IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NO: 11692/2023P

In the matter between:

ROBERT FELLNER-FELDEG **APPLICANT**

and

FRIEDRICH WILHELM GERHARD WORNER **RESPONDENT**

ORDER

The following order is granted:

1. The estate of Friedrich Wilhelm Gerhard Worner, with identity number 5[...] and who is an unmarried male, be and is hereby placed under provisional sequestration in the hands of the Master of the High Court, Pietermaritzburg.

2. The respondent and all other interested persons are hereby called upon to show cause, if any, on 17 September 2025 at 09h30 or as soon thereafter as counsel may be heard, why the estate of the respondent should not be placed under final sequestration.

3. A copy of the provisional sequestration order is to be served on the respondent's employees, if any, and any trade union to which they may belong, and on the South African Revenue Services.

The cost of this application shall be costs in the sequestration of the respondent's estate, on the scale of party and party costs.

JUDGMENT

Gwagwa AJ

Background

[1] This matter was heard before me on the opposed roll on 14 March 2025.

[2] The applicant is a major male businessman who is a resident of South Africa, residing at S[…] Estate Portion 1[…], O[…] B[…] Road, Pietermaritzburg, KwaZulu-Natal. The applicant also has residence in Germany at Ulrich-Kiffhaber- Strasse […], L[…], Germany.

[3] The respondent is Friedrich Wilhelm Gerhard Worner, a major unmarried businessman with identity number 5[...], who was born on 25 November 1955.

Nature of the case

[4] This application is for the sequestration of the respondent's estate due to the following reasons:

(a) The respondent has committed an act of insolvency, as contemplated in section 8*(b)* of the Insolvency Act 24 of 1936 (the Insolvency Act) in that the respondent has, upon demand by the sheriff, failed to satisfy the judgment issued by this court against the respondent and/or failed to indicate to the sheriff disposable property sufficient to satisfy the judgment.

(b) In essence, the court granted an application brought by the applicant, based on the premise that the respondent and Skema Holdings Limited (Skema) are jointly and severally liable to pay the sum of €1 500 000 together with interest thereon to the applicant. Furthermore, the applicant sought an order thus declaring certain immovable properties belonging to Skema executable.

(c) The basis of the claim by the applicant emanates from the conclusion of a written loan agreement in terms whereof the applicant agreed to advance an amount of up to €2 500 000 to Skema. It appears that the respondent bound himself, jointly and severally, as surety and co-principal debtor in the applicant's favour for all of Skema's obligations in terms of the loan agreement. The applicant then advanced a total sum of €2 500 000 to Skema. The amount was repayable in two instalments of €1 500 000 and €1 000 000. However, neither Skema nor the respondent repaid any amount.

(d) The respondent lodged an application for leave to appeal and leave to appeal was granted to the full bench.

(e) The appeal was heard on 28 October 2021, and on 21 September 2022, the full court of this division dismissed the respondent‘s and Skema’s appeal.

(f) The respondent applied for special leave to appeal from the Supreme Court of Appeal, which was dismissed on 14 December 2022. The respondent thereafter approached the Constitutional Court, which refused the application for special leave to appeal on 26 July 2023.

(g) The respondent accordingly remained indebted to the applicant in the sum of €1 500 000, by virtue of the judgment granted under case number 2082/2021P.

(h) Another application was brought by the applicant on 18 August 2022, under case number 10933/2022P, against the respondent and Skema. In that applicant, an order directing the respondent and Skema, jointly and severally, to pay the sum of €1 000 000 (being the balance of the original loan of €2 500 000), together with interest thereon was sought. The following order was granted by consent on 2 November 2022:

‘It is ordered that:

1. The matter be and is hereby adjourned sine die pending the final determination of the application pending in this Court under Case no: 2082/21P and AR 32/22 (“the First Application”) as well as any further processes available to any of the parties in respect of the First Application in terms of section 17 of the Superior Court Act no 10 of 2013 and/or in terms of Rule 19 of the Constitutional Court Rules (GN R1675/2003).

2. This matter shall follow the result of the above final determination mutatis mutandis, inclusive of costs.

3. The parties are given leave to approach this court on 5 days’ notice to the Respondent or the Applicant, once the First Application has been finally determined for an order to give effect to paragraph 2 above.’

[5] Pursuant to the respondent’s refusal by the Constitutional court on the application for leave to appeal, the respondent still remains indebted to the applicant in the sum of €2 500 000, if converted into Rands (as at 4 August 2023), it amounts to R51 253 152.18 (excluding any interest).

[6] On 26 July 2023, the applicant caused a warrant of execution to be issued by the registrar of this court.

[7] Pursuant to the dismissal of the leave to appeal at Supreme Court of Appeal, further to that dismissal, the Constitutional Court refused to entertain such Appeal. As a result, the applicant's attorneys, on 22 December 2022, caused a letter of demand to be addressed to the respondent's and Skema's attorneys of record. The letter demanded payment of €1 500 000 in lieu of a judgment debt, which remained outstanding since 24 January 2017, together with interest to date, by 3 January 2023. A second letter of demand for €1 000 000 was sent by the applicant's attorneys to the respondent's and Skema's attorneys, calling for payment to be made by 3 January 2023. On 2 August 2023, the sheriff served the warrant of execution personally upon the respondent.[1] The sheriff explained the nature and the exigency of the warrant to the respondent. The sheriff demanded payment of the debt from the respondent. However, in response to the sheriff, the respondent advised the sheriff that he had no sufficient movable assets or cash to satisfy the outstanding debt. Prima facie, there were no movable assets belonging to the respondent that were pointed out to the sheriff nor could the sheriff find anything after a conducting a diligent search and enquiry thereto. The sheriff thereafter issued a nulla bona return.

[8] Subsequent thereto, the respondent's attorneys wrote a 'without prejudice' letter to the applicant's attorneys of record, which read as follows:

'As you may be aware, as our client does not have the available funds to settle the loan, he is in discussions with Land Affairs and other prospective purchasers with a view to selling most of the remaining properties on Saxony. We are advised that Land Affairs are very interested in purchasing and are currently undertaking a full investigation. A sale to Land Affairs will understandably not be in the interest of either your client or some of the other parties.

We are instructed that your client advised our client during a meeting in November 2020 that he would be amenable to purchasing most of the remaining properties but that was not at that stage prepared to pay R2 million per property, which our client still believe is a fair price for each of the properties.

Our Client will be overseas for the next 2 weeks but has indicated as a preliminary proposal that he would be prepared to sell your client sufficient properties in Saxony to cover the loans, interest and cost. By purchasing the majority of the properties, your client will be able to protect his existing investment from a sale to purchaser not acceptable to him.

[1] Annexure "PH8" at page 34 of the founding affidavit.

Please take instructions and advice whether your client would be prepared to entertain a proposal of this nature, and if so, what would be his thinking regarding the value of each of the properties to be purchased.'

[9] The applicant further submitted that, the letter written by Coetzee marked 'without prejudice' who are the attorneys of record of the respondent, should be regarded as prima facie evidence as admissible in this application, as evidence exists that the respondent has committed an act of insolvency as contemplated in section 8*(g)* of the Insolvency Act. The letter served as prima facie facts regarding the status quo of the respondent's finances and that the respondent was unable to pay his debt owed to the applicant.

[10] The applicant alleged that the respondent has committed an act of insolvency as contemplated in section 8*(g)* of the Insolvency Act.

[11] The respondent remains indebted to the applicant for the amounts previously mentioned.

[12] It is the applicant's contention that proper security, as required in terms of section 9(3) of the Insolvency Act, will be furnished to the Master of this court ('the Master') and the relevant certificate will be filed with this application.

[13] It is further submitted by the applicant that a copy of the court order will be served by the sheriff, upon an enquiry from the respondent regarding the existence of employees and if the respondent does have employees, a copy of this application will be furnished to such employees and to any trade union to which they may belong in compliance with the provisions of sections 9(4A)*(a)*(i) and (ii) of the Insolvency Act.

[14] In response, the respondent, however, refers to section 9(3)*(a)*(iv) of the Insolvency Act which states that 'whether the claim is or is not secured and, if it is, the nature and value of the security'. Furthermore, section 2 of the Insolvency Act defines security as follows:

'in relation to the claim of a creditor of an insolvent estate, means property of that estate over which the creditor has a preferent right by virtue of any special mortgage, landlord's legal hypothec, pledge or right of retention'.

[15] However, the respondent acknowledges in his affidavit that the applicant holds no security, as defined in the Insolvency Act over any property that belongs to the respondent. Nonetheless, he further claims that the applicant does hold security against him, in the form of a substantial security provided by the principal debtor, namely Skema, for the claim against the respondent, who acts as surety and co-principal debtor.

[16] The respondent further acknowledges in his answering affidavit that the claim arose from a loan which was advanced by the applicant to Skema, as result of which the applicant obtained judgment against Skema and the respondent, jointly and severally, and in terms of the judgment 'certain immovable properties belonging to Skema were declared executable'.

[17] The respondent further refers to the following extract from Bedderson J's judgment:[2]

'He further seeks an order declaring executable a number of immovable properties which have been put up as security for the loan that he had advanced to the first respondent and which are subject to a covering mortgage bond registered in his favour.'

[18] The respondent contends that this application has been brought deliberately in accordance with the applicant's ulterior motive.

[19] Furthermore, it is the respondent's contention that the applicant's application is an abuse of process as it seeks to bring about a *concursus creditorum* and not the recovery of a debt.

[20] The applicant further failed to include other creditors who desire to or which support his application for sequestration against the respondent.

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[2] *Fellner-Feldegg v Skema Holdings (Pty) Ltd and Others* [2021] ZAKZPHC 80 para 1.

[21] It is the respondent's contention that the applicant deliberately engineered a nulla bona return, which the respondent claims to be invalid and as such cannot be relied upon under the prevailing circumstances.

[22] The respondent further refers to the liquidation application brought by the applicant against Skema Holdings Proprietary Limited (Skema) under case no: 11692/2023, where the applicant has failed to disclose a cause of action against Skema. That it is excipiable and should therefore be dismissed with costs, including cost of senior counsel on the grounds that stipulated under s 345(1) of the Companies Act 61 of 1973:

'(1) A company … shall be deemed to be unable to pay its debts if—

(*a*) a creditor … to whom the company is indebted in a sum not less than one hundred rand then due—

(i) has served on the company, by leaving the same at its registered office, a demand requiring the company to pay the sum so due; or

(ii) …

and the company … has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or

(*b*) any process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned by the sheriff or the messenger with an endorsement that he has not found sufficient disposable property to satisfy the judgment, decree or order or that any disposable property found did not upon sale satisfy such process; or

(*c*) it is proved to the satisfaction of the Court that the company is unable to pay its debts.'

[23] It is the respondent's contention that the applicant has already exercised his option by obtaining judgment and declaring some of the immovable property belonging to the respondent to be executable. Therefore, the applicant is bound by the doctrine of election and is as such precluded from pursuing any sequestration application prior to execution against the mortgaged properties, which also include the sale thereof, and that the applicant should receive those proceeds obtained from such envisaged sale.

[24] The further contention of the respondent is that in terms of a valuation conducted by Mr Graham Allan, a professional valuator, the valuation of the mortgaged properties amounts to R146 800 000, which far exceeds the applicant's claim.[3]

[25] He further refers to the municipal valuation for the 2022 and 2016, which amount to R166 457 743.58 and R155 436 534.60, respectively. These valuations far exceed the applicant's claim.

Issue for determination

[26] This court has to determine whether the applicant has met all the requirements set to satisfy that the order for sequestration be granted by this court, alternatively whether such sequestration application should to be stayed pending the final outcome of any of the execution proceedings by the applicant against the mortgaged immovable properties belonging to Skema.

[27] Furthermore, this court will have to determine whether the sheriff who served the warrant of execution on the respondent had jurisdiction to serve such warrant. It is the contention of the respondent that the sheriff did not have jurisdiction to serve such warrant, and therefore such nulla bona return of service is invalid for want of jurisdiction.

[28] Lastly, the court has to consider whether the application was brought as an abuse of the court process by applying for the respondent's sequestration, alternatively whether the applicant had an ulterior motive in bringing this application.

Legal principles

[29] It has been held in the case of "*Boere Se Koöperatiewe Wol En Produkte Unie Bpk v Kruger* [4], that if a deputy-sheriff serves a summons outside his district, such service is invalid. A translated version of the judgment is available and is attached.

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[3] In the respondent's answering affidavit in page 90. The valuation is marked as Annexure 'SH8'.

[4] *Boere Se Koöperatiewe Wol En Produkte Unie Bpk v Kruger* [4]1969 (4) SA 215 (NC).

The following is also stated in A C Cilliers, C Loots and H C Nel Herbstein and Van Winsen: Civil Practice of the High Courts and the Supreme Court of Appeal of South Africa 5 ed (2009) at ch11-p344

'Inasmuch as a sheriff, acting sheriff or deputy sheriff is appointed for a particular area, it is submitted that each of these officials can serve only within the limits of that area, and that service outside the area of appointment will be bad.'

See also *Barclays National Bank Ltd v Wentzel* 1978 (3) SA 976 (O) and D Harms Civil Procedure in the Superior Courts (March 2025, SI 81) para B4.3.

However, section 43(2) of the Superior Court Act 10 of 2013 provides as follows:

'The return of the sheriff or a deputy sheriff of what has been done upon any process of a court, shall be prima facie evidence of the matters therein stated.'

In *Absa Bank Ltd v Collier* 2015 (4) SA 364 (WCC) para 43 it was held that the evidential burden lies on the person disputing the return of service:

'Prima facie evidence calls for an answer and places an evidential burden on the respondent. It follows that where a respondent seeks to impeach a return of the sheriff this must be done on "the clearest and most satisfactory evidence". It is not open to a respondent to impeach a return on flimsy grounds or when there exists no reasonable basis on which to do so.' (Footnote omitted.)"

[30] In another case of *Body Corporate of DSL v Lunika and Another*,[5] where Judge Hassim granted a provisionally sequestration against the respondent on the 25 August 2022, which was extended to 15 November 2023. The final sequestration was not granted but was extended to 15 August 2024 and further ordered that the heads of arguments be filed on the 12 August 2024.

[31] In *SJC v TRC,*[6] the following was held:

'8. Section 10 of the Insolvency Act provides as follows:

"*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

[5] *Body Corporate of DSL v Lunika and Another* [2024] ZAGPPHC 804.
[6] *SJC v TRC* [2022] ZAWCHC 256 paras 8-11 and 23.

(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."

9. The claim mentioned is section 9(1) is a claim of at least R100,00.

10. Even if the papers disclose disputes of fact, an applicant will nevertheless succeed in establishing a *prima facie* case where he or she can show that "*on a consideration of all the affidavits filed [that] a case for sequestration has been established on a balance of probabilities*", though open to some doubt (*Kalil v Decotex (Pty) Ltd and another* 1988 (1) SA 943 (A) at 978D-E).

11. I proceed to consider each of these requirements in turn.

…

23. *In Gilliat v Sassin* 1954 (2) SA 278 (C) the issue was whether the applicant creditor had a liquidated claim in circumstances where she relied on an amount due to her as heir in terms of the first and final liquidation and distribution account in her late mother's estate, which the respondent, the executor, had misappropriated out of the estate. The respondent took the point that the estate account had not yet been finally approved by the Master, and that it was possible that the Master might require amendments to the estate account, in which case the amount due to the applicant would be subject to alteration. The court was called upon to determine whether, in these circumstances, the applicant had a liquidated claim entitling her to apply for the sequestration of the respondent's estate. The court held as follows at 280A-D:

> "*To be regarded as a liquidated claim the petitioner's claim must be fixed and determined. This Court, in the case of* Stephan v Khan *1917 CPD 24 – a decision which has frequently been followed not only in this Court but in other Courts – held that "liquidated claim", as those words are used in sec. 9(1) of the 1916 Insolvency Act, mean a claim the amount of which has been determined by a judgment of the Court, by agreement or otherwise.*
>
> <u>*Now, in the present case the amount of the petitioner's claim – and indeed whether she will have a claim at all – is conditional upon whether the account in the estate of the petitioner's late mother is accepted in the form in which it presently stands. The account has, however, still to be advertised and objection may successfully be taken thereto, which might have the effect of reducing her claim or even eliminating it altogether*</u>*. Mr.Meyerowitz stated that in any event she had a prima facie claim to the amount appearing in this account and that it was highly probable that an amount would eventually be found to be due to her which would be in excess of £ 50. This may be so, but to my mind this does not go far enough to satisfy the provisions of sec. 9(1), which require a liquidated claim.*" (Emphasis added.)' (Formatting as in the original judgment.)

[32] In *Johnson v Hirotec (Pty) Ltd,*[7] the court dealt with a court's discretion on whether to grant a final or provisional liquidation and held as follows:

'[9] … The Act does not require a final order to be preceded by a provisional order, but in *Kalil v Decotex (Pty) Ltd and Another* 1988 (1) SA 943 (A) at 976A - B Corbett JA referred to the practice, which he regarded as well-established, of granting a provisional order of winding-up and a rule *nisi* calling upon persons concerned to show cause why a final order should not be granted. From the information given to us by counsel it would seem that there is no longer a uniform practice in this regard throughout the country. According to the *Practice Manual* of the Transvaal Provincial Division, a Judge of that Division appears to have a wide discretion to grant a provisional or a final winding-up order, as the case may require, and is under no constraint to issue a provisional order as a matter of course.

[33] The SCA in *Absa Bank Ltd v Hammerle Group*[8] held as follows:

> "[13] It is true that as a general rule, negotiations between parties which are undertaken with a view to a settlement of their disputes are privileged from disclosure. This is regardless of whether or not the negotiations have been stipulated to be without prejudice. However, there are exceptions to this rule. One of these exceptions is that an offer made, even on a 'without prejudice' basis, is admissible in evidence as an act of insolvency. Where a party therefore concedes insolvency, as the respondent did in this case, public policy dictates that such admissions of insolvency should not be precluded from sequestration or winding-up proceedings, even if made on a privileged occasion. The reason for the exception is that liquidation or insolvency proceedings is a matter which by its very nature involves the public interest. A *concursus creditorum* is created and the trading public is protected from the risk of further dealing with a person or company trading in insolvent circumstances. It follows that any admission of such insolvency, whether made in confidence or otherwise, cannot be considered privileged. This is explained by the words of Van Schalkwyk J in *Absa Bank Ltd v Chopdat*, when he said:
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> > '[A]s a matter of public policy, an act of insolvency should not always be afforded the same protection which the common law privilege accords to settlement negotiations. A creditor who undertakes the sequestration of a debtor's estate is not merely engaging in private litigation; he initiates a juridical process which can have extensive and indeed profound consequences for many other creditors, some of whom might be gravely

[7] *Johnson v Hirotec (Pty) Ltd* 2000 (4) SA 930 (SCA) paras 9-10.
[8] *Absa Bank Ltd v Hammerle Group* [2015] ZASCA 43; 2015 (5) SA 215 (SCA) para 13.

prejudiced if the debtor is permitted to continue to trade whilst insolvent. I would therefore be inclined to draw an analogy between the individual who seeks to protect from disclosure a criminal threat upon the basis of privilege and the debtor who objects to the disclosure of an act of insolvency on the same basis.' In the final analysis, the learned judge said at 1094F: 'In this case the respondent has admitted his insolvency. Public policy would require that such admission should not be precluded from these proceedings, even if made on a privileged occasion."'

Analysis of evidence

[34] It is applicant's contention that the respondent has committed an act of insolvency as contemplated in s 8*(b)* of the Insolvency Act in that the respondent has, upon demand by the sheriff, failed to satisfy the judgment against the respondent and/or failed to indicate to the sheriff disposable property sufficient to satisfy the judgment.

[35] The applicant's legal representative caused a letter to be written on 2 August 2023, which was addressed to the respondent, which was served personally upon the respondent.

[36] The sheriff return of service of Mgungundlovu West reads as follows:

'On this 02 day of August 2023 at 12:40 I served this WARRANT OF EXECUTION AGAINST PROPERTY on FRIENDRICH WILHEL GERHARD WRNER personally at KARKLOOF SAFARI SPA, O[…] B[…] ROAD, KARKLOOF by handing a copy thereof to the abovementioned after explaining the nature and exigency of the said process. (Rule 4(1)(a)).

Further, it is hereby certified that at the above address, the amount of 1.500.000.00 (One Million Five Hundred Thousand Euro) had been demanded from Friedrich Wilhel Gerhard Worner.

Friedrich Wilhel Gerhard Worner, however, informed me that he had no money or attachable assets to satisfy the said warrant or a portion thereof. No movable goods/disposal assets were pointed out there, or could be found by me after a diligent search and enquiry at the given address. Therefore my return is one of NULLA BONA, in respect of the given address, it is not known whether Friedrich Wilhel Gerhard Worner has any assets at any other address.'

The return of service became a prima facie of evidence of a *nulla bone* return.

[37] A second judgment was granted on 18 August 2024 for the sum of €1 000 000.

[38] The total amount due and payable is €2 500 000, together with interest.

[39] It is clear that according to the sheriff's return, when he demanded movable assets or cash to satisfy the debt from the respondent. The respondent informed the Sheriff that he had insufficient movable assets or cash with which to satisfy the debt due and payable in favour of the applicant.

[40] Counsel for the applicant, Mr *Lotz SC*, argued that the sheriff returned a nulla bona return of service, which indicated that the respondent had no movable assets or cash readily available to satisfy the debt of the applicant. He further referred to the letter written by the respondent's attorneys on a 'without prejudice' basis, who indicated that the respondent does not have available funds to settle the loans or the debts of the applicant.

[41] He further argued that the respondent has committed an act of insolvency, as provided for in section 8(g) of the Insolvency Act .

[42] Counsel for the respondent, Mr Harpur SC, vehemently challenged the jurisdiction of the sheriff who served the warrant of execution. It was submitted that the sheriff did not belong to the magisterial jurisdiction of the Mswati area, who was better placed to serve such warrant of execution and therefore such return of service becomes invalid for want of jurisdiction. However , the only thing that the respondent failed to do was to impeach the sheriff with valid grounds not flimsy reasons as illustrated or demonstrated in paragraph 29 above. Therefore without exercising his rights to challenge the sheriff weakened his defence in this scenario . Anything further challenge on the jurisdiction of the sheriff will not take the court in its confidence without such compliance by the respondent .

[43] It is further the contention of the respondent that the applicant purely brought this sequestration application as an abuse of the court process.

[44] Mr Harpur further argued that the applicant has brought this application as an abuse of power against the respondent.

[45] The main argument by Mr Harpur was that the court could exercise its discretion and stay the provisional sequestration, pending the sale of the mortgaged properties of the respondent, and in the event of insufficient payment, the court may then entertain such provisional sequestration. It is also the argument of the respondent that placing him under sequestration is not to the advantage of other creditors. In *Kalil v Decotex (Pty) Ltd and Another* [9] the court held that it had a wide discretion whether to grant provisional or final liquidation.

[46] It is not disputed by the respondent that the applicant is owed a sum of €2 500 000.

[47] The aforesaid amount has not been recovered from the respondent. The court has to determine whether an act of insolvency has been committed, before the issue of whether the sheriff had jurisdiction to serve upon the respondent is dealt with. It is clear that a liquid amount was owed to the applicant. The court will not repeat the circumstances pertaining to the existence of a loan agreement, as those facts have previously been mentioned, suffice it to mention that the amount in question is not in dispute. The submissions made by Mr Lotz that the respondent had committed an act of insolvency, as contemplated in s 8*(b)* and *(g)* of the Insolvency Act can only be viewed with the evidence of the sheriffs return of service, which is disputed by the respondent without any basis in law.

[48] It was stated in *Absa Bank Ltd v Hammerle Group*[10], that a letter written on a 'without prejudice' basis is admissible evidence as an act of insolvency. I am satisfied that an act of insolvency has been committed by the respondent, as contemplated in 8*(b) (g)* of the Insolvency Act and/or when the sheriff demanded assets or money to satisfy the debt of the respondent, where the respondent could

[9] *Kalil v Decotex (Pty) Ltd and Another* 1988 (1) SA 943 (A) page 50-51.
[10] *Absa Bank Ltd v Hammerle Group* [2015] ZASCA 43; 2015 (5) SA 215 (SCA) para 13.

not produce any assets or money thus satisfying the elements of insolvency on its own. The submission presented by the respondent by denying the contents of the return of service has no basis in law, as the respondent failed to impeach the sheriff as alluded in paragraph 36 above. The applicant could not manoeuvre any return of service on his own, for what purpose indeed, does not make sense at all. The sheriff is best placed to fulfil his/her duties within the prescripts of the law bestowed upon the sheriff to perform those duties.

[49] There is no basis in law by the respondent when he challenged the jurisdiction of the sheriff without impeaching the sheriff as illustrated in the case of *Boere Se Koöperatiewe Wol En Produkte Unie Bpk v Kruger*[11], who served him with the warrant of execution, the crux of the matter is that the respondent could not produce assets or money to satisfy the outstanding money owed to the applicant. I am not persuaded by the respondent's contention that the applicant has abused the court process, rather his submission lacks sufficient evidence to support his argument.

[50] The court is satisfied that the acts of insolvency have been committed in line with principle laid down in the *SJC v TRC* [12] mentioned in paragraph 31 above, which resonate with this case before me.

[51] I agree with the submissions made by Mr Lotz that the respondent has committed an act of insolvency in line with s 8*(g)* of the Insolvency Act.

Order

[52] I therefore make the following order:

1. The estate of Friedrich Wilhelm Gerhard Worner, with identity number 5[...] and who is an unmarried male, be and is hereby place under provisional sequestration in the hands of the Master of the High Court, Pietermaritzburg.

2. The respondent and all other interested persons are hereby called upon to show cause, if any, on 17 September 2025 at 09h30 or as soon thereafter as

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[11] *Boere Se Koöperatiewe Wol En Produkte Unie Bpk v Kruger* 1969 (4) SA 215 (NC).

[12] *SJC v TRC* [2022] ZAWCHC 256 paras 8-11 and 23.

counsel may be heard, why the estate of the respondent should not be placed under final sequestration.

3. A copy of the provisional sequestration order is to be served on the respondent’s employees, if any, and any trade union to which they may belong, and on the South African Revenue Services.

4. The coast of this application shall be costs in the sequestration of the respondent’s estate, on the scale of party and party costs.

GWAGWA AJ

APPEARANCES

For the applicant:	Mr Lotz SC
Instructed by:	Hay & Scott Attorney
For the respondent:	Mr Harpur SC
Instructed by:	Shepstone & Wylie Attorney
Heard:	14 March 2025
Delivered:	01 September 2025