IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

Not reportable

Case no:510/25

In the ex parte application of:

JOSIAS PAULUS GERINGER First Applicant

and

MICHELLE GERINGER Second applicant

Coram:	Wessels AJ
Heard:	18 September 2025
Reserved:	24 October 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 10h00 on 17 March 2026.

Summary: Insolvency – Voluntary surrender – Application for – Applicants previously entered debt review in 2019, which was terminated – Applicants failed to provide information regarding investigation into reckless credit as mandated by s 86(6) of the National Credit Act 34 of 2005 – Applicants' monthly expenses exceed income, resulting in monthly deficit even before payments to creditors – Applying principles in *Ex parte Van Staden*, the mere statement that debt review was terminated, without further information, leaves court unable to consider reckless credit – Sequestration is remedy of last resort – Applicants failed to demonstrate why remedies under NCA, including investigation into reckless credit and debt restructuring, would not be more appropriate – Advantage to creditors not established – Application dismissed.

JUDGMENT

Wessels AJ

Introduction

[1] This is an application for the voluntary surrender of the joint estate of the applicants, who are married in community of property. The matter served before me on the unopposed motion roll on 11 September 2025. On that date, I stood the matter down to 18 September 2025, pending the outcome of the Full Court judgment of this Division in *Ex parte Van Staden*[1], which dealt with similar issues. When called on 18 September 2025, counsel who

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[1] Reported as *Van Staden v Van Staden* (FC2/25; 1536/24) [2025] ZANWHC 210 (23 October 2025).

appeared initially in the matter (on 11 September 2025) indicated that he was not briefed again for the appearance on 18 September 2025, and I stood that matter down pending the handing down of the Full Court judgment. The judgment in *Van Staden* was subsequently handed down on 23 October 2025. The principles enunciated therein are directly applicable to the present application.

The applicants' case

[2] The first applicant is employed as a store manager earning R29 496.87 per month. The second applicant is unemployed. Their joint monthly expenses total R31 940.00, resulting in a monthly shortfall of approximately R2 443.13. The total liabilities of the parties amount to R175 434.27, owed to three creditors: Standard Bank (R49 188.33), Woolworths (R76 044.20), and Direct Axis (R50 201.74). All of these are credit agreements regulated by the National Credit Act[2] ('NCA').

[3] The parties' assets consist solely of movable property, valued at R22 000.00 on a forced-sale basis, and cash of R46 000.00 held in their attorney's trust account. This cash amount was raised through family assistance, the sale of some assets, and the conversion of accumulated leave.

[4] The applicants state that they entered debt review in 2019, but the process was terminated when they could no longer afford the monthly instalments.

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[2] National Credit Act 34 of 2005.

[5] The reasons for applicants' financial woes, as cited in the application, inter alia include the rising cost of living and the first applicant's relocation to Rustenburg, which increased rental expenses. The applicants calculate a dividend of approximately 20 cents in the rand after deducting sequestration costs of R33 446.60 from total unencumbered assets of R68 000.

The requirements for voluntary surrender

[6] The requirements for an application for voluntary surrender have been dealt with extensively in *Van Staden*. For purposes of this judgment, I need to deal with these requirements cursorily.

[7] Section 6(1) of the Insolvency Act[3] ('Insolvency Act') requires a court to be satisfied that the provisions of s 4 have been complied with, that the estate is insolvent, that there is sufficient realisable property to defray sequestration costs, and that it will be to the advantage of creditors if the estate is sequestrated. The use of the word *'may'* confers a discretion on a court, even where all requirements are met. The advantage to creditors is the paramount consideration, and the test in voluntary surrender is more stringent than in compulsory sequestration applications to the extent that a court must be satisfied that it will be to the advantage of creditors, not merely that there is reason to believe so. Sequestration is a drastic remedy and one of last resort, to be considered only if alternative remedies have proved unsuccessful or are inapplicable.

[8] Flowing from *Van Staden*, the following principles, are binding on this Court; First, the advantage to creditors is the paramount consideration, and

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[3] Insolvency Act 24 of 1936.

the test in voluntary surrender is more stringent than in compulsory sequestration: a court must be satisfied that it will be to the advantage of creditors, not merely that there is reason to believe so; Second, sequestration is a drastic remedy and one of last resort, to be considered only if alternative remedies have proved unsuccessful or are inapplicable; Third, the NCA provides a range of remedial relief that can be tailored to the justice of a particular case, and s 85 applies to any court proceedings in which a credit agreement is being considered, including voluntary surrender applications; Fourth, where a debt counsellor has conducted an assessment, s 86(6) of the NCA requires an investigation into reckless credit. The mere statement that debt review was terminated, without providing further information on its implementation or failure, has the effect that a court cannot consider the issue of reckless credit; Fifth, applications for voluntary surrender are *ex parte* in nature and the utmost good faith. Compliance with formal requirements does not mean that an application should consist of a mere tabulation of the bare minimum.

Application of the Van Staden principles to this matter

[9] Measured against the principles laid down in *Van Staden,* the present application must fail. The applicants state that they entered debt review in 2019 and that it was terminated. Applying the principle from *Van Staden* that the mere statement that debt review was terminated, without further information on its implementation or failure, leaves a court unable to consider the issue of reckless credit. I find that the applicants have failed to place sufficient information before this Court. What is conspicuously absent is any information regarding what investigation the applicants' debt counsellor conducted into reckless credit as mandated by s 86(6) of the NCA, whether any recommendation was made in terms of s 86(7), whether the possibility of

a declaration of reckless credit was explored, the applicants' financial position at the time each credit agreement was concluded or any attempts made to renegotiate payment terms directly with creditors before resorting to sequestration.

[10] The applicants' calculation of a 20-cent dividend depends entirely on the forced sale of their movable assets. I am enjoined to consider whether the machinery of the NCA might yield a better result for creditors. Upon careful consideration, I find that such consideration weighs against the granting of the order.

[11] The applicants have a combined monthly income of R29 496.87. Their expenses, excluding payments to creditors, total R31 940. This means that even before making any payment to creditors, the applicants have a monthly deficit. On these figures, it is difficult to see how the credit granted to the applicants could be anything other than reckless when one considers the statutory affordability assessments that ought to have been conducted.

[12] The NCA provides various remedies that could potentially assist the applicants without the drastic consequences of sequestration. A declaration of reckless credit could result in the suspension of agreements or the setting aside of obligations. Debt rearrangement could extend repayment periods and reduce monthly instalments. These remedies would preserve the applicants' assets while still ensuring that responsible creditors receive payment. The applicants have failed to demonstrate why remedies available under the NCA would be less appropriate in their circumstances.

[13] The source of the R46 000 in the attorney's trust account is explained as family assistance, sale of assets, and conversion of accumulated leave

remuneration. However, what is not explained is why these funds could not have been applied to the debt review process or to negotiating settlements with creditors. The founding affidavit largely mirrors the statement of affairs and provides for little beyond the statutory minimum. This Court was required to be furnished with sufficient information to exercise its discretion, which the applicants failed to provide.

Conclusion

[14] I am not satisfied that it will be to the advantage of creditors to sequestrate the applicants' estate. The applicants have failed to demonstrate why the remedies available under the NCA, including an investigation into reckless credit and potential debt restructuring, would not be more appropriate in their circumstances. The scant information available regarding the terminated debt review process leaves me unable to assess whether those remedies were properly explored.

[15] In the last instance, although the formal requirements of s 4 of the Insolvency Act have been met, the advantage to creditors, which is the paramount consideration, has not been established.

Order

[16] In the result, the following order is made:

The application for the voluntary surrender of the applicants' estate is dismissed.

[redacted]

M WESSELS

ACTING JUDGE OF THE HIGH COURT

NORTH WEST DIVISION, MAHIKENG

Appearances

For applicant	:Adv B Riley
Instructed by	:Herman Scholtz Attorneys
	:Mahikeng