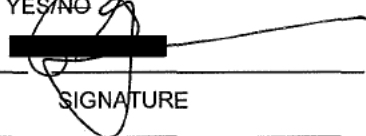


REPUBLIC OF SOUTH AFRICA


 IN THE HIGH COURT OF SOUTH AFRICA
 GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: 2023/049884

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
_____ DATE  _____ SIGNATURE	

In the matter between:

ASCAR; CLINT CHRISTIAN

Applicant

and

MALEPE; EMMANUEL

First respondent

MALEPE ATTORNEYS

Second respondent

LPC OF SOUTH AFRICA

Third respondent

ROAD ACCIDENT FUND

Fourth respondent

JUDGMENT

AMM, AJ

1. On Tuesday, 3 November 2025, the applicant appeared in person before me at the calling of the Insolvency Motion Court roll with an ensuing request that I enroll the

sequestration application on the Insolvency Motion Court roll for purposes of it being postponed to the opposed Insolvency Motion Court for hearing on 19 January 2026.

2. Whilst there is no pending provisional order or return date in the application that needed extension, the reasons for the requested enrolment and subsequent postponement arose in circumstances where his Lordship Acting Justice Van Heerden had, on 15 September 2025, postponed the application to the opposed Insolvency Motion Court of 3 November 2025 (costs reserved). I accept that Van Heerden AJ identified a specific need for postponing the application to a specific date.
3. In response to the applicant's previously mentioned requests at roll call, Mr. Malatji, an attorney, placed himself on record for the first and second respondents ("the respondents").¹
4. The respondents' representative stated that his clients opposed the applicant's requests. In support of this opposition, he made certain submissions as to inter-alia (i) the apparent unlawfulness of the requests and (ii) the fact that there was a pending opposed application to compel his clients to file heads of argument in the sequestration application.
5. Because (i) I knew nothing of the application, nor of the Van Heerden AJ order, (ii) I had not yet been granted access to the application on CaseLines, and (iii) I required that the applicant file an affidavit explaining the circumstances and reasons for the applicant's requests, I provisionally enrolled the application as matter no. S24 and stood it down to 11h30 on Thursday, 6 November 2025.

¹ There are in fact four respondents in this application, I nevertheless to the first and second respondents as simply "the respondents".

6. The applicant subsequently filed an explanatory affidavit. Despite being afforded an opportunity to answer the explanatory affidavit, should they wish to do so, the respondents elected not to do so.
7. When the application was called before me on Thursday morning, 6 November 2025, I indicated that I was satisfied with the explanation provided in the applicant's explanatory affidavit.
8. When I asked the respondents' representative, still Mr. Malatji, whether his clients persisted with their opposition to the (final) enrolment of the application and its postponement, he advised me that they did. When I asked why, the respondents' representative submitted that it was essentially unlawful for me to do so because (i) "the rules" permitted only the Registrar to enroll applications, (ii) I was bound by "the rules", and (iii) it would, accordingly, be unlawful for me to accede to the applicant's requests.
9. When I enquired from the respondents' representative as to which specific "rules" he referred, he blandly referenced uniform rule 6. When I asked him to point me to the specific sub-rule within uniform rule 6 that dictated the enrolment of applications by the Registrar only, the respondents' representative prevaricated. He vaguely referred to the "law" generally, and "PRECCA"² specifically. I was not referred to any provisions within uniform rule 6 or PRECCA that support these submissions. I could also not find any such provisions.
10. I additionally enquired from the respondents' representative - if he was correct that the (uniform) rules provided that it was for the Registrar alone to enroll the application -

² Assumedly a reference to the commonly used acronym or label for the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004.

whether I nevertheless had an inherent power under section 173 of the South African Constitution to consider, and if appropriate, accede to the applicant's requests.

11. Section 173 reads:

Inherent power

173. The Constitutional Court, the Supreme Court of Appeal and the High Court of South Africa each has the inherent power to protect and regulate their own process, and to develop the common law, taking into account the interests of justice.

12. The respondents' representative's response was Delphic. He initially agreed that the South African Constitution was the "supreme law" in South Africa, yet he later argued that the uniform rules of court "trump" and enjoy preference over section 173.

13. I am unable to agree with the latter argument. I am not the only one. I count myself amongst inter-alia the Constitutional Court, and other Superior Courts on this score. By way of example I list certain of these decisions (listed in chronological order) below:

13.1. The then Cape Provision Division in *Nconweni v Bezuidenhout*³ stated: "*The rules of procedure of this Court are devised for the purpose of administering justice and not of hampering it.*"

13.2. This Court in *Brown Bros. Ltd v Daise*⁴ held: "... *I think that the court has the inherent power to read the rules applicable to the procedure of court in a manner which would enable practical justice to be administered and a matter to be handled along practical lines.*"

³ 1927 CPD 130.

⁴ 1955 (1) SA (W) 75 on page 77.

- 13.3. The Appellate Division in its well known and often cited judgment in *Republikeinse Publikasies*:⁵ stated "... die hof nie vir die reels bestaan maar die reels vir die hof".⁶
- 13.4. The Pretoria Division of this Court in *FirstRand Bank Ltd v Folscher*⁷ - within the context of condoning non-compliance with court rules in an insolvency context - emphasised that procedural requirements should not defeat substantive rights where no prejudice would result.
- 13.5. In *Arendsnes Sweefspoor CC v Botha*,⁸ the Supreme Court of Appeal observed: "*Courts should not be bound inflexibly by rules of procedure unless the language clearly necessitates this Courts have a discretion, which must be exercised judicially on a consideration of the facts of each case, in essence it is a matter of fairness to both parties ...*".
- 13.6. The Constitutional Court, for its part, in *Mukaddam*⁹ stated the following: "*It is important that the rules of courts are used as tools to facilitate access to courts rather than hindering it. Hence rules are made for courts and not that the courts are established for rules*".
- 13.7. The Free State High Court in *Louw v Grobler & Another*¹⁰ held: "*The rules set the parameters within which the course of litigation has to proceed. The rules of engagement, must, therefore, be obeyed by the litigants. However, dogmatically rigid adherence to the uniform court rules is as distasteful as their flagrant*

⁵ *Republikeinse Publikasies (Edms) Bpk v Afrikaanse Pers Publikasies (Edms) Bpk* 1972 (1) SA 773 (A) and specifically at page 19 thereof.

⁶ "*The court does not exist for the rules, but the rules exist for the court.*"

⁷ 2011 (4) SA 314 (GNP).

⁸ 2013 (5) SA 399 (SCA).

⁹ *Mukaddam v Pioneer Foods (Pty) Ltd* 2013 (5) SA 89 (CC) para 32.

¹⁰ (3074/2016) [2016] ZAFSHC 206 (15 December 2016) 18.

disregard or violation. Dogmatic adherence, just like flagrant violation, defeats the purpose for which the court rules were made."

13.8. The Constitutional Court, in *Eke v Parsons*¹¹ held: "... courts should be detained by the rules to a point where they are hamstrung in the performance of the core function of dispensing justice. Put differently, rules should not be observed for their own sake. Where the interests of justice so dictate, courts may depart from a strict observance of the rules. That, even where one of the litigants is insistent that there be adherence to the rules. Not surprisingly, courts have often said '(i)t is trite that the rules exist for the courts, and not the courts for the rules'".

13.9. The Constitutional Court additionally stated the following in *Social Justice Coalition and Others v Minister of Police and Others*,¹² namely: "*The inherent power of this Court and other superior courts to protect and regulate their own processes, is closely associated with and inextricably linked to the manner and fashion in which a litigant may exercise the right of access to courts.*"

13.10. This Court, in *Sasol South Africa t/a Sasol Chemicals v Penkin*¹³, affirmed the aforesaid position – while acknowledging the importance of the uniform rules, by stating: (i) "... [this] does not mean that the Rules are to be applied rigidly, inflexibly or without due regard to the exigencies of a particular case"; (ii) "... [this] does not mean that courts should be detained by the rules to a point where they are hamstrung in the performance of the core function of dispensing justice. Put differently, rules should not be observed for their own sake. Where the interests of justice so dictate, courts may depart from a strict observance of the rules. That, even where one of the litigants is insistent that there be adherence to the rules.

¹¹ *Eke v Parsons* 2016 (3) SA 27 (CC) para 39 and 40.

¹² 2022 JDR 2047 (CC) para 71.

¹³ 2024 (1) SA 272 (GJ).

Not surprisingly, courts have often said '(i)t is trite that the rules exist for the courts, and not the courts for the rules'; and (iii) "[i]n terms of this [inherent] power, the High Court has always been able to regulate its own proceedings for a number of reasons, including catering for circumstances not adequately covered by the Uniform Rules, and generally ensuring the efficient administration of the courts' judicial functions."

14. Accordingly, while I accept without demure that (i) there is an obvious interests of justice / administration of justice need and utility in the guardrails provided by the uniform rules of court, and (ii) the inherent power afforded under section 173 is not unfettered, the uniform rules of court nevertheless do not enjoy the status of the law of the Medes and Persians in our constitutional democracy.
15. As to the fetters that bridle and limit section 173's inherent power, they are twofold: (i) the power is limited to procedural issues and questions only, not matters of substantive rights;¹⁴ and (ii) can only be engaged within the context of the interests of justice consideration.¹⁵
 - 15.1. In respect of the former consideration, section 6(1)(a) of the Rules Board for Courts of Law Act, No. 107 of 1985 provides that the Rules Board has the authority to review, amend, make and repeal rules regulating *"the practice and procedure in connection with litigation"*.
 - 15.2. As such, the uniform rules can only deal with practice and procedural aspects, not substantive rights. Additionally, it was not argued, let alone suggested on

¹⁴ See inter-alia *Children's Institute v Presiding Officer, Children's Court, Krugersdorp, and Others* 2013 (2) SA 620 (CC), *Social Justice Coalition and Others v Minister of Police and Others* 2022 (10) BCLR 1267 (CC), *S v Molaudzi* 2015 (2) SACR 341 (CC), and *Oosthuizen v Road Accident Fund* 2011 (6) SA 31 (SCA).

¹⁵ See inter-alia *South African Broadcasting Corp Ltd v National Director of Public Prosecutions* 2007 (1) SA 523 (CC) paras 36 and 90.

behalf of the respondents that the applicant's requests infringed upon any of their substantive rights, and equally importantly no such rights were identified.

15.3. Apropos the latter consideration, the interests of justice consideration is coloured, at least in part, with the question of prejudice. Other than to argue that his clients were being forced to court by the applicant, the respondents' representative was unable to point to any lasting or other prejudice that his clients would suffer by the requested enrolment and subsequent postponement of the application.

15.4. I, in any event, find the respondents' "forced-to-court" argument self-defeating given the vigorous opposition they mount in response to the applicant's innocuous requests.

16. The aforesaid is indubitably so because – while the circumstances of all cases will not ordinarily justify a Court invoking its inherent power – section 173's purposes is to empower Superior Courts to regulate and protect their own processes if, in doing so, the interests of justice are protected, or advanced. This inherent power thus aligns and empowers a Superior Court's ability to comply with its panoply of constitutional duties. It simply cannot be – when the interests of justices are in play – that a Superior Court is straight-jacketed by the uniform rules of court in respect of purely procedural matters.

17. I briefly pause to mention that historically the common law jurisdiction of the High Court allowed a High Court to govern its own procedures. This much is clear from the pre-Constitutional authorities listed above. This inherent power therefore does not have its *fons et origo* in section 173 of the Constitution.

18. Additionally, during his submissions, the respondents' representative placed reliance on several decisions. These cases, as I read them, do not assist the respondents. For example, some of these cases relate to the status of practice directives and are thus

irrelevant or distinguishable. One of the other cases relied upon is *National Director of Public Prosecutions (Ex Parte Application)*.¹⁶ This is a case dealing with whether an applicant is required to prove urgency when applying for a preservation order, and section 38(2) of the Prevention of Organised Crime Act, No. 121 of 1998 (POCA); it thus finds no application.

19. The respondents' representative also indicated that he would provide me with the reference to a "Zuma" case on which he said he also wished to place reliance. At the time of writing this judgment, he had not done so. The efforts of my Registrar to contact him telephonically and via email have been unsuccessful. I have nevertheless scanned the plethora of ascertainable "Zuma" decisions (including those on Safflii). I am unable to identify any "Zuma" decision that aids the respondents' cause.
20. On a consideration of the facts before me (i) I am unable to find a provision within uniform rule 6 that affords the Registrar the sole, let alone any, power of the type or kind claimed by the respondents' representative, (ii) I am unable to find that the respondents would be prejudiced or unfairly treated if I were to grant the orders that I intend to grant in paragraph 25(1) and 25(2) below, (iii) I find that it is in the interests of justice that I grant such orders, and (iv) the granting of such orders ensures the efficient administration of a Courts' judicial functions. Otherwise stated, the circumstances of the proceedings before me justifies such orders. I understand that the Registrar has provided the below-mentioned 19 January 2026 postponement date.
21. Before turning to the question of costs, the respondents' representative – during his submissions – suggested that I was "*biased*" because of my "*interjections*" and questions when he was arguing, and my apparent "*favoring*" of the applicant's submissions. He,

¹⁶ 669/2020 ZASCA 142 (7 October 2021), 2022 (1) SACR 1 (SCA) being its reported citation.

however, did not ask for my recusal – even when I asked him what I was to do, and what he wanted me to do, in response to the suggested bias.

22. While I deny the suggested bias, I believe that the following statement by LTC Harms¹⁷ is instructive: A judge's role is not that of a passive disinterested umpire, asked to answer the question "How is that?".¹⁸
23. Regard is also to be had to the following extract of the 5 November 2025 appeal ruling of the Judicial Conduct Committee in *Fischer / De Broglio* (ref No. JSC/894/21– footnote reference omitted):

[25] Judges should not be stifled from voicing their concerns about matters before them. While expected to maintain impartiality, they also have a responsibility to uphold the law and express their opinions on issues before them; sometimes during robust engagement with counsel, as affirmed in *AfriForum v EFF*,¹⁰ albeit in the context of an application for recusal of a judge for the remarks a judge made about one of the parties. Judges raising concerns where they arise promotes public trust as it speaks to transparency and the ability of judges to openly discuss their concerns showing fairness therein. If a judge believes that something is wrong or amiss in a case, they have a duty to speak up to ensure fairness and justice.

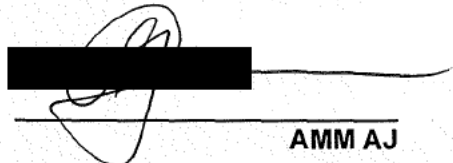
[26] Note 4(i) of Article 4 of the Code expresses it as follows:

"A judge acts fearlessly to his or her conscience because a judge is only accountable to the law."

¹⁷ The former Deputy President of the Supreme Court of Appeal and Professor Extraordinary for Intellectual Property Law at the University of Pretoria.

¹⁸ Taken from an article "What Irritates Judges?" written by LTC Harms, December 2001 "Advocates" magazine www.gcbsa.co.za/law-journals/2001/december/2001-december-vol014-no3-pp24-26.pdf. A similar phrase is used in *Greenfield Manufacturers (Temba) (Pty) Ltd v Royton Electrical Engineering (Pty) Ltd* 1976 (2) SA 565 (A) 570E-F and *Take and Save Trading CC v Standard Bank of South Africa Ltd* [2004] 1 All SA 597 (SCA).

24. Moreover, when the arguments were concluded, the respondents' representative confirmed that he had made all the submissions that he wished to make, and that he had nothing further to add.
25. Turning to costs, both the applicant's and the respondents' representative made submissions on the cost consequences of the proceedings before me. I have weighed and considered these. For present purposes, the prudent order is to reserve these costs for subsequent determination by the Court hearing the sequestration application.
26. In the result, I grant the following orders:
1. The sequestration application under the above case number is finally enrolled in the Insolvency Motion Court as matter no. S24.
 2. The sequestration application is postponed to the opposed Insolvency Motion Court of 19 January 2026.
 3. All issues of costs pertaining to the proceeding and arguments before me are reserved for subsequent determination by the Court hearing the sequestration application.


AMM AJ
JUDGE OF THE HIGH COURT
JOHANNESBURG

HEARD & ARGUED: - 6 NOVEMBER 2025

JUDGMENT ELECTRONICALLY DELIVERED: - This judgment was handed down electronically by circulation to the parties' legal representatives by email. It will also be uploaded onto CaseLines.

The date and time for the handing-down of this judgment is deemed to be:
10h00 on 10 NOVEMBER 2025.

For the applicant:

Mr C Ascar (Advocate)
Instructed by Kruger Engelbrecht

For the respondents:

Mr Malatji (Attorney)
Instructed by Malatji S Attorney