



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

|                                |                                                                                                |
|--------------------------------|------------------------------------------------------------------------------------------------|
| (1)                            | REPORTABLE: NO                                                                                 |
| (2)                            | OF INTEREST TO OTHER JUDGES: NO                                                                |
| (3)                            | REVISED:                                                                                       |
| <u>8 December 2025</u><br>DATE | <br>SIGNATURE |

**Case No. 42344/21**

In the matter between:

**THE BODY CORPORATE OF ST TROPEZ**

**Applicant**

and

**LUNESH SINGH**

**Respondent**

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**NEUKIRCHER J:**

1] This is an application for leave to appeal brought by Mr Singh against the provisional order for sequestration granted against him by this court on 29 October 2025.

2] In considering the relief to be granted I have considered, once again, the papers filed, the contemporaneous notes made during argument of the main application, the application for leave to appeal and the argument presented on 3 December 2025 and the judgment handed down on 29 October 2025.

3] Mr Singh argued, once again, the issues raised during the initial hearing including that the application was issued during the time that National State of Disaster had been declared in South Africa and there were strict protocols<sup>1</sup> in place for the hearing of these matters which the Body Corporate had ignored; that the Body Corporate's heads of argument had been filed late and no condonation application had been filed thus the application should not have been adjudicated; that as he had not had time to file heads of argument<sup>2</sup> his right to a fair trial was disregarded; that the court had still had regard to the Body Corporate's heads of argument despite stating that they would not be considered in the adjudication process; that as no proper exposition of his assets and liabilities had been provided by the Body Corporate, there was nothing before court to justify that the order was correct; that his estate was worth over R10 million<sup>3</sup> and thus there were no grounds to justify the relief sought.

4] Mr Singh also argued that another court would come to a different decision as the judgment was clearly wrong and took wrong principles into account, ignored the effect of the National State of Disaster and the protocols issued pursuant to that and that it was in the interests of justice to grant leave to appeal. He also argued that his

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<sup>1</sup> For example, those issued by the Office of the Master of the High Court – these were not attached to any of his affidavits

<sup>2</sup> Because the Body Corporate's heads were not properly before court

<sup>3</sup> A new fact stated in the Application for Leave to Appeal which was not stated in his original Answering Affidavit

right to a fair hearing was not given effect to because of the fact that the Body Corporate's heads of argument were allowed without the necessity of a condonation application, and that he was not given the opportunity to file heads of argument. I do not intend to repeat those portions of the judgment which deal with these arguments – I am not of the view that there is merit in these arguments.

5] Whilst there are many more grounds set out in the application for leave to appeal, many of them simply repeat the above albeit differently packaged.

6] At the hearing it was argued by Mr Meintjies, and I also asked Mr Singh to make submissions, whether or not a provisional order of sequestration is indeed appealable. This question stems from the provisions of s150 of the Insolvency Act 24 of 1936 which states:

**“150 Appeal**

(1) Any person aggrieved by a final order of sequestration or by an order setting aside an order of provisional sequestration may, subject to the provisions of section 20 (4) and (5) of the Supreme Court Act, 1959 (Act 59 of 1959), appeal against such order.

(2) Such appeal shall be noted and prosecuted as if it were an appeal from a judgment or order in a civil suit given by the court which made such final order or set aside such provisional order, and all rules applicable to such last-mentioned appeal shall *mutatis mutandis* but subject to the provisions of subsection (3), apply to an appeal under this section.

(3) When an appeal has been noted (whether under this section or under any other law), against a final order of sequestration, the provisions of this Act shall nevertheless apply as if no appeal had been noted: Provided that no property belonging to the

sequestrated estate shall be realized without the written consent of the insolvent concerned.

(4) If an appeal against a final order of sequestration is allowed, the court allowing such appeal may order the respondent to pay the costs of sequestrating and administering the estate.

(5) There shall be no appeal against any Order made by the court in terms of this Act, except as provided in this section.”

7] Mr Meinjties argued that no appeal lies against the provisional order as no provision is made for such appealability in s150, and that in *Pitello v Everton Gardens Projects CC*<sup>4</sup> Nugent JA stated:

“[27] An order is not final for the purpose of an appeal merely because it takes effect, unless it is set aside. It is final when the proceedings of the court for first instance are complete and that court is not capable of revisiting the order...It is not appealable because such an order is capable of being rescinded by the court that granted it, and it is thus not final in its effect...”

8] Mr Singh argued that it was in the interests of justice to grant leave to appeal most especially because the issue as regards the effect of the National Disaster Directives and Protocols are precedent-setting and will determine how these type of matters should be dealt with in future. He argued that leave to appeal should be granted to allow what he termed “wider audience and a more filmed decision”. He further argued that the concept of the ‘interests of justice’ is in its infancy and that its application to issues dealing with the National State of Disaster is developing law. He

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<sup>4</sup> 2010 (5) SA 171 (SCA)

lastly argued that the decision of *Zweni v Minister of Law and Order*<sup>5</sup> (*Zweni*) should inform the decision on whether an interim order is appealable.

9] In *Siyanda Sabelo Trading (Pty) Ltd v Twin Rivers Homeowners Association NPC*, Vivian AJ stated<sup>6</sup> the following as regards *Zweni*:

“The *Zweni* triad of attributes for an order to be an appealable order, is therefore no longer cast in stone nor exhaustive. But those attributes have also not become irrelevant or supplanted by the development in our jurisprudence. This court has remarked that, “the interests of justice should now be approached with the gravitational pull on *Zweni*.” If one of the attributes is lacking, an order will probably not be appealable, unless there are circumstances which is the interests of justice, render it appealable. The emphasis has moved from an enquiry focused on the nature of the order, to one more as to the nature and effect of the order, having regard to what is in the interests of justice. What the interests of justice require depends on the facts of a particular case. This standard applies both to appealability and the grant of leave to appeal, no matter what pre-Constitution common law impediments may exist.”

10] But s12 of the Insolvency Act makes specific provision for the return date of the *rule nisi* and also makes provision for the discharge of the provisional order in s12(2):

“(2) If at such hearing the Court is not so satisfied, it shall dismiss the petition for the sequestration of the estate of the debtor and set aside the order of provisional sequestration or require further proof of the matters set forth in the petition and postpone the hearing day for any reasonable period but not *sine die*.”

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<sup>5</sup> 1993 (1) SA 523 (A)

<sup>6</sup> Quoting from Koen AJA in *MV Smart: Minnentalis Logistics Zhejiang Co Ltd v Owners and Underwriters of MV Smart and Another* 2025 (1) SA 392 (SCA) at par 32

11] What this means is that Mr Singh will be provided another opportunity to state his case and he is entitled to file such further affidavits as he may wish. It must also be borne in mind that the approach taken by the court to the evidence before it in the provisional and the final stages of a sequestration is different: at the provisional stage the applicant must make out a *prima facie* case; at the final stage a higher degree of proof is required – that of a balance of probabilities.<sup>7</sup> For the reasons set out in the judgment, I am of the view that the Body Corporate satisfied the test for the grant of the provisional order.

12] In my view, the fact that the Insolvency Act itself makes provision for the proverbial further ‘bite at the cherry’ precludes an appeal against a provisional order of sequestration. Section 150 itself talks only to a final order of sequestration and in s150(4) specifically provides that “[t]here shall be no appeal against any Order made by the court in terms of this Act, except as provided in this section.”

13] In *Liberty Group Ltd v Moosa*<sup>8</sup> the SCA found that an order dismissing a final order of sequestration is indeed appealable. But no such finding has been made in respect of a provisional order and given the provisions of s150(4) and s12(2) of the Insolvency Act, that is not surprising.

14] I also find that, apart from the above, there are no interests of justice to be served by allowing a delay in the proceedings: the National State of Disaster has come and gone and the application was launched as far back as August 2021. Mr Singh has

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<sup>7</sup> ABSA Bank Ltd v Erf 1252 Marine Drive (Pty) Ltd and Another (23255/2010) [2012] ZAWCHC 43 (15 May 2012)

<sup>8</sup> 2023 (5) SA 126 (SCA)

had 4 years' worth of opportunities to file proper affidavits in answer to the merits of the provisional relief sought – he has yet to do so. He was given multiple opportunities to file heads of argument – he failed to do so. I have dealt with all these issues in the judgment.

15] In my view, any consideration of the interests of justice in this matter must fall in favour of the Body Corporate.

16] Given the above and the reasons set out in the judgment dated 29 October 2025 and the order granted, there are no prospects of success on appeal and the requirements of s17 of the Superior Courts Act 10 of 2013 have not been satisfied.

**ORDER:**

1. The application for leave to appeal is dismissed with costs, which costs are to be taxed in accordance with Scale B and which costs shall be costs in the sequestration.



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**NEUKIRCHER J**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, PRETORIA**

This judgment was prepared and authored by the judge whose name is reflected, and is handed down electronically by circulation to the parties/their legal representatives

by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 8 December 2025.

Appearances

|                                      |   |                      |
|--------------------------------------|---|----------------------|
| For the applicant – leave to appeal  | : | Mr Singh (in person) |
| For the respondent – leave to appeal | : | Mr Meintjies         |
| Instructed by                        | : | Beyers Inc Attorneys |
| Date of hearing                      | : | 3 December 2025      |
| Date of judgment                     | : | 8 December 2025      |