



**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN**

CASE No: 20910/2024

In the matter between:

AGRI SOUTH AFRICA NPC

Applicant

and

MARK ERWIN PAULSMEIER

Respondent

Identity number: 6[...]

Date of birth: 3 June 1963

Residing at: 1[...] C[...] F[...] Street, Monte Christo Eco Estate, Hartenbos

Married out of community of property to Matilda Helena Paulsmeier

Application for the sequestration of his estate

Heard: 5 November 2025

Judgment: 17 November 2025

Summary: Application for sequestration.

ORDER

1. The estate of Mark Erwin Paulsmeier is placed under provisional sequestration in the hands of the Master of the High Court, Cape Town.
2. The respondent, and any party with a legitimate interest in the respondent's affairs, is called to show cause on Tuesday, **24 February 2026**, at 10:00, or as

soon thereafter as the matter may be heard, why an order should not be granted in the following terms:

- 2.1. The provisional order of sequestration be made final.
- 2.2. The costs of this application (excluding any costs incurred from 6 November 2025 until this order was handed down on 17 November 2025) shall form part of the costs of the administration of the respondent's insolvent estate, such costs to be taxed on a scale as between attorney and client, including the costs of senior counsel to be taxed on scale B.
3. The Sheriff shall attach all movable property of the insolvent estate and shall immediately after effecting the attachment, report to the Master in writing that the attachment has been effected and shall submit with such report a copy of the inventory in terms of Section 19(1) of the Insolvency Act 24 of 1936.
4. This order shall be:
 - 4.1. Served by the sheriff on the respondent at 1[...] C[...] F[...] Street, Monte Christo Eco Estate, Hartenbos.
 - 4.2. Served by the sheriff on Matilda Helena Paulsmeier at 1[...] C[...] F[...] Street, Monte Christo Eco Estate, Hartenbos, together with a copy of the papers in this application (excluding the Rule 30 application papers).
 - 4.3. Served on the South African Revenue Service, electronically via email at I[...].
 - 4.4. Delivered to the Master of the High Court, Cape Town.
 - 4.5. Served by the sheriff on any possible employees of the respondent by affixing a copy of this order to the front entrance at the respondent's place of residence, being 1[...] C[...] F[...] Street, Monte Christo Eco Estate, Hartenbos.
 - 4.6. Published in one publication each of the following:
 - 4.6.1. The Cape Argus newspaper.
 - 4.6.2. The Burger newspaper.
 - 4.6.3. The Government Gazette.

JUDGMENT

Handed down by email to the parties on 17 November 2025

Judgment handed down electronically by circulation to the parties' legal representatives by email and released to SAFLII.

KANTOR, AJ:

1. This is an application for the provisional sequestration of the respondent's estate.
2. The respondent brought a counter application. In paragraph 6.1 of the Order of the Deputy Judge President on 28 August 2025 ("the 28 August Order"), the applicant's application for sequestration was set down for hearing on 5 November 2025. In paragraph 6.2 of the 28 August Order, the Deputy Judge President expressly recorded and ordered that "*For the avoidance of doubt, the counter-application in the sequestration application is not hereby set down for hearing.*"
3. Accordingly, it was only the applicant's application for the sequestration of the respondent's estate that was before the court on 5 November 2025 and this judgment deals only with that application.
4. For ease of reference in relation to the 28 August Order, the following is mentioned:
 - 4.1 Case number 2025-073277 of this Court, is referred to in paragraph 2.4 of the 28 August Order as the "*second R86 billion action*".
 - 4.2 In the 28 August 2025 Order, it was noted that the respondent confirms that he has withdrawn four actions, under case numbers 15885/2021 ("*the Media 24 action*") and 2025/054957 ("*the first R86 billion action against Naspers*") of this Court and under case numbers 70725/2019 ("*the Agri SA action*") and 44916/2021 ("*the TLU action*") of the Pretoria High Court. The respondent, who appeared in person, confirmed these withdrawals in Court.

Condonation

5. While considering the matter after oral argument on 5 November 2025 (the day of argument) I picked up that there had not been compliance with paragraph 30(1) of the Practice Directions of this Court, which reads:

“Save where the court in its discretion and on good cause shown dispenses therewith, notice of intention to apply for a provisional order of sequestration shall be given to the debtor and, if married, to the debtor’s spouse (whether married in our [sic: should be ‘or’] out of community of property), who shall be joined as a respondent.”

6. On 6 November 2025, on my request my registrar sent an email to the parties which reads as follows:

“Kantor AJ has requested me to communicate the following to you:

1. While working on the case yesterday he picked up that the Western Cape Practice Directive 30(1) appears not to have been complied with.
2. This would be required if the respondent is married, whether in or out community of property.
3. It is indicated in the papers that the respondent is married out of community of property.
4. For your ease of reference a copy of Practice Directive 30(1) is attached.
5. The parties are to revert by 3pm on Wednesday, 12 November 2025, as to further steps they wish to take, or to take such steps, in this regard.
6. The judgment is no longer reserved in the interim.”

7. On 12 November 2025, an email was received from the respondent attaching an affidavit from his wife, Matilda Helena Paulsmeier (“Mrs Paulsmeier”) in which she:

7.1 Confirmed that she is married to the respondent out of community of property, having been previously married in community of property and having caused that regime to be changed in 1994.

7.2 Recorded that she “*was the sole owner of the property known as Liverpool 55 in Hoedspruit, Limpopo Province*”, in July 2022 a third party was interested in buying it and she sold it to him “*after more than a year*”.

7.3 Stated that *"I object to my name being drag[ged] into the above proceedings as me and my husband's estates are legally separated from each other in terms of the provisions set out in Annexure 1."*
Annexure 1 is the notarial deed in this regard.

7.4 Made certain observations in relation to the application for provisional sequestration which, in my view, do not take the matter any further for the reasons which are dealt with briefly below.

8. In his email, the respondent offered to travel to Cape Town to have Mrs Paulsmeier's affidavit court-stamped.

9. Having read this email and the affidavit, I decided to expressly refer the parties to section 21 of the Insolvency Act 24 of 1936 ("the Act"). Accordingly, on 12 November 2025, on my request my registrar sent an email on the same day to the parties which reads as follows:

"Kantor AJ has requested me to communicate the following to you:

1. There is no need for Mr Paulsmeier to drive to Cape Town to have the document emailed to me today stamped.
2. As pointed out last week, it appears that there has not been compliance with Practice Directive 30(1).
3. Please note for your consideration in regard to compliance with Practice Directive 30(1), that the effect of the provisions of section 21 of the Insolvency Act 24 of 1936, which includes that the assets of a spouse married out of community of property to a person who is sequestrated vest in the Master until a Trustee is appointed and then in the Trustee (with other consequences which you can read in the copy of section 21 which is attached for your ease of reference).
4. This will be the effect on Mrs Paulsmeier if Mr Paulsmeier is placed under an order of sequestration.
5. In the light of the above, if any of you have anything further which you would like to submit or place before the court or as to steps you would like to take in this regard, please do so in writing by 3pm on Friday, 14 November 2025."

10. On 12 November 2025, the applicant sent supplementary submissions by email to my registrar.

11. The import of those submissions was to request condonation for non-compliance with Practice Direction 30(1). These submissions are dealt with below.

12. On 14 November 2025, the respondent filed 14 pages of submissions in single-spacing on the merits of the sequestration application. Nothing further was provided in respect of the issues raised in the email sent by my registrar on 12 November 2025 as to Practice Direction 30(1) and section 21 of the Act. It was irregular to make further submissions on the merits of the sequestration application. Be that as it may, I considered those submissions and am of the view that they do not add anything further which is of any materiality to the determination of the matter. There were three new aspects raised which also do not take the matter any further and will be mentioned briefly to explain why:

12.1 First, it was stated that the deponent to the founding affidavit does not have the authority from the applicant to depose to that affidavit. This is of no moment: there is no requirement for a deponent to be authorised to depose to an affidavit, as held in Ganes and Another v Telecom Namibia Ltd 2004 (3) SA 615 (SCA) at paragraph 19: “In my view it is irrelevant whether Hanke had been authorised to depose to the founding affidavit. The deponent to an affidavit in motion proceedings need not be authorised by the party concerned to depose to the affidavit.”

12.2 Second, as correctly pointed out by Mr Paulsmeier, the confirmatory affidavit of Mr Kotze is signed on 19 September 2024, which was the day before the founding affidavit was signed. On my reading of the founding papers, no facts were attributed to the knowledge of Mr Kotze and the sole purpose of his confirmatory affidavit was to confirm Mr

Van der Rheede's authority to depose to the founding affidavit which, as mentioned, was not necessary. The core facts are either admitted or in the knowledge of Mr Van der Rheede, for example the existence of the two costs ordered which have been taxed and allocated.

- 12.3 Third, it is stated that the attorneys acting for the applicant have not provided a board resolution from the applicant authorising them to act on its behalf. While that is so, there is no requirement for this to be done. If the authority of an attorney to act for a party is to be challenged, then it must be challenged. Further, questions of authority of an attorney are to be raised in terms of Uniform Rule 7, within 10 days of becoming aware of such person acting or with the leave of the court on good cause shown at any time before judgment. There has been no challenge to authority and no request for leave to challenge, the 10 days having long passed by more than a year. In Eskom v Soweto City Council 1992 (2) SA 703 (W) at paragraph 705F (approved in Ganes at paragraph 19) it was held that:

"As to when and how the attorney's authority should be proved, the Rule-maker made a policy decision. Perhaps because the risk is minimal that that an attorney will act for a person without authority to do so, proof is dispensed with except only if the other party challenges the authority. See rule 7(1)."

13. The applicant's request for condonation is made essentially on the following basis:

13.1 Practice Direction 30(1) is "*seemingly at odds with*" certain judgments.

13.2 The advanced stage of the litigation.

13.3 It submits that "... *contextually the purpose behind paragraph 30(1) of the practice directive is to ensure that spouses are made aware of applications that may impact on them.*" It states further that by means

of her affidavit (mentioned above), Mrs Paulsmeier was aware of the sequestration application and objects to her name being dragged into those proceedings.

13.4 Only a provisional order is sought at this stage which can be served on Mrs Paulsmeier and her attention can be invited to section 21 of the Act.

13.5 That condonation be granted in the interests of justice.

14. In Sewpersad and Others v Standard Bank of South Africa (Pty) Ltd and Others (EC14/2023) [2024] ZAWCHC 435 (9 December 2024) it was held as follows at paragraph 6 (relying on Mulaudzi v Old Mutual Life Assurance 2017 (6) SA 90 (SCA) at 101G) :

“Factors which usually weigh with a court in considering an application for condonation include the degree of non-compliance, the explanation therefor, the importance of the case, a respondent's interest in the finality of the judgment, the convenience of the court and the avoidance of unnecessary delay in the administration of justice.”

15. No explanation is provided by the applicant as to why there was not compliance with Practice Direction 30(1). That is a negative factor for the applicant. In the absence of another explanation, the only inference to be drawn is that the reason was either an oversight by its legal representatives or that, being from Gauteng, they were not aware of Practice Direction 30(1), which would be a negative factor in the consideration of condonation.

16. The advanced stage of the proceedings would not tell in the applicant's favour. It was represented by attorneys and senior counsel who struck me as being competent. They had copious time to deal with the practices of this court, including in the sharp focus of opposed litigation.

17. I tend to agree with the applicant that the (main) purpose behind Practice Direction 30(1) is to bring an application for the sequestration of a married person to the attention of his/her spouse. This plainly applies to persons married out of community of property. For persons married in community of property, it seems to be the position that both spouses must in any event be respondents because they have one estate, but that is not material in the instant matter.
18. Accordingly, that Mrs Paulsmeier is now aware of the nature and purpose of the proceedings (as appears from her affidavit), namely the sequestration of her husband, is a factor which counts in the applicant's favour.
19. So, too, is the statement in her affidavit that she does not wish to be dragged into the proceedings.
20. Another factor in favour of condonation is that in her affidavit she took the opportunity to raise certain substantive aspects in relation to the sequestration application. In my view, these are of no moment and their absence of materiality can be dealt with briefly:
- 20.1 She makes the submission that "... *the Confirmatory Affidavit of Johan Kotze (CEO of AGRI SA NPC) as well as the Founding Affidavit of Mr. Christo van der Rheede do not contain their respective RSA identity numbers or addresses as is a specific legal requirement, which render these affidavits null and void.*" On my reading of the Justices of the Peace and Commissioner of Oaths Act 16 of 1963 and the regulations thereto they contain no such requirements.

20.2 The other aspect is that in 2022 Mrs Paulsmeier had withdrawn the offer for her property to stand as security for the cost orders against the respondent. This is not material to the instant sequestration application.

20.3 Both of these aspects therefore have no bearing on the sequestration application.

21. As to the applicant's averment that Practice Direction 30(1) is "*seemingly at odds with*" certain judgments, I do not consider this to be a valid factor for the following reasons:

21.1 This submission that the Practice Directive 30(1) is "... *seemingly at odds with the referenced judgments*" is in somewhat equivocal terms.

21.2 I have considered the judgments referred to by the applicant in its written submissions. My own research did not find any others.

21.3 The applicant relies on what is said in Mars The Law of Insolvency 10ed at 229: "*Such solvent spouse is not entitled to be joined as a party or to be given notice of the application, when it is sought to sequester the estate of the other spouse.*" In doing so, the applicant pointed out, Mars relies on De Jager Investments Ltd v Mark 1952 (3) SA 471 (W) as authority.

21.4 In its submissions, the applicant does not give a page reference in De Jager. The most relevant passage that I could identify is at 475G where it is held: "*With respect, I am of the opinion that Scher & Getz, N.O. v Mader, supra, [1951 (2) SA 585 (T)] is not correctly decided, and that it is not necessary either to join respondent's husband as a party to the proceedings or to give him formal notice thereof.*"

- 21.5 What had been held in Scher is that a spouse had a right to be and was obliged to be notified (or joined). It is this which found disapproval in De Jager.
- 21.6 However, De Jager is not authority for the proposition that a solvent spouse cannot be joined or given notice. It is rather that his/her joinder or notice to her/him is not a matter of necessity.
- 21.7 The applicant state that *“The learned authors of Meskin’s Insolvency Law express the opinion that in the absence of proof that the marriage is one in community of property, the spouse may not be joined as a second respondent.”*
- 21.8 In doing so, Meskin Insolvency Law and its operation in winding up at paragraph 2.1.6 relied on Standard Bank v Sewpersadh 2005 (4) SA 148 (C) at paragraph 27 which reads as follows: *“In the absence of proof that the matrimonial regime between the two respondents is that brought about by a marriage in community of property, I am in law precluded from finding that, in the first place, it was proper to cite the second respondent in these proceedings.”*
- 21.9 No authority is cited for this proposition which the applicant contends must be understood to be of wide compass prohibiting the joinder as contemplated in Practice Direction 30(1) – or at least that it “seemingly” appears to be the case.
- 21.10 The next two sentences in paragraph 27 identify what the court was considering. The first deals with the issue in that case which was relevant to citing the other spouse, namely whether they were married in community of property. The application had been brought on the basis that the respondents were married in community of property and

a provisional order of sequestration and rule *nisi* against both the respondents was granted on that basis before answering papers were filed. When answering papers were filed, the respondents denied that they were married in community and which was not established because the relevant Muslim law was not addressed. In the next sentence this court held that it therefore could not find that there was a joint estate and therefore found that the rule *nisi* could not be confirmed against the second respondent.

21.11 The point of paragraph 27 is that, uncontroversially, a court cannot sequester a spouse on the basis of the other spouse's insolvency unless they are married in community of property.

21.12 The sentence in paragraph 27 relied on by the applicant is therefore *obiter*. Further, the applicant's argument ignores the issues the court faced in Sewpersadh which was a very different context.

21.13 What Sewpersadh is authority for is that a spouse cannot be sequestered on the basis of the other spouse's debt and insolvency in the absence of them being married in community of property.

21.14 Had Dlodlo J intended to find that in law there was a prohibition against the joinder of the solvent spouse, I believe that he would have said so and dealt with such an aspect in some detail, which he did not do.

21.15 The next case is Samsudin v Berrange NO 2005 (3) SA 529 (N) at 533D-533G which was also referred to in Meskin. I have been through that extract a few times and I do not read it as supporting in any way what Meskin says. I have read the whole case and reached the same conclusion.

22. The applicant has not requested Practice Directive 30(1) to be found contrary to law. It asks for condonation.
23. Mrs Paulsmeier says in her affidavit that “*I have no interest or involvement in my husband’s business affairs ...*” I think that she would not be able to provide facts material to the application.
24. I have already dealt with her submissions of substance in her affidavit and why they are not material or relevant.
25. Mrs Paulsmeier is aware of the application and states in her affidavit that “*I object to my name being drag[ged] into the above proceedings.*”
26. Mrs Paulsmeier has therefore, in an affidavit, taken up the opportunity to place material before the court, has stated that she does not want her name in the proceedings and has stated she has no interest or involvement in the respondent’s business affairs.
27. For all intents and purposes, therefore, it appears to me that the object of Practice Direction 30(1) has been achieved.
28. The above, coupled with my views on the merits of the sequestration application, dealt with below, tip the balance in granting condonation for the non-compliance with Practice Direction 30(1).
29. I might add that, even if there were an obligatory joinder in law (i.e. outside of the confines of Practice Direction 30(1)), which I do not think that there is, failure to join can be cured in an informal manner if the party in question, as held in *In re BOE Trust Ltd* 2013 (3) SA 236 (SCA) at paragraph 20, “... was

properly informed of the nature and purpose of the proceedings and unequivocally indicated that it would abide the decision of this court.” Mrs Paulsmeier’s affidavit reveals that she is now aware of the nature and purpose of the proceedings, namely the sequestration of her husband. As to an indication to abide, while she did not use the word ‘abide’, she did record that *“I object to my name being drag[ged] into the above proceedings ...”* which I think is effectively to the same effect.

30. A final comment: while in the practice of law, practitioners will inevitably at some time overlook a practice, directive, rule or the like, these do create extra complications. This happened in the instant matter, such as the extra attendances after oral argument, with which a sequestrated estate should not be saddled, and the 11 pages of this judgment taken up in dealing with the application for condonation. With some care, diligence and attention from practitioners, this should be kept to an absolute minimum. Another less than satisfactory aspect was, in the applicant’s heads of argument and written submissions, the failure in some instances to give page references to cases cited as well as the inexact quoting of authorities therein. If anything is quoted it must be strictly verbatim.

The requirements for sequestration

31. Section 9(1) of the Act provides that a creditor may apply to court for the sequestration of the estate of a debtor. For a creditor to succeed with an application for sequestration, it must establish that (see *Braithwaite v Gilbert* 1984 (4) SA 717 (W) at 718):

- 31.1 It has a claim that entitles it, in terms of section 9(1) of the Act, to apply for the sequestration of the respondent's estate.
- 31.2 The respondent has committed an act of insolvency or is factually insolvent.
- 31.3 There is reason to believe that it will be to the advantage of creditors of the respondent's estate if it is sequestrated.

The applicant's claims

32. The applicant's claims are for payment of two taxed bills of costs in respect of which allocators have been issued in the amounts of R383 067.29 on 29 September 2022 and R144 434.96 on 30 November 2022. This was in the Agri SA action which was since been withdrawn by the respondent, as mentioned above. It is common cause that the costs were taxed and allocators issued in these amounts.
33. The total of these two taxed bills of costs is R527 502.25.
34. As the taxed amounts were immediately payable, the applicant is also entitled to interest on the taxed costs. If the taxed amounts have not been paid (this is an issue dealt with below), interest over the past three years since 2022 would increase the amount due.
35. The costs orders were granted against the respondent in respect of:
- 35.1 The postponement of the trial set down for nine days in the Agri SA action at the request of the respondent who was the plaintiff therein. The cost order was on the scale as between attorney and client.

35.2 An application in terms of Uniform Rule 33(4) for the separation of issues brought by the applicant (as one of the defendants) in the same action which was unsuccessfully opposed by the respondent.

Whether there is a bona fide dispute of applicant's claims on reasonable grounds

36. Kyle & Others v Maritz & Pieterse Inc [2002] 3 All SA 223 (T) at paragraph 13 explained how a debt must be disputed:

“Where the claim of the applicant is disputed the respondent bears the onus to establish the existence of a bona fide dispute on reasonable ground (see *Porterstraat 69 Eiendomme (Pty) Ltd v PA Venter Worcester (Pty) Ltd* 2000 4 SA 598 (C) at 606). The dispute raised by the debtor company must be in good faith. It must be genuine and honest. The dispute so raised must of course be based on reasonable grounds. Therefore, a defence which is inherently improbable or patently false or dishonest would not qualify as a bona fide dispute:

“a debt is not bona fide disputed simply because the respondent company says that it is disputed. A dispute must not only be bona fide or genuine but must be on good, reasonable or substantial grounds. The expression 'genuine dispute' connotes a plausible contention requiring the same sort of consideration as 'serious question to be tried' ”

(See Joubert (ed) LAWSA vol 4 prt 3 at paragraph 113).”

37. The respondent opposes the application, contending that he has settled the cost orders and has no outstanding debt to the applicant.

38. The applicant is a non-profit company that represents and promotes the interests of commercial agricultural producers and agri-businesses in South Africa.

39. An unusual course of events was set in motion in June 2016 when the respondent made an unsolicited offer to arrange a donation of at least R1billion (the amount varies in the papers) to benefit drought-stricken farmers in South Africa. The donation did not materialise. What followed was the

institution of various court proceedings by the respondent against various parties, including the applicant, in which many billions of Rand were claimed.

40. One of these instances of litigation was in 2019, when the respondent instituted a claim in the Pretoria High Court against the applicant and Mr Christo van der Rheede, its former chief executive officer. This is the Agri SA action referred to above. The trial was set down as a special 9-day trial in November 2021. The respondent caused subpoenas to be issued and served on various witnesses to attend the trial, including the President of the Republic of South Africa and the Governor of the Reserve Bank. On the morning of the trial, the respondent said that some of his witnesses had departed from South Africa the previous day as a result of intimidation, and that these witnesses were accordingly unable to testify. He also said that due to the departure of his witnesses, his “*senior legal team*” that was going to come on record for him that morning did not arrive. After hearing opposed argument, the trial was postponed *sine die*, and the respondent was directed to pay the wasted costs occasioned by the postponement on the scale as between attorney and client.
41. After the postponement, the applicant applied for a separation of issues. The respondent opposed this unsuccessfully. A further cost order was granted in the applicant’s favour.
42. These two costs order were taxed and allocated, as mentioned above.
43. Correspondence between the legal representatives of the parties ensued over an extended period of time regarding the outstanding payment of the first taxed bill of costs. The correspondence culminated in the respondent’s attorney confirming that the respondent had taken steps to settle the bill of

costs by selling his immovable property in Hoedspruit. It also informed the applicant that the respondent has instructed his attorneys to confirm that his net assets exceed USD2.5 billion but that circumstances beyond his control had made it impossible to pay the cost orders up to then.

44. On 17 November 2022, the sheriff attempted to execute a writ on the respondent personally at his Hoedspruit address. The return of the sheriff records:

“Subsequently, after I demanded payment of the amount due, I was informed by the abovementioned [the respondent] that it was impossible to pay the amount claimed or any sum. After enquiry no property or assets could be pointed out to satisfy this writ.

THE PLAINTIFF DOES NOT HAVE SUFFICIENT MOVABLE PROPERTY TO SATISFY THE WRIT.

I therefore make a return of ‘NULLA BONA’.”

45. Accordingly, a *nulla bona* return was received from the sheriff.
46. The respondent alleged that the litigation between the parties (including the applicant) was settled in terms of a settlement agreement between parties described as One Vision Investment and Tri-Star Partners. The respondent further alleged that the applicant is a member of Tri-Star Partners, which in turn is a member of the One Vision Investment consortium.
47. No settlement agreement was produced. Nor was any correspondence referring to a settlement agreement. I pointed out to the respondent in argument that that was somewhat implausible, taking into account the vast sums involved, the various instances of litigation covered and that attorneys had been involved. He confirmed that there was no correspondence. All that was produced was an offer by the respondent to settle his vast claims of many tens of billions of Rands for, inter alia, R86 million. Contrary to the assertion of

a settlement agreement having been reached is the letter written by the respondent on 24 July 2024 recording: *“Please be advised that the Settlement Offer (Annexure 1) is consequently herewith withdrawn ...”*

48. On 16 May 2024, the respondent produced documents, purporting to be a ‘credit note’ and ‘statement’ in respect of an account between him, ‘Naspers, One Vision Investments and Tri-Star Partners’ in terms of which these entities were allegedly liable to him in the amount of R11 903 610 000 (over R11.9 billion). His purpose in doing so was to establish payment of the taxed costs owed by him to the applicant by reducing this amount due by ‘Naspers, One Vision Investments and Tri-Star Partners’ to him by the amount of the taxed costs. That is of no legal effect on the costs amounts due and payable because they are due and payable to the applicant and not ‘Naspers, One Vision Investments and Tri-Star Partners’.
49. On 5 June 2024, the sheriff attempted to execute a writ on the respondent personally at the respondent’s new residential address in Hartenbos, Western Cape. The return of the sheriff records:
- “Subsequently, after I demanded payment of the amount due, I was informed by the abovementioned [the respondent] that it was impossible to pay the amount claimed or any sum. After enquiry no property or assets could be pointed out to satisfy this writ. Despite a diligent search and enquiry I could not find sufficient disposable property to satisfy this writ.
I therefore make a return of ‘NULLA BONA’.”
50. Accordingly, a second *nulla bona* return was received from the sheriff.
51. The respondent further contends that the two taxed bills of costs have been settled by means of a transfer of R550 000.00 on or about 21 May 2023 into a *“joint Fortaleza account”* allegedly belonging to the “Tri-Star Partnership”.

Other than his say-so, no evidence of this payment is shared with the court. No proof of payment, correspondence or the like was produced. In ordinary proceedings (action or motion), the onus is on a party alleging payment to prove it (Breitenbach v Fiat 1976 2 SA 226 (T) at 230G). In sequestration proceedings that onus is not on a balance of probabilities but is rather for the respondent to establish the defence of payment on *bona fide* and reasonable grounds. Furthermore, the averred 'Tri-Star Partnership' is not the applicant and payment to it would not constitute payment to the applicant in the absence of agreement thereon, which is not raised in the papers.

52. The respondent also contends that the applicant is jointly and severally indebted to him in the staggering amount of R57 billion. The respondent only attaches a summons prepared by him in this respect. No evidence in support thereof is provided, besides his say-so.
53. The defences raised by the respondents are not supported by any primary facts or evidence. As held in Bidvest Bank Limited v Surtee (2024/073198; 2024/073203) [2025] ZAGPJHC 1134 (10 November 2025) at paragraph 55, "*The answering affidavits delivered by the respondents are replete with conclusions. There are next to no primary facts adduced by them.*"
54. In my view, there is no *bona fide* dispute of the applicant's claims on reasonable grounds.
55. In terms of the taxed bills, the respondent remains indebted to the applicant in the amount of R527 502.25, plus interest.

56. In my view, the applicant's *locus standi* has therefore been established and it is held as such.

Acts of insolvency

57. In terms of section 8(b) of the Act:

“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 disposable property to satisfy the judgment;”

58. The two costs order were taxed and allocated, as mentioned above.
59. As mentioned, on 17 November 2022, the sheriff attempted to execute a writ of execution and issued a *nulla bona* return. In my view, this constitutes an act of insolvency in terms of section 8(b) of the Act.
60. As also mentioned, On 5 June 2024, the sheriff attempted to execute a writ of execution and issued a second *nulla bona* return. In my view, this also constitutes an act of insolvency in terms of section 8(b) of the Act.
61. In his heads of argument, the respondent contends that in the Hoedspruit instance he did not inform the Sheriff that it was impossible to pay and in the Hartenbos instance the Sheriff did not include his contentions as to having R11.9 billion in escrow which the applicant can access for payment against the respondent issuing a credit note. In my view these do not avail him:
- 61.1 It is not evidence (the allegations do not appear in affidavits in the papers).

61.2 The return of a sheriff is *prima facie* evidence of the matters stated therein: section 43(2) of the Superior Courts Act 10 of 2013.

61.3 The onus is on the respondent to show by the *clearest and most satisfactory evidence* that the facts set out in the return are incorrect. See Van Vuuren v Jansen 1977 (3) SA 1062 (T) at 1062H and 1063C: “A sheriff’s return of service is regarded as *prima facie* evidence of the truth of its content. A Court will require clear and satisfactory proof that it is incorrect ... the onus is on the respondent to show by the *clearest and most satisfactory evidence* that the return is impeachable.” Van Vuuren also quoted earlier judgments which held that a return “... can only be impeached on the *clearest and most satisfactory evidence*.”

61.4 The respondent produced no such *clearest and most satisfactory* evidence.

61.5 No evidence before the court detracted from the *nulla bona* nature of the return.

62. In terms of section 8(g) of the Act:

“A debtor commits an act of insolvency ... if he gives notice in writing to any one of his creditors that he is unable to pay any of his debts;”

63. On 5 October 2022, attorneys acting for the respondent informed the applicant’s attorney, in writing, that:

“... should your Client proceed with a Warrant of Execution they will surely not receive the full amount in respect of their Costs when they try to attach our Client’s personal assets.”

64. The respondent argued that this communication was limited to his assets at his home. In my view, this is not what the letter says: it refers to personal assets, which I take to mean assets owned by him personally.

65. In my view, this constitutes an act of insolvency in terms of section 8(g) of the Act.
66. In terms of section 8(c) of the Act:
- “A debtor commits an act of insolvency ... if he makes or attempts to make any disposition of any of his property which has or would have the effect of prejudicing his creditors or of preferring one creditor above another;”
67. The applicant contends that (1) the respondent sold his immovable property in Hoedspruit, (2) the amount and whereabouts of the proceeds thereof are unknown and (3) despite undertaking in writing to pay the outstanding debt from the proceeds of the sale, the respondent intentionally failed to do so.
68. The applicant contends that this constitutes an act of insolvency as contemplated by section 8(c) of the Act. The problem, however, is that it has not been established that the respondent owned the property supposedly to be sold or that was sold. A deeds office history report would have resolved this. However, all that the applicant produced was a limited search which did not show such history.
69. In my view, therefore, no act of insolvency in terms of section 8(c) of the Act has been established, but three other acts of insolvency have been, as canvassed above.

Factual insolvency

70. In ABSA Bank v Van Rhebokskloof (Pty) Ltd 1993 (4) SA 436 (C) at 443C, the court held as follows in respect of factual insolvency:

“Even, however, where a debtor has not committed an act of insolvency, and it is incumbent on his unpaid creditor seeking to sequester the former’s estate to

establish actual insolvency on the requisite balance of probabilities, it is not essential that in order to discharge the *onus* resting on the creditor if he is to achieve this purpose that he set out chapter and verse (and indeed figures) listing the assets (and their value) and the liabilities (and their value) for he may establish the debtor's insolvency inferentially. There is no exhaustive list of facts from which an inference of insolvency may be drawn, as for example an oral admission of a debt and failure to discharge it may, in appropriate circumstances which are sufficiently set out, be enough to establish insolvency for the purpose of the *prima facie* case which the creditor is required to initially make out. It is then for the debtor to rebut this *prima facie* case and show that his assets have a value exceeding the sum total of his liabilities."

71. The respondent argued that his latest SARS declaration establishes that his assets exceed his liabilities by several billion Rand. The validity of the document, the truth of its contents or that it was submitted to SARS was not established. He did not attach any formally submitted documentation or any other substantial evidence to corroborate his assertions. Even were something to have been submitted to SARS, a self-created document does not establish ownership of any assets. He argued that it would not make sense for him to declare this to SARS as it would expose him to tax liability. Two problems with this spring to mind: (1) Actual submissions and proof of submission to SARS were not provided and (2) it would make sense to do this if he was trying to achieve what he argues in this application, namely a vast multi-billion surplus of his assets over his liabilities.
72. The *nulla bona* returns record that the respondent does not have sufficient disposable assets to satisfy his debts.
73. As has already been found, the amounts owed to the applicant by the respondent remain outstanding.
74. In De Waard v Andrew & Thienhaus Ltd 1907 TS 727, it was held at 733:

“Now, when a man commits an act of insolvency he must expect his estate to be sequestrated. The matter is not sprung upon him; first, a judgment is obtained against him, then a writ is taken out, and he must expect, if he does not satisfy the claim, that his estate will be sequestrated. Of course, the Court has a large discretion in regard to making the rule absolute; and in exercising that discretion the condition of a man’s assets and his general financial position will be important elements to be considered. Speaking for myself, I always look with great suspicion upon, and examine very narrowly, the position of a debtor who says “I am sorry that I cannot pay my creditor, but my assets far exceed my liabilities.” To my mind the best proof of solvency is that a man should pay his debts; and therefore I always examine in a critical spirit the case of a man who does not pay what he owes.”

75. The respondent’s failure to pay the amounts owed by him to the applicant is an indication that he is not able to pay his creditors.
76. I asked him in argument whether he knew that, if he paid the R527 502.25 (plus interest) to the applicant, the application for sequestration would fall away. He said that he did and that another Judge in another matter had also mentioned the question of payment to him. He said, however, that he had already paid and on principle he would not pay twice. Three problems with this spring to mind: (1) his assertions of payment do not, in my view, establish a *bona fide* dispute on reasonable grounds for the reasons dealt with above, (2) those alleged payments involve the contortions discussed above, when he averred that he has USD6.3 million (approximately R100 million) available for subsistence and day to day expenses from which the debts could easily have been paid if that was what he intended to do (3) it is inherently improbable that someone with these vast funds available (besides the R86 billion in claims for himself (R57 billion) and his family foundation) would not pay the relatively negligible sum of the taxed costs (under protest) to avoid a sequestration application.

77. In the premise, I am satisfied that a *prima facie* case of factual insolvency has been established.

Advantage to creditors

78. In regard to reason to believe that sequestration will be to the advantage of creditors, it was held as follows in Meskin & Company v Friedman 1948 (2) SA 555 (W) at 559:

“In my opinion, the facts put before the Court must satisfy it that there is a reasonable prospect – not necessarily a likelihood, but a prospect which is not too remote – that some pecuniary benefit will result to creditors. It is not necessary to prove that the insolvent has any assets. Even if there are none at all, but there are reasons for thinking that as a result of enquiry under the Act some may be revealed or recovered for the benefit of creditors, that is sufficient ...”

79. In Commissioner, South African Revenue Services v Hawker Air Services (Pty) Ltd and Hawker Aviation Partnership and Others 2006 (4) SA 292 (SCA) at paragraph 29, Meskin was referred to with approval, the court holding:

“The question is whether the Commissioner has established that sequestration would render any benefit to creditors, given that the partnership is now defunct. The answer seems to lie in those decisions that have held that a court need not be satisfied that there will be advantage to creditors in the sense of immediate financial benefit. The court need be satisfied only that there is reason to believe – not necessarily a likelihood, but a prospect not too remote – that as a result of investigation and inquiry assets might be unearthed that will benefit creditors.”

80. Meskin was also approved by the Constitutional Court in Stratford and Others v Investec Bank Ltd and Others 2015 (3) SA 1 (CC) at paragraph 45:

81. Advantage to creditors can also be established by, for example, the importance that trustees take control of the estate if a debtor is wasting the property of the estate or there is a real concern that the debtor is concealing assets of the estate (Fourie NO v Smith 21145/2011, 21143/2011, 21144/2011) [2012] ZAWCHC 170 (12 September 2012) at paragraph 52(v)),

or may attempt to dissipate assets (Standard Bank v Sauer and Another (18273/2018) [2019] ZAWCHC 28 (12 March 2019) at paragraph 47.

82. The applicant submitted that, considering that all attempts to recover the taxed costs have failed and that the respondent alleges that he has assets, then there is a prospect that he has placed his assets beyond the reach of his creditors. A trustee, however, would have the machinery of the Act at her disposal which may result in any such assets, if they do exist, being uncovered. The applicant contends that there is a not too remote prospect that, as a result of an investigation and enquiry, assets might be unearthed that will benefit creditors.
83. The respondent has described his own financial position as one of fabulous wealth. If any of his allegations are remotely true, the facts of this matter illustrate this alleged wealth is beyond the reach of his creditors. The respondent's purported business interests can be investigated by a trustee for the benefit of the respondent's general body of creditors.
84. In this matter, the respondent brought an application under Rule 30 challenging the whole of the founding affidavit as an irregular step. The application was opposed and argued. Mr Justice Domano dismissed the application with attorney client costs which, I assume, are still to be taxed (because taxed costs in this respect have not been relied upon in this matter). This is a further debt which the respondent has incurred, still to be quantified, which he would not be in a position to do unilaterally if under sequestration. It would advantage creditors were such debt not to be incurred. Further, in the 28 August 2025 Order, it was recorded that the respondent had withdrawn or

would withdraw four of the action proceedings commenced by him (in court the respondent confirmed that those four matters had been withdrawn). The 28 August 2025 Order recorded that the question of costs remained in issue which means there may be further costs incurred in this regard and further cost orders.

85. At the stage when an applicant is applying for a provisional order of sequestration, its burden is to establish on a *prima facie* basis that there is reason to believe that there is an advantage to creditors. In my view, this has been established.

Discretion

86. In ABSA Bank Limited v Cupido N.O and Another (8898/2023) [2024] ZAWCHC 19 (31 January 2024) it was held at paragraph 30 as follows:

“Once the applicant for a provisional order of sequestration has established on a *prima facie* basis the requisites for such an order, the court has a discretion whether to grant the order. Where the conditions prescribed for the grant of a provisional order of sequestration are satisfied, then, in the absence of some special circumstances, the court should ordinarily grant the order, and it is for the respondent to establish the special or unusual circumstances that warrant the exercise of the court's discretion in his or her favour.”

87. In Millward v Glaser 1950 (3) SA 547 (W), it was held as follows at 553F-554A:

“So also where a debtor cannot pay immediately, but is not insolvent, and if given time will be able to discharge the debt, the Court would be justified in exercising its discretion against sequestration ... The discretion of the Court is however not to be exercised lightly, and where an act of insolvency has been proved the *onus* upon the debtor who wishes to avoid sequestration is a heavy one ... I agree with respect with the observation of BROOME, J., in *Port Shepstone Fresh Meat & Fish Co. (Pty.), Ltd. v. Schultz* [1940 N.P.D. 163], that where the petitioning creditor has proved an act of insolvency and reason to believe that sequestration will be to the advantage of the creditors, “very special considerations” are necessary to disentitle him to his order.”

88. No special or unusual circumstances have been established by the respondent on the basis of which the court may exercise its discretion to refuse the application for provisional sequestration. On the contrary, I consider that the circumstances militate in favour of such an order.

89. In the premise, the following order is made:

1. The estate of Mark Erwin Paulsmeier is placed under provisional sequestration in the hands of the Master of the High Court, Cape Town.
2. The respondent, and any party with a legitimate interest in the respondent's affairs, is called to show cause on Tuesday, **24 February 2026**, at 10:00, or as soon thereafter as the matter may be heard, why an order should not be granted in the following terms:
 - 2.1. The provisional order of sequestration be made final.
 - 2.2. The costs of this application (excluding any costs incurred from 6 November 2025 until this order was handed down on 17 November 2025) shall form part of the costs of the administration of the respondent's insolvent estate, such costs to be taxed on a scale as between attorney and client, including the costs of senior counsel to be taxed on scale B.
3. The Sheriff shall attach all movable property of the insolvent estate and shall immediately after effecting the attachment, report to the Master in writing that the attachment has been effected and shall submit with such report a copy of the inventory in terms of Section 19(1) of the Insolvency Act 24 of 1936 .
4. This order shall be:
 - 4.1. Served by the sheriff on the respondent at 1[...] C[...] F[...] Street, Monte Christo Eco Estate, Hartenbos.
 - 4.2. Served by the sheriff on Matilda Helena Paulsmeier at 1[...] C[...] F[...] Street, Monte Christo Eco Estate, Hartenbos, together with a copy of the papers in this application (excluding the Rule 30 application papers).
 - 4.3. Served on the South African Revenue Service, electronically via email at I[...].
 - 4.4. Delivered to the Master of the High Court, Cape Town.
 - 4.5. Served by the sheriff on any possible employees of the respondent by affixing a copy of this order to the front entrance at the respondent's place of residence, being 1[...] C[...] F[...] Street, Monte Christo Eco Estate, Hartenbos.
 - 4.6. Published in one publication each of the following:
 - 4.6.1. The Cape Argus newspaper.
 - 4.6.2. The Burger newspaper.
 - 4.6.3. The Government Gazette.

A Kantor

Acting Judge of the High Court

APPEARANCES

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