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

Case Number: 2024-092685

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

13 February 2026 ______________________
DATE SIGNATURE

In the matter between:

FIRSTRAND BANK LIMITED Applicant
(Registration Number: 1929/001225/06)

and

EPHRAIM MBUSO DLAMINI Respondent
Identity Number: 5[…]
Address: 3[…] S[…] Road, R[…], Sandton
Marital status: unmarried

JUDGMENT

WANLESS J

Introduction

[1] This is an application in terms of section 12 of the Insolvency Act 24 of 1936 *("the Act")* for a final order sequestrating the estate of the Respondent. The

application is opposed. FirstRand Bank Limited *("the Applicant")* is a judgment creditor of Ephraim Mbuso Dlamini *("the Respondent")* for a sum, with interest, now exceeding R 48 million. A provisional order of sequestration was granted by this Court on 5 December 2024 and, from time to time, extended to the 27th of February 2026. The Respondent has filed opposing papers and seeks, in addition to the dismissal of the application, leave to prosecute a counterclaim.

Background

[2] The factual and procedural background in this matter is largely uncontroversial. On 22 October 2019, judgment was granted against the Respondent in favour of the Applicant for a capital sum of approximately R 27.6 million *("the 2019 Judgment")*. All subsequent applications for leave to appeal against that judgment, including to the Supreme Court of Appeal and the Constitutional Court, were refused. The judgment is therefore final and binding.

[3] Relying on the 2019 Judgment and a *nulla bona* return of a writ of execution the Applicant instituted this sequestration application in August 2024. The Respondent's estate was provisionally sequestrated on 5 December 2024. Thereafter, the Respondent filed an answering affidavit on the eve of the initial return day, leading to an extension of the *rule nisi.* The Applicant filed a replying affidavit. Thereafter, the Respondent filed an *(irregular)* "amended answering affidavit", in response to which the Applicant filed a "supplementary replying affidavit".

[4] The Master of the High Court has filed a report in terms of the Act, confirming service and publication of the provisional order and noting that no claims have been received. The report raises no objection to the granting of a final order. All procedural requirements under the Act have been properly complied with by the Applicant. This is not an issue between the parties in this application.

The facts

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

5.1. the Applicant holds a final and binding judgment against the Respondent in terms of the 2019 Judgment;

5.2. a writ of execution issued in respect of that judgment was returned by the Sheriff, *nulla bona;*

5.3. the Respondent's indebtedness to the Applicant, as evidenced by a certificate of balance dated 13 August 2024, is approximately R 48 million;

5.4. the Respondent's estate was placed under provisional sequestration on 5 December 2024;

5.5. the formalities regarding service of the provisional order and publication have been complied with;

5.6. The Respondent is an active businessperson with various business interests.

<u>Issues</u>

[6] The issues for determination are:

6.1. whether the Applicant has met the requirements for a final sequestration order as set out in subsection 12(1) of the Act, namely:

(a) a claim entitling it to apply for sequestration;

(b) proof that the Respondent has committed an act of insolvency or is insolvent; and

(c) that there is reason to believe that sequestration of the Respondent's estate will be to the advantage of his creditors.

6.2. whether the Respondent’s defences, including allegations of fraud, *res judicata* and the *in duplum* rule, preclude the granting of the order;

6.3. whether the Respondent should be granted leave to prosecute a counterclaim within these proceedings.

<u>Application of the law to the facts</u>

[7] When this Court applies the correct principles of law to the facts of this matter, it is clear that the Applicant has satisfied the requirements for the final sequestration of the Respondent’s estate, as provided for in the Act. In this regard:

7.1. The 2019 Judgment constitutes conclusive proof of a liquidated claim well in excess of the minimum threshold required by subsection 9(1) of the Act. The Applicant is clearly a creditor with the necessary *locus standi* to institute this application.

7.2. The *nulla bona* return constitutes an act of insolvency in terms of subsection 8(b) of the Act. Furthermore, on the Applicant’s evidence, which stands uncontroverted on this core point, the Respondent is factually insolvent. The Applicant’s schedule indicates liabilities of approximately R 50 million against assets of approximately R 37.5 million, leaving a deficit of at least R 12 million. In opposition thereto, the Respondent’s answering affidavits fail to provide any credible, substantiated evidence of solvency. In this regard, the Respondent’s vague references to assets owned by a third-party company, in liquidation, do not assist him.

7.3. It is fairly trite that the test for whether or not there will be an advantage to creditors if the estate of the Respondent is finally sequestrated, is whether there is reason to *believe* (*not* a certainty) that *some* benefit will accrue to creditors. The Respondent is a person of apparent business means with diverse interests. A trustee would be empowered to investigate these interests and the Respondent’s financial affairs which. in itself, constitutes an advantage. Furthermore, the equity in the Respondent’s immovable properties, exceeding secured claims by approximately R 4 million, offers the prospect of a reasonable dividend for concurrent creditors. This satisfies the requirement.

<u>The Respondent's defences</u>

[8] For the reasons set out hereunder the Respondent's defences are without merit and are not a bar to the final sequestration of his estate.

8.1. As to the Respondent's defence of *res judicata* / issue estoppel, the Respondent's attempt to re-litigate the validity or quantum of the underlying debt is impermissible. The 2019 Judgment is final. The issues he seeks to raise regarding the calculation of the debt; the alleged *"missing"* R 20 million and the events leading to the 2019 judgment, have been conclusively determined by a court of competent jurisdiction. They are themselves *res judicata*. To allow them to be once again addressed in these sequestration proceedings, would be an abuse of process.

8.2. The Respondent's sweeping and serious allegations of fraud, forgery and abuse of process against the Applicant and its attorneys are entirely unsubstantiated by any admissible evidence. As such, they amount to baseless and vexatious allegations. These allegations cannot affect the conclusive effect of the 2019 judgment which forms the foundation of this application *(and the basis of the Applicant's case).*

8.3. The Respondent's complaint that interest has reached the *in duplum* limit is misconceived. The *in duplum* rule applies to pre-judgment interest. Once a judgment is granted, interest prescribed by that judgment runs afresh. The Applicant's certificate of balance demonstrates that post-judgment interest has not exceeded the capital sum of the judgment debt. In any event, even if it had, the Applicant's claim against the Respondent far exceeds the required amount in terms of the Act.

8.4. The Respondent's points *in limine* regarding discovery are opportunistic and irrelevant to the real issues for determination in this sequestration application based on a final judgment. They do not create a *bona fide* dispute of fact regarding the Applicant's claim or the Respondent's insolvency.

The Respondent's alleged counterclaim

[9] The Respondent's attempt to introduce a substantial counterclaim for damages (some R 63 million) and to seek leave to prosecute such counterclaim under the same case number, has been misconstrued by the Respondent. Sequestration proceedings are summary in nature, designed to determine the creditor's claim and the debtor's insolvency. They are not the appropriate forum for the trial of intricate issues of, *inter alia,* fraud and damages. The Respondent's remedy, if he has one, is to pursue a separate action. The interests of justice do not favour burdening this application for the final sequestration of the Respondent's estate with what would effectively be a *"trial within a trial".* In the premises, the application by the Respondent for leave to prosecute a counterclaim in these proceedings must be refused.

Conclusion

[10] The Applicant has established a valid claim; an act of insolvency; the Respondent's factual insolvency and reason to believe that the final sequestration of the Respondent's estate will be to the advantage of his creditors. The Respondent's defences are unsustainable. There is no basis to refuse the final order.

Order

[11] This Court makes the following order:

1. The *rule nisi* granted on 5 December 2024 is confirmed.

2. The estate of the Respondent, EPHRAIM MBUSO DLAMINI (Identity Number: 5[…]), is placed under final sequestration.

3. The Respondent's application for leave to institute a counterclaim under case number 2024-092685, is dismissed.

4. The costs of the application (including the application referred to in paragraph 3 hereof) shall be costs in the sequestration.

BC WANLESS

JUDGE OF THE HIGH COURT

JOHANNESBURG

Date of Hearing: 29 July 2025

Date of Judgment: 13 February 2026

Appearances

On behalf of the Applicant: Adv. M De Oliveira

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On behalf of the Respondent: In person

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