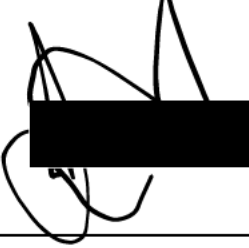


**REPUBLIC OF SOUTH AFRICA**



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

**CASE NO: 2025/108114**

|                                                                                                         |
|---------------------------------------------------------------------------------------------------------|
| 1. REPORTABLE: <del>YES</del> / NO                                                                      |
| 2. OF INTEREST TO OTHER JUDGES: YES/NO                                                                  |
| 3. REVISED: YES / <del>NO</del>                                                                         |
| DATE: 27 January 2025                                                                                   |
| SIGNATURE OF JUDGE:  |

In the matter between:

**THE BODY CORPORATE OF RONELDA PARK**

**APPLICANT**

and

**MASANA MASHABA**

**RESPONDENT**

---

**JUDGMENT**

---

**HERSHENSOHN AJ**

## **Introduction**

[1] This is the return date of a rule *nisi* issued in an application for the compulsory sequestration of the Respondent's estate. The Applicant seeks a final sequestration order and an order that costs be costs in the administration of the insolvent estate.

[2] A provisional sequestration order was granted on 31 October 2025, with the return date set as 26 January 2026.

[3] The Respondent did not deliver an answering affidavit opposing the provisional order, nor were opposing papers filed for purposes of the return date. The matter accordingly proceeded on the papers as filed, save that the Respondent attended in person on the return date, as he apparently did when the provisional order was granted.

[4] At the hearing, the Respondent requested a postponement and an extension of the rule *nisi* to enable him to save funds to obtain legal representation. No application for postponement was filed on affidavit, and was simply argued by the respondent in person and before me.

## **Material background**

[5] The Applicant is the body corporate of a sectional title scheme. Its claim arises from arrear levies due by the Respondent in respect of his unit within the scheme.

[6] On 26 February 2024, default judgment was obtained against the Respondent in the Magistrates' Court for arrear levies in the amount of R37 754.41.

[7] A warrant of execution was issued pursuant to the judgment. The Sheriff was unable to locate attachable assets and issued a *nulla bona* return dated 29 November 2024. The Applicant relies upon this return as an act of insolvency as contemplated in section 8(b) of the Insolvency Act 24 of 1936.

[8] The papers indicate that the levy arrears have increased materially since the granting of default judgment and remain substantially unpaid.

[9] The papers record service of the provisional sequestration order and return-date documents on the Respondent, and service on the Master of the High Court and SARS.

### **The postponement request**

[10] A postponement is an indulgence; it is not there for the taking. It is granted in the Court's discretion, exercised judicially with due regard to fairness, the interests of justice, and the proper administration of the roll.

[11] The approach is well-established. In *Persadh v General Motors South Africa (Pty) Ltd* 2006 (1) SA 455 (SE) at 459E–G, the Court emphasised that the applicant for a postponement bears the onus to show good cause and must place sufficient facts before the Court to enable a proper exercise of the discretion. In *Myburgh Transport v Botha t/a SA Truck Bodies* 1991 (3) SA 310 (Nm) at 314F–315J, the Court identified, among others, the requirement for a full and satisfactory explanation, *bona fides* (as opposed to delay), and consideration of prejudice and costs.

[12] Where a postponement is sought to obtain legal representation, that factor may be relevant; however, it does not automatically entitle a litigant to an extension. The Court must still be placed in a position to assess *bona fides*, at least an outline of the merits, prejudice to the other party (and, in insolvency matters, to creditors), and the appropriate costs order.

[13] In this matter the Respondent's request was made from the bar without any affidavit. He advanced no substantive defence to the sequestration; placed no facts before Court to suggest that he is solvent or that the Applicant's claim is disputed on *bona fide* and reasonable grounds; offered no plan, supported by evidence, to cure the arrears within a defined period; and offered no tender for wasted costs.

[14] In these circumstances, good cause was not shown. The postponement request (insofar as it constituted an application) is refused.

### **The legal requirements: provisional and final sequestration**

[15] Section 10 of the Insolvency Act 24 of 1936 governs provisional sequestration. The Court must be of the opinion that, *prima facie*: (a) the petitioning creditor has a claim; (b) the debtor has committed an act of insolvency or is insolvent; and (c) there is reason to believe that sequestration will be to the advantage of creditors.

[16] On the return day, section 12(1) requires the Court to be satisfied that: (a) the creditor has established the claim; (b) the debtor has committed an act of insolvency or is insolvent; and (c) there is reason to believe that sequestration will be to the advantage of creditors. The matter on the return day is decided on the balance of probabilities.

[17] As to advantage to creditors, the Constitutional Court in *Stratford and Others v Investec Bank Ltd and Others* [2014] ZACC 38; 2015 (3) SA 1 (CC) at paras 43–44 held that advantage means a reasonable prospect (not necessarily a likelihood) of some pecuniary benefit to creditors, and the concept should not be rigidified.

### **Application to the facts**

[18] The Applicant is a creditor with a liquidated claim arising from arrear levies and the Magistrates' Court judgment referred to above.

[19] The *nulla bona* return of 29 November 2024 constitutes an act of insolvency in terms of section 8(b). On the papers before me, that requirement is established on a balance of probabilities.

[20] In addition, the persistent failure to pay due debts is a powerful indicator of commercial insolvency, particularly in liquidation applications. In *Absa Bank Ltd v*

Rhebokskloof (Pty) Ltd and Others 1993 (4) SA 436 (C) at 440F–441A, the Court remarked, in substance, that the sign of solvency is that a debtor pays his debts, and that inability to do so as they fall due is a compelling indicator of insolvency.

[21] Here, the debt has remained unpaid for a prolonged period, and the levy arrears have grown substantially without meaningful reduction. This supports the conclusion that the Respondent is either unable or unwilling to pay his debts as they fall due.

[22] On advantage to creditors, the Applicant relies on the sequestration machinery, including the investigation by a trustee and the realisation process ordinarily available in insolvency. Applying Stratford, I am satisfied that there is reason to believe sequestration will be to the advantage of creditors.

[23] In the absence of answering papers and in light of the undisputed evidence of sustained non-payment and substantial arrears, the requirements of section 12(1) are met and a final order is warranted.

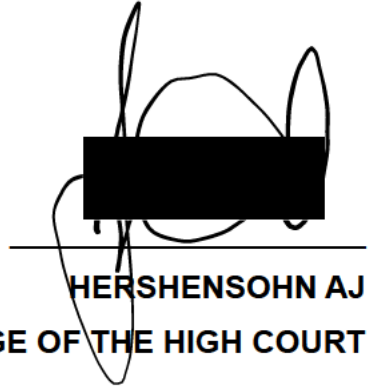
## **Order**

[24] The following order is made:

[24.1] The Respondent's application for postponement (insofar as such application was made) is dismissed.

[24.2] The provisional sequestration order is confirmed and the estate of the Respondent is placed under final sequestration in terms of section 12(1) of the Insolvency Act 24 of 1936.

[24.3] The costs of the application shall be costs in the administration of the insolvent estate.



**HERSHENSOHN AJ**  
**ACTING JUDGE OF THE HIGH COURT**

*This Judgment was handed down electronically by circulation to the parties' and or parties' representatives by email and by being uploaded to CaseLines. The date and time for the hand down is deemed to be 10h00 on this 27<sup>th</sup> day of January 2026.*

### **Appearances**

Counsel for the Applicant: Adv. N M van der Waldt  
instructed by EW SERFONTEIN & ASSOCIATES ATTORNEYS

Counsel for the Respondent: In Person  
Instructed by

Date of Hearing: 26 January 2026

Date of Judgment: 27 January 2026