



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

(1) Reportable: No
(2) OF interest to other Judges: NO
(3) Revised: Yes

Case number: **010020/2024**

28 November 2025

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Signature

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Date

In the matter between:

WILLOW PARK MINOR EXT 86

Applicant

HOME OWNERS ASSOCIATION(NPC)

Registration No. 2016/145980108)

And

NGDANONGOATJE ANNA SIWELA

Respondent

(Marital status, married out of community of property

to Moradia Doctor Masemola)

JUDGMENT

LESO AJ,

INTRODUCTION

1. This is an application for the provisional sequestration of the respondent's estate in terms of section 10 of the Insolvency Act 24 of 1936 ("the Act").

2. The applicant contends that the respondent has committed an act of insolvency as contemplated in section 8(b) of the Act, following the return of a *nulla bona* by the sheriff after attempts to execute a writ of execution issued pursuant to a judgment obtained in the Magistrate Court against the respondent for unpaid levies.
3. The respondent filed her opposition without legal assistance and she continued to argue her case in person.

BACKGROUND FACTS

4. On 1 November 2022 the applicant (a Homeowners' Association) obtained a default judgment against the respondent in the Magistrates' Court for payment of arrears of **R25,490.44** in respect of the levies of the together with interest and costs on an attorney and client scale.
5. The respondent is a member of the Willow Park Manor, Willow Park Manor Extension 86 Homeowners Association (NPC), with the Registration No. 2016/145980108).
6. The applicant alleges that the respondent has failed to comply with her levy obligations in terms of the Memorandum of Incorporation (MOI), resulting in arrears in the levies that had allegedly escalated to R73,894.66.
7. Two attempts were made to execute the writ. On the first occasion, the sheriff attached goods valued at approximately R3,000.
8. On 19 April 2023, the Sheriff served a letter upon the applicants indicating that a Third Party has laid a claim to the attached assets, whereafter the attached movable assets were released.
9. On 11 July 2023 the Sheriff again attempted to execute the writ and issued a *nulla bona* return, recording that the respondent had no disposable property sufficient to satisfy the judgment debt. It is primarily on this return that the applicant bases the present application for sequestration.

10. On 19 June 2024, the application for sequestration was personally served by the Sheriff upon the respondent.

SUMMARY OF EVIDENCE

11. The applicant's case in this application for the insolvency of the respondent is made out as follows:

- 11.1 The contention that the respondent is actually insolvent, in that her liabilities exceed the value of her assets.
- 11.2 The contention that the second requirement for provisional sequestration has been met after the Sheriff attempted to attach the movable property of the respondent on two separate occasions and the second return of service was a *nulla bona* return, which states that the respondent does not have any money or disposable assets, or property which could be attached to satisfy the warrant or any portion thereof.
- 11.3 The contention that the respondent performed an act of insolvency when she allegedly informed the sheriff that she cannot satisfy the debt. According to the applicant, the respondent admitted that she cannot pay her debts when she averred that she was experiencing financial burden associated with the medical expenses of her sickly child.
- 11.4 The applicant relied on *Meskin & Co v Friedman*¹ argued that the sequestration of the respondent would be to the advantage of creditors because the respondent has a magnitude of accounts which are already in arrears in the total amount of R409 489.66. The alleged account in arrears as listed in the applicant's founding affidavit
1. FNB Credit Card R11 452.00
2. DMC 5 R810.00
3. FNB RMB – Private Clients Home Loans R29 472.00
4. Nimble Credit Fund R293 861.00

¹ See *Meskin & Co v Friedman* [1948] 2 ALL SA 416 (W) at page 419

5. Applicant's arrears as of October 2023 R73 894.66.

12. The applicant's counsel proposed that the court consider whether there is a reason to believe that the issue of the benefit of the creditors the sequestration of the respondent would be to the advantage of creditors that as was held in *Friedman*. The court said in this case, that "It is not necessary, either at the first or at the final hearing for the creditor to induce in the mind of the Court a positive view that sequestration will be to the financial advantage of creditors, that it is only necessary that the Court shall be of the opinion that prima facie there is such 'reason to believe that the sequestration of the respondent would be to the advantage of creditors.

Respondents submissions

13. In the opposing affidavit filed by the respondent, she does not address the averments raised by the applicant for the sequestration of her assets, instead, the respondent deals with the defence in the application which was launched in the Magistrate's Court.
14. Only in court, during oral submissions did the respondent argue her case against the application for the sequestration of her assets. The respondent disputed the factual and legal basis on which the application for sequestration is founded. She denied the allegations that she had informed the Sheriff that she had no assets or that she could not pay her debts including the levies. According to the respondent, she was communicating with the respondent's attorney after the default judgment was granted to arrange for payment. She argued that a day after the attachment, she emailed the applicant's attorneys from hospital telling them that she intended to make payment when she is discharged. This was confirmed by the applicant in the founding affidavit.
15. During the hearing, the respondent presented copies of proof of payments of **R4000** from 25 July 2025 to 25 November 2025 towards the default judgment totalling to the amount of **R20,000**. She disputed that she committed an act of

insolvency, or that she was actually insolvent as alleged by the applicant. She asserted that she has made payments towards her levy account. She argued that the applicant's claim that she made "no single payment since August 2020" is false and misleading.

16. The respondent stated that the reason she stopped paying in November 2025 was that she received another notice of bar with a different case number issued by the applicant. She went to investigate the matter at the Magistrate's Court and she enquired further details about the case. She informed by the applicant's attorneys(Looock Du Pisane INC Attorneys) that she intends to defend the matter. Alarming was the applicant's counsel's reaction when the respondent produced proof of payments and a copy of the proof of communication she had sent to the applicant's attorneys of record. The matter stood down for Counsel to verify the information as well as the amount paid by the respondent. What came out of after the adjournment was even shocking as the counsel told the court that the applicant was not aware at the hearing of this matter of another pending case between the same parties under Magistrates' Court case number 18355/2024, nor did they know about the respondent's recent payments of R4,000 per month from July to November 2025.
17. The respondent refuted the allegations by the applicant that she prefers the other creditors over the others because she is paying her house loan only. The respondent asserted that she has no other creditors except the mortgage bond.

ANALYSIS OF FACTS AND THE APPLICABLE LAW

18. The core issue for determination is whether the applicant has established that the respondent committed an act of insolvency or that she is actually insolvent, and whether sequestration would be to the advantage of creditors as contemplated under section 12(1) of the Insolvency Act². This goes to the heart of any sequestration or liquidation application.

² See section 12(1) of the Insolvency Act 24 of 1936 ("the Act").

19. An applicant for a provisional sequestration order must show, on a prima facie basis, the following three jurisdictional facts:
1. That the applicant has a liquidated claim against the debtor of at least R100 as provided in section 9(1) of the insolvency Act;
 2. That the debtor has committed an act of insolvency or is actually insolvent as required in section 8 of the insolvency Act ; and
 3. That there is reason to believe that sequestration will be to the advantage of creditors as required by section 10(c)).

Reliance on a liquidated claim

20. It might be so that the applicant has a liquidated claim against the debtor of at least R100 because the applicant has already obtained a default judgment against the respondent. The challenge with the applicant's reliance on a liquidated claim does not assist the applicant's case because of the incorrect and unreliable averments made by the applicant relating to the alleged amount claimed. The issue here is that the amount alleged to be owing at the time of the sequestration application appears to be inconsistent with the respondent's payment history which was not disputed and the applicant's own statements of account.
21. I am of the view that it is not enough for the applicant to aver a liquidated claim without justification. Surely, a sequestration application must be based on accurate, verified financial facts. The claim must be supported by evidence. The fundamental principle that a claim must be supported by evidence is established through the legal concept of the burden of proof (or *onus probandi*). The party that makes an assertion or brings a claim generally bears the responsibility of proving that claim with sufficient evidence. Failure to provide the required evidence can result in the claim being dismissed.

22. The matter was stood down twice for the applicants' attorneys to verify the payments made by the respondent and to obtain the updated statements. That indulgence did not bear any positive results because the money that the respondent paid into the attorney's account was not accounted for by the attorney and the counsel could not explain what happened to that money. This issue exposes an anomaly in the applicant's claim that the respondent is insolvent.
23. The affidavit deposed to by **Debora Jacoba Retief Coertse**, the portfolio manager of First Property Trust (Pty) Ltd, contains troubling inconsistencies. Despite claiming to be fully acquainted with the applicant's financial records, she failed to acknowledge the respondent's recent payments or the existence of parallel litigation concerning the same levies.
24. The applicant failed to file a supplementary affidavit correcting the arrear amount despite being aware of subsequent payments. Shocking was the fact that the applicant and the counsel were not aware of the payments made by the respondent to Looock Du Pisane Inc and the notice of Bar served on the respondent. In response to this chaos, the applicant's counsel submitted that the supplementary affidavit correcting such inconsistency was 'inconvenient'. This submission is a bad reflection of a legal representative who has no regard for the rule of law and has no interest in pursuing justice. I find the conduct of the applicant and its legal representative before the court unacceptable.

Reliance on the nulla bona return

25. The applicant's reliance on the sheriff's *nulla bona* return of 11 July 2023 to demonstrate that the respondent is factually insolvent or committed an act of insolvency is problematic. This return is a crucial piece of evidence that a debtor has committed an act of insolvency in terms of Section 8(b) of the Insolvency Act 24 of 1936. It is clear from the evidence that the sheriff made no effort to conduct a diligent search for assets after the assets worth R30000 were returned to the third party before issuing a *nulla bona* return. The applicant's reliance on the *nulla bona* return is fatal to the case because the return was

issued more than six months before the application was filed and no evidence was placed before this Court to establish that there has been no material change in the respondent's financial position in the interim. On the contrary, there is evidence presented by the respondent to demonstrate that her financial position has changed since the default award was granted to the extent that he managed to pay R20,000 of the R25,490.44.

26. In *Saber Motors (Pty) Ltd v Moropane, Natalse Landboukoöperasie Bpk v Moolman, and Abell v Strauss*³ 1973 (3) SA 617 (T), the courts held that where a *nulla bona* return is older than six months, the applicant must show that there has been no material alteration in the debtor's financial position. The applicant has failed to do so.

Actual Insolvency and Advantage to Creditors

27. The applicant also failed to impress on the contention that the respondent committed act of insolvency because he failed to pay the amount in terms of the default judgment. The fact that the applicant avers that the respondent informed the sheriff and the applicant's attorneys that she will make arrangements to pay when she is discharged from the hospital discredits the applicant's contention that the respondent confirmed that she cannot pay her debt and therefore performed an act of insolvency.
28. The Court cannot ignore the respondent's assertion that she has been harassed and subjected to pressure to sell her property. While such personal circumstances are not determinative of the insolvency question, they raise concerns about the good faith of the applicant's approach and the conduct of its legal representatives. The fact that she explains her financial challenges since the default court was awarded, including the torment by the applicant with litigation that attracted legal costs even though she challenged the plaintiff's claims for arrears levied in her answering affidavit cannot be inferred that she

³ See *Saber Motors (Pty) Ltd v Moropane, Natalse Landboukoöperasie Bpk v Moolman, and Abell v Strauss*

was admitting that she cannot pay her debts or that her liabilities exceeds his assets.

29. The applicant further relies on a Lightstone Automated Valuation Report showing the value of the respondent's property to allege that sequestration would benefit creditors. This evidence does not take the applicant any further because the respondent has already disputed that she has no other creditors.
28. The applicant's failure to demonstrate a factual basis for actual insolvency or advantage to creditors renders the application fatally defective.
27. The Court is deeply concerned about the conduct of the applicant's attorneys, **Look du Pisane Inc.** The filing of an affidavit containing demonstrably false statements under oath, and the omission of material financial facts, constitutes conduct verging on vexatious litigation. Such conduct undermines the administration of justice and will not be tolerated.
29. This is a frivolous litigation that financially affects the all the members of the Home Owners Association, including the respondent who might not probably be aware of the shady litigation against the respondent. For this reason, the respondent should not contribute to any legal costs and fees due to **Look du Pisane Inc.** No interest, no administration costs of fees related the amount in dispute.
28. The fact that the respondent failed to properly articulate her defence however that does not relieve the applicant's onus to prove

CONCLUSION

28. The applicant has failed to make out a case for the sequestration of the respondent under section 8 of the Insolvency Act.
29. The applicant's case is further undermined by the lack of candour and accuracy in its founding papers.

30. The Court therefore finds that the application for provisional sequestration is without merit and must be dismissed.
31. I also commented on the conduct of the applicants and their legal representative, being fully aware that the court is not ceased with the determination of the conduct of the applicants or their legal representative. I however, cannot turn a blind eye to the unbecoming character and the injustice that the respondent suffered at the hands of **Loock Du Pisane Inc. Attorneys**. Their stance of not reporting monies received from the respondent and serving her with the notice of bar, which they could not explain, is distasteful to say the least.

ORDER

1. The application for provisional sequestration of the respondent's estate is dismissed.
2. The respondent is **exempted** from contributing to the legal costs arising from this application.
3. The respondent's levy invoices shall exclude all legal costs incurred in connection with this application.
26. No order as to costs.



J T LESO

ACTING JUDGE OF THE HIGH COURT

(This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email.)

DATE OF THE HEARING: 13 August 2025

DATE OF JUDGEMENT: 01 December 2025

APPEARANCES

FOR THE APPLICANT:

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