



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

Case Number: 2018/44865

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED
19 August 2025	
DATE	SIGNATURE

In the matter between:

**BLUE VALLEY GOLF AND COUNTRY ESTATE
HOMEOWNERS ASSOCIATION**

Applicant

and

PETER MANDLA MAPHANGA

Respondent

JUDGMENT

VIVIAN AJ

Introduction

- [1] This is the return day of a provisional sequestration order granted against the respondent. The applicant seeks a final sequestration order. The respondent opposes the application.
- [2] There are numerous irregularities in the application. I mention only a few.
- [3] The notice of motion is dated 15 September 2023, but it was issued under a 2018 case number. The applicant's attorneys used the same case number as the previous proceedings, which is irregular. A sequestration application is a separate proceeding and must be issued under its own case number.
- [4] In terms of Section 9(3)(a) of the Insolvency Act (Act 24 of 1936), the founding affidavit must contain, *inter alia*, the respondent's identity number, date of birth and marital status. If married, the spouse's full names, date of birth and identity number must be set out. None of these requirements is met in the founding affidavit.
- [5] Section 9(3)(c) requires these particulars to be set out in the heading of the application. The applicant did not do so.
- [6] If the applicant was unable to furnish any of these details, Section 9(3)(c) required it to state the reason why it was unable to do so. It did not do so.
- [7] These are not mere formalities. Section 9(3)(d) requires that the Registrar include these particulars when issuing a sequestration order.

- [8] Section 9(3)(a)(iv) requires the applicant to say whether the claim is or is not secured and, if it is, the nature and value of the security. The applicant conflates this requirement with the requirement in Section 9(4) to furnish sufficient security for the payment of all fees and charges necessary for the prosecution of all sequestration proceedings and of all costs of administering the estate until a trustee has been appointed, or if no trustee is appointed, of all fees and charges necessary for the discharge of the estate from sequestration.
- [9] The Section 9(3)(a)(iv) requirement relates to whether the applicant's claim against the respondent is secured. For example, if the applicant holds a pledge as security, it must disclose this. This is important, *inter alia*, in the assessment as to whether sequestration of the respondent would be to the benefit of creditors.
- [10] An important innovation that was introduced into the Insolvency Act with effect from 1 January 2003 is the requirement in Section 9(4A) that a copy of the application must be furnished to *inter alia* the respondent's employees, any trade unions representing them and SARS. Before the application is heard, the applicant must file an affidavit by the person who furnished a copy of the petition which sets out the manner in which this was done.
- [11] The requirement to furnish a copy of the application to the respondent's employees, any trade unions representing them and SARS is mandatory. If it is not done, the Court cannot grant a final order.¹

¹ EB Steam Co (Pty) Ltd v Eskom Holdings SOC Ltd 2015 (2) SA 526 (SCA) at para 23

- [12] The applicant made no reference in its founding affidavit to the question as to whether the respondent had any employees. In his answering affidavit, the respondent said that he had employees. This was not responded to in reply.
- [13] The applicant did not file an affidavit as required in Section 9(4A). Yet the applicant's counsel sought a final sequestration order.
- [14] The non-compliance with the Insolvency Act in respect of these mandatory requirements meant that a final order could not be granted.
- [15] In any event, the provisional order falls to be discharged because the applicant did not demonstrate either an act of insolvency or factual insolvency.

Background facts

- [16] The respondent is the registered owner of a vacant erf situated in a residential estate. He fell into arrears with the payment of estate levies. The applicant is the homeowners' association to whom such levies are owed.
- [17] On 23 May 2019, the applicant obtained default judgment against the respondent in the amount of R218 325,27, together with interest and costs. The respondent avers that he had no knowledge of the summons before the judgment was granted.
- [18] The applicant caused a writ of execution to be issued. The writ directed the sheriff to attend at the vacant erf and to attach and take into execution the respondent's movables.
- [19] The sheriff attended at the vacant erf on 4 July 2019. His return of service records that he served the writ by placing it under a stone. The return further records that,

after a diligent search, he could not find disposable property to satisfy the judgment. The sheriff said that his return was one of *nulla bona*. The applicant relies on this return of service for purposes of this application.

[20] The sheriff also attempted service at the church where the respondent is employed, but was advised that he was not there. A return of non-service was rendered in that respect.

[21] The applicant was aware at all material times that the property in question was an undeveloped erf. It could not reasonably have expected the sheriff to locate any movable assets at the property.

The present application

[22] The notice of motion in the sequestration proceedings is dated 15 September 2023, more than four years after the sheriff's *nulla bona* return of service in July 2019.

[23] The Insolvency Act provides two grounds on which a sequestration order may be granted, namely the commission of an act of insolvency or actual insolvency.

[24] The applicant contends that the *nulla bona* return of service constitutes an act of insolvency in terms of section 8(b) of the Insolvency Act

[25] Section 8(b) provides that a debtor commits an act of insolvency 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 property to satisfy the judgment*".

- [26] Although the subsection envisages two acts of insolvency, the officer does not have a choice as to whether to demand payment or not. It is only when the first act cannot be established that the second may be committed.²
- [27] In the present case, there is no evidence in the sheriff's return that a demand for payment was made to the respondent, as section 8(b) requires. The return merely records service of the writ at the vacant erf by placing it under a stone and notes the absence of attachable property.
- [28] The purpose of section 8(b) is to provide evidence of the respondent's insolvency.
- [29] The subsection is not satisfied where there is no attempt to serve the writ on the respondent personally.³
- [30] The applicant was aware that the erf was vacant. Service at such an address could not realistically have resulted in the sheriff encountering the respondent to make the requisite demand.
- [31] The attempted service at the respondent's workplace also did not result in a demand for payment; the sheriff did not find the respondent there. The applicant said that it attempted to trace the respondent without success. Yet it knew his place of employment and seems to have only sent the sheriff there to serve the writ on a single occasion.
- [32] These facts fall short of establishing an act of insolvency under section 8(b).

² Nedbank Ltd v Norton 1987 (3) SA 619 (N) at 621 H

³ Rodrew (Pty) Ltd v Rossouw 1975 (3) SA 137 (O) at 138 E to G

[33] The applicant alternatively contends that the respondent is factually insolvent. Factual insolvency exists where the liabilities of the debtor exceed his assets.⁴

[34] The applicant has placed no reliable evidence before the court of the respondent's total liabilities or assets. The onus rests on the applicant to prove this ground on a balance of probabilities. The court will not lightly infer insolvency. In the absence of such evidence, factual insolvency has not been established.

Conclusion

[35] The application is fatally defective. It does not comply with a number of mandatory provisions in the Insolvency Act.

[36] Moreover, the applicant has failed to prove any act of insolvency under section 8(b) of the Act. Factual insolvency has likewise not been established.

[37] In the circumstances, the provisional sequestration order must be discharged.

[38] The applicant's counsel suggested that I should not mulct the applicant in costs. I see no reason to depart from the usual practice that costs follow the event. I consider that counsel's costs on scale B is appropriate.

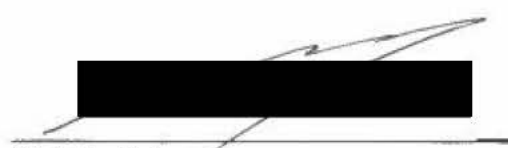
[39] I accordingly make the following order:

39.1. The provisional sequestration order is discharged.

39.2. The application for a final sequestration order is dismissed.

⁴ Ohlsens Cape Breweries v Totten 1911 TPD 48 at 50

39.3. The applicant is to pay the respondent's costs, including the fees of counsel on scale B.



Vivian, AJ
Acting Judge of the Gauteng Division
of the High Court of South Africa

Appearances

For the Applicant:	Mr van der Merwe Instructed by Malele Attorneys Inc.
For the Respondent:	Mr T Mahapa Instructed by Crafford Attorneys
Date of hearing:	12 August 2025
Date Delivered:	19 August 2025

MODE OF DELIVERY: *This Judgment was handed down electronically by circulation to the parties' and or parties' representatives by email and by being uploaded to CaseLines. The date and time for the hearing are deemed to be 10h00 on 19 August 2025*