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REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 2024 - 063151

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

.....	
DATE	MOKOSE SNI

In the matter between:

ATTACQ WATERFALL INVESTMENT

COMPANY (PTY) LIMITED

(Registration Number: 2000/013587/07)

First Applicant

EAST AND WEST INVESTMENTS (PTY) LIMITED

(Registration Number: 1954/018444/07)

Second Applicant

and

SOLOMON KGOSITHEBE MAHUMAPELO

Respondent

JUDGMENT

MOKOSE J

Introduction

[1] The applicants, co-owners of the Maxwell Office Park, apply for an order for the final sequestration of the respondent, the provisional order having been granted by Janse van Nieuwenhuizen J on 7 May 2025. At the hearing, the respondent applied for a postponement of the matter. No substantive application for the postponement was before the court. The court ordered that the oral application for the postponement be dismissed.

Brief Facts

[2] The applicants concluded a lease agreement with a close corporation known as Ikageng Web Services and Graphic Design Solutions CC to rent commercial space in the Maxwell Office Park. The respondent signed surety for the indebtedness of the close corporation towards the applicants under the lease. It is common cause that the close corporation fell into arrears with its payment obligations towards the applicants, the consequence of which was the service of summons in the Gauteng Division of the High Court sitting at Johannesburg. Judgement by Makume J in the application for summary judgment was granted on 18 July 2022 against both the close corporation and the respondent in the sum of R895 064,36 together with interest and costs.

[3] On 20 September 2022, a settlement agreement was concluded between the applicants and the respondent, which agreement was made an order of court. In terms of the settlement agreement, the respondent bound himself to settle the debt which at that stage was acknowledged to be the sum of R2 347 839,93 which was payable in monthly instalments of R100 000,00 from 15 October 2022.

[4] The respondent furthermore undertook in the settlement agreement that should any payments not be made promptly, the whole outstanding balance would immediately become due and payable whilst costs on an attorney and client scale would also be recoverable from him.

[5] The applicants contend that the respondent and the tenant, the close corporation, have failed to meet their obligations in terms of the settlement agreement resulting in the applicants' attorneys of record causing a writ of execution to be issued against the respondent and allowing the attachment of funds in the bank account of the respondent for the sum of R2 347 839,93 together with interest thereon. The attachment in respect thereof was unsuccessful in that the sum of R12 500,00 only was available in the account of the respondent.

[6] The applicants further contend that they continued to try to engage with the respondent in an attempt settle the debt. Furthermore, the attempt of service of the writ on known addresses of the respondent failed as he was unknown at the addresses and was as a result unable to execute the writ. These include the following attempts: (1) 12 April 2024 on 1[...] H[...] Crescent Kyalami Glen Estate where the sheriff was informed that the respondent had left the address; (2) 29 April 2024 and 30 April 2024 on 1[...] C[...] Estate where there was a non-service; (3) 30 April 2024 and 2 May 2024 on 5[...] T[...] R[...] where there was non-service; (4) 4 May 2024 on 5[...] T[...] R[...] when the Sheriff was informed by Ms Thuli that the respondent was unknown to her; (5) 6 May 2024 on 1[...] C[...] Estate where there was non-service and a note made by the Sheriff that the respondent appeared to be extremely evasive. Such conduct was seen by the applicants as an attempt to delay and frustrate the execution of the judgment debt whilst diluting his assets.

[7] The respondent does not dispute the debt. He, however, contends that there is no basis to believe that creditors cannot be paid except through the sequestration process and that the application before the court is an abuse of process.

Legal Principles

[8] Section 12(1) of the Act deals with the final sequestration or the dismissal of the petition for sequestration. It provides that if at the hearing pursuant to a *rule nisi* the court is satisfied that the petition creditor has established against a debtor a claim for no less than R100 and that the debtor has committed an act of insolvency or is insolvent and that there is reason to believe that it will be to the advantage of creditors of the debtor that his estate be sequestrated, the court may sequester the estate of the debtor.

[9] Section 12(2) provides that if the court is not so satisfied, then it may dismiss the petition for the sequestration of the estate and set aside the provisional sequestration order or require further proof of the allegations set out in the petition and postpone the hearing for a reasonable period but not *sine die*.

[10] It is trite that for a creditor to succeed in an application for the sequestration of an estate of a debtor, it needs to establish a debt of no less than R100,00 (one hundred rand) which the debtor is unable to contest on reasonable and *bona fide* grounds. It must also be proved that the debtor has committed an act of insolvency and that there is reason to believe that it would be to the advantage of all its creditors that the estate be sequestrated.

[11] The debt is not in dispute between the parties. The respondent contends that there is no basis for the sequestration as he is in possession of assets that exceed the amount of the debt. Furthermore, no *nulla bona* return has been filed by the applicant showing that no assets were found that could be executed against.

[12] It is common cause that the sheriff was unable to execute the writ on numerous occasions, having attended at several addresses noted as belonging and traced to the respondent. The respondent was requested on several occasions by the applicants to disclose and divulge the assets which were available for execution after he indicated that he had sufficient assets to satisfy the debt. He failed to furnish the applicants with the information in the correspondence when requested by the applicants to advise of his assets. Such information is also not dealt with in the answering affidavit which information would have been important in the determination of whether the estate of the respondent should be finally sequestrated.

[13] In respect of the first requirement for a sequestration order, the applicant relies upon the liquidated claim as stated above. The amount is not disputed by the respondent. It follows that the applicant has satisfied the first requirement for the sequestration of the respondent on a balance of probabilities.

[14] The second requirement is that the debtor must have committed an act of insolvency or is insolvent. The respondent denies that he is insolvent and alleges that he has assets that exceed the judgment debt.

[15] An act of insolvency is sufficient for sequestration without the need to prove actual or commercial insolvency, provided that the respondent does not rebut the act of insolvency by producing admissible evidence that his assets exceed his liabilities. This information was called for on numerous occasions by the applicant to no avail. No evidence was disclosed which rebuts the presumption of insolvency. Accordingly, the applicant has satisfied the second requirement for a final sequestration order on a balance of probabilities.

[16] The final requirement is that of advantage to creditors. There must be reason to believe that this application will be to the advantage of creditors. The court in the matter of *Du Randt Richards Inc Attorneys v Scheepers N.O. and Another (Absa Bank Ltd intervening)*¹ held as follows:

“.....when evaluating whether or not there is “an advantage to creditors” no distinction should be drawn between creditors who should be viewed as a single entity. All assets, secured and otherwise, should therefore be place in one imaginary pot. After deducting the costs of sequestration, the remainder available for the benefit of the “general body” i.e. all creditors should then be determined. No creditor should be excluded from this arithmetical calculation which should include all assets, secured and otherwise.”

[17] The phrase ‘advantage to creditors’ is not defined in the Act. However, it is generally accepted that creditors will be advantaged when there is a reasonable prospect of some pecuniary benefit to the general body of creditors as a whole.² The procedure is not intended to benefit one or two creditors only. It is intended to benefit all the creditors. The court in the matter of *Body Corporate of Empire Gardens v Sithole and Another*³ held as follows:

“The purpose and effect of the sequestration process are ‘to bring about a convergence of the claims in an insolvent estate to ensure that it is wound up in an orderly fashion and that the creditors are treated equally.’

¹ [2013] JOL 30519 (GSJ) at para 5

² Steyn v Steyn N.O. and Others 2024 (4) SA 285 (GP)

³ 2017 (4) SA 161 (SCA) at para 9

[18] The respondent contends that there are substantial assets against which the applicant can execute. However, those assets have not been disclosed in the answering affidavit although he contends that he owns various immovable properties and that the bonds registered over those properties are insignificant in that the amounts due were insignificant amounts.

[19] In reply, the applicant avers that their attorneys of record were contacted by attorneys representing Nedbank Limited enquiring about the progress in the sequestration application as they also had an unpaid claim against the respondent.

[20] I am satisfied that there will be an advantage to creditors if the estate of the respondent were to be sequestrated. All creditors will be treated equally and fairly in the sequestration of the estate.

Order

[21] Accordingly, the following order is granted:

1. The respondent's estate is finally sequestrated;
2. The costs of the sequestration application will be costs in the sequestration.

SNI MOKOSE J
Judge of the High Court of South Africa
~ Gauteng Division, Pretoria

For the Applicant: Adv HP Wessels

On instructions of: Van der Merwe & Associates

For the Respondent: Mr K Motshwane

On instructions of: RAMS Attorneys

Date of Judgement: 11 February 2026