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IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case number: 083931/2024

Date: 9 June 2025

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED

DATE 09/05/2025

SIGNATURE

In the matter between:

UMK PROPERTY DEVELOPERS (PTY) LTD

Applicant

And

RUAN SEVE RABIE

First Respondent

(ID number: 8[...])

Married Out of Community of Property

CLAUDETTE RABIE

Second Respondent

JUDGMENT

MINNAAR AJ.

[1] On 4 October 2024, this Court ordered that the first respondent's estate be placed under provisional sequestration in the hands of the Master of the High Court, Pretoria. A rule nisi was issued calling on the first respondent and all

other interested parties to show cause, if any, on 14 November 2024, why the estate of the first respondent should not be placed under final sequestration.

[2] On 14 November 2024, the first respondent appeared in person, and the rule nisi was extended to 30 January 2025. The first respondent, on 30 January 2025, delivered a notice of intention to oppose the sequestration application. The first respondent also appeared in court on 30 January 2025. As a result of the notice to oppose, the rule nisi was further extended to 2 June 2025. Despite the delivery of the notice to oppose, the first respondent failed to deliver an answering affidavit.

[3] On 2 June 2025, the application came before me. The first respondent appeared in person. The first respondent requested a postponement, with the main motivation being that he now wishes to apply to rescind the order granted by this Court on 4 July 2023. The first respondent had a document in his hand and stated that it was the rescission application, and that a copy of the application was provided to the applicant's counsel.

[4] The applicant's counsel opposed the request for a postponement and moved for an order of final sequestration of the first respondent's estate. Counsel for the applicant submitted that the rescission application was not issued, and as such, no rescission application is pending before the Court.

[5] According to the first respondent, he could not issue the application as he could not access the electronic file. Despite being granted ample opportunity to address the Court on the reason for the lateness of the purported rescission application, the first respondent could not provide a satisfactory explanation.

[6] In considering the request for postponement to provide the first respondent time to proceed with his rescission of judgment application, the following is relevant:

- a. The order of 4 July 2023 was granted in favour of the applicant as a default judgment against the first respondent, jointly and severally with ACMR Capital (Pty) Ltd, for payment of the amount of R2 500 000.00, together with interest and costs (“the default judgment”).
- b. Following the default judgment, the applicant attempted to execute the order. On 29 November 2023, the first respondent personally informed the Sheriff that he had no money or disposable assets to satisfy the writ, and the Sheriff issued a *nulla bona* return of service. It is thus evident that the first respondent knew about the default judgment from at least 29 November 2023, yet he took no steps to rescind the order.
- c. On 16 August 2024, the sequestration application was served personally on the first respondent. In the founding affidavit, the events leading up to the default judgment were fully addressed. Again, the first respondent took no steps to lodge a rescission application. Being aware of the sequestration application, the first respondent also elected not to oppose same.
- d. When the provisional sequestration order was granted on 4 October 2024, the first respondent was not in attendance.
- e. On the return date of 14 November 2024, the first respondent was in attendance. The first respondent is by now acutely aware of the provisional order, yet he takes no steps to oppose the application or to rescind the default judgment.
- f. It is only on 30 January 2025, one day before the return date of 31 January 2025, that the first respondent delivers a notice of intention to oppose the sequestration application.
- g. Based on this belated notice of intention to oppose, the first respondent managed to get a further extension of the rule nisi until 2 June 2025.

[7] Having regard to the above, this Court is not convinced that the first respondent is serious in his attempts to pursue a rescission application or to oppose the confirmation of the provisional order for sequestration. The conduct of the first respondent is clearly to frustrate the applicant and to buy time.

[8] From the submissions made by the first respondent, and on a perusal of the founding affidavit, the first respondent was an admitted attorney practising for his own account. He has since been struck from the roll. Having practised as an attorney, he must know the processes of this Court and the need to attend to litigation with urgency and seriousness.

[9] I pause to state that even if there were a properly issued application for rescission, it would not be a bar for the applicant to move for confirmation of the provisional order for sequestration. It is trite that a rescission application does not suspend the execution of an order. Absent an application in terms of Rule 45A of the Uniform Rules of Court, dealing with suspensions of an order of court, execution of an order can proceed.

[10] The primary consideration for the granting of a postponement is whether it would be in the interest of justice to grant the postponement. The Constitutional Court held in *Lekolwane and Another v Minister of Justice and Constitutional Development* 2007 (3) BCLR 280 (CC) at para 17:

'The postponement of a matter set down for hearing on a particular date cannot be claimed as a right. An applicant for a postponement seeks an indulgence from the court. A postponement will not be granted unless this court is satisfied that it is in the interests of justice to do so. In this respect the applicant must ordinarily show that there is good cause for the postponement. Whether a postponement will be granted is therefore in the discretion of the court. In exercising that discretion, this court takes into account a number of factors, including (but not limited to) whether the application has been timeously made, whether the explanation given by the applicant for postponement is full and satisfactory, whether there is prejudice to any of the parties, whether the application is opposed and the broader public interest.'

[11] Considering all the facts before this Court, and the submission made on behalf of the parties, the Court is not convinced that it would be in the interest of justice to grant the first respondent any further indulgences. On the contrary, the interest of justice would dictate that the order prayed for by the applicant be granted as the applicant is entitled to finality in its litigation.

[12] The applicant has met all the statutory requirements and is entitled to confirmation of the provisional order.

[13] Consequently, I make the following order:

1. The first respondent's estate is placed under final sequestration and in the hands of the Master of the High Court, Pretoria; and
2. The costs of this application shall be costs in the sequestration of the first respondent's estate.

Minnaar AJ
Acting Judge of the High Court
Gauteng Division, Pretoria

Heard on	: 2 June 2025
For the Applicant / Plaintiff	: Adv. M L van Ryneveld
Instructed by	: VDT Attorneys Inc
For the First Respondent	: In person
Instructed by	: In person
Date of Judgment	: 9 June 2025