REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: 2023/046741

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

11 February 2026 ____________________

DATE SIGNATURE

In the matter between:

ATLANTA SUGAR SA (PTY) LTD Applicant

and

SIYABONGA(SIYABULELA) PRINCE NTUTELA 8[…] Respondent

JUDGMENT

WANLESS J

Introduction

[1] This is an application by Atlanta Sugar (Pty) Limited *("the Applicant")* in terms of section 12 of the Insolvency Act 24 of 1936 *("the Act")* for an order placing the estate of Siyabonga (Siyabulela) Prince Ntutela *("the Respondent")* under final sequestration. The Applicant obtained a provisional sequestration order on 10 October 2023. A *rule nisi* was issued by this Court on that date, placing the Respondent's estate under provisional sequestration. Since 10 October 2023 the said *rule nisi* has been extended from time to time. The Respondent opposes the confirmation of that *rule nisi*.

<u>Background</u>

[2] On 25 February 2022, this Court granted summary judgment against the Respondent, as surety and co-principal debtor for Zande Africa (Pty) Ltd *("the principal debtor")*, in the amount of R 439 530.00 *("the capital sum")*together with interest and costs *("the judgment debt").* Subsequent attempts by the Sheriff to execute writs against the Respondent's movable property at his residential and business addresses were unsuccessful.

<u>The facts</u>

[3] The following facts are either common cause or cannot be seriously disputed by the parties, namely:

3.1 The judgment debt remains extant and has not been settled in full.

3.2 Pursuant to the issuing of a writ of execution the Sheriff attempted to execute at the Respondent's gated residence on 30 July, 6 August and 13 August 2022. On each occasion, access-control personnel, acting on the Respondent's instructions, refused the Sheriff entry.

3.3 A second writ was issued and the Sheriff attempted execution at the Respondent's business premises *("The Bakery"),* in Waltloo on 4, 7 and 9 November 2022 and again on 2 December 2022. On 7 November 2022, employees of the aforesaid business were present but the Respondent was allegedly absent. On 9 November and 2 December 2022, the said premises were locked, with a notice on the latter date stating that the business was closed for *"restructuring".*

3.4 On 9 November 2022, the same day as the Sheriff's third attempt to execute the writ at these business premises, the Respondent resigned as a director of the operating company and a 20-year-old proxy was appointed as sole director.

3.5 Between May 2024 and May 2025 the Respondent made ten (10) irregular payments totalling R 140 000.00 towards the judgment debt.

3.6 As at 22 June 2025 the outstanding balance of the judgment debt, inclusive of interest, amounted to approximately R 550 047.05. The payments made by the Respondent have been absorbed by accruing interest and the capital sum remains the same.

Issues

[4] The issues for determination, as per the requirements of section 12 of the Act, are whether:

4.1 the Applicant has established a liquidated claim against the Respondent for not less than R100.00 (*subsection 9(1) read with subsection 12(1)(a) of the Act);*

4.2 the Respondent has committed an act of insolvency or is insolvent *(subsection 12(1)(b) of the Act);* and

4.3 there is reason to believe that it will be to the advantage of the Respondent's creditors if his estate is finally sequestrated (*subsection 12(1)(c) of the Act).*

The Law

[5] As held in the matter of *Courier-IT SA (Pty) Ltd v Van Staden & Another*[1] a judgment debt constitutes a liquidated claim for the purposes of subsection 9(1) of the Act.

[6] With regard to acts of insolvency in terms of section 8 of the Act, a debtor commits an act of insolvency by departing from his dwelling or absenting himself with intent to evade or delay payment. Deliberate conduct preventing the Sheriff from gaining entry to execute a writ of attachment, constitutes such an act.[2] An act of insolvency is committed if a debtor removes or attempts to remove property with the intent to prejudice creditors.[3] In the opinion of this Court, a concerted effort to place assets beyond the reach of creditors, such as through resignation from a company and closure of a business contemporaneous with execution attempts, falls within this provision.

[7] With regard to *" advantage to creditors"*[4] the court need not be satisfied that there *will* be an advantage, only that there is *reason to believe* there will be. This belief must be rational and based on sufficient facts.[5] The advantage need not be immediate financial benefit; it is sufficient if the investigation and enquiry under the Act might unearth assets for creditors.[6] The principle as set out in *Ex parte Anthony en 'n Ander*[7] that the advantage must be real and practical, does not require certainty of a dividend but rather a reasonable prospect based on the evidence.

[8] Whilst it is correct that a court has a discretion in terms of section 12 of the Act, this discretion must be exercised judicially. Sporadic payments

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[1] *[2022] ZAGPJHC 94 at paragraphs [49] to [53].*
[2] *AR v HR, GJ Case No. 3565/2018, (17 Sept 2019).*
[3] *Subsection 8(d) of the Act.*
[4] *Subsection 12(1)(c) of the Act.*
[5] *Firstrand Bank Ltd v Nel* (022940/2022) [2025] ZAGPJHC 617
[6] *Meskin & Co v Friedman* 1948 (2) SA 555 (W).
[7] *2000 (4) SA 116 (C).*

towards a rapidly accruing debt do not, without more, negate the statutory requirements or the need for a formal sequestration where acts of insolvency are present and assets may be concealed.[8] Sequestration is not a punitive measure but a collective remedy for creditors.[9]

The Applicant's case

[9] In very broad summary the Applicant submits that:

9.1 It holds an established liquidated claim in excess of R 100.00. based on the judgment debt.

9.2 The Respondent has committed acts of insolvency by instructing estate security to refuse the Sheriff entry and by resigning as director, together with orchestrating the closure of his bakery to frustrate execution and remove assets from creditors' reach.

9.3 There is reason to believe sequestration will be to the advantage of creditors. The Respondent is a director of multiple active companies and The Bakery has significant assets. Unexplained financial flows and the use of undisclosed bank accounts suggest hidden assets which a trustee, armed with powers under the Act, would be best placed to investigate and realise.

The Respondent's case

[10] The Respondent opposes the final sequestration of his estate on the grounds that:

10.1 He has made substantial payments (R 140 000.00) demonstrating good faith and a willingness to pay.

10.2 Sequestration would yield no dividend as he has no attachable assets. The Bakery has failed and its equipment was surrendered to the landlord.

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[8] *Investec Bank Ltd v Mutemeri* 2010 (1) SA 265 (GSJ) distinguished on facts

[9] *Meskin at footnote 6 ibid.*

10.3 The debt arose during the Covid-19 pandemic and sequestration would cripple his recent economic recovery.

10.4 He did not obstruct the Sheriff and the changes at The Bakery were due to commercial failure, not an intent to prejudice creditors.

<u>Discussion</u>

[11] This Court finds the Applicant's arguments compelling for the following reasons:

11.1. The judgment debt for R 439 530.00, plus interest, constitutes an undisputed liquidated claim well in excess of the statutory threshold.

11.2. Respondent's explicit instructions to refuse the Sheriff entry at his residence on three consecutive occasions has to be accepted as a classic example of evading execution. The pattern of being *"absent"* during attempted executions at the business premises, coupled with the aforesaid refusals to refuse the Sheriff entry to the residential premises, establishes the requisite intent. Moreover, the timing of the Respondent's resignation as director on 9 November 2022 *(the very day of the Sheriff's visit)* followed swiftly by the physical closure of the business, reveals a clear pattern. These were not ordinary commercial events but deliberate steps likely intended to distance the Respondent from the business and shield its assets from creditors. This constitutes an attempt to remove property from the reach of creditors.

11.3 With regard to *"advantage to creditors"* the Respondent's assertion of having no assets is contradicted by the evidence. He is linked to 16 active companies. A promotional video depicted The Bakery as a substantial operation with valuable equipment. There are unexplained deposits and evidence of financial transactions through undisclosed banking accounts. These facts and the evidence of possible hidden assets, provide a rational basis to believe that a trustee's investigative powers may uncover realisable value for creditors. This satisfies the standard as set out in *Firstrand Bank v Nel* and *Meskin*. *Ex parte Anthony*, relied upon by the Respondent, is distinguishable from the present matter since in the application before this Court, there is tangible evidence warranting investigation.

11.4 With regard to the Respondent's opposition to the relief sought the payments made, whilst not insignificant, have been irregular and have failed to prevent the relentless growth of the judgment debt due to interest. They have not reduced the capital sum. The Respondent's case is further undermined by the obstructive conduct towards the Sheriff and the lack of full financial transparency. Whilst the submissions made by the Respondent in the context of the Covid – 19 pandemic may give rise to some sympathy and the somewhat vague references to new business ventures may be cause for some hope, they do not override the commission of acts of insolvency and the reasonable prospect of advantage to creditors through the mechanisms of the sequestration process.

<u>Conclusion</u>

[12] In the premises, this Court is satisfied that the Applicant has met all the requirements of section 12 of the Act, namely:

12.1 A liquidated claim exceeding R 100.00 has been established.

12.2 The Respondent has committed acts of insolvency as contemplated in subsections 8(a) and 8(d) of the Act.

12.3 There is reason to believe that sequestration of the Respondent's estate will be to the advantage of his creditors.

<u>Costs</u>

[13] The general rule is that costs in sequestration applications should be costs in the sequestration of the debtor's estate. There is no reason for this Court to depart therefrom.

[14] This Court makes the following order:

1. The provisional sequestration order granted against the estate of the Respondent on 10 October 2023 is confirmed and the Respondent's estate is placed under final sequestration.

2. The costs of this application shall be costs in the sequestration of the Respondent's estate.

BC WANLESS

JUDGE OF THE HIGH COURT

JOHANNESBURG

Date of Hearing: 29 July 2025

Date of Judgment: 11 February 2026

Appearances

On behalf of the Applicant: Percy Mokoena (Attorney)

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