IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Reportable

Case no: **6165/2024**

In the *ex parte* application of:

JOHANNES HENDRIK JACOBUS DU RAAN **FIRST APPLICANT**

Identity number: 83[…]

And

MARIE-LOUISE DU RAAN **SECOND APPLICANT**

Identity number: 88[…]

(Married out of community of property)

For the voluntary surrender of their estate

And

Case no: **29/2025**

In the *ex parte* application of:

CHRIZELLE SNYMAN **APPLICANT**

Identity number: 86[…]

(Divorced)

For the voluntary surrender of her estate

And

Case no: **645/2025**

In the *ex parte* application of:

JOHANNES CHRISTIAN MAGNUS BUYS **APPLICANT**

Identity number: 860214 5053 080

(Married out of community of property)
For the voluntary surrender of his estate

Neutral Citation: *Ex parte Du Raan and Another; Ex parte Snyman; and Ex parte Buys* (6165/2024; 29/2025; 645/2025) [2025] ZAFSHC 284 (9 September 2025)

Coram: JP Daffue J

Heard: 29 May 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 16h00 on 9 September 2025.

Summary: Three similar applications for voluntary surrender of estates – applications carbon copies of applications previously dismissed – same firms of attorneys involved – dividends deliberately calculated incorrectly – advantage to creditors not proven – applications *mala fide* and dismissed.

JUDGMENT

Daffue J

Introduction

[1] On 20 February 2025, I dismissed two applications for voluntary surrender. I handed down my reasons on 27 February 2025.[1] My judgment fell on deaf ears.

[2] The applicants' legal representatives in all three applications that served before me on 29 May 2025 – they being the very same persons that were involved in the aforesaid two applications – intentionally did not give any attention to the reasons provided on 27 February 2025. I shall make myself clear later herein.

[3] It is appropriate to again quote the following observations made by the authors of *Mars*:[2]

'The requirement that all information presented to the court in an application for surrender must be accurate and that valuations must be exact, arises from the courts' insistence that a debtor who is pressed by his creditors does not over-estimate the value of his estate in order to obtain relief from his financial burdens.

The administration of insolvent estates has over the years developed into a very lucrative and therefore very competitive profession. The pressure has therefore increased to identify debtors whose sequestration or liquidation may render a lucrative return to lawyers, trustees, liquidators, valuators and auctioneers. Advertisements in the media canvassing debtors who are desirous of ridding themselves of their financial burdens have become commonplace. This has increased the risks for debtors and creditors alike. …

On the other hand, insolvency practitioners are tempted to present a rosy picture of the debtor's affairs that bears little semblance to reality, resulting in an estate being declared insolvent that renders little or no dividend for creditors once the fees of the various participants

[1] *Van Niekerk and Du Plessis and Another* [2025] ZAFSHC 66.

[2] Bertelsmann *et al*, *Mars: The Law of Insolvency in South Africa*, 9th ed at 63.

in voluntary surrender proceedings have been deducted and the administration costs have been paid.'

[4] Upon considering the present applications for voluntary surrender of the respective applicants' estates in accordance with s 4 of the Insolvency Act 24 of 1936 (the Insolvency Act), I made the following orders in all three applications:

'1. The application for postponement is dismissed.
2. The application for voluntary surrender is dismissed.
3. Reasons will follow in due course.'

These are my reasons.

The parties

[5] The applicants in application 6165/2024 are a married couple, Mr Johannes Hendrik Jacobus du Raan and Mrs Marie-Louise du Raan. They are married to each other in community of property and are resident in Welkom. The applicant in application 29/2025 is Mrs Chrizelle Snyman, a major female divorcee, residing in Bethlehem. The applicant in application 645/2025 is Mr Johannes Christian Magnus Buys, a major male person, married out of community of property, residing in Bloemfontein.

The dramatis personae

[6] Having referred to the applicants in the three applications, the following *dramatis personae* should now be mentioned. They are involved in all three applications, save where stated otherwise. They are:

a. Mr David Johann Schoonraad of Schoonraad Attorneys, Pretoria;
b. the Bloemfontein correspondents, Kleingeld Attorneys;
c. Ms Adele Reyneke, a financial advisor of Senator Counsellors (Pty) Ltd in Centurion, who is not involved in the Buys application;
d. Mr Franco Maartens of Worth Authority in Centurion; and
e. Mr Albertus Wilhelm Labuschagne of Bloemfontein, who acted as commissioner of oaths relating to the sworn valuations by Mr Maartens.

General observations

[7] Mr David Johann Schoonraad (Mr Schoonraad) is an attorney practising under the name and style of Schoonraad Attorneys at 955 Arcadia Street, Arcadia, Pretoria. He is not only the applicants' attorney of record in these three applications, but was also instrumental in launching the two applications referred to above,[3] as well as an earlier application issued under application 3065/2024, in which case Mrs Lizelle Mare was the applicant. I shall return to the Mare application.

[8] Mr Schoonraad stated in each of his supporting affidavits, as was the case in the previous applications:

'I further submit that the dividend calculation explained in the Applicant's Founding Affidavit was done strictly in accordance with the prescriptions and provisions of the Insolvency Act, Act 24 of 1936.'

It is apparent that he regards himself as an expert in insolvency matters.

[9] In *Van Niekerk and Du Plessis and Another*[4] (*Van Niekerk*), I stated that Mr Schoonraad either could not do maths, or was totally unaware of the applicable tariff, or deliberately elected to present the court with false facts. He calculated the trustee's remuneration to be R2 875 in those applications. The fees of the trustees, incorrectly referred to as liquidators, were also reflected to be R2 875 in the present applications. Mr Schoonraad should have known by now that the figure of R2 875 is incorrect. I have no doubt that he is guilty of deliberately presenting false facts to the courts. The total fees in each of the applications should be much higher as will be indicated hereunder.

[10] I have dealt with the involvement of Schoonraad Attorneys and Kleingeld Attorneys. Ms Adele Reyneke was apparently requested to consider the Du Raans' and Snyman's financial problems. According to her, the applicants' 'debt review was unsuccessful due to not being in a position to make the minimum monthly instalments'. I shall deal with debt review applications hereunder.

[11] Mr Maartens, the valuer, did not present his statements of account in any of the three matters. There is no indication whether he has been paid up front, or whether he

[3] Footnote 1.
[4] Footnote 1.

intends to file a claim against the insolvent estates. He is not indicated as a creditor in any of the three applications, unlike Senator Counsellors, the business of Ms Reyneke. His fees and travelling costs from Centurion to Welkom, Bethlehem and Bloemfontein respectively, may obviously make a huge difference to the actual dividend. Again, all queries raised by me in earlier judgments,[5] dealt with in more detail hereunder, remain applicable in general, but in particular, pertaining to the valuations. I emphasise that courts are not called upon to rubberstamp meaningless expert opinion which is not reasoned properly and not based on common cause facts or data. Mr Maartens failed to indicate the make, model, age and purchase price of the items and whether these items are still under warranty. No photographs have been taken of any item. He did not state whether the electrical appliances had been tested and were found to be in a working condition.

[12] Furthermore, I find it improbable that Mr Maartens would drive through to Bloemfontein for his valuations to be deposed to under oath before Mr Labuschagne in Bloemfontein, save perhaps in the case of Mr Buys who is resident here. All three affidavits were deposed to on different dates.

[13] Tariff B of the Second Schedule of the Insolvency Act deals with the remuneration of trustees. Paragraph 1 thereof reads as follows:

'On the gross proceeds of movable property (other than shares or similar securities) sold, or on the gross amount collected under promissory notes or book debts, or as rent, interest or other income . . . 10 per cent.'

[14] If 10% is charged on the gross proceeds of movables in the three applications (if the valuations can be trusted), the trustees to be appointed would be entitled to fees ranging between R5 120, excluding 15% VAT, in the case of Snyman, to R6 525, excluding 15% VAT, in the case of the Du Raans. The total fees in each of the applications should therefore be much higher than set out by the applicants. There is no explanation by Mr Schoonraad why he arrived at a figure of R2 875 in each instance. As quoted, Tariff B of the Second Schedule to the Insolvency Act, entitles trustees to charge 10% on the gross proceeds of movable property. It is unnecessary to deal with the other percentages referred to in Tariff B, save cash found in an estate

[5] *Botha v Botha* [2016] ZAFSHC 194 paras 18-20; *Eksteen v Van der Merwe* [2018] ZAFSHC 131; *ex parte Cloete* [2013] ZAFSHC 45 para 29; *Van Niekerk and Du Plessis and Another*, fn 1; paras 2.3, 2.4 and 2.5 of the directives issued in application 3065/2024, quoted in para 19 *infra*.

as is the case in two of the applications. In such cases the trustee in entitled to 1% remuneration on the amount found.

[15] Mr Schoonraad's incorrect reliance on the trustee's remuneration in the amount of R2 875 could possibly have its origin in the proviso in Tariff B. In terms thereof, a trustee's remuneration shall not be less than R2 500, excluding VAT. If 15% VAT is added, the minimum fee is R2 875. This is to provide for those cases where little or no assets are eventually found in an insolvent estate. No trustees will charge the minimum fee if they are entitled to much higher fees as is the case in each of these applications, obviously on the assumption that the gross proceeds of the movables would be in line with the valuations. In the case of the Du Raans, the fee including VAT, would be R7 504. As an expert who has been involved in these kinds of applications for many years, as I shall show later herein, Mr Schoonraad should have known better.

[16] If the assets are to be sold on public auction, the fees and expenses of auctioneers will come into play. It is common cause that auctioneers are entitled to 6% on the gross proceeds, plus VAT. This was totally neglected in calculation of the dividends. The Master's fees have not been considered, as is the case with the advertising costs pertaining to advertisement of the second meeting of creditors, which costs are, nowadays, enormous.

[17] Again, as in the other applications, the legal costs of the two sets of attorneys are calculated at R14 000 plus VAT for the Pretoria attorney and R8 000 plus VAT for the Bloemfontein attorney. These fees are ridiculously low as will be indicated in the following paragraph. I dealt with this aspect more than ten years earlier in *Ex parte Snooke*[6] and *Ex parte Cloete.*[7] Immediately after the *Cloete* judgment, the rules of the Free State Division of the High Court were amended to substitute the amount of R20 000 in Rule 9.4.1 to R30 000. Rule 9.4 was replaced with Government Notice 414 of 14 June 2013, effective from 1 June 2013. The rule now reads as follows:

[6] *Ex parte Snooke* [2014] ZAFSHC 96; 2014 (5) SA 426 (FB) paras 17-23.
[7] *Ex parte Cloete* 2013 JDR 0854 (FB) para 22.

'9.4.1 All applications for provisional sequestration and voluntary surrender will be approached by this Court on the basis that the costs of sequestration and administration will amount to R30 000. (This amount may be adjusted from time to time.)

9.4.2 If the applicant is of the opinion that those costs will be less in a particular matter, an estimate thereof must be attached to the application papers and that estimate must be placed before the Master, who shall provide comments thereanent to the Court.'

Although legal costs have increased over the last 12 years, the amount of R30 000 has not been amended yet.

[18] I asked one of the registrars of this Court to present me with taxed bills of costs in similar applications. In application 5132/2021, the bill of costs of the one firm of attorneys, being a Bloemfontein firm, amounted to R49 555.74. In application 514/2020, the bill of costs of a single firm of attorneys in Bloemfontein was taxed in the amount of R36 801.87.

[19] I reiterated in *Van Niekerk* that there is nothing wrong to make use of precedents in drafting documents. However, if mistakes and/or false allegations are repeatedly presented to the court, an investigation into the *bona fides* of the draughtsperson and/or legal representative shall be conducted. In my judgment I referred to the voluntary surrender application 3065/2024 of Mrs Lizelle Mare, which I postponed on 25 July 2024, directing her to supplement her founding affidavit. The information that I required is equally applicable in these applications. Therefore, I deem it appropriate to quote the order:

'1. . . .

2. Leave is granted to the applicant to file a supplementary affidavit dealing with all of the following:

2.1 several of the applicant's movable properties fall within the category of properties usually returned to an insolvent in accordance with section 82(6) of the Insolvency Act 24 of 1936 and the applicant shall provide reasons why the value of all such household properties should be taken into consideration in determining a possible dividend;

2.2 nowhere is there any mention of the fees and travelling expenses of the valuator and the applicant shall explain with proof of his account why these expenses are not set out as part of the disbursements;

2.3 the valuator's valuation is meaningless insofar as the items valued have not been identified by make, model, age, purchase price and/or whether these items are still under warranty;

2.4 the lounge suite valued at R20 010 is not properly identified with reference to paragraph 2.3 above, but more particularly, there is no indication as to the number of pieces thereof, whether it is a genuine leather suite, and if not, the kind of material thereof should be provided;

2.5 it is expected that photographs be provided of the lounge suite in particular, but also of the most expensive items valued in excess of R 2 000;

2.6 what is meant in annexure IV of the statement of affairs with reference to the alleged prescription of the claim of the Receiver of Revenue and is it the applicant's case that no amount is due and payable to the Receiver of Revenue;

2.7 the statement by H Smit is not commissioned and in any event, this person shall explain in detail why the debt review application was dismissed in terms of section 86 of the National Credit Act 34 of 2005 (NCA) as it is apparent from paragraph 13 of the founding affidavit that at least R 5 000 per month would be available to distribute amongst creditors;

2.8 the applicant shall explain whether, when and to which court she applied for relief in terms of section 86 of the NCA;

2.9 the affidavit of attorney Schoonraad is confusing and he should confirm whether he and his correspondent will insist on their taxed fees and expenses and not the minimal amounts of R 14 000 and R 8 000 plus VAT used to calculate a dividend, whilst it should be common cause that the taxed accounts of two sets of attorneys will be much higher than estimated which will have a detrimental effect on the dividend;

2.10 why was it necessary to make use of a Gauteng attorney, valuator and debt counsellor when the applicant is resident in Bloemfontein;

2.11 it is expected that the applicant shall state what her husband earns and what he contributes to the household expenses.

3. This supplementary affidavit and any annexures thereto shall be served on the Master to enable him/her to file a supplementary report.'

Mrs Mare did not file a supplementary affidavit as directed. Her application was eventually removed from the roll on 6 August 2024 by Kleingeld Attorneys. As in all these matters under discussion, Schoonraad Attorneys were the instructing attorneys. The application was never enrolled again.

Evaluation of the applications

[20] By mere coincidence and on the verge of finalising this judgment, I came across

a judgment by Davis J, delivered on 20 March 2025.[8] The learned judge adjudicated three applications for voluntary surrender. The applicants' attorney was none other than Mr Schoonraad. The learned judge *inter alia* referred to the similarities in the three applications. Ironically, the similarities between those applications and the matters before me is astonishing. In order to grasp the similarities with more ease, I decided to prepare the following table, indicating the precise figures presented in the six applications mentioned herein:

	Mare 3065/2024	Van Niekerk 5983/2024	Du Plessis 28/2025	Du Raan 6165/2024	Snyman 29/2025	Buys 645/2025
Movable Assets	R56 000.00	R50 650.00	R65 600.00	R65 250.00	R51 200.00	R57 800.00
Cash	Nil	R25 000.00	Nil	Nil	Nil	R10 000.00
Trustee's Fees	R2 875.00	R2 875.00	R2 875.00	R2 875.00	R2 875.00	R2 875.00
Bill of costs (Pretoria Attorney)	R16 100.00 (VAT included)	R16 100.00 (VAT included)	R16 100.00 (VAT included)	R16 100.00 (VAT included)	R16 100.00 (VAT included)	R16 100.00 (VAT included)
Bill of costs (Bloemfontein Attorneys)	R9 200.00 (VAT included)	R9 200.00 (VAT included)	R9 200.00 (VAT included)	R9 200.00 (VAT included)	R9 200.00 (VAT included)	R9 200.00 (VAT included)
Counsel's fees	R1 380.00 (VAT included)	R1 380.00 (VAT included)	R1 380.00 (VAT included)	R1 380.00 (VAT included)	R1 380.00 (VAT included)	R1 380.00 (VAT included)
General disbursements	R1 200.00	R1 200.00	R1 200.00	R1 200.00	R1 200.00	R1 200.00
Master's fees	Nil	Nil	Nil	Nil	Nil	Nil
Available for distribution	R25 245.00	R44 895.00	R34 845.00	R34 495.00	R20 445.00	R37 045.00
Total Claims	R125 558.44	R260 102.80	R170 053.16	R162 437.78	R96 179.44	R174 753.37
Dividend	20.10%	21.78%	20.49%	21.23%	21.25%	21.19%

[21] When these similarities are compared with the similarities mentioned by Davis J, an extraordinary picture is presented. Mr Schoonraad, an attorney practising in Pretoria, knows very well that in Gauteng, applicants for voluntary surrender have to show that a dividend would be available to concurrent creditors in not less than 20 cents in the Rand in order to prove an advantage to creditors. We do not have a similar requirement in this division, but it is obvious that Mr Schoonraad has made a habit in trying to persuade the courts that dividends of just in excess of 20 cents in the Rand would be payable in the event of sequestration. I do not intend to deal with all the issues raised by Davis J, many of which I have dealt with in my earlier judgments. The learned judge refused the applications adjudicated by him, but 'found insufficient *mala fides* on the part of the attorney to meri[t] a referral to the Legal Practice Council.' He concluded:

'The judgment should serve as a warning, through to the attorney and all others in a similar position.'

[8] *Ex parte Slabbert* [2025] ZAGPPHC 286; [2025] 3 All SA 264 (GP).

The individual attorney's name is not mentioned in the judgment, although Schoonraad Attorneys, Pretoria is cited as the applicants' attorneys of record.

[22] I shall soon deal with each application separately. Before then, I deem it apposite to quote extensively from *Van Niekerk*, due to the similarities of the applications:

'[18] The applicants had to satisfy the court that the acceptance of the surrender of their estates would be to the advantage of their creditors. In these instances where the over-indebtedness is about exclusively related to debt arising from credit agreements, the applicants should have properly utilised the NCA [the National Credit act 34 of 2005] processes which provide a wide range of remedial relief. Section 87 of the NCA reads as follows:

"(1) If a debt counsellor makes a proposal to the Magistrate's Court in terms of section 86 (8) (b), or a consumer applies to the Magistrate's Court in terms of section 86 (9), the Magistrate's Court must conduct a hearing and, having regard to the proposal and information before it and the consumer's financial means, prospects and obligations, may-

(a) reject the recommendation or application as the case may be; or

(b) make-

(i) an order declaring any credit agreement to be reckless, and an order contemplated in section 83 (2) or (3), if the Magistrate's Court concludes that the agreement is reckless;

(ii) an order re-arranging the consumer's obligations in any manner contemplated in section 86 (7) (c) (ii); or

(iii) both orders contemplated in subparagraph (i) and (ii).

(2) The National Credit Regulator may not intervene before the Magistrate's Court in a matter referred to it in terms of this section."

[19] Although I am prepared to accept that no reckless credit was extended as stated by the financial advisor, the applicants' resistance to seek relief provided by the NCA is frowned upon. I shall show in the next paragraph that the applicants in both applications have a sufficient nett income (if their contractual obligations towards creditors are deducted) to be utilised in order to settle their debts in affordable instalments. In my view the applicants have been advised by their attorney to choose relief in terms of the Insolvency Act to their convenience and in doing so by mechanically and superficially satisfying the relevant statutory requirements under the Insolvency Act. This is a misdirected approach, especially where the grant of the selected remedy is discretionary as pointed out many years ago by Binns-Ward AJ in *Ex parte Ford and Two Similar Cases.*

. . .

[23] I stated as long ago as 2013 in *Ex parte Cloete* that it is not acceptable that debtors utilise the expensive machinery of the Insolvency Act to get rid of creditors to the disadvantage of creditors. Insolvency must always be the last resort. In cases such as the present matters, where we are confronted with small estates, the starting point should be to embrace the protection of the NCA if the claims fall within its ambit. We have seen over the years that debtors are not prepared to continue paying off their debts, but rather to get a quick fix to get rid of their debts, either by way of friendly sequestrations, or the surrender of their estates. In *Ex parte Loraine Jordaan and three other similar applications* I discussed in detail the statutory requirements for voluntary surrender, the abuse of the process by some legal practitioners and applicants, as well as the similarities in the four applications that served before me at the time. As in that case, it is debatable whether it is a coincidence that the concurrent dividend payable to creditors is calculated at about 20 cent in the rand. Already then, the law firm, Schoonraad Attorneys, was one of the role players insofar as the valuator instructed at the time 'received written instructions from Schoonraad Attorneys to estimate the market value in each case.' I stated further:

"There is no indication how Schoonraad Attorneys fit in the picture and it appears as if a third set of attorneys are involved. This is the case in all the applications, save the Esterhuizen application, where no valuation was placed before the court."

[24] In *Ex parte Concato and Similar Cases* Bozalek J was seized with five similar voluntary surrender applications. The learned judge concluded as follows:

"A conclusion of lack of bona fides was also informed by shortcomings in the applications as a whole, including inter alia their superficiality, the similarity in the averments made and the uncanny coincidence of the projected dividend being either 16 or 17 cents in the rand. There were also lacunae evident in the particular applications under consideration that led to the conclusion that the applicants had either not made full and proper disclosure of their affairs, or had not employed, or properly utilised, alternative statutory measures to reach an accommodation with their creditors."

[25] It is also appropriate to again refer to *Ex parte Snooke.* The judgment dealt with an application for rehabilitation, but I discussed the legal fees and the advantage of creditors in some detail. I *inter alia* mentioned the following:

"Bertelsmann et al *Mars: The Law of Insolvency in South Africa* 9 ed at 64 are of the view that there is a lacuna in our present legislation that no provision is made for judicial oversight of the actual results of the liquidation process. Judges are not informed whether the dividend that was held up to creditors in the application was in fact realised. I decided some time ago, when having to consider rehabilitation applications, to arrange for perusal of the applicable applications for voluntary surrender or sequestration to obtain personal knowledge of the allegations made under oath, and have no hesitation to state that the averments under oath in so-called friendly sequestration and voluntary surrender applications in order to prove advantage to creditors are far from the truth in many instances. My own experience, that sequestration in the majority of cases eventually turns out not to be to the advantage of creditors, is no surprise at all. This much is apparent from a survey conducted more than three decades earlier. See South African Law Commission *Review of the Law of Insolvency: Prerequisites for and Alternatives to Sequestration* Working Paper 29 Project 63 (1989); and *Hillhouse v Stott; Freban Inv (Pty) Ltd v Itzkin; Botha v Botha* 1990 (4) SA 580 (W). Information obtained from the Pretoria office of the master revealed that concurrent creditors received dividends in only 28,6% of the cases included in the survey, while creditors were liable to pay contributions in 40,6% of the cases. There is no reason to believe that the position in the Free State is remarkably different."' (Emphasis added).

[23] When the first of the three applications was called on 29 May 2025, Mr A Verhoef requested a postponement in order to file a supplementary affidavit pertaining to issues raised in the Master's report. When I enquired whether he would also appear in the next two applications, to wit applications 29/2025 and 645/2025, he confirmed it to be the case. He also had instructions to ask for postponement of those two matters. Insofar as counsel also appeared before me in February 2025 in the voluntary surrender applications referred to,[9] I made it clear that I was not prepared to grant the applications for postponement, that no case had been made out for voluntary surrender in each matter and consequently, I dismissed all three applications.

The Du Raan application

[24] The Du Raans deposed to their affidavits on 7 October 2024. The application was issued on 30 October 2024, indicating that it would be moved for on 13 February 2025. The advertisements in the Government Gazette as well as the Citizen indicated that the debtors' statement of affairs would lie for inspection at the Master's Office and at the Welkom Magistrate's Court from 17 January 2025.

[25] On 13 February 2025 the application was postponed to 6 March 2025 for the applicant to file a commissioned affidavit and the Master's report. The Master's first report of 28 February 2025 is not in the court file. On 6 March 2025 the application was postponed to 27 March 2025 with leave to the applicants to file a supplementary affidavit, addressing the issues raised in the Master's report. On 27 March 2025 the application was postponed to 10 April 2025 for the same reasons as in the previous order. On 4 April 2025 the Master reported that the applicants had failed to file a

[9] Footnote 1.

supplementary affidavit and insisted that the application be refused. On 10 April 2025 the application was again postponed, this time to 8 May 2025, on exactly the same grounds as previously. On 8 May 2025 the matter was postponed to 29 May 2025. A similar order was made pertaining to the filing of a supplementary affidavit and an updated Master's report.

[26] On 2 May 2025 the Master filed a report, referring to his two earlier reports and indicated the following which is quoted *verbatim*:

'2. An incomplete application for the voluntary surrender of the applicant's estate was filed Registrar of the High Court on 30 October 2024 and with the Master. I received the statement of debtor's affairs to lie open for inspection at the Master on 18 February 2025. The Magistrate's certificate stipulated that the statement of debtor's affairs had lain open for inspection for a period of 14 days from 17 January 2025 to 31 January 2025. The period for inspection at the Master therefore does not correspond with the period of inspection according to the Magistrate's Welkom certificate.
3. Annexure A, B, C, D, E, F, and H were not attached to the application, and I could not comment on the missing attachments.
4. It is my submission that the application be refused by the Honorable Court.'

[27] On 23 May 2025 the Master filed a supplementary report wherein further queries were raised. Most importantly, the Master pointed out that the statement of the debtors' affairs did not lie open from 17 January 2025 to 31 January 2025 at the Master's office as advertised. As indicated earlier, this document was only served on the Master a month later, *ie* on 18 February 2025.

[28] The numerous postponements of the application obviously increased the legal costs. Each time counsel is entitled to charge a fee. In this case the trustee's fee would be R7 504 if the movables were to be sold at valuation and not R2 875. My criticism of the valuation remains as mentioned above. The difference in the trustee's fees, together with the failure to deal with auctioneer's fees and costs of an auction, Master's fees and advertisements costs as mentioned above, will obviously significantly impact on the sequestration and administration costs and eventually the dividend payable to creditors. In the event of insolvency, there would be a real risk that creditors who proved claims, might be called upon to pay contributions to the costs of administration.

[29] Clearly, save for all other aspects dealing with the merits of the application mentioned earlier herein, a postponement of the application would serve no purpose at all. Although the applicants refer in paragraph 8 of the founding affidavit that proof of notice to creditors and their attorney's affidavit would be attach as annexures D and E respectively, Mr Schoonraad's affidavit was deposed to on 20 February 2025 only, *ie* after the initial date of set down of the application. The pro forma notice to creditors does not contain the debtors' account numbers with the various creditors. It is difficult to accept that these notices would come to the knowledge of the responsible employees employed by the various creditors.

Chrizelle Snyman

[30] In this case, Mr Schoonraad brought an application on behalf of Chrizelle Snyman under application 4848/2024 which was set down for hearing on 10 October 2024. The applicant's founding affidavit was dated 21 July 2024. On that day, it was postponed to 31 October 2024 to enable the applicant to obtain the Master's and the Bethlehem Magistrate's Court reports. There was no compliance. On 31 October 2024, the matter was postponed again to 5 December 2024, but on 29 November 2024 a notice to remove the application from the roll was filed.

[31] A new notice of motion under application 29/2025 was issued on 8 January 2025, relying on the applicant's original founding affidavit of 21 July 2024. The new application was enrolled for hearing on 27 February 2025. Mr Schoonraad's initial supporting affidavit in this application was only deposed to on 11 February 2025. On 21 February 2025 the Master reported *inter alia* that he was not placed in possession of proof of advertisement in the Government Gazette and a local newspaper. Therefore, he could not issue a certificate that the applicant's statement of affairs had lain for inspection. Other issues were raised as well.

[32] On 27 February 2025 the application was postponed to 17 April 2025, then again to 8 May 2025 and eventually to 29 May 2025. On 8 May 2025 leave was granted to the applicant to file a supplementary affidavit to address the issues raised by the Master. The Master filed a further report dated 23 May 2025, drawing the court's attention to the duplication in respect of the two applications 4848/2024 and 29/2025. The Master insisted that Mr Schoonraad should resolve the duplication as the Master

was not prepared to issue a report due to the uncertainty. I became aware of the first application on receipt of the Master's report.

[33] Again, as in the case of the Du Raans, the numerous postponements of the application obviously increased the legal costs. In this case the movable assets are valued at R51 200. My criticism of the valuation remains the same as mentioned above. However, instead of R2 875, the trustee's fees should be calculated at 10% of R51 200 (on the basis that the assets would be sold for this amount), plus VAT in the amount of R768, totalling R5 888. I arrive at same conclusion as in the Du Raan application. No advantage to creditors has been proven.

Johannes Christian Magnus Buys

[34] This application was issued on 7 February 2025 and was set down for hearing on 6 March 2025. The applicant's founding affidavit was deposed to as long ago as 15 October 2024. In this instance, Mr Schoonraad's supporting affidavit, filed belatedly on 17 February 2025, refers in the heading to Chrizelle Snyman's application. Therefore, no supporting affidavit has been filed as referred to in paragraph 8 of the founding affidavit deposed on 15 October 2024. Mr Buys resides in Bloemfontein. If a valuation was indeed done, Mr Maartens would have travelled about a thousand kilometres to do that. I reiterate that there is no provision for the payment of his account and it is uncertain whether this has been paid up front. If not, he has not been considered as one of the applicant's creditors. The gross value of the movables amounts to R57 800. If it is possible to fetch this amount on an auction, or in a private treaty, the trustee would be entitled to a total fee of R6 647 (VAT included) and not R2 875.

[35] Mr Schoonraad did in fact file a supplementary affidavit in response to the Master's queries contained in the report of 24 March 2025, but failed to deal with paragraph 6 of the Master's report. The Master mentioned that Mr Schoonraad's affidavit referred to the *ex parte* application of Chrizelle Snyman and not to that of Buys. This has not been rectified and therefore, there is no evidence under oath that the applicant's creditors had in fact been properly notified by registered post.

Further observations

[36] In *Malebo and Another v Schoonraad and Others,*[10] Ranchod AJ dealt with a rescission application in terms of s 149(2) of the Insolvency Act to set aside an order for the voluntary surrender of a joint estate. There is no indication in the judgment that Mr David Johan Schoonraad featuring herein is in fact the Mr Schoonraad, cited as first respondent in that judgment. However, I accept it to be the case. According to the learned acting judge, that Mr Schoonraad was guilty of serious misconduct. The court concluded as follows:

'To charge for these items in the circumstances is tantamount to fraud or the first respondent has lied under oath to this court which, either way, ill befits an officer of this court. The conduct of the first respondent also appears to be in conflict with the rules of conduct of the Law Society of the Northern Provinces.'

[37] In *Naidoo v Matlala NO,*[11] Southwood J made hair-raising findings[12] and concluded in paragraph 13:

'The most plausible inference on all the facts is that Mr Schoonraad advised the second and third respondents to apply for their sequestration because of the impending sale in execution and that he advised them to withhold the facts relating to the sale in execution and not give notice to the applicants. It is inconceivable that he did not know about the sale in execution.'

Eventually, the court ordered the Law Society of the Northern Provinces (as it was then known), to investigate the conduct of Mr David Johan Schoonraad of Schoonraad Attorneys, Pretoria, as well as that of the appointed trustee.

[38] In *Ex Parte Matthysen et Uxor (First Rand Bank Ltd intervening)*,[13] Southwood J had to adjudicate an application for voluntary surrender which was opposed by Firstrand Bank as the intervening creditor, the learned judge dealt with the obligation by an applicant in an *ex parte* application to make full disclosure of all material facts which may affect the granting, or otherwise, of an *ex parte* order and mentioned the following:

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[10] *Malebo and Another v Schoonraad and Others* 2005 JDR 0165 (T).
[11] *Naidoo and Another v Matlala NO and Others* [2011] ZAGPPHC 165; 2012 (1) SA 143 (GNP).
[12] *Ibid* paras 9-13.
[13] *Ex Parte Matthysen et Uxor (First Rand Bank Ltd intervening)* 2003 (2) SA 308 (T) at 316B-C.

'Here it appears that there has been a deliberate misrepresentation of the facts. The probability is overwhelming that this was done with the assistance of the applicants' attorney.'

The learned judge regarded the matter sufficiently serious to request the Law Society of the Northern Provinces (as it was known then) to investigate 'the conduct of Mr Schoonraad, the attorney of Schoonraad Prokureurs of 824 Church Street, Arcadia, Pretoria, . . .'

[39] I am satisfied that all three applications are not *bona fide*. I have reason to believe that if these applications were to succeed, the applicants would be rid of their debts to the detriment of creditors who would not even try to file claims, bearing in mind the risk of contributions payable. It is trite that courts shall follow a creditor orientated, and not a debtor driven, approach.

[40] In conclusion, I refer to the following paragraphs in *Van Niekerk*:

'[26] The factual inaccuracies in the affidavits before the court, whether intentional or negligent, prove the point raised by me many years ago that the Master should consider the advantage of creditors in each and every application for voluntary surrender and to report to the court on this issue. The Master is for example empowered to direct the applicant to obtain a valuation "by a sworn appraiser or by any person designated by the Master for the purpose." Too many applications for voluntary surrender are nothing but an abuse of court process.

[27] The legal practitioners who are involved in these applications benefit directly from the debtors' financial predicament. The same applies to the trustees who are eventually appointed to liquidate the insolvent estates with no hassles or difficult issues to be considered. The meetings of creditors are a mere formality as creditors more often than not refuse to file any claims. Much more can be said, but hopefully this judgment will remind all role players of their responsibilities in order to ensure that justice is done.' (Emphasis added).

[41] The registrar of this Court is requested to send a copy of this judgment to the South African Legal Practice Council to investigate the conduct of Mr David Johann Schoonraad of Schoonraad Attorneys, Pretoria. The registrar is also requested to forward a copy of this judgment to the Master. Master's reports are required to assist the courts in these types of applications, and also regarding friendly sequestrations. Much reliance is placed on the Master's views, if properly articulated. Obvious

inaccuracies in affidavits and/or attachments thereto, specifically in an attempt to prove an advantage to creditors, should be pointed out and reflected in the reports. I express my gratitude towards the Master for pointing out relevant issues in these application, but care should be taken to point out inaccuracies that may have an effect on the alleged advantage of creditors.

J P DAFFUE
JUDGE OF THE HIGH COURT

Appearances

For the applicants:	AA Verhoef
Instructed by:	Schoonraad Attorneys, Pretoria
	c/o Kleingeld Attorneys, Bloemfontein.