REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

~~(1)~~	REPORTABLE: ~~YES /~~ NO
(2)	OF INTEREST TO OTHER JUDGES: ~~YES /~~ NO
(3)	REVISED: ~~YES /~~ NO

[redacted]

4 February 2026 ____________________________

DATE SIGNATURE

CASE NUMBER:2022/039556

In the matter between:

BODY CORPORATE OF CHARLEMAGNE **APPLICANT**

And

LEE- ANNE PATRICIA DRYSDALE **RESPONDENT**

Heard: 28 October 2025

Delivered: 4 February 2026

Headnote: Insolvency law –provisional sequestration – non-compliance with statutory requirements – abuse of process – application dismissed

JUDGMENT

WINDELL J:

Introduction

[1] The applicant, the Body Corporate of Charlemagne, approaches this court seeking the sequestration of the respondent's estate in terms of sections 8, 9 and 12 of the Insolvency Act 24 of 1936 ("the Act"). Although the notice of motion is framed as one seeking a provisional order, the applicant's founding papers and heads of argument make it plain that final sequestration is sought.

[2] That approach is misconceived. The Act provides for a two-stage process. First, the court may grant a provisional sequestration order together with a rule nisi calling upon the respondent and other interested parties to show cause on a return date why a final order should not be made. Second, only on the return date, and if the jurisdictional requirements are then shown to be satisfied, may a final sequestration order be granted. Final sequestration cannot be granted at first instance without the intervening provisional stage.

[3] The mischaracterisation of the relief sought is not merely a matter of form. It reflects a failure to appreciate the statutory scheme and the safeguards built into the Act for debtors, creditors, employees and other affected parties. Sequestration orders have far-reaching consequences: upon the grant of such an order, a debtor is divested of his or her estate, which vests in the Master until a trustee is appointed and thereafter in the

trustee. The application must therefore be assessed strictly against the requirements for a provisional sequestration order, failing which it cannot succeed.[1]

Condonation

[4] The application was launched in October 2022. Both parties delivered affidavits outside the time periods prescribed by Rule 6(5). The delays are comparable, both parties seek the indulgence of the court, and no material prejudice has been demonstrated. Applying the interests-of-justice approach articulated in *Grootboom v National Prosecuting Authority,*[2] it is appropriate to admit all the affidavits and determine the matter on its merits.

Background

[5] The respondent is the registered owner of a unit ("the immovable property") within the applicant's sectional title scheme. It is common cause that she has failed to pay levies and related charges for several years. The respondent does not contend that levies are, in principle, not payable. Her explanation for non-payment, as set out in the pleadings, is that a dispute between the parties regarding the levies has persisted since at least 2011, when the matter was referred to arbitration. The arbitration award obliged the respondent to pay levies, but expressly contemplated that the precise amount payable could only be determined once the applicant furnished the arbitrator with an accepted budget and audited financial statements so as to enable a proper debatement and recalculation of the account. The respondent's case is that the applicant failed to comply with these

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[1] *Rent a Tank JHB (Pty) Ltd v FuelGiants (Pty) Ltd and several other matters*. Case no:2025-012156. Gauteng Division Johannesburg. Delivered on 19 May 2025 by Gilbert AJ.

[2] 2014 (2) SA 68 (CC).

requirements and continued to levy charges without implementing the award. On that basis, she withheld payment, making only limited payments totalling R53 068.90 over a period exceeding five years, while disputing the correctness and escalation of the amounts claimed.

[6] The applicant has pursued various enforcement measures. In 2016, the applicant sued the respondent for arrear levies and related charges.[3] On 17 June 2017 the parties concluded a written settlement agreement, made an order of court, in terms of which the respondent acknowledged indebtedness to the applicant in the amount of R379 084.24 and undertook to pay that amount from the net proceeds of the sale of her immovable property. The respondent breached that agreement.

[7] Two attempts were made to execute against the respondent's movable property without success. On 1 November 2019 the applicant obtained judgment against the respondent in terms of Rule 46A of the Uniform Rules of Court and the immovable property was declared executable and a warrant of execution was authorised. A reserve price of R1 900 000.00 was fixed in respect of the property. At the time it was recorded by the court that the respondent owed the applicant an amount of R565 799.26. At that time, the court recorded that the respondent was indebted to the applicant in the amount of R565 799.26. Notwithstanding that order, the property has not been sold in execution and the applicant has received no payment.

[3] Case No: 2016/30340

The nature of the relief sought

[8] The statutory requirements set out in the Act must be strictly complied with before an application for sequestration of a person's estate can be considered. Section 9 prescribes peremptory formal and substantive requirements for the bringing of a sequestration application. These include, inter alia, the disclosure of the debtor's marital status and the full particulars of any spouse; service of the application on the Master, SARS, and, where applicable, the debtor's employees and any registered trade unions; and the furnishing of a valid and timeous certificate by the Master confirming that adequate security has been lodged. In addition, section 9(4A)*(b),* requires the filing of an affidavit by the person who effected service, setting out the manner in which compliance with the service requirements was achieved.

[9] The applicant has failed to demonstrate compliance with these requirements. The papers do not disclose whether the respondent is married or identify any spouse. There is no indication whether the respondent employs a domestic worker or any other employee,[4] nor is there proof of service on SARS and the Master as contemplated in section 9(4) and 9(4A) of the Act. No affidavit has been filed setting out the manner in which compliance with the service requirements was effected, as required by section 9(4A)(b).

[10] Compliance with section 9 is not a matter of form. These requirements serve important protective and informational functions and must be strictly observed. The

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[4] In *Stratford and others v Investec Bank Ltd and Others* 2015 (3) SA 1 (CC) para 37 the Constitutional Court found that employees for purposes of section 9(4A) includes domestic employees. See also *Rent a Tank JHB (Pty) Ltd v FuelGiants (Pty) Ltd and several other matters* para [78] *supra.*

absence of proof of compliance is, in itself, sufficient to preclude the granting of a sequestration order.[5]

Advantage to creditors

[11] Even if statutory compliance were assumed in the applicant's favour, the application falls short on the requirement of advantage to creditors. Section 10 (c) of the Act requires the court to be satisfied that there is reason to believe that sequestration will be to the advantage of creditors. This is a jurisdictional prerequisite.

[12] On the applicant's own version, its claim amounts to R1 453 567.35. The value of the respondent's immovable property is estimated at between R1 900 000 and R2 500 000. The papers, however, are silent on whether the property is bonded, the amount outstanding to any bondholder, or the ranking of secured claims. In the absence of this information, the court is unable to determine whether any proceeds would remain after the satisfaction of secured debts and the costs of realisation and administration so as to yield a dividend to concurrent creditors.

[13] A further difficulty arises from the passage of time. The application was launched in 2022 but was only prosecuted some three years later, in 2025. No explanation is furnished for this delay, nor has the applicant placed updated information before the court regarding the respondent's current financial position, the status of the immovable property, or the position of any secured or concurrent creditors at the time the matter was

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[5] See *Rent a Tank JHB (Pty) Ltd v FuelGiants (Pty) Ltd and several other matters supra.*

argued. In the absence of such contemporaneous evidence, the court is unable to assess whether sequestration would presently serve the collective interests of creditors.

[14] The applicant has not identified any other creditors who would benefit from sequestration, nor has it demonstrated that the general body of creditors would receive a dividend. On the applicant's own showing, it is equally plausible that sequestration would yield no benefit beyond advancing the applicant's individual recovery. That does not satisfy the statutory requirement.

Abuse of process

[15] The context in which the application is brought gives rise to a further difficulty. The applicant already holds two court orders against the respondent: the 2017 settlement agreement made an order of court, and the 2019 judgment declaring the property specially executable. Those orders afford the applicant clear and established execution remedies.

[16] Sequestration proceedings are not designed to serve as an alternative or supplementary debt-collection mechanism where execution remains available.[6] They are instituted not for the purpose of enforcing payment of a debt, but to set in motion the statutory machinery for the declaration of insolvency in the interests of creditors as a whole. As explained in *Naidoo v Absa Bank Ltd*[7] a sequestration order affects not only the rights of the immediate litigants, but also those of third parties: it brings about the

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[6] *Investec Bank Ltd v Mutemeri and Another* 2010 (1) SA 265 (GSJ) at 274-275; *Collier v Priest* 1931 AD 290 at 299.

[7] 2010 (4) SA 597 (SCA) para 4.

distribution of the debtor's estate among creditors, restricts their ordinary remedies, and imposes significant disabilities on the insolvent. It is therefore not akin to an ordinary judgment entitling a creditor to execute against a debtor.

[17] In circumstances where the applicant has not demonstrated that those remedies are ineffective or exhausted, and where no advantage to creditors has been shown, the inference that sequestration is being invoked primarily to enforce payment of a debt cannot be excluded.

[18] Viewed cumulatively, the applicant's failure to comply with the peremptory requirements of section 9 of the Act, to establish as required by section 10(c) that sequestration would serve the collective interests of creditors, and the availability of existing execution remedies compel the conclusion that the application constitutes an abuse of the process of court and that no basis exists upon which even a provisional sequestration order could be granted.

[19] In the result the following order is made:

1. Application is dismissed with costs.

[redacted]

L WINDELL

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

Delivered: 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 4 February 2026.

Appearances

For the applicant:	IT Allis
Instructed by:	Allis Attorneys.
For the respondent:	BSW Marais
Instructed by:	Oosthuizen Caine INC.
Date of Hearing:	28 October 2025
Date of Judgment:	4 February 2026