12] Section 5 of the Act deals with the prohibition of sales in execution after the publication of a notice of intention to apply for the voluntary surrender of an estate.

[13] Section 6(1) of the Act, amongst other issues, prescribe that the voluntary surrender of an applicant’s estate can only be accepted once the court is satisfied that the estate is factually insolvent that the debtor owns “*realisable property of a sufficient value to defray all costs of sequestration ... and that it will be to the advantage of creditors if his estate is sequestrated ...*”.

[14] Following the wording of section 6, our courts have repeatedly held that the proceedings envisaged in the Insolvency act are “creditor-oriented” or “creditor-driven”⁶.

⁴ 24 of 1936.

⁵ Section 1 of the Petition Proceedings Replacement Act 35 of 1976

⁶ See: Acta Universitatis Danubis, *The Meaning of Advantage to Creditors under Voluntary, Compulsory and Friendly Sequestration in South Africa*, AUDI, Vol 15 No 2/2019 pp 62-83.

[15] In our Division, the “advantage to creditors” requirement has been taken to mean a dividend, after costs, of no less than 20c in the Rand for the whole body of creditors⁷.

[16] In addition, although the manner in which applications for voluntary surrender should be made has been statutorily prescribed, they remain *ex parte* in nature. As such, each applicant must display *uberrima fides*, that is utmost faith to the Court. In *Ex parte Arntzen*⁸ the court has emphasized that in applications of this nature, the requirement of full disclosure to be made by applicants, is even more stringent as the relief sought impacts on the rights of third parties, namely the estate’s creditors.

[17] In *Ex parte Steenberg & other related cases*⁹ the court expressed the view that often valuers give an inflated value to assets “*for insolvency purposes ... to enable the debtor ... to surmount the difficulty of showing advantage to creditors*”. To ward against this, full and proper description of the assets must be given, so much so that the court can be satisfied that the values reflected are true and realistic.

[18] The existence of a free residue, sufficient to pay all the costs of sequestration, has been described as an “indispensable condition precedent” to a court’s acceptance of the voluntary surrender of an estate¹⁰.

[19] In compiling a statement of the applicant’s affairs as required by section 4(3), all assets must be included and no assets should be omitted merely because they are hypothecated or regarded as worthless¹¹.

⁷ See the various permutations of the Practice Directives and Practice manuals over the years since *Ex parte Ogunlaja* [2011] JOL 27029 (GNP) at par [9] per Bertelsmann J.

⁸ 2013 (1) SA 49 (KZN). See also in general *Schlezingers v Schlezingers* 1979(4)SA 342(W).

⁹ 1996 (3) SA 822 (W).

¹⁰ *Ex parte Vane* 1956 (4) SA 616 (O) and *Ex parte Swanepoel* 1975 (2) SA 367 (O).

¹¹ *Ex parte Klopper* 1965 (2) SA 107 (O).

[20] The reason why the statement of affairs must be furnished with meticulous accuracy “... *is to afford each of the creditors information concerning the debtor’s property and liabilities in order to enable such creditors to determine the attitude [they] intend to adopt towards the application*”.¹²

[21] Once full disclosure has been made of the applicant’s estate, not only are the creditors of the debtor/insolvent in a position to determine their response to the proposed voluntary surrender, but the Court is then also in a position to make a determination as to whether the acceptance of the voluntary surrender would carry with it a sufficient advantage to the general body of creditors¹³.

[22] In order to assist with and provide a measure of proof of the advantage and possible dividends, the assets disclosed must be inspected by a qualified valuator in the presence of the applicant and a sworn valuation must be provided, indicating the realisable value of each item of the assets, both movable and immovable¹⁴.

[23] There are certain assets which, although part of an applicant’s estate, are excluded from any sale in execution by his trustee in the event that the voluntary surrender is accepted. These excluded assets fall into two categories. These are determined by section 86(2). The first category consists of wearing apparel and bedding, which are absolutely excepted. The second category consists of household furniture, tools of trade and other means of subsistence. The assets comprising the second category are excepted from sale, but only at the discretion

¹² Meskin, *Insolvency Law in South Africa* at par 7.3.2 on 3-8(3) and *Ex parte Nel (supra)* and *Ex parte Van Zyl* 1963 (2) SA 311 (G).

¹³ See: *Stratford and Others v Investec Bank Ltd* 2015 (3) SA 1 (CC) at par [45] and *Meskin & Co Ltd v Friedman* 1948 (2) SA 555 (W).

¹⁴ *Ex parte Erasmus* 2015 (1) SA 540 (GP) per BertelsmannJ, laying down the procedure in this regard in this Division.

of those creditors who had proven claims against the estate and, in the event of no claims being proven, at the discretion of the Master.

[24] Although previously¹⁵ applicants applying for the acceptance of the voluntary surrender of their estates may have “waived” their aforementioned rights of exclusion of assets, in order to increase the realisable extent of their estate or to increase the advantage to creditors, this is no longer the case. It has been held that it is impermissible for an applicant to waive rights which would impair his or her Constitutionally guaranteed rights to dignity and freedom of trade¹⁶.

[25] Against this legislative backdrop, I shall now deal with the three applications under consideration individually, starting in each instance with the initial set of papers placed before the court and thereafter the papers delivered pursuant to the Court’s directives referred to earlier.

Ex parte Slabbert Case no 099263/2024 (Slabbert)

[26] In this matter the applicant was a sales marketing manager from Boksburg. She was earning just under R18 000.000 per month, but this fell more than R10 000.00 short of her expenses. She was married out of community of property. The reasons for her insolvency were that “*Covid had an effect on [her] financial stability due to [her] not receiving salary for November, December 2023 and January 2024*”. Her husband’s business only breaks even and they have two children to take care of.

¹⁵ *Ex parte Anthony and six similar matters* 2000 (4) SA 116 (C).

¹⁶ See Evans, “*Legislative Exclusions or Exemptions of Property from the Insolvent Estate*”, [2011] PER 28 as discussed in *Ex parte Kroese* 2015 (1) SA 405 (NWM) at [42] and [52] – [54].

[27] The applicant's liabilities of R108 174.54 exceeded her assets, valued at R44 200.00, constituting factual insolvency. Included in her list of creditors, was an amount of R2 600.00 for Ursula Gouws Consulting.

[28] The free residue in *Slabbert* was calculated by her in the affidavit prepared on the advice of her attorney, Schoonraad Attorneys of Arcadia, Pretoria (VAT included) as follows:

Assets	44 200.00
Less: Liquidations fees	2 875.00
Bill of costs	16 100.00
Counsels fees	1 380.00
"General disbursements"	<u>1 200.00</u>
Available for distribution	R 22 645,00

[29] Based on the above, the dividend was calculated to be 20,93 cents/Rand.

[30] The application was supported by a valuation provided by a professional valuator, Mr H B Dinna of Top Bid Auctioneers, Valuers and Appraisers CC, having been performed on 12 August 2024. In a schedule, movable assets comprising of 18 items were listed, including a "Trojan Exercise Bike" at a replacement value of R15 680.00.

[31] The applicant also, in her founding affidavit, stated "*I have been advised, which advice I accept, that all the assets must be disclosed to the Honourable Court. The Statement of Affairs under oath represents all my creditors as well as all of my assets*".

[32] The applicant also added in a later paragraph: “*I confirm that I was present at the time my assets was (sic) appraised and that all my assets are reflected in the valuation report not excluded by the insolvency act (sic)*”. She did not explain which assets were excluded. The valuator, in his affidavit, merely stated in this regard that Mrs Slabbert had “... *pointed out the movable assets that needed to be valued*”.

[33] As will be seen hereinlater, the three applications under consideration, bore striking resemblances to each other. The resemblances ranged from virtually exact wording of the affidavits of the applicants and the valuator, to the amounts of liabilities, the values of the assets (all only movables), and the dividends proclaimed as advantages to creditors. In addition, the estate in all three applications, despite the applicants hailing from various addresses in the area of this Court’s jurisdiction, all shared the same creditor, Ursula Gouws Consulting. Moreover, an asset described as a “Trojan Exercise bike”, featured in two of the three applications, at the exact same replacement value of R15 680.00.

[34] In her supplementary affidavit, Mrs Slabbert explained that she had approached Ursula Gouws Consulting in January 2024 and that the reasons for her consultation was her lack of receiving a salary as set out in her founding affidavit and to find out if debt review would be to her advantage. In the end, after discussions with her spouse and after Ursula Gouws had attempted to negotiate with creditors, the proposed monthly instalment was not affordable. She was then referred to “an attorney” and was provided with an invoice for services rendered. She had approached Schoonraad Attorneys, provided them with a list of creditors and a list of assets and was advised about the process and consequences of the voluntary surrender of her estate.

[35] The attorney responded in his supplementary affidavit that, in order to address the Court’s concerns, he had contacted Ursula Gouws and he referred the

Court to her affidavit with which I shall deal later. He similarly referred to the affidavit/s provided by the valuator.

[36] Although the attorney stated that the applicant had been referred to him by Ursula Gouws Consulting, he stated that he thereafter had an independent consultation with each of the applicants, but proceeded with each application for voluntary surrender on the instructions of the individual applicants. In the case of Mrs Slabbert, he was “entirely dependent” on the information provided by her and the valuator. He also reiterated his *bona fides* and assured the Court that his firm constantly strove to improve the quality of “their” applications “... *by regularly determining the courts’ requirements through our Counsel and adjusting our applications accordingly*”.

[37] The valuator also provided an affidavit. From start to end, it consisted of seven paragraphs, including the sub-paragraphs. He confirmed having been advised of the similarity between his report in this matter and that provided by him in the third matter (to be dealt with hereunder). The valuator confirmed that he had performed the valuation of Mrs Slabbert’s assets on 12 August 2024 and that she had been present. He further stated the following: “*I requested her to indicate which assets she was the owner of as her spouse’s assets do not form part of her estate. I further informed her that certain assets are exempted from the insolvent estate due to the personal nature thereof unless she repudiates her rights to these assets. The applicant indicated that she was advised accordingly by her attorney*”.

[38] Mrs Ursula Gouws also provided the court with an affidavit. In it, she stated that she was a “financial coach, strategist and registered debt counsellor”. She confirmed that she had consulted with Mrs Slabbert on various occasions since January 2024. She had received instructions from Mrs Slabbert to attempt debt restructuring but, after having contacted her creditors and after having

prepared a proposal, Mrs Slabbert could not proceed with the process, due to financial constraints. She stated that, although she is entitled to payment for services rendered, it remained in her discretion to prove a claim in the insolvent estate.

Ex parte E.C & H M Swanepoel Case no 099003/2024 (Swanepoel)

[39] In this matter the applicants were married in community of property to each other. They reside in Krugersdorp. Mr Swanepoel is a manager at a local company and Mrs Swanepoel is unemployed. They also have two children and their expenses exceed their income. They stated that, “prior to Covid”, they could cover their expenses but, during Covid Mr Swanepoel’s salary was not always paid, whereafter he also became unemployed for several months.

[40] The parties’ liabilities amounted to R109 742.67 (including a claim by Ursula Gouws Consulting for R4 200.00), while their assets, consisting only of movables, were valued at R44 100.00. Mr Dinna was also the valuator and the attorney was again Schoonraad Attorneys.

[41] The free residue available for distribution amongst creditors, was calculated as follows (VAT included):

Assets	44 100.00
Less: Liquidators fees	2 875.00
Bill of costs	16 100.00
Counsel’s fees	1 380.00
“General disbursements”	<u>1 200.00</u>
Available for distribution	R22 545.00

[42] Based on the above, the dividend was calculated at 20,54 cents/Rand.

[43] The *Swanepoel* application was, in similar fashion as that of *Slabbert*, supported by a valuation, this time one which had been performed on 20 August 2024. Some 21 items had been listed in a schedule attached to the valuator's report, in which he had indicated the above value as the forced sale value.

[44] The same allegations had been made by the Swanepoels as by Mrs Slabbert, namely that they had acted on the advice of the attorney and that they had declared all their assets. Contrary to the case of *Slabbert*, the Swanepoels stated: "*We do away from the protection afforded by Section 82(6) of the Insolvency Act and the sequestration process as certain of these items are luxury items. Those assets that are exempted from seizure have not been listed by the valuator*". None of these latter two categories of assets have been particularised in either the affidavits or the valuation report.

[45] Again, this matter was also postponed for three weeks with directives to file supplementary affidavits. Those affidavits were filed and they were in *pari materia* with those filed in *Slabbert*. This time round, the valuator's affidavit was even more brief. The affidavit from Ursula Gouws indicated that the Swanepoels had made an arrangement to pay her fees in installments. Despite this, the amount due to her in this case was higher than in *Slabbert*.

Ex parte Jacobs Case No 098 627/2024 (Jacobs)

[46] In this matter the applicant was an unmarried assistant manager at a national outdoor clothes and equipment retailer. Prior to 2018 Mr Jacobs had a reasonable income but after switching to his current employer with hopes of promotion, his position changed for the worse when all promotions had been put on hold during the Covid period.

[47] Mr Jacob's expenses also exceed his income and with creditors totaling R108 691.56 exceeding his assets, which have been valued at R44 800.00, he was

factually insolvent. He also, like the Swanepoels, “[*did*] away with the protection afforded by section 82(6) of the Insolvency Act”.

[48] After having also made allegations that he had disclosed “all” of his assets, Mr Jacobs calculated the free residue in his estate to be as follows (VAT included):

Assets	44 800,00
Liquidators fees	2 875,00
Bill of costs	16 100,00
Counsel’s fees	1 380,00
“General disbursements”	<u>1 200,00</u>
Available for distribution	R23 245,00

[49] Based on the above, Mr Jacobs in his affidavit calculated the advantage to creditors to be 21,38 cents/Rand.

[50] In similar fashion as in *Slabbert* and *Swanepoel*, I had postponed this matter and directed that further affidavits be filed. This was prompted by the considerations and concerns previously outlined, no least of which was the inclusion of a “Trojan Exercise Bike” with a replacement value of R15 680.00 which also featured amongst Mr Jacob’s movable assets. His list of creditors also featured Ursula Gouws Consulting in an amount of R2 200.00.

[51] The supplementary affidavits by the attorney and Mrs Gouws followed by the same pattern as in the previous two matters. Regarding the exclusion of assets, Mr Jacobs explained that he was in a relationship and that some of the assets at his place of residence, were not his.

[52] The biggest difference in the supplementary affidavits filed in this matter from those in the other matters, was contained in the affidavit of Mr Dinna. He explained the similarities in the valuation reports in *Slabbert* and in *Jacobs* as follows (I quote from his affidavit lest the gist of the contents be lost or misconstrued by summation):

“3.5 I determined from my internal investigation that the valuation on the application of Slabbert NL under case number 24/099263 was done on the 12 August 2024. This valuation was done prior to the valuation on the applicant’s file.

On the file of the applicant I noted that there was (sic) two valuations and upon further investigation I noted that it was the valuation for both the applicant and the aforementioned matter under case number 24/099263. I humbly submit that for the valuation of movable assets I have a general template that is used. In this instance I can only conclude that prior to drafting the correct valuation the incorrect valuation was printed and incorrectly filed on the applicant’s file. I humbly submit that this was a bona fide filing error in my office.

3.6 I further humbly submit that I am aware that I signed the incorrect affidavit regarding the valuation and provided that attorney with the incorrect affidavit which was on file. A duplicate valuation which was in the process of being altered to reflect the correct assets was accidentally printed and placed on file. This incorrect valuation was accidentally used as the correct valuation and provided to the attorney”.

[53] So the explanation provided to the court was a simple one: the valuator used a template to formulate his reports, but before he could complete the template to reflect the assets and values of Mr Jacob's movables, he had inadvertently reprinted the template reflecting Mrs Slabbert's assets and annexed that to his affidavit as the valuation of Mr Jacob's estate. A mere error of inadvertently annexing another file's report.

[54] But the above is not true. Although all the assets reflected in Mrs Slabbert's valuation report were repeated in that portrayed as the report of Mr Jacobs estate, in three instances, the forced sale values had been changed.

[55] The easiest way to explain these differences are as follows:

Slabbert

Asset	Replacement value	Current value	Forced sale value
3 bookshelves	8 560.00	5 050.00	600.00
Sitting room suite	28 750.00	18 550.00	8 500.00
Trojan Exercise bike	15 680.00	10 440.00	3 200.00

Jacobs

3 bookshelves	8 560.00	5 050.00	800.00
Sitting room suite	28 750.00	18 550.00	7 900.00
Trojan Exercise bike	15 680.00	10 440.00	4 200.00

[56] Admittedly, the differences in the amounts are small, but it means that the explanation by the valuator of having inadvertently annexed exact copies of the same report to his affidavits in two different files, was untrue. Consequently the differences in forced sale values used in the two “templates” were not explained.

[57] The “new” and purportedly correct valuation report of Mr Jacobs’ assets, look markedly different. A completely different set of assets was reflected, reflecting a replacement value of R145 858.00, current value of R90 840 and a forced sale value of R47 910.00. This led to the attorney triumphantly claiming in his supplementary affidavit an increased dividend of 24.24 cents/Rand.

[58] Despite the above, the list of similarities in values in the three estates are still astounding. They can be depicted as follows:

	Liabilities	Assets Current Value	Forced Sale Residue	Free Residue	Dividend
Slabbert	108 174.54	101 910.00	44 200.00	22 645.00	20.93
Swanepoel	109 742.67	101 830.00	41 100.00	22 545.00	20.54
Jacobs	108 691.56	101 910.00	44 800.00	23 245.00	21.38
Jacobs (“new”)	108 691.56	90 840.00	47 910.00	26 355.00	24.24

[59] The following similarities must be added: all the applicants earn less than R30 000.00 per month, all used Ursula Gouws Consulting and in all the valuations performed, those assets comprising their estates (all only consisting of

movables) were identified by the valuer, who determined which assets may or may not be subject to exemptions contemplated in Section 86(2) of the Act.

Discussion and evaluation

[60] I unreservedly accept that the financial consequences of the Covid 19 pandemic and the measures used to attempt to prevent its spread, had wreaked havoc and devastation in the lives of a great many people. I have no reason to doubt the evidence of the applicants in this regard, which exemplify this.

[61] Despite the case law indicating that voluntary surrenders of estates should be creditor-oriented and to the advantage of an estate's body of creditors, many debtors resort to it as a last resort, being a method utilised for their own benefit to escape dire circumstances. The law, however, contemplates that such an escape must at least also have a not negligible benefit to their creditors.

[62] It is this last requirement and, in particular the size of that benefit or advantage required by our courts (and by this Division in respect of the size of the required dividend), which gave rise to the current practice as evinced by these three applications.

[63] Despite the requirements set by this court for the contents of valuers' reports and their supporting affidavits¹⁷, the valuations often presented to court, either do not assist the court properly or result in the non-compliant disclosure of an applicant's estate.

[64] The primary reason for the above, as evinced by the three applicants under consideration in this judgment, is the apparently widely held opinion that those assets contemplated in section 82(6) do not form part of an insolvent's estate. This perception probably arises from the anomaly that, although those assets do

¹⁷ *Ex parte Ogunlaja* (supra).

in fact form part of an insolvent's estate, they are in qualifying circumstances exempted from sales in execution by an insolvent's trustees.

[65] To be clear: all of an insolvent's assets must be disclosed by him or her in an application for the acceptance of the voluntary surrender of such an insolvent's estate. The totality of an applicant's estate, that includes particulars of all assets and all liabilities, must meticulously be included in the statement of affairs contemplated by section 4(3) of the Act.

[66] In calculating the free residue and the dividend constituting an advantage to creditors, such an applicant should indicate which of his assets fall in the first category mentioned in section 82(6) (and paragraph 23 above) and which should therefore be excluded from the assets from which a free residue can be extracted.

[67] Those assets comprising the second category mentioned in section 82(6) and which may, at the instance of proven creditors or the Master, as the case may be, must also be disclosed and the applicant should furnish particularity and reasons why those assets should be excluded from the dividend calculation.

[68] It is not enough for either the applicant or the valuator to simply (and glibly, I might add) refer to the fact that assets contemplated in section 82(6) are either not disclosed or not included in the valuation report.

[69] As also indicated earlier, the "waivers" of the exclusion of assets from sales in execution, is Constitutionally impermissible.

[70] The "exclusion" of assets from their disclosure by applicants also give rise to the suspicion that only so much assets as may be required to reach the magical dividend of 20 cents/Rand, are disclosed.

[71] The fact is that all three parties to each application, that is the applicant/s, the attorney and the valuator must of necessity work together to achieve this result. That is the only inference to be drawn from the facts illustrated by these three applications. The attorney claims to rely exclusively on the information provided by the applicants, while the applicants in turn rely exclusively on the advice given by the attorney. The valuator relies on the pointing out of assets by the applicant, but clearly also indicates to the applicant which assets are “excluded” and therefore omitted from both the valuator’s report and the Statement of Affairs. It is also inconceivable lay applicants would have been capable of performing the divided calculations contained in their affidavits.

[72] I therefore found that all three applications under consideration failed to satisfy the requirements of the Act. In none of them were full and proper disclosure of the assets in the respective estates made. The unreliability of the valuator’s reports were also to such an extent that a correct calculation of the alleged advantage to creditors could not reliably be undertaken.

[73] Whilst I accept the *bona fides* of Mrs Gouws, it appears that the process, as seen from her perspective and that of the attorney and the applicants, is debtor-relief driven and not as creditor-oriented as contemplated in the Act. All applications compiled with this objective in mind and with the deficiencies set out in this judgment, should be scrutinized with a magnifying glass, before the voluntary surrenders of estates contemplated therein are accepted.

[74] Attorneys, valuers and prospective applicants are yet again reminded of the requirement of displaying the utmost good faith before alleging to a court that full disclosure of all assets have been made, as the applicants in these three matters have done.

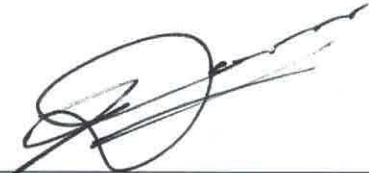
Conclusion

[75] For all the reasons set out above, all three applications were refused. Despite this refusal, I found insufficient *mala fides* on the part of the attorney to meri a referral to the Legal Practice Council. The judgment should serve as a warning, through to the attorney and all others in a similar position.

Order

[76] I therefore made the following orders:

The applications for voluntary surrender of the applicants' estates in matters 099263/24, 099003/24 and 098627/24 are refused.



N DAVIS
 Judge of the High Court
 Gauteng Division, Pretoria

Date of Hearing: 11 November 2024

Judgment delivered: 20 March 2025

APPEARANCES:

For the Applicants:

Adv W Venter

Attorney for the Applicants:

Schoonraad Attorney, Pretoria.