

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO.: 106283/2023

(1) REPORTABLE: NO

(2) OF INTEREST TO THE JUDGES: NO

(3) REVISED.

DATE: 28/11/2025

SIGNATURE:

In the matter between:

THE BODY CORPORATE BOTHA MANSIONS

Applicant

and

TAKE PRIDE MASETELE

Respondent

[Identity Number: 6[...]]

[unmarried]

JUDGMENT

EASTES AJ:

[1] On 24 November 2025 a return date of a provisional order served before the Court. The provisional order provisionally sequestrated the estate of the Respondent. The Applicant prayed that a final sequestration order be granted. The Respondent prayed that the provisional order sequestrating his estate be discharged, and the sequestration application be dismissed. The application was argued on 24 November 2025, and I issued a final order sequestrating the estate of the

Respondent and order the costs of the Application to be in the sequestration on Scale B. This is a written judgment in support of the order I made on 24 November 2025.

[2] For the purposes of obtaining a final sequestration order the Applicant is required to establish on a balance of probabilities (a) that it is a creditor and has *locus standi* and, (b) that the Respondent has committed an act of insolvency or is insolvent; and (c) that there is reason to believe that it will be to the advantage of creditors if the Respondent's estate is finally sequestrated.

[3] Even if the Applicant establishes the requirements for a final sequestration, this court retains an overarching discretion to order the final sequestration of the estate of the Respondent, but the discretion to refuse a final sequestration order is "narrow". As was stated by Wallis J (as he then was) in First Rand Bank Ltd v Evans, 2011 (4) SA 597 (KZD) at paragraph [27]:

"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. 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."

[4] Section 9(1) of the Insolvency Act, 24 of 1936 (the "Insolvency Act") provides that a creditor who has a liquidated claim for not less than R100.00 may apply for the sequestration of the estate of a debtor. In a sequestration application, it is of no assistance to a Respondent to raise a dispute in respect of the exact amount of his / her indebtedness [see Laeveldse Koöperasie Bpk v Joubert 1980 (3) SA 1117 (T)].

[5] I turn to deal with the nexus between the parties. The Applicant is the body corporate Botha Mansions, a legal person created in terms of the Sectional Title Schemes Management Act, Act 8 of 2011 (the "Schemes Act") for the scheme known as Botha Mansions of which the main office is corner of Huurkor Admin (Pty) Ltd situated at 3[...] H[...] Street, Hatfield, Pretoria, Gauteng.

[6] Huurkor Admin (Pty) Ltd is a company which *inter alia* renders management services to bodies corporate and was appointed as managing agent on behalf of the Applicant to administrate the affairs of the Applicant. The duties of the managing agent include the collection of monthly contributions to the administrative fund of the Applicant, payable by the members of the Applicant, in terms of Section 3(1) of the Schemes Act.

[7] The Respondent is the registered owner of Unit 4[...] (Door No. 6[...]) Botha Mansions, 1[...] C[...] Street, Sunnyside, Pretoria, Gauteng ("the immovable property").

[8] In terms of Section 2 of the Schemes Act, every person who becomes an owner of a unit in a sectional title scheme shall be a member of the body corporate and as such the Respondent in this matter is bound by the rules, regulations and the resolutions of the Applicant.

[9] The Applicant in its capacity as the body corporate is responsible for the enforcement of management rules referred to in Section 10 of the Schemes Act, on owners of units in the said scheme, including *inter alia* the Respondent. The Respondent is liable for levies and associated charges that are payable in respect of the unit in terms of the Schemes Act, which amount is payable by the Respondent to the Applicant on the 7th day of every month. In addition, in terms of the Community Schemes Ombud Service Act, Act 9 of 2011, the Respondent is further liable for the payment of the monthly levy contribution towards the Community Schemes Ombud as with effect from 1 January 2017.

[10] In terms of Section 3(1)(a), (c) and (f) and Section 3(2) of the Schemes Act, the arrear amount that includes contributions and handover fees, may be recovered by the body corporate and in this matter the Applicant from a member or owner of a property forming part and parcel of the body corporate.

[11] The Respondent failed to pay the levies and administration fees in respect of the immovable property of which he is the owner. This led to the Applicant instituting an action against the Respondent. On 15 May 2023 the Applicant obtained a

judgment in the Magistrates' Court for the district of Tshwane Central, held at Pretoria under case number 36903/2022 against the Respondent ("the judgment").

[12] In terms of the judgment, the Respondent was *inter alia* ordered to pay to the Applicant an amount of R14 377.54, together with interest at 20% per annum, calculated from 14 October 2022 to date of payment. The Respondent was ordered to pay the cost of the action on an attorney and client scale. It is common cause that the judgment and costs order has not been satisfied, and that the Applicant is a judgment creditor. The debt steeply escalated.

[13] As at 9 October 2023, the outstanding balance owed by the Respondent to the Applicant in respect of unpaid levies and administration fees escalated to the amount of R44 882.19. The Applicant in this matter is a creditor with a liquidated claim and, accordingly has the necessary and required locus standi to apply for the final sequestration of the estate of the Respondent.

[14] Subsequent to the judgment, the Applicant's attorneys of record attempted to execute the judgment at the immovable property. The sheriff advised that he was unable to execute the Warrants of Execution against the Respondent as the Respondent could not be found at the immovable property. It was advised by the sheriff that the immovable property is constantly locked and after several enquiries, it could not be ascertained whether the Respondent resides at the immovable property. The sheriff indicated to the Applicant's attorneys of record by way of his return of service, that the Respondent did not respond to written messages that the sheriff left informing him to contact the office of the sheriff.

[15] The Applicant's attorneys instructed tracers to locate the Respondent. Those tracers on 11 April 2023, successfully traced the Respondent and revealed that the Respondent's residential address is situated at 4[...] O[...] Way, Calvin, Sandton, 2090.

[16] The Applicant's attorneys of record instructed the sheriff to execute the warrant at the traced residential address of the Respondent. On 3 May 2023, the tracer advised, that he was unable to trace the Respondent as the brother of the

Respondent and, current occupier at the traced address, advised that the Respondent does not reside at the given address.

[17] The Applicant's attorneys again instructed tracers. On 17 May 2023, the tracing agents advised the Applicant's attorneys of record that they have exhausted their resources and that the Respondent could not be located and traced. They supplied the Applicant's attorneys of record with a no trace report.

[18] In a further attempt to locate the Respondent, the Applicant's attorneys of record instructed a different tracing agency to trace the Respondent. On 2 June 2023, the second tracing agency advised that they were unable to locate the Respondent. Then, in a final third attempt to locate the Respondent, the Applicant's attorneys of record instructed a further alternative tracing agency to locate the Respondent. On 9 June 2023, the third tracing agency advised that they were also unable to trace the Respondent, and they also supplied a no trace report to the Applicant's attorneys of record.

[19] The Applicant elected to proceed to institute the sequestration application. In the Founding Affidavit, the Applicant contended on the aspect of insolvency that the Respondent committed an act of insolvency as envisaged in Section 8(a) of the Insolvency Act. The Applicant also in the Founding Affidavit contended that the Respondent committed an act of insolvency as envisaged in Section 8(d) of the Insolvency Act.

[20] The Respondent delivered an Answering Affidavit, consisting of one page and comprising of four paragraphs. The issues raised in the Answering Affidavit is firstly to the effect that the Respondent contends that he has "handed" the property in question to the mortgage holder who has put the asset on the market. The Respondent secondly contended that he had communicated his intentions to the Applicant's attorneys of record, to in the meantime and pending the possible sale of the immovable property by the mortgage holder, to pay monthly levies to the Applicant.

[21] The Respondent thirdly indicated that whatever may be owed to the Applicant body corporate will be settled by the mortgage holder as all the debt has been communicated and the documents were forwarded confirming the debt owed to the Applicant. The Respondent ended in paragraph 4 of the Answering Affidavit to testify to the effect that the situation was because of his unemployment, but that has now changed, but that he feels that the prospect of settling the debt is high.

[22] In the Replying Affidavit, the Applicant indicated that the Respondent in the Answering Affidavit confirmed his intent to sell the immovable property and that constitutes a further act of insolvency as envisaged in Section 8(c) of the Insolvency Act. In addition, the Applicant in the Replying Affidavit indicated that the Respondent offered to make an arrangement with the Applicant for the repayment of his debts in that payment R3 000 per month was offered until the immovable property is sold. Consequently the Applicant contended that another act of insolvency as envisaged in Section 8(e) of the Insolvency Act, was committed by the Respondent.

[23] Turning again to the Respondent's Answering Affidavit, the Respondent did not grapple with the case in Founding Affidavit [see Wightman t/a JW Construction v Headfour, 2008 (3) SA 371 (SCA)]. I therefore accept the version of the Applicant as in the Founding Affidavit. The Respondent had to show in the Answering Affidavit that the Respondent is not insolvent. The Respondent did not deal with the aspect of whether or not he is solvent [see Mercantile Bank Ltd, a division of Capitec Bank Ltd v Ross & Another, (19791/2020) [20231 ZAGP JHC 435 (8 May 2023)]].

[24] It is evident from the Answering Affidavit filed that the Respondent does not dispute the judgment debt owed to the Applicant. It is common cause from the Answering Affidavit that the Respondent did not pay the judgment debt. There is a lack of evidence before this court by the Respondent, showing that the Respondent is not insolvent, or illustrating exceptional circumstances for this Court to exercise its overarching discretion in favour of the Respondent.

[25] In argument the Respondent indicated that he disputed a portion of the debt only that relates to legal fees. The Respondent also confirmed in argument that he has not satisfied the judgment. The Respondent therefore in argument took issue

with the exact amount of the debt. In a sequestration application it is of no assistance to a Respondent to raise a dispute in respect of the exact amount of the indebtedness [see Laeveldse Koöperasie Bpk v Joubert, 1980 (3) SA 1117 (T)].

[26] The enquiry into whether or not a final sequestration order ought to be granted is not only limited to direct evidence, a court can also rely upon indirect or inferential evidence in coming to the conclusion in this matter that the Respondent, not only committed the acts of insolvency, but is insolvent, after all, the Respondent did not pay an admitted debt [see Fedco Cape (Pty) Ltd v Meyer, 1988 (4) SA 207 (E)].

[27] In the matter of De Waard v Andrew & Thienhaus Ltd. 1907 (TS) 727 at 733, the following was said by Innes CJ:

"To my mind the best proof of solvency is that the 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."

[28] I now turn to consider whether the final sequestration of the estate of the Respondent will be to the advantage of creditors. In Stratford & Others v Investec Bank Ltd & Others, 2015 (3) SA 1 (CC) the Constitutional Court held that when determining whether sequestration would be to the advantage of creditors, the term "advantage" is "broad and should not be rigidified". The court went on to state that:

"To my mind, specifying the cents in the rand or "not-negligible" benefit in the contents of a hostile sequestration where there could be many creditors is unhelpful."

[29] The notion of advantage to creditors is a relative and not an absolute one. [See Gardee v Dhanmanta Holdings & Others, 1978 (1) SA 1066 (N)]. The Respondent is the owner of the immovable property. The Applicant indicated by way of a sworn valuation that the property has a forced sale value of R300 000.00 and, a market value of R450 000.00. This is an asset that can be realised and there is a reasonable prospect in my view that payment of a substantial dividend will be

possible for creditors. The Applicant complied with all the statutory requirements as envisaged in Section 9(4A)(a) of the Insolvency Act.

[30] In the premises, I find that:

[30.1] The Applicant is creditor of the Respondent and has the necessary *locus standi*; and

[30.2] The Respondent has committed various acts of insolvency as envisaged in section 8 of the Insolvency Act, alternatively the Respondent is insolvent; and

[30.3] The Respondent does not dispute the indebtedness on bona fide and reasonable grounds at all. He admitted the indebtedness; and

[30.4] It will be to the advantage of the creditors of the estate of the Respondent if the Respondent's estate is finally sequestrated; and

[30.5] There has been compliance with all the statutory requirements for the final sequestration of the estate of the Respondent; and

[30.6] There are no facts before the Court for this Court to exercise its "narrow" overarching discretion in favour of the Respondent or against ordering the final sequestration of the estate of the Respondent.

[31] Consequently and on 24 November 2025, it was ordered that:

[31.1] The estate of the Respondent is placed under final sequestration.

[31.2] The costs of the sequestration application are to be cost in the sequestration on Scale B.

J EASTES
ACTING JUDGE OF THE HIGH COURT
PRETORIA

APPEARANCES:

FOR APPLICANT:

ADV D BROODRYK

INSTRUCTED BY:

ROUSSEAU & ROUSSEAU ATTORNEYS

THE RESPONDENT:

IN PERSON