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**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA**

CASE NO: 4385/2024

(1) REPORTABLE: NO

(2) OF INTEREST TO THE JUDGES: NO

(3) REVISED.

DATE 10 /11/2025

SIGNATURE

In the matter between:

**THE BODY CORPORATE OF THE SECTIONAL
TITLE SCHEME OF ASHDOWN FOREST**

APPLICANT

And

**DANIEL THEMBA MABUNDA N. O.
RESPONDENT**

FIRST

MBUSO GODFREY MABUNDA N.O.

SECOND RESPONDENT

ANNA NGOMANE N. O.

THIRD RESPONDENT

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for the hand-down is deemed to be 10 November 2025 at 11H00.

JUDGMENT

MADAVHA AJ

Introduction

[1] This is an opposed provisional sequestration application in which the applicant seeks a provisional sequestration of the Mabunda Family Trust and that the estate be placed in the hands of the Master of the High Court. That the rule nisi be published once in the Government Gazette and a local newspaper. The applicant is a Body Corporate of Ashdown Forest with scheme number SS110/1996, a body corporate duly established in terms of section 2 of the Sectional Title Schemes Management Act 8 of 2011. The first respondent is Mabunda Family Trust; the second and third respondents are the trustees of the first respondent.

Background

[2] An action was instituted in the Magistrate's Court for the district of Mbombela, in which the applicant sought payment for expenses incurred on account of the first respondent's ownership of the property in the sectional title scheme. Judgment in favour of the applicants was granted in the amount of R38 691.12, including interest and costs. A warrant of execution was executed by the sheriff, and notwithstanding demand, the respondents were unable to satisfy the debt. The sheriff had to issue a *nulla bona* return of service. The respondents, in having failed to pay the said debt, are said to be deemed unable to pay their debts.

[3] At the time of launching this application, the respondents had outstanding levies amounting to R 146 931.37.

[4] The respondents in opposing the application, submit that there was no proper service to all interested parties, to wit, employees of the entity, financial institutions of the entity, the bank, and the South African Revenue Services. That there has been non-compliance with providing security to the Master of the High Court. It is the respondent's contention that there are alternatives or remedies available to the applicant to recover the debt rather than to bring an application of this nature.

[5] The respondents allege to have paid fifty % towards the debt and that the trust is in sound financial position, owns immovable assets, and can meet its financial obligations.

Common cause issues

[6] It is not disputed that the respondent, the Mabunda Family Trust, is the owner of Unit 4[...], Ashdown Forest, [...] P[...] Crescent, Kingsview, Extension 1, White River. The applicant issued summons, and a judgment was obtained against the respondents for overdue levies. As of 31 July 2024, the respondents still owed an outstanding amount of R 146 931.31 in arrear levies. The respondents failed to satisfy the judgment debt, as a *nolla bona* return of service was issued by the sheriff. The applicant has a liquidated claim in excess of R100.

Issues

[7] This court is called upon to determine whether: the respondents have committed an act of insolvency; whether or not it is failing to pay its debt owed to the applicant; if service of the application has been effected to the affected parties; and whether or not security to the Master of the High Court has been made.

The Law

[8] A court may grant an application for the sequestration of a debtors estate if it is satisfied that the applicant has established a claim which entitles it under section 9 (1) of the Insolvency Act 24 of 1936 (the Insolvency Act) to apply for sequestration of the estate concerned, that the debtor committed an act of insolvency or is insolvent, and there is reason to believe that it will be to the advantage of the creditors of the debtor if the estate is sequestrated.

[9] The onus to satisfy the court on these matters is on the sequestrating creditor, throughout, and the debtor has no onus to disprove any element of the claim. Section 10 of the Insolvency Act provides that if the court is of the opinion that, *prima facie*, the applicant has established against the debtor a claim which is of the kind mentioned under sub section 9 (1) and the debtor has committed an act of insolvency or is insolvent and there is reason to believe that it will be to the advantage of creditors of the debtor of the estate that the estate is sequestrated, it may make an order sequestrating the estate of the debtor provisionally.

[10] In order to obtain a provisional sequestration order, the applicant must satisfy the court on a *prima facie* basis that it has a liquidated claim in excess of R100, that the Trust is factually insolvent or has committed an act of insolvency, further that there is reason to believe that sequestration will be to the advantage of the creditors.

[11] The Supreme Court of Appeal in *Body Corporate of Empire Gardens v Sithole and Another*¹ held that “the purpose and effect of the sequestration process is ‘to bring about a convergence of the claims in an insolvent estate to ensure that it is wound up in an orderly fashion and that the creditors are treated equally’” It cannot fittingly be described as a mechanism to be utilized by a creditor to claim a debt due by a debtor to one single creditor. Once a sequestration order is made, a *concursum creditorum* comes into being. This means that the rights of the creditors as a group are preferred to the rights of the individual creditor.

[12] In *Du Randt Richards Inc Attorneys v Scheepers NO and another*² the court stated:” when evaluating not there is an 'advantage to creditors, ' no distinction should be drawn between creditors who should be viewed as a single entity. All assets, secured or otherwise, should therefore be placed in one imaginary pot. After deducting the costs of sequestration, the remainder available for the benefit of the ‘general body’, i.e. all creditors, should then be determined. No creditor should be excluded from this arithmetical calculation, which should include all assets, secured or otherwise.”

Discussion

[13] The respondents’ submission that the application was not served on the interested parties, I should state, is unfounded. From the reading of the return of services attached to the application herein, one can clearly note how evasive the second respondent has been in being served with this application. In any event, the service affidavit states the manner in which service was effected, and I am therefore satisfied that service has been effected on the interested parties. The first respondent is a trust, and there is no indication by the respondents that the said trust has employees to whom service should be effected.

¹ Body Corporate of Empire Gardens v Sithole and Another 2017 (4) SA 161 (SCA) para 9.

²Du Randt Richards Inc Attorneys v Scheepers NO and another [2013] JOL 30519 (GSJ) para 5.

[14] The only defence that the respondents raise is that the trust has enough assets to meet the debt, and that half of the said debt has been paid. I should mention that I find it puzzling for the respondents to allege payment has been made but fail to attach proof of the said payment. Be that as it may, the respondents remain indebted to the applicants since the outstanding debt has not been paid. I am therefore satisfied that the respondent has committed an act of insolvency as contemplated in section 8(b) of the Insolvency Act, by failing to pay the judgment debt and that a *nulla bona* return of service has been issued, which the respondent does not dispute.

[15] I have reason to believe that this provisional sequestration order will be to the advantage of the creditors since the respondent alleges that it has realisable assets to the value of R950 000.00.

[16] I accordingly make the following order:

1. The Mabunda Family Trust is placed under provisional sequestration, and its estate is placed in the hands of the Master of the High Court.
2. A rule nisi returnable on 02 March 2026 is hereby granted, and the Respondents acting in their capacities as the trustees of the Mabunda Family Trust are called upon on the return date to show cause why this Honourable Court should not grant a final sequestration order.
3. The rule nisi be published in the Government Gazette and a local newspaper.
4. Costs of the application shall be costs in the sequestration.

M B MADAVHA
ACTING JUDGE OF THE HIGH COURT

Appearances:

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Date of hearing: 08 August 2025

Date of judgment: 10 November 2025