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

Case No: 49097/2023

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

12 August 2025

In the matter between:

THE BODY CORPORATE OF INCASA

APPLICANT

and

MALINGA EDWARD MUSEHANE

FIRST RESPONDENT

ESTHER MUSEHANE

SECOND RESPONDENT

JUDGMENT

GOUWS, AJ

INTRODUCTION

[1] This is the return day of a rule *nisi* issued on 25 November 2024 provisionally sequestrating the joint estate of the respondents. The matter now serves before

me for the confirmation or discharge of the provisional order.

- [2] The applicant is the Body Corporate of Incasa Scheme No SS61/1980.
- [3] The respondents are Mr Malinga Edward Musehane and Mrs. Ester Musehane, respectively the first and second respondents, married in community of property, and co- owners of the property at 5[...] I[...], 2[...] J[...] Street, Sunnyside, Pretoria.
- [4] The first respondent appeared in person during the hearing. There was no appearance for the second respondent.

FACTUAL BACKGROUND AND HISTORY

- [5] The application for sequestration, launched on 24 May 2023, is predicated upon arrear levies in the approximate amount of R220,000.
- [6] At the time of the institution of the proceedings, the applicant had already obtained no fewer than three default judgments against the respondents for the recovery of arrears levies, all of which remain unpaid.
- [7] The applicant also caused a writ of execution to be issued pursuant to these judgments. A *nulla bona* return was obtained from the Sheriff consequent upon an attempt to execute on the writ.
- [8] The litigation has a cumbersome history, mainly hallmarked by the respondent filing a substantial number of applications and affidavits in purported opposition to the application. These documents have consistently been brought to court with little or no regard for proper procedure, time periods or the rules of court in

general. I briefly expatiate.

- [9] The respondents filed a notice of intention to oppose the sequestration application on 6 November 2023.
- [10] On 17 April 2024 the answering affidavit was filed. This was months out of time. It purports to deal with the aspect of condonation for the late filing, but I am unable to extract therefrom any factual basis that could inform an explanation for the delay. Their primary defences raised in this answering affidavit included (i) improper service of the application; (ii) denial of the quantification of the judgment debts; and (iii) lack of authority of the applicant.
- [11] On 6 August 2024 the first respondent delivered a notice entitled “Application for Objection to Tanya Krog of Kleynhans and Swanepoel Inc as Attorneys of Record”, together with a supporting affidavit. It is unclear in terms of what rule of court this objection application was brought. The status of this application is also unknown. The gist of the submission there is that the attorney’s mandate is terminated by the body corporate. It is also stated that the persons operating as the body corporate operates as an action group in the “guise name” of Incasa Body Corporate.
- [12] Insofar as this application was supposedly instituted by virtue of rule 7 of the uniform rules, it was out of time, with no request for the court’s leave as envisaged in rule 7(1).
- [13] On 22 October 2024 a rule 7 notice, accompanied by an affidavit, was filed—again significantly outside of the prescribed time periods and without any application for leave. This application was enrolled for the 25th of November 2024, the day that the opposed sequestration application was ultimately to be heard. The objection set out in the previous affidavit was mirrored there, the respondents contending that the applicant’s attorney lacked capacity to act

because the Incasa Body Corporate had terminated their mandate.

- [14] A further supplementary affidavit was filed on 24 November 2024. No leave was sought to file this affidavit. This affidavit states that the respondents are intent to “remove and replace” the content of the original answering affidavit. In this affidavit the first respondent also produced a letter, purportedly authored by the Incasa Body Corporate, confirming that the attorney’s mandate was invalid.
- [15] The termination letter to Kleynhans and Swanepoel attorneys dated December 2023 was included. On circumspection the letter was co- signed on behalf of the Incasa Body Corporate by the first respondent, purporting to act in some capacity as a part of the Incasa body corporate. Significantly, the letter also states that, at time of obtaining the court orders by Incasa, that the respondents’ levies were up to date and that they have accordingly been “exonerated”.
- [16] On 7 May 2025, 5 days prior to the hearing of the return date, the respondents filed yet another Rule 7 notice with an affidavit. This notice and accompanying affidavit was similarly filed without leave of the court. On the face of it there was an indication that it was to be heard on 12 May 2025.
- [17] During the day of the hearing the first respondent handed up a further supplementary affidavit. No application for condonation or leave to file same accompanied the affidavit. Of note in this affidavit is the allegation that the applicant has not exhausted their remedies (mediation, negotiation and execution). The respondents also again reiterate that the trustees of Incasa are acting unilaterally and without proper mandate. The respondents also therein contend that they are not factually insolvent, referencing ownership of 2 properties (without reference to any encumbrance on these properties).
- [18] The affidavit does not meaningfully assist the respondents to any extent. In any

event, the applicant has had no opportunity to respond to this affidavit. In light of the procedural deficiencies, I do not admit same, nor the rule 7 application brought on 7 May 2025.

[19] None of the balance of the documents adverted to above were admitted by this Court, and the respondents did not seek condonation or leave for such documents to be filed.

[20] In order to bring an element of finality to the current iteration of the dispute, I am constrained to deal with the content of the documents filed by the respondents, however irregularly it has been presented. (I am also constrained to speculate that my brother Ramawele, AJ would have dealt with the late rule 7 application when the provisional order was granted.)

DISCUSSION

[21] At the core of the respondents' challenge is the allegation that the applicant body corporate did not authorise the proceedings and that the current attorneys' mandate had been terminated. As it turns out, these assertions are premised on a supposed resolution by a "breakaway" group of trustees within the scheme, of which the first respondent is evidently a part.

[22] This so-called rival body corporate was the subject of a detailed judgment by my brother Swanepoel J in the urgent court on 23 October 2023, in which he remarked:

"[6] The adjudicator held against the applicant in respect of all the relief sought, either on the basis that no case was made out, or that the relief sought was moot. However, somehow, the applicant interpreted the adjudicator's findings to mean that it granted them leave to hold their own general meeting, and to choose their own trustees. To that end they

drafted their own “constitution”, and they held a meeting of aggrieved owners on 24 July 2023. At this meeting new “trustees” were chosen, it is those trustees who now drive this application....

[8]...Applicants’ members do not seem to understand that they cannot simply hold their own meeting and install a rival board of trustees. They also do not understand that nothing in the adjudicator’s findings gives them that authority.”

- [23] Despite the fact that the rule 7 applications are not properly before me, I am in any event satisfied that the applicant is properly represented and that the mandate of its attorneys remains intact.
- [24] Paragraph 7 of the founding affidavit evinces that the institution of proceedings was properly authorised.
- [25] The respondents’ reliance on the breakaway group’s purported termination notice is misplaced, seeing as this notice has no legal force, having seemingly been authored pursuant to an attempted coup of the applicant’s body corporate.
- [26] It is evidently then also this breakaway group, to which the first respondent belongs, that authored the letter to the first respondent that confirms that the outstanding levies have been exonerated.
- [27] As at the time of the application, the arrears with respect to the outstanding levies stood at R203,897.53. At 20 August 2025 this had escalated to R260,296.25.
- [28] The respondent has not produced proof of the payment of any levies.
- [29] The respondents have throughout employed a stratagem, where affidavit upon

affidavit is filed without proper leave from court, or any procedural compliance.

- [30] Their failure to substantively engage with the merits of the application, provide proof of payment, or demonstrate a bona fide dispute of fact, confirms a Stalingrad strategy intended to delay the inevitable.

THE POSTPONEMENT

- [31] During argument, the first respondent was directly asked by the court whether the indebtedness was admitted. Surprisingly, his response was that he couldn't say whether the applicant was owed money. He then sought a postponement from the bar to allow time to visit his bank in order to reconcile payments. No substantive application for postponement, supported by affidavit, was forthcoming.
- [32] The respondents have had ample time to raise genuine defences, provide supporting documents, or challenge the quantum credibly. The first respondent could not provide any convincing reason why he could not previously have visited his bank in order to do the exercise the postponement would now allegedly allow for. To procure proof of the payment of levies is a simply enough exercise, and the respondents have been aware of the pending application at least since 6 November 2023. As at date of hearing the respondents have not been able to produce any form of proof of payment of their levy obligation, despite ample opportunity to do so.
- [33] It is accordingly apparent is that this request for a postponement is to nothing other than a delaying tactic, aimed at preventing the granting of a final order for sequestration.
- [34] There is no proper application for postponement before me. There is in any event no cogent reasons raised for the granting of such an application.

- [35] It is trite that a postponement is an indulgence, and not simply there for the taking. It is an indulgence sought that may be granted subject to considerations of prejudice to all concerned.
- [36] The prejudice to the applicant body corporate, and the other members of the scheme continues to grow. The scheme's financial viability depends on the timely contributions of all owners. Continued non-payment by the respondents compromises the integrity of the scheme.
- [37] Seeing as the respondents are not contributing to levies at all, it seems a fair inference that the situation will only worsen over time. Full recovery of the compounded levies appears dubious. The deterioration of the situation must be arrested forthwith.
- [38] The application for a postponement is refused.

ELEMENTS FOR SEQUESTRATION AND FORMAL REQUIREMENTS

- [39] The rule *nisi* was served in substantial compliance with the order of Ramawele AJ, which dictates the manner of service of the provisional order. I pause to mention that service had throughout been effected under the imprimatur of court through the device of substituted service. The measures put in place by my brother Ramawele, AJ , as was borne out in the provisional order, corresponded with the substituted service order. The provisional order was transmitted to the respondents' last known email addresses and via SMS to their mobile numbers. I do not find any evidence that the order was served at the domicile address as per the order. I am however satisfied that there has been substantial compliance with the order. The order makes provision for the furnishing of a pre-scripted sms message to the respondents' cell phones. Included in this message is an invitation to contact the applicant's attorney with

any further queries. The attorney's name and contact details are included. In any event, the first respondent was present in court.

[40] I am satisfied that the applicant has made out a proper case for the granting of a final order for sequestration. The respondents have committed a deed of insolvency and are in all likelihood also factually insolvent.

[41] There is reason to believe that a sequestration would result in a benefit to creditors, if for no other reason, than that the final order would arrest the burden of the scheme to continue to financially carry non- performing members to the detriment of the scheme as a whole.

[42] There has otherwise been compliance with the statutory requirements.

[43] In the result, I make the following order:

- (a) The provisional sequestration order granted on 25 November 2024 is confirmed.
- (b) The estate of the first and second respondents is placed under final sequestration.

The costs of the application shall be costs in the winding up.

SG GOUWS
ACTING JUDGE OF THE HIGH COURT, PRETORIA

APPEARANCES:

FOR PLAINTIFF:

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