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REPUBLIC OF SOUTH AFRICA



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

CASE NO: 102163/2023

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO THE JUDGES: ~~YES~~/NO

(3) REVISED.

DATE: 20/08/2025

SIGNATURE:

In the matter between:

BARTEL WILHELM STEIJN t/a STEIJN PROPERTIES

Applicant

and

MATABAKHOLO CONSTANCE KGOMO

First Respondent

(IDENTITY NUMBER: 6[...])

LESHATA PHILEMON KGOMO

Second Respondent

(IDENTITY NUMBER: 5[...])

This Judgment was handed down electronically and by circulation to the parties' legal representatives by way of email and shall be uploaded on caselines. The date for hand down is deemed to be on 20/08/2025.

JUDGMENT

MODISA AJ:

[1] In this matter the Applicant is applying for an order for the sequestration of the Respondents. The First and Second Respondents are opposing this application, and have filed an Opposing Affidavit.

[2] The application arises from a Judgment, obtained by the Applicant, against the Respondents herein, and this Judgment, specifically the costs order, has been taxed, but remains unpaid by the Respondents. The amount of the taxed bill of costs amounts to **R54 230.26**, plus interest and further costs incurred herein.

[3] The sequestration application of the Applicant is therefore brought in terms of Section 9(1) of the Insolvency Act, Act 24 of 1936 (hereinafter referred to as the "Insolvency Act"), as read with Sections 10(b) and 12(1)(b) of the Insolvency Act, alternatively, in terms of the Insolvency Act, Act 24 of 1936, specifically in terms of **Sections 8(b)**.

[4] The Applicant has filed its Replying Affidavit.

[5] The basis of the Applicant's claim, is that the Respondents are indebted to the Applicant, in terms of a taxed bill of costs, originating from a judgment obtained against the Respondents, by the Applicant, which amount remains due by the Respondents, to the Applicant, and which costs order amount remains unpaid by the Respondents.

[6] The Applicant had the bill of costs taxed, and it was agreed to the total payment of the amount of **R54 230.26**, plus interest and further costs.

[7] The Respondents have failed to make any payment to the Applicant, and the total amount of the taxed bill of costs, amounts to **R54 230.26**.

[8] As a result of the Respondents' failure to make payment to the Applicant, the Applicant, demanded payment from the Respondents, in the taxed bill of costs amount, by way of a Warrant of Execution, executed by the Sheriff.

[9] The Applicant demanded payment from the Respondents, by way of the Sheriff and a warrant of attachment, to which, the First Respondent responded to the Sheriff, that he has no movable assets to satisfy the claim of the Applicant. The return of execution of the warrant was a *nulla bona* return.

[10] In terms of this Warrant of Execution and Returns of Service, the Sheriff provided a *nulla bona* return.

[11] Therefore, this amounts to an Act of Insolvency, in terms of the Insolvency Act, Act 24 of 1936, specifically in terms of **Sections 8(b)**.

[12] Further to this, the sequestration application of the Applicant is also brought in terms of Section 9(1) of the Insolvency Act, Act 24 of 1936 (hereinafter referred to as the "Insolvency Act"), read with Sections 10(b) and 12(1)(b) of the Insolvency Act, as the Respondents are clearly insolvent.

[13] The Applicant therefore proceeded with the Application for Sequestration, as it is clear that the Respondents are in no position to make payment to its creditors, upon demand.

[14] The Applicant has tendered the necessary security with the Master of the High Court.

[15] Roper J at 558 in **Meskin v Friedman**¹ considered the meaning of the phrase "reason to believe". He stated:

¹ 1948 (2) SA 555 (W)

"The phrase "reason to believe", used as it is in both these sections, 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 satisfied that sequestration will be to the advantage of creditors, but only that there is reason to believe that it will be so."

[16] The first issue raised by the Respondents is that the Respondents seem to suggest that they have a defence in the written purchase agreement, that was entered into between Mrs Troskie and the Respondents, and where the Applicant acted as estate agent.

[17] The Respondents fail to state, or make any allegations of what their assets are, that could be used, or have been used, to satisfy the debt. The Respondents are completely silent on these aspects.

[18] The Respondents fail to make a full disclosure to this Court. The Respondents provide no detail as to what assets or liabilities they have. The Respondents fails to show, or even allege, that their assets exceed their liabilities. The Respondents makes no allegations in this regard.

[19] The Respondents further allege that they have sufficient property to satisfy the Judgment Debt with, but fail to provide any detail of what these alleged assets are, where such assets can be found or even what is the value of such assets.

[20] The Respondents provide no detail as to the assets that the Sheriff could have found.

[21] In any event, the First Respondent has already informed the Sheriff at the time when the warrant of execution was served that there are no assets available to satisfy the judgment debt.

[22] The Respondents further provide no detail of any other creditors of the Respondents are provided, and therefore, there is no allegations as to the other liabilities of the Respondents, to determine what their financial exposure is.

[23] Further, the return of service of the Sheriff is indeed correct, and complies with the requirements set out in Rule 45(3) of the Uniform Rules of Court.

[24] The judgment debt which is the subject matter of the sequestration application emanates from a bill of costs which was agreed upon between the parties.

[25] It is trite law that the Court has to be satisfied that the requirements for sequestration have been complied with, namely;

- a. That the Applicant has established a liquidated claim for not less than R100.00 (One Hundred Rand) against the debtor,
- b. That the debtor has committed an act of insolvency or is insolvent and
- c. That there is reason to believe that it will be to the advantage creditors of the debtor if the estate is sequestrated.

[26] It is important to highlight that the Respondents do not join issue with the contents of annexure E to the Applicant's founding affidavit which forms the subject matter of the judgment debt.

[27] Annexure E to the Applicant's founding affidavit is a letter from Nkome Incorporated who are the attorneys acting on behalf of the Applicant addressed to the Respondents' attorneys of record Mathys Krog attorney dated 21 May 2023 which reads as follows:

**"BARTEL WILHELM STEIJN t/a STEIJN PROPERTIES// MATABAKHOLO
CONSTANCE KGOMO AND ANOTHER MAGISTRATES' COURT,
PRETORIA
CASE NUMBER: 34119/20
YOUR REF: MR KROGIYVUS.2575**

1. We refer to the above matter and as you are aware, we act for and on behalf of Matabakholo Constance Kgomo and Leshata Philemon Kgomo ("**our clients**")-

2. We further refer to your counter -offer to our marked bill without prejudice in an amount of **R 54 230.26 (Fifty-Four Thousand, Two Hundred and Thirty Rands , Twenty-Six Cents)**.

3. We confirm that we agree and accept your counter offer in the aforesaid amount and same should be made an order of the above Honourable Court by its Taxing Master at the hearing on the 4th day of July 2023 at 08h30.

4. We trust the above finds you well "

[28] Pursuant to this correspondence, a warrant of execution was served personally on the First Respondent which warrant recorded a nu/la bona return in that no assets could be identified to the Sheriff to satisfy the judgment debt. Such warrant of execution recorded the following:

"

Notice in terms of rule 8 Act 32/44 (MAGISTRATE'S COURTS)

In the matter between:

STEIJM B T/A/ STEIJN PROPERTIES EXECUTION CREDITOR

and

KGOMO MC (15T)

EXECUTION DEBTOR

Address:

FORUM EAST BUILDING, 1[...] A[...] STREET, HATFIELD

WARRANT OF EXECUTION

*On 08-sep-2023 at 08:16 this process was dealt with as follows by
DEPUTY SHERIFF N RAMARU:*

RETURN OF SERVICE: PESONAL SERVICE: NULLA BONA

*On 08-Sep-2023 at 08:16 at FORUM EAST BUILDING, 1[...] A[...] STREET,
HATFIELD, the judgment debt plus interest and costs was demanded from
KGOMO MC (1 ST) who informed me that She has no money or disposable
assets or property inter alia wherewith to satisfy the warrant or any portion
thereof. No movable property/ disposable assets were either pointed out to
me or could be found after a diligent search and enquiry at the given address.
My return is therefore one of NULLA BONA. It is hereby further certified that
the execution debtor was requested in terms of section 66(8) to declare
whether SHE has any immovable property which is executable on which the
following was answered: NO ALL ASSETS BELONG TO THE DEPARTMENT
OF CORRECTIONAL SERVICES "*

[29] It is improbable that they would have effected payment on the judgment debt during 2022 because the agreement in terms of annexure E to the founding affidavit was entered into during 2023..

[30] Therefore, any arguments pertaining to any transactions or contracts entered into prior to 2023 is irrelevant for purposes of this sequestration application.

[31] I must hasten to add that at the time when the Respondents' Counsel made legal submissions I granted condonation for the late filing of the answering affidavit.

[32] In my view, the judgment of the Court referred by the Counsel for the Respondent in the matter of **Ratila v Do Santos**² find no application in this matter in that the matter was confined with service of the sequestration application itself and not service of the warrant of execution. The judgment of **Nedbank limited v Katompa**³ finds application in that it was not necessary for service of the warrant of execution to be effected on both Respondents and it was sufficient for the Sheriff to effect service on either one of the Respondents.

² 1995(4) SA 117 (W

³ (29675/20) [2021] ZAGPPHC 299 (12 May 2021)

[33] Baqwa J in *Nedbank Limited v Katompa* remarked as follows:

'[18] On a proper reading of the Rafi/al judgment, so the applicant submits, nothing prohibits this court from granting a provisional order for sequestration where the application was served on both parties and where the nature and content of the application came to both spouses' attention before the granting of a provisional order.'

[34] The Court in the *Katempa* matter dismissed the point in limine to the effect that the *nulla bona* return was not served on the Second Respondent.⁴

[35] The argument that the *nulla bona* return is defective in that it was not served on the Second Respondent is rejected. Similarly, the argument that the *nulla bona* return was made in bad faith is also rejected.

[36] I have already made an order in terms of the draft Court order marked "X" which reads as follows:

"

1. *That the estate of the First and Second respondents, **MATABAKHOLO CONSTANCE KGOMO** with identity number: 6[...] and **LESHATA PHILEMON KGOMO** with identity number: 5[...] be placed under provisional sequestration, returnable on the 10th day of November 2025;*
2. *That the Respondents, and all other interested parties, are called upon to show cause on or before the return date hereof, why this order should not be made final;*
3. *That this provisional order served upon the Respondents' attorneys, Nkome Incorporated by way of email;*
4. *That this provisional order be served upon the Master of the High Court by hand;*
5. *That this provisional order be served upon the South African Revenue Services by way of e-mail;*

⁴ See: *Nedbank Limited v Katompa supra* at para [26]

6. *That this provisional order be served upon the employees of the Respondents if any, by affixing a copy of this order against the principal door, or gate of the premises of the residence of the Respondents, by way of the Sheriff;*
7. *That the costs of this application be costs in the sequestration."*

MODISA AJ
ACTING JUDGE OF THE HIGH COURT

Appearances

For the Applicant : Adv Z SCHOEMAN
Instructed by : MATHYS KROG ATTORNEYS

For the Respondents : Adv MTHETHWA
Instructed by : NKOME INCORPORATED

DATE OF HEARING: : 29 JULY 2025
DATE OF JUDGMENT: : 12 AUGUST 2025