IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

Not reportable

Case Numbers: 741/2024 & 742/2024

In the matter between:

THE LAND AND AGRICULTURAL
DEVELOPMENT BANK OF SOUTH AFRICA Applicant

and

JOHANNES RUDOLPH NAGEL Respondent

Coram: Reddy J

Judgment reserved: 13 June 2025

Delivered: This judgment was handed down electronically, circulated to the parties' representatives via email, uploaded to CaseLines, and released to SAFLII. The date and time for the handing down of the judgment are deemed to be on 6 March 2026 at 10h00.

Summary: Insolvency – Sequestration -Provisional - Final Order -Conflict between the finality of litigation and the principle that fraud "unravels everything".

Practice - Judgments and Orders -Binding nature of final orders- Court orders remain enforceable until set aside; a mere allegation of fraud does not automatically stay sequestration proceedings. Evidence - Fraud - Challenges to locus standi -Allegations of misrepresentation regarding cession agreements based on "new facts" -Recognition that fraud claims require proper evidential ventilation beyond affidavits. Court's Discretion - Balanced Approach - Granting a provisional order to prevent irreversible prejudice to the respondent while protecting the creditor from indefinite delay. Use of an ancillary mechanism to expedite the pending rescission action. - Provisional sequestration granted.

JUDGMENT

REDDY J:

Introduction

[1] There are two applications before this Court, under Case Numbers 741/2024 and 742/2024, for the final sequestration of the estate of Mr. Johannes Rudolph Nagel ("the respondent") and his wife. The applications are substantively identical. By agreement between the parties, the arguments in Case Number 741/2024 were heard as the leading matter, with the understanding that the outcome would be dispositive of the application in Case Number 742/2024. This judgment therefore pertains to both matters.

Factual Background and Litigation History

[2] The applications are predicated on a default judgment granted by this Court on 30 January 2020 ("the main judgment"). In terms of that judgment, the respondent, his wife, and the JR Family Trust ("the Trust") were ordered to pay the Land and Agricultural Development Bank of South Africa ("the applicant" or "Land Bank") the sum of R25,628,590.49, together with interest and costs. The respondent's indebtedness arises from his liability as a surety and co-principal debtor for the debts of the Trust.

[3] Following the granting of the default judgment, the respondent and the other judgment debtors launched an application for its rescission. This Court dismissed that rescission application. An appeal against that dismissal was refused by the Supreme Court of Appeal, and a subsequent application for leave to appeal to the Constitutional Court was also refused, primarily on the grounds of an excessive delay and an inadequate explanation for it. The main judgment therefore stands as a final, binding, and unsatisfied court order.

[4] The respondent now opposes the sequestration applications on a new basis. He contends that the main judgment was obtained through the intentional or negligent misrepresentation by the Land Bank regarding its locus standi. He claims that the Land Bank, when it obtained the default judgment, falsely represented itself as the cessionary of the debts owed by the Trust to Suidwes, the original creditor. In support of this, the respondent has launched a fresh action under Case Number 5495/2024, seeking to set aside the main judgment at common law on the grounds of fraud. He argues that these are "new facts" which only came to his attention in February 2024, following the outcomes in similar matters against the Land Bank, such as *Waldeck NO and Others v Land*

and Agricultural Development Bank of South Africa [1] and *Trakman N.O and Others v The Master of the High Court of South Africa, Johannesburg and Others*.[2]

His primary submission is that the sequestration application is premature and must await the finalisation of this pending rescission action.

The Central Issue

[5] The central issue before me is whether a pending action to rescind a final judgment on the grounds of fraud operates as an automatic bar to a sequestration application based on that judgment.

Summary of the Applicant's Submissions

[6] Counsel for the Land Bank, Advocate Cilliers SC, advanced two core arguments. First, he submitted that the main judgment of 30 January 2020 is binding and enforceable. Advocate Cilliers SC posits that in terms of section 165(5) of the Constitution, a court order binds all until set aside by a competent court. Relying on *Department of Transport and Others v Tasima (Pty) Ltd*,[3] he argued that even an allegedly irregular order has legal consequences and must be obeyed. The mere issuance of a new summons does not suspend the operation of a final judgment, nor does it render a sequestration application premature. The judgment constitutes a liquidated claim against the respondent, satisfying a key requirement for sequestration.

[7] Second, Advocate Cilliers SC argued that the only court competent to rescind the main judgment is the Constitutional Court. He traced the litigation

[1] (4013/18) [2019] ZAMPMHC 4 (14 October 2019)

[2] (2020/12432) [2021] ZAGPJHC 168 (21 May 2021)

[3] (CCT5/16) [2016] ZACC 39; 2017 (1) BCLR 1 (CC); 2017 (2) SA 622 (CC) (9 November 2016)

history, pointing out that the issue of locus standi was raised and dismissed in the initial rescission application. That dismissal was taken on appeal, and both the Supreme Court of Appeal and the Constitutional Court refused leave to appeal. Citing *Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State and* Others[4] he submitted that it would be inappropriate and undermine the principle of finality for a lower court to entertain a rescission application pertaining to matters that have been settled by the apex court. To allow the respondent to relitigate these issues in a new action would render the final orders of the higher courts meaningless and invite "legal chaos." He further argued that the respondent cannot rely on *Waldeck* or *Trakman* as those cases are factually distinguishable and do not establish a precedent for fraud in this matter. Moreover, the respondent has failed to make the requisite averments for a common-law rescission based on fraud, which requires proof that the applicant was a party to the fraud and that, but for the fraud, the judgment would not have been granted.

Summary of the Respondent's Submissions

[8] Advocate Janse van Rensburg, counsel for the respondent, countered that the main judgment was obtained by way of motion proceedings where the Land Bank failed to place the foundational agreements (the cession and sale agreements between itself and Suidwes) before the court. He argued that the Land Bank's mere "say-so" in an affidavit, without attaching the "primary facts" contained in those agreements, is insufficient to establish locus standi. He relied on *Die Dros (Pty) Ltd v Telefon Beverages CC*[5] for the principle that secondary

[4] (CCT 52/21) [2021] ZACC 28; 2021 (11) BCLR 1263 (CC) (17 September 2021)
[5] (3413/02) [2002] ZAWCHC 53; [2003] 1 All SA 164 (C); 2003 (4) SA 207 (C) (3 October 2002)

facts and legal conclusions in an affidavit have no evidentiary value in the absence of the primary facts upon which they are based.

[9] The respondent contends that this modus operandi by the Land Bank of refusing to disclose the very agreements that establish its standing has been judicially criticised in matters like *Waldeck* and *Trakman*. In those cases, the courts found that the Land Bank's obstructive approach warranted further investigation into its locus standi. He submitted that these are "new facts" that were not before the court in the previous rescission application, which was dismissed on procedural grounds rather than the merits. Therefore, the argument of res judicata does not apply. He also raised a legal challenge to the validity of ceding future debts, relying on *South African Breweries Ltd v Van Zyl*[6] and *First National Bank Ltd v Lynn NO*[7], arguing that a surety cannot be held liable for future debts of a principal debtor that were not in existence at the time of the cession.

[10] Crucially, the respondent distinguished his current action from the previous rescission application. He argued that the previous application did not deal with the "new facts" of the Land Bank's systemic lack of locus standi. Furthermore, because the Constitutional Court refused leave to appeal based on delay and condonation, the merits of the locus standi defence were never considered by that court. Consequently, he submitted, it is incorrect for the Land Bank to argue that only the Constitutional Court can hear the matter. The pending action in this court does not seek to set aside an order of the

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[6] (381/2004) [2005] ZASCA 93; 2006 (1) SA 197 (SCA) (29 September 2005)

[7] (405/94) [1995] ZASCA 158; 1996 (2) SA 339 (SCA); [1996] 1 All SA 229 (A); (30 November 1995)

Constitutional Court, but the original default judgment of this court, based on newly discovered evidence of fraud.

Legal Analysis

[11] The answer to the core issue before me is an unequivocal 'no'. The principle of finality in litigation is a cornerstone of the rule of law. As was stated in *Camps Bay Ratepayers and Residents Association v Harrison*,[8] the doctrine of *stare decisis* and the principle of finality provide certainty and predictability. A final judgment stands until it is set aside by a competent court. Its validity is presumed, and it remains enforceable.

[12] While fraud unravels everything (*fraus omnia corrumpit*), a mere allegation of fraud is insufficient to stay execution or related proceedings. A debtor cannot hold a creditor at bay indefinitely by simply issuing a new summons. If that were the case, the court process would be held at ransom, and litigation would never end. This is precisely the "intolerable" situation the Constitutional Court warned against in *Zuma*.

[13] In this matter, the respondent has not yet established fraud; he has only launched an action alleging it. The Land Bank has not had the opportunity to defend that action. To grant a stay of these sequestration proceedings on the basis of a mere, unproven allegation would be to grant the respondent the very relief he seeks in the action, without any of the required proof. It would undermine the final and binding nature of the main judgment and the subsequent orders of the Supreme Court of Appeal and the Constitutional Court which refused leave to appeal.

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[8] (CCT 18/10) [2010] ZACC 19; 2011 (2) BCLR 121 (CC) ; 2011 (4) SA 42 (CC) (4 November 2010)

[14] This court is not persuaded that the *Waldeck* and *Trakman* matters assist the respondent at this stage. Those judgments dealt with the Land Bank's duty to discover documents and its locus standi in those specific cases. They do not constitute a binding finding that the Land Bank has no locus standi in this matter, nor do they serve as proof of fraud in the present case. They establish, at best, a basis for the respondent's bona fides in launching his new action, but they do not elevate his unproven claim to a defence that can halt these proceedings.

[15] Furthermore, the respondent's attempt to distinguish his current action from the previous rescission application is, in my view, a distinction without a difference. The core issue, the validity of the Land Bank's locus standi, is the same. The respondent's "new facts" are essentially a new legal argument based on a different interpretation of the same underlying transactional documents. The fact that the Constitutional Court refused leave to appeal on procedural grounds does not give this Court licence to reopen a substantive issue that was or could have been raised in those prior proceedings. The respondent has had his day in court, and the matter has reached finality in the Constitutional Court.

<u>The determination of the appropriate remedy</u>

[16] The foregoing analysis establishes that the respondent's opposition, while raising interesting legal points, does not constitute a legally tenable basis to dismiss the sequestration application or to stay it indefinitely. Aside from this, this Court retains a discretion regarding the appropriate form of relief whether to grant a final sequestration order now, or to adopt the more cautious approach of a provisional order. Advocate Cilliers SC, proposed that this Court should disregard established precedential authority and order the final sequestration of the respondent. At first blush this would appear to be an attractive proposition

but nevertheless would require a revisiting of our jurisprudence in this area of law.

[17] In *Imobrite (Pty) Ltd v DTL Boerdery CC*[9] the court delineated the distinction between provisional and final winding-up orders which principles apply with equal force to sequestration. The difference was articulated in the following way. At the provisional stage, the court need only be satisfied of a prima facie case and that the applicant is clothed with the necessary locus standi. At the final stage, the court must be satisfied on a balance of probabilities that the requirements for sequestration have been met.

[18] The Supreme Court underscored that where a bona fide dispute of fact exists regarding the underlying debt, it may be inappropriate to grant a final order without first affording the respondent an opportunity to present evidence. The court further held that the purpose of a provisional order is to protect the position of all parties pending the final determination of the matter, and that a court should be cautious not to grant final relief where the respondent's opposition, while not defeating the application entirely, raises issues that warrant further investigation.

[19] Our law further recognises that where a judgment debtor has launched a bona fide rescission application with reasonable prospects of success, a court may, in its discretion, stay execution or related proceedings pending the outcome. While a pending rescission application does not automatically suspend a judgment, its existence is a relevant factor in the exercise of judicial discretion.

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[9] (1007/20) [2022] ZASCA 67 (19 May 2022)

[20] Courts are rightly circumspect when invited to make final findings on fraud on the papers. The Supreme Court of Appeal has expressly framed the antecedent question "whether fraud could properly be adjudicated on the affidavits," underscoring that fraud allegations often cannot fairly be determined without proper evidential ventilation. It also reiterated that "fraud, if established, 'unravels everything'… No court will give effect to a fraud", and cautioned that such a finding cannot be made in the absence of the allegedly fraudulent beneficiary.[10] Consistently, the SCA has cautioned that courts are "careful not to find fraud unless it is distinctly pleaded and proved"; and where fraud induces an agreement, the contract is voidable at the instance of the victim further illustrating why a cautious approach is warranted before granting final relief on motion when bona fide and evidentially-supported fraud allegations remain disputed[11]. It axiomatically stands to reason that procedural fairness may require that a party be given the opportunity to establish such fraud before irreversible consequences ensue.

[21] Applying these trite principles to the peculiar facts of this matter, I am of the view that a provisional sequestration order is the more appropriate remedy. This conclusion is predicated on five pillars.

[22] First, while the *Waldeck* and *Trakman* judgments do not establish fraud in this matter, they provide some objective support for the respondent's contention that the Land Bank's locus standi has been judicially questioned in similar contexts. This catapults the respondent's allegations beyond a bare denial or speculative hypothesis.

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[10] See *Bonifacio and Another v Lombard Insurance Company* Ltd (247/2023) [2024] ZASCA 86 at summary; judgment, per Koen AJA.

[11] See *Namasthethu Electrical (Pty) Ltd v City of Cape Town and Another* [2020] ZASCA 74 at paras 25–30).

[23] Second, the respondent does not merely dispute the quantum of the debt or raise a procedural irregularity. He alleges that the very foundation of the creditor's claim, the Land Bank’s legal standing to sue was obtained through misrepresentation. If proven, this would render the main judgment a nullity.

[24] Third, a final sequestration order would irreversibly alter the respondent's position and could render his pending rescission action moot. The appointment of a trustee, the vesting of assets, and the potential sale of property are consequences that cannot readily be undone, even if the fraud claim later succeeds.

[25] Fourth, the Land Bank, while entitled to execute on its judgment, faces only delay if a provisional order is granted with mechanisms for expedited resolution. The respondent faces potentially irreversible prejudice if a final order is granted and his fraud claim later succeeds.

[26] Fifth, the salutary caution echoed in *Imobrite* against granting final winding-up orders where genuine disputes exist about the underlying debt is apposite. While the main judgment is final, the fraud allegations, if established, would vitiate that judgment retrospectively. The Supreme Court of Appeal in *Imobrite* emphasised that the purpose of a provisional order is to ensure that all relevant facts are properly before the court before final relief is granted, particularly where the respondent has demonstrated a bona fide challenge to the foundation of the creditor's claim.

[27] To my mind a balanced approach is required. That being said, this Court is equally mindful of the need to prevent abuse of process and to ensure that the respondent does not use the pending rescission action as a device to pause the

legal process indeterminately. To circumvent this, judicial innovation is required. Dovetailing the provisional order there must therefore be an ancillary mechanism to ensure that the rescission action is accelerated.

Conclusion

[28] The Land Bank has established a prima facie case for sequestration. It is a creditor of the respondent in a liquidated amount, as evidenced by the final default judgment. The respondent has not satisfied that judgment. The applicant has complied with all procedural requirements. The respondent's opposition, based on a pending rescission action, does not defeat the application.

[29] In the exercise of this Court's discretion, and having regard to facts germane to this application, more particularly by the providing some evidentiary support for the fraud allegations it is my considered view that a provisional sequestration order would be apposite. This approach engenders credence to the principle of finality in litigation whilst simultaneously affording the respondent an opportunity to pursue his remedy in the pending rescission action, provided that action is prosecuted with urgency. As enunciated in *Imobrite*, the granting of a provisional order allows for the proper ventilation of disputes while reserving the status quo and protecting the interests of all parties pending final determination.

Costs

[30] The general principle that costs follow the result should apply to the sequestration application independently. However, given that the form of relief granted, which is influenced by the respondent's pending action, it would be appropriate that the costs of this application be costs in the rescission action, to be determined by the court hearing that matter. This ensures that the ultimate

responsibility for costs aligns with the outcome of the fundamental dispute between the parties.

Order

[31] In the result, I make the following order:

In Case Number 741/2024:

1. A provisional order of sequestration is hereby granted against the estate of the Respondent, Johannes Rudolph Nagel (Identity Number: 5[…]).

2. A rule nisi is hereby issued calling upon the Respondent to show cause, if any, on Friday, 19 June 2026 at 10h00, why his estate should not be placed under final sequestration.

3. The Respondent is directed, within fourteen (14) days of service of this order, to take all steps necessary to set down his pending rescission action under Case Number 5495/2024 on an expedited basis, and to prosecute that action with due diligence.

4. Service of this order shall be effected as follows:
   4.1. By service on the Respondent personally;
   4.2. By service on the South African Revenue Service;
   4.3. By publication in the Government Gazette and a local newspaper circulating in the area in which the Respondent resides or carries on business, once.

5. The costs of this application shall be costs in the rescission

action under Case Number 5495/2024.

In Case Number 742/2024:

6. It is recorded that by agreement between the parties, the order in Case Number 741/2024 is dispositive of the relief sought in Case Number 742/2024. Consequently, a provisional order of sequestration is hereby granted against the estate of the respondent in that matter, subject to the same terms and conditions set forth in paragraphs 2 to 5 above.

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JUDGE OF THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

Appearances:

For the Applicant: Adv P.G. Cilliers SC and Adv A. van der Merwe

Instructed by: Leahy Attorneys Inc.
c/o Maree & Maree Attorneys
Mahikeng

For the Respondent: Adv F.G. Janse van Rensburg

Instructed by: Geyser Attorneys
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