IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

(1) REPORTABLE: ~~YES~~ / NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

(3) REVISED: NO

[redacted]

20 February 2026

DATE SIGNATURE

Case number: 2025/136970

In the matter between:

JACOBUS PETRUS FOURIE N.O.	First Applicant
SAFIYAH EBRAHIM COOK N.O.	Second Applicant
and	
CHRISTOFFEL HENDRIK ROOTMAN	Respondent

JUDGMENT

GREYLING AJ

INTRODUCTION

[1] This matter served before me on 4 February 2026, being the return date of a provisional sequestration order granted against the Respondent. The Applicants seek confirmation of the *rule nisi* on an unopposed basis. Sequestration proceedings affect the civil status of the Respondent and engage matters of public interest. The Court is accordingly obliged to satisfy itself independently that the jurisdictional requirements prescribed by sections 9 and 12 of the Insolvency Act, 1936 (the Act) have been met.

[2] From the outset, the court enquired from counsel for the Applicants whether, on the papers before me, a "claim" exists for purposes of sections 9(1) and 12(1)(a) of the Act. The alleged indebtedness of the Respondent arose from payments characterised as impeachable dispositions, which have not yet been set aside by judicial order as provided for in the Act. The matter stood down and, upon request, counsel provided the court with heads of argument for which the court is grateful.

[3] The First and Second Applicants are the duly appointed liquidators of Protectour CC(in liquidation). The Respondent, an adult male and at all material times the sole member of Protectour CC, is married out of community of property. Protectour CC was placed into liquidation by the Respondent pursuant to the registration of a special resolution registered with the Companies and Intellectual Property

Commission. The Applicants were appointed as liquidators in July 2025 and assumed control of the affairs of the close corporation.

[4] Performing their statutory duties, the Applicants investigated the financial affairs of Protectour CC, including reference to its banking records. The investigations revealed that numerous payments were made from the bank account of Protectour CC, over an extended period preceding liquidation.

[5] The Applicants compiled a schedule of payments allegedly made to, or for the benefit of the Respondent, totalling R99 018.39. The payments, ex facie the affidavits submitted, can be summarized as fuel and petrol purchases, groceries and household consumables, medical and pharmaceutical expenses, restaurant and entertainment expenses, utilities and municipal services and direct electronic transfers to the Respondent for, what has been described as, miscellaneous retail purchases.

[6] The payments were made either directly to the Respondent by the Close Corporation, or to third parties for his benefit (so the ostensible argument goes). Having identified objectionable transactions and having formed the view that the underlying causa of the payments are to be set aside as impeachable dispositions, the Applicants, in their capacities as liquidators, demanded payment from the Respondent.

The Respondent acknowledged the receipt of the transfers and payments as alleged by the Applicants. He stated however that these payments ought not to have been made and indicated that he lacked the means to repay it. On the pleadings before me, the Respondent has proferred no explanation for the payments he received. He has not alleged the existence of a loan agreement, a contractual obligation to repay in terms thereof nor any other legally enforceable debt or claim.

THE BASIS OF THE APPLICATION

[7] Based on the aforementioned facts the Applicants allege that Protectour CC (in liquidation) is a creditor of the Respondent in the amount of R99 018.39. I am constrained by the facts as pleaded and, as such, I have a difficulty to determine whether the Respondent's alleged liability is founded upon a claim *ex contractu, ex delicto, ex variis causarum figuris* (from various types of causes) or, as stated by the Applicants, that the payments were *"voidable preferences and dispositions without value notwithstanding Protectour CC being factually insolvent, for his own benefit"*[sic]

[8] The founding affidavit deposed to by the Applicants does not engage any of the initial three categories mentioned above as the basis for the Respondent's indebtedness. To the contrary, the Applicants rely solely upon the construct of the relief catered for as impeachable dispositions as provided in terms of the Insolvency Act. I find this to be the only factual basis upon which, according to their testimony, the Applicants allege to be a creditor of the Respondent.. This alleged indebtedness is not specifically pleaded with reference to any of the relevant sections of the Act but referred to in general.

An argument was advanced that, if any of the sections find Application, the sought relief is competent as the amount claimed is liquid and undisputed and therefore falls within the ambit of either one of sections 26, 29, 30 or 31 of the Act. That argument is misplaced insofar as it does not address the Applicants' core issue being that, insofar as the evidence presented before me, the Applicants have not satisfied the Court that they (nomine officio or otherwise) are a creditor with the requisite *locus standi* to bring the current application..

[9] I raised with the Applicants' counsel whether, on their own pleaded version, the Applicants' claim, with the view of establishing its *locus standi* as a creditor, constituted a claim or debt absent a court order in terms of section 32 of the Act.

[10] The Applicants advanced the argument that it is not necessary to set aside such dispositions and that a liquidated claim requires certainty of amount only and, so they proceeded to contend, sequestration proceedings are not proceedings for the enforcement of a debt. The Applicants argued that, with the Respondent's admissions, the debt has been established and that, accordingly, there was no need for them to further prove their *locus standi qua creditor*. The court was referred to authority, in support of the argument referencing the reported matters of *Kleynhans v Van der Westhuizen NO;* [1] *Hassan and Others v Berrange NO;*[2] *Investec Bank Ltd v Mutemeri*[3] *and Van Wyk Van Heerden Attorneys v Gore N.O.* [4]

STATUTORY FRAMEWORK

[11] Section 9(1) of the Act permits a creditor with a liquidated claim of not less than the prescribed amount to apply for sequestration. The section reads:

"(1) A creditor (or his agent) who has a liquidated claim for not less than 50 pounds, or two or more creditors (or their agent) who in the aggregate have liquidated claims for not less than 100 pounds against a debtor who has committed an act of insolvency, or is insolvent, may petition the Court for the sequestration of the estate of the debtor."

[12] Section 12(1) requires the Court, on the return date of a provisional order, to be satisfied that the Applicant has established a liquidated claim as contemplated in section 9(1), an act of insolvency or factual insolvency and reason to believe that sequestration will be to the advantage of creditors.

[13] Sections 26, 29 and 30 of the Act regulate dispositions without value, voidable preferences and collusive dealings respectively, each providing that a court may set aside such dispositions. Section 31 regulates the consequences of certain impeachable transactions. Ultimately Section 32(3) provides that:

"When the Court sets aside any disposition of property under any of the said sections, it shall declare the trustee entitled to recover any property alienated under the said disposition or in default of such property the value thereof at the date of the disposition or at the date on which the disposition is set aside, whichever is the higher."

ANALYSIS

[14] It is correct that a liquidated claim refers to certainty of amount rather than certainty of legal basis. The authorities relied upon by the Applicants establish no more than that. The authorities presented in argument presuppose the existence of a legally

enforceable claim, the amount of which is liquidated, i.e capable of determination without reference, or being subject to further process. The Applicants do not address the anterior question raised by the court, being whether a debt exists at all where liability is dependent upon the outcome of proceedings to set aside impeachable dispositions.

[15] An impeachable disposition under sections 26, 29 or 30 of the Act is not void *ab initio*. The aggrieved transaction remains valid and effective until set aside by a court. Until such time, the liquidator holds a statutory right of action. The recipient of the disposition does not stand in a debtor–creditor relationship with the insolvent estate. Section 32 makes plain that the obligation to restore property or to pay compensation arises only once the court has exercised its powers to set aside the disposition and to grant consequential relief. This position applies across all categories of impeachable dispositions relied upon by the Applicants.

[16] In seeking their relief, i.e the sequestration of the Respondent, it is trite that the Applicants must satisfy this court that, at a bare minimum, they are a creditor of the Respondent having the necessary *locus standi* as envisaged in terms of the Insolvency Act. If they fail to do so, the application must fail.

It may well be that the Respondent is indebted to the Applicants, the *causae* of which may be established by further evidence not presented *in casu*.

In the present matter however the Applicants rely, to establish their *locus standi*, solely upon their alleged claim against the Respondent as founded in the relief they contend they are entitled to in terms of sections 26 to 32 of the Insolvency Act of 1936. They do so absent an order of this court setting aside the dispositions and, concomitantly, absent a claim capable of being executed upon.

Properly understood, Van Wyk Van Heerden *supra* confirms the supervisory role of the court in insolvency matters and does not support the proposition that a liquidated claim arises automatically upon identification of an impeachable transaction. While sequestration proceedings are not proceedings for the enforcement of a debt, creditor status remains a jurisdictional prerequisite. Sequestration cannot be used to create a debt where none yet exists.

CONCLUSION

[17] On the Applicants' own pleaded case, the alleged claim arises from payments characterised as impeachable dispositions. Vagueness as to which section might be relied upon is irrelevant as the right of action of the Applicants have, has not been converted into a claim in terms of section 32 of the Act. In the absence of such an order no claim exists for purposes of sections 9(1) and 12(1)(a) of the Act. The Applicants have accordingly failed to establish a valid claim and therefore, have failed to establish their *locus standi* to bring these proceedings..

ORDER

[18] In the result, the rule *nisi is* discharged and the application for the final sequestration of the Respondent's estate is dismissed.

[redacted]

PJ GREYLING

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

REPRESENTATION FOR PARTIES:

FOR THE APPLICANTS:

Adv.________________________

Instructed by __________________

FOR THE RESPONDENT

Adv.________________________

Instructed by __________________

AUTHORITIES

1 Kleynhans v Van der Westhuizen *NO* 1970, (2) SA 742 (A) at 749E–750B.

2 Hassan and Others v Berrange *NO,* 2012 (6) SA 329 (SCA) at para 35.

3 Investec Bank Ltd and Another v Mutemeri and Another, 2010 (1) SA 265 (GSJ) at paras 27–31.

4 Van Wyk van Heerden Attorneys v Gore *N.O,* 2023 (1) SA 80 (SCA)