



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

APPEAL NO: A322/2023

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: **NO**
- (2) OF INTEREST TO OTHER JUDGES: **NO**
- (3) REVISED
- (4) Date: 13 August 2025

Signature: _____

In the matter between:

THE BODY CORPORATE OF MIONETTE

APPELLANT

and

STEPHINA LEKGANYANE

RESPONDENT

Coram: Nyathi J, et Mashaba & Nobanda JJ

Heard on: 04 JUNE 2025

Delivered: 13 August 2025 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 10H00 on 13 August 2025.

JUDGMENT

MASHABA AJ

- [1] This an appeal to the Full Court brought by the appellant against the judgment of the Bam J. Bam J granted judgment in favour of the respondent by discharging the *rule nisi* and dismissing the applicant's case with costs for the sequestration of the respondent's estate on basis that there will be no financial advantage to the respondent's creditors. The appellant applied for leave to appeal which leave was refused. The appellant petitioned the Supreme Court of Appeal which granted leave to appeal to the full Court of this Division. Hence the matter came before us for determination.
- [2] The appellant in this matter is the Body Corporate of Mionette, with scheme number SS96/1981 duly incorporated in terms of section 36 of the Sectional Titles Act, 95 of 1986, read together with section 2 of the Sectional Titles Schemes Management Act 8 of 2011. The body corporate consists of 12 units whose owners constitute the body corporate and who are liable for the levies and other contributions as provided for in terms of Sectional Titles Act, 95 of 1986 and the Sectional Titles Schemes Management Act 8 of 2011.
- [3] The respondent is the owner of unit number 12 in the sectional title scheme development known as my Mionette, situated at 146 Dwars Street, Sunnyside, Pretoria. The appellant is according to sub-section 2(5) of the Sectional Titles Schemes Management Act and subject to the provisions of the Act, responsible for the enforcement of the rules and for the control, administration and management of the common property for the benefit of all owners.

- [4] The respondent purchased the above property, unit number 12, during year 2001. This unit has been the subject of many contentious transactions and legal disputes. The respondent alleged that she fell victim to a scheme which was instigated by a company known as Brusson Finance. In one of the well-known cases of *ABSA Bank Limited v Moore 2017 (1) SA 255 (CC)* it was found that homeowners had fallen victim to a scam targeting property owners and banks. The scam ("the Brusson scam") preyed on property owners in distress by offering them a loan on "favourable terms" with the homeowner's property serving as security. Victims were told that a Brusson partnership investor would purchase the homeowner's property but would immediately sell it back to the homeowner. It was specifically stated that the homeowner would retain ownership of his home. That was false, as the instantaneous "resale" was bogus, and the homeowner in truth signed away ownership. The respondent also fell victim to this scheme. I do not deem it necessary to delve deeper into Brusson saga save to highlight this unfortunate incident in passing which befell the respondent.
- [5] On 15 December 2017 Pienaar AJ made an order, declaring amongst other things, the loan agreement entered into between the respondent and Brusson Finance null and void ab initio. This was one of the many court cases where the property (unit number 12) would be the subject matter and at the center of litigation. The appellant was also involved in another matter against the respondent involving, amongst other things, whether the respondent was liable for the levies and other contributions pertaining to the said property (unit number 12) as envisaged in section 3 of the Sectional Titles Scheme Management Act read together with section 37 of the Sectional Titles Act. At the end of that matter, as per GT Avvakoumides AJ's judgment, it was held that the respondent was liable for the levies and other contributions relating to the aforesaid property and ordered the respondent to pay the costs of the application on an attorney and client scale.
- [6] As a result of the above cost order by Avvakoumides AJ the appellant during February 2022 obtained an allocator in the amount of R103, 914.10. On 21 February 2022 the appellant issued a warrant of execution with the sheriff of

Pretoria South East for an amount of R94,602.15 for the taxed costs and other charges of the appellant. The amount of R94,602.15 was the difference between an amount of R103, 914.10 minus an amount of R9 311.95, which had been debited on the respondent's levy statement for tax consultant fees. This then resulted in the original allocator amount of R103, 914.10 being reduced to R94,602.15.

- [7] On 25 February 2022 the appellant served the writ of execution for R103, 914.10 on respondent's residence to which the respondent declared that she had no money or disposable property wherewith to satisfy the said warrant. It is important to indicate without further ado that whereas the appellant obtained an allocator in the amount of R103, 914.10 such amount has been reduced to R94,602.15 as a result of an amount R9 311.95 being debited on the respondent's levy statement for tax consultant fees. This amount (R94,602.15) has been recorded in the warrant of execution and is not disputed by either of the parties. It is important to make this point clear because the appellant's Counsel in paragraph C of his heads of argument and during argument submitted that the respondent was indebted to the to the appellant in the amount of R103,914.10 in respect of the taxed bill of costs under case number 93746/2019. As already indicated above the exact amount that is due to the appellant is the reduced of R94,602.15 and not original taxed amount of R103,914.10.
- [8] The respondent further admitted that she was also indebted to the appellant in the amount of R45 029.26 for the levies from December 2017 to February 2020 including interest. According to the municipal statement issued on 13 May 2022 the respondent owed municipal levies to the tune of R33 171.52. The respondent submitted that she was paying the arrear amount in installments. Counsel for the appellant submitted that at the time of filing of the appellant's answering affidavit the arrear amount was approximately R28 504.28.
- [9] The respondent's levies statement indicates that as on 1 August 2022 her levies and other related contributions were in arrears amounting to approximately R871 301.94. I do not intend making, for the purpose of the current appeal, any factual findings as to the accuracy or correctness of the arrear levies statement

amounts as reflected in the respondent's levy statement save to mention that the appellant has issued summons in this division against the respondent for the recovery of arrear levy amount of approximately R690 096.27. The respondent disputes the quantum of this arrear amount. That is a matter for determination by another court and I resist the temptation of delving into the merits of that matter.

[10] In terms of section 8 of the Insolvency Act 24 of 1936 a debtor commits an act of insolvency if he commits the following acts:

8. Acts of insolvency.

A debtor commits an act of insolvency—

- (a) if he leaves the Republic or being out of the Republic remains absent therefrom, or departs from his dwelling or otherwise absents himself, with intent by so doing to evade or delay the payment of his debts;*
- (b) if a court has given judgment against him and he fails, upon the demand of the officer whose duty it is to execute that judgment, to satisfy it or to indicate to that officer disposable property sufficient to satisfy it, or if it appears from the return made by that officer that he has not found sufficient disposable property to satisfy the judgment;*
- (c) if he makes or attempts to make any disposition of any of his property which has or would have the effect of prejudicing his creditors or of preferring one creditor above another;*
- (d) if he removes or attempts to remove any of his property with intent to prejudice his creditors or to prefer one creditor above another;*
- (e) if he makes or offers to make any arrangement with any of his creditors for releasing him wholly or partially from his debts;*
- (f) if, after having published a notice of surrender of his estate which has not lapsed or been withdrawn in terms of section six or seven, he fails to comply with the requirements of subsection (3) of section four or lodges, in terms of that subsection, a statement which is incorrect or incomplete in any material respect or fails to apply for the acceptance of the surrender of his estate on the date mentioned in the aforesaid notice as the date on which such application is to be made;*

- (g) *if he gives notice in writing to any one of his creditors that he is unable to pay any of his debts;*
- (h) *if, being a trader, he gives notice in the Gazette in terms of subsection (1) of section thirty-four, and is thereafter unable to pay all his debts.*

[11] During the argument it became clear that the respondent had committed an act of insolvency in terms of the Insolvency Act. When payment for the judgment debt was demanded from the respondent, she indicated that she had no money or disposable property to satisfy the warrant. The respondent, furthermore, through her erstwhile attorneys, indicated in her email dated 10 February 2022 that she was not in the financial position to pay all amounts due, and she requested to pay off the taxed costs in instalments of R2 500 per month.

[12] In the case of *Court v Standard Bank of SA Ltd; Court v Bester NO and Others* 1995 (3) SA 123 (AD) AT 134; [1995] 2 All SA 440 (A); the Supreme Court of Appeal had the following to say about a notice which constitutes an act of insolvency:

“Whether a particular notice such as to constitute an act of insolvency within the meaning of meaning of section 8 (g) depends on the construction of its contents, read as a whole. The question when considering the letter is not whether the debtor is in fact unable to pay or whether he is solvent or insolvent. Inability to pay must be distinguished from unwillingness to pay. If the debtor is merely saying that he is unwilling to pay, the letter does not constitute an act of insolvency. Construing a written notice involves deciding how the reasonable person in the position of the creditor receiving the notice would understand it.”

[13] Section 12 of the Insolvency Act makes provision for those instances that a final order of sequestration can be granted and the dismissal of a petition for sequestration and provides as follows:

12. Final sequestration or dismissal of petition for sequestration.

- (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.*

[14] As already indicated above that the appellant had proven the provisions of subsections 12(1) (a) and (b) of the Act by establishing against the respondent a claim in the amount of R94,602.15 as is mentioned in subsection (1) of section 9; and that the respondent had committed an act of insolvency. The remaining contentious issue was whether there is reason to believe that it will be to the advantage of creditors if the respondent's estate is sequestrated.

[15] As was stated by the Constitutional Court in *Stratford and Others v Investec Bank Limited and Others*¹ “[t]he meaning of the term ‘advantage’ is broad and should not be rigidified. This includes the nebulous ‘not-negligible’ pecuniary benefit . . . To my mind, specifying the cents in the rand or ‘not-negligible’ benefit in the context of a hostile sequestration where there could be many creditors is unhelpful . . . The correct approach in evaluating advantage to creditors is for a court to exercise its discretion guided by the dicta outlined in *Friedman*. For example, it is up to a court to assess whether the sequestration will result in some payment to the creditors as a body; that there is a substantial estate from which the creditors cannot get payment except through sequestration; or that some pecuniary benefit will result for the creditors. Given the potential impeachable transactions detailed by Investec, totalling over R37 million, it is evident that there is reason to believe that there will be an advantage to creditors.”

[16] In *Meskin & Co v Friedman*², Roper J had the following to say:

“Under sec. 10, which sets out the powers of the Court to which the petition for sequestration is first presented, it is only necessary that the Court shall be of the opinion

¹ [2015] JOL 32695 (CC) at paras 44–46

² 1948 (2) SA 555 (W) at 558

that prima facie there is such "reason to believe". Under sec.12 which deals with the position when the rule nisi comes up for confirmation, the Court may make a final order of sequestration if it "is satisfied" that there is some reason to believe. The phrase "reason to believe", is used as it is in both these section, indicates that it is not necessary, either at the first or at the final hearing, for the creditor to induce in the mind of the Court a positive view that sequestration will be to the financial advantage of creditors. At the final hearing, though the Court must be "satisfied", it is not to be satisfied that sequestration will be to the advantage of creditors, but only that there is reason to believe that it will be so."

[17] It is worth mentioning that sequestration confers upon the creditors of the insolvent advantages which may include a full investigation of the respondent's affairs. These benefits may not be pecuniary in nature however they remain advantages to the benefit of the appellant.³ When dealing with the question of advantage to creditors it is important to realize pecuniary value is not the only consideration that a court has to look into when considering the question of advantage to creditors.

[18] It is one of a multiplicity of factors that the trier of facts has to consider when exercising his or her discretion whether to grant a final order of sequestration. The respondent's unit is unincumbered by a bond and realizable. She is a salary earner who most probably has surplus income from her full-time job. Most importantly sequestration will put an end to the continued deterioration of the respondent's estate. These are some of the many issues which were adduced before the court a quo and before us to indicate that there was reason to believe that it would be to the advantage of creditors of the respondent if her estate is sequestrated. As stated by INNES, C.J., in *Pelunsky & Co. v Beiles and Others* (1908 TS at p 372), *"It does not seem clear --- on the contrary, it seems very doubtful --- whether the appellant would get anything. But it is not essential for the petitioning creditor to show that he would benefit pecuniarily by sequestration. There are other grounds which would justify a sequestration order, apart from the mere prospect of receiving a dividend. The examination of the insolvent, for instance, might reveal assets which are not in his schedules and are not at present within the knowledge of his creditors."*

³ Estate Bukes 1933 OPD 86 at 90.

[19] In *Investec Bank and another v Mutemeri and Another 2010 (1) SA 265 (GSJ)* at 274-275, Trengove AJ pointed out that while the creditor's underlying motive may be to obtain payment of his debt, an applicant for sequestration in fact does not constitute proceedings for the recovery of a debt, but rather-'*[i]ts purpose and effect are merely to bring about a convergence of the claims in an insolvent estate to ensure that it is wound up in an orderly fashion and that creditors are treated equally. An applicant for sequestration must have a liquidated claim against the respondent, not because the application is one for the enforcement of the claim, but merely to ensure that applications for sequestration are only brought by creditors with a sufficient interest in the sequestration. Once the sequestration order is granted, the enforcement of the sequestrating creditor's claim is governed by the same rules that apply to the claims of all the other creditors in the estate. The order for the sequestration of the debtor's estate is thus not an order for the enforcement of the sequestrating creditor's claim.'*

[20] The respondent is a member of a body corporate and her unit represents a realizable asset within her estate. Creditors in the context of the current case are the appellant which is constituted by other 11 unit owners are members of the body corporate who are liable for the levies and other contributions as provided for in terms of Sectional Titles Act, 95 of 1986 and the Sectional Titles Schemes Management Act 8 of 2011 and the municipality which the respondent owes in rates and taxes. The respondent's continued financial burden in honoring her financial obligations risks putting other members of the body corporate into financial ruin due to unpaid levies and other contributions.

[21] The respondent relied, amongst other things, on an automated valuation report from Lighthouse Scheme Valuation in proving that the equity in the property and the sale thereof would result in a not too negligent distribution to creditors. According to this report the respondent unit was valued at: (i) R475 000- a municipal price, (ii) R540 000- an expected value, (iii) R600 000- an estimated high value, (iv) R420 000- an expected low value, and (v) R490 999.95- a comparable average sale price. The Court a quo was critical of this automated valuation report from Light house Scheme Valuation and indicated that there were several challenges that may arise to the expected projected price amongst

them being, amongst others, that: (i) the slumping economy, and the pressure exerted on property prices, (ii) if the property was sold in forced sales then it would be sold to the highest bidder, (iii) the fact that the purchaser of the respondent's unit may not be guaranteed vacant possession which might factor the risk of litigation into their bidding price, (iv) the risk of getting approved building plans and the certificate of occupation and (v) the automated report did not describe the condition of the property.

[22] Some the court a quo's considerations as alluded to above particularly when determining what reserve price to be set for immovable property in a forced sale scenario is misguided. Assets in an insolvent estate are not always realized on a forced sale basis. The creditors may direct that the respondent's unit be sold by way of public auction or public tender in terms of section 80 and 82(1) of the Insolvency Act. The respondent in her papers did not dispute the automated valuation report from Lighthouse Scheme Valuation.

[23] Neither was it her case that since the report was first provided when the provisional order was granted more was needed to be done by way of procuring an expert to express an opinion on how were the figures arrived at. Even after the granting of provisional order the respondent did not challenge the authenticity or veracity of the automated valuation report. On the contrary both parties agreed that the estimated value of the unit showed that the equity in the property and that the sale thereof would result in a not too negligent distribution to creditors.

[24] This material concession made by the parties lays the matter to bed. This then confirms that (a) the sequestration will result in some payment to the creditors as a body; (b) that there is a substantial estate from which the creditors cannot get payment except through sequestration; and (c) that some pecuniary benefit will result for the creditors. I am of the respectful view that once it was common cause that the estimated value of the respondent's unit showed that the equity in the property and the sale thereof would result in a not too negligent distribution to creditors then the court a quo ought to have confirmed the rule nisi and not discharge it.

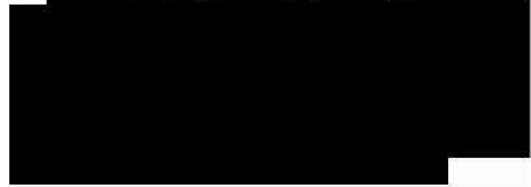
[25] One of the factors which dissuaded the court a quo from confirming the rule nisi was the automated valuation report from Lighthouse Scheme Valuation. The courts in this division granting sequestration orders, albeit provisional, readily relied on automated valuation reports. In the case of *Seevnarayan v Ramjathan [2021] JOL 51959 (GJ)* the Court relied on a Windeed Automated Valuation Report, a LexisNexus product (the valuation report), to the effect that the property currently has an estimated value of R1 850 000.00. In the case of *Shackleton Credit Management (Pty) Ltd v Ngakatau and another [2022] JOL 52144 (GJ)* the Court considered a valuation obtained from respondent's estate agent that the expected selling value of the property is between R600 000.00 and R740 000.00 according to. The Applicant, on the other hand contended that according to an automated valuation report obtained by the Applicant, the Homes Haven property has an expected low value of R1 870 000.00, and an expected value of R2 150 000.00.

[26] In the case of *Chemagic (Pty) Ltd v Van Der Schyff [2021] JOL 52575* the Court in that matter relied on a Lightstone valuation wherein a mortgage bond registered over the property for an amount of R500,000.00 was valued at R705,600.00.

[27] The respondent is a salary earner with a probable surplus income that may become available to creditors. The respondent seems to be trapped in a financial quagmire that seems to be worsening. We are satisfied that sequestration will be to the advantage of creditors. The granting of the final order of sequestration will further confer upon the creditors of the respondent the other advantage of conducting a full investigation of the respondent's affairs. The court a quo's decision in dismissing the appellant's case had the effect of hanging the respondent's estate up indefinitely, leaving the appellant meanwhile without redress.

[27] In the circumstances the following order is made:

- (a) The appeal is upheld with costs, such costs to include the costs in the court a quo, costs of the application for leave to appeal and costs of appeal.
- (b) The order of the court a quo is set aside and replaced with the following:
- (1) The rule nisi dated 30 August 2022 is confirmed.
 - (2) The respondent's estate is placed under final sequestration.

MG MASHABA AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I AGREE AND IT IS SO ORDERED,



JS NYATHI J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I AGREE,




PL NOBANDA AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON:

04 JUNE 2025

JUDGMENT DELIVERED ON:

13 AUGUST 2025

APPEARANCES:

FOR THE RESPONDENT: ADVOCATE JC PRINSLOO

INSTRUCTED BY THERON & HENNING ATTORNEYS, PRETORIA

FOR THE RESPONDENT: ADVOCATE LM MAAKE

INSTRUCTED BY: MALALE NTHAPELENG ATTORNEYS, PRETORIA