

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO:021127/2024

(1) REPORTABLE: NO

(2) OF INTEREST TO THE JUDGES: NO

(3) REVISED.

DATE: 12/03/2026

SIGNATURE:

THE PRUDENTIAL AUTHORITY

Applicant

And

ELSIE RIFOMANE MATHEBULA

Respondent

Delivered: This judgment is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading to Caselines. The date and time of hand-down is deemed to be 14:00 on 12 March 2026.

JUDGEMENT

LENYAI J

[1] This is an application by the Prudential Authority (the applicant) seeking an order of final sequestration of the Elsie Rifomane Mathebula's estate (the respondent) in accordance with sections 83(3)(b) and 84(1A)(c) of the Banks Act 94 of 1990 ("Banks Act"). This application follows a provisional sequestration order that was granted by the court on 3 March 2024.

[2] The respondent raised the following defences against the applicant's case:

2.1 non-joinder: the respondent indicates that because she co-owns the im-movable property that is subject to the sequestration application in question located in Rabie Ridge with Mr Malungane Mphahlele Midas, he ought to be joined in the proceedings;

2.2 the alleged material dispute of fact: the respondent also indicates that this matter will be better dealt with through action proceedings as opposed to motion proceedings as there is a genuine and material dispute of fact that is likely to emerge;

2.3 the alleged non-receipt of section 83 notice;

2.4 that most depositors have either been repaid or have otherwise benefited from the scheme, and that the applicant has failed to provide a proper list or schedule identifying which depositors remain unpaid. On this basis, the respondent contends that the applicant's claim is not a liquidated claim, is genuinely disputed, and gives rise to a bona fide dispute of fact warranting referral to oral evidence; and

2.5 that the respondent is not insolvent and is able to pay her debts.

[3] The following are common cause facts:

3.1 The respondent does not dispute the applicant's *locus standi* or its statutory powers and responsibilities;

3.2 The respondent admits that her bank account received deposits from members of the public in connection with the TVI schemes;

3.3 The respondent confirms that she has not repaid any monies in terms of the demand Notice;

3.4 The respondent engaged in conduct amounting to the business of a bank without being registered or authorised in terms of the Banks Act;

3.5 To date, the respondent admits that she has not made repayments through the Prudential Authority but rather alleges that she has made payment directly to members of the public;

3.6 There has been no formal challenge or review of the Solvency Report, and the findings made by the inspectors, which sets out the respondent's total indebtedness, including accrued interest, as at May 2023;

3.7 The respondent confirms that upon the infamous search and seizure at her house in 2014, she repaid or refunded participants at their requests;

3.8 The applicant does not have a schedule of creditors for the amounts reflecting at paragraphs 23 and 24 of the founding affidavit respectively;

3.9 The applicant is uncertain as to whether the deposits reflecting as per the mentioned paragraph were repaid and or refunded;

3.10 The applicant has not confirmed with the depositors or participants as whether they were ever repaid or refunded;

3.11 That the deposits remain probable and possible TVI deposits.

[4] The applicant submits that it became apprised or aware that a certain business trading as 'Travel Venture International and/or TVI Express Makers and/or TVI Express and/or any related person or entity' (the TVI Schemes) was conducting the business of a bank or a mutual bank without being registered as such or without any authorisation to do so in accordance with sections 17 and 18A(1) of the Banks Act and/or the provisions of the Mutual Banks Act 80 of 1998, as amended. As a result of such knowledge, three temporary inspectors namely, Johannes Kruger ("Kruger") and Mandy Munro-Smith and Matthew Purchase were appointed by the

former Deputy Registrar of Banks, advocate Michael Blackbeard to investigate the business practice of this entity.

[5] The TVI Schemes are international, direct selling companies with alliances and channel partners across the world. The TVI schemes then market the sale of travel vouchers, which purportedly give the recipient substantial discounts for international travel and accommodation. However, the alliance partners who are purportedly linked to the TVI Schemes are not in fact partners, and the marketed relationships are in fact, fraudulent.

[6] This investigation indicated that South Africa houses approximately 5742 members/distributors of the TVI Schemes across all provinces and the majority of them are based in Kwa-Zulu Natal. The respondent became the subject of the investigation as the three inspectors appointed were mandated to investigate everything related to this scheme.

[7] The inspectors unearthed copies of the bank statements of the respondent from the following two accounts Capitec Bank account number 1[...] and Standard Bank account number 0[...]. From these bank statements, the following was obtained:

(a) Capitec Account:

1. The respondent had 658 transactions consisting of 100 inflows for an aggregate amount of R 1 092 296.31 and 558 inflows for an aggregate amount of R 1 092 251.77 for the period between 11 May 2010 and 31 July 2013.

2. From these transactions approximately:

2.1. R 561 00.00 are probable TVI investor deposits;

2.2. One transaction of an amount of R 21 600.00 has been traced to Mrs Getrude Tshabalala ("Mrs Tshabalala") an alleged TVI operator who forms the subject of a separate investigation;

2.3. Six transactions for an aggregate amount of R 291 600.00 (the Source of which appears to be Mrs Raesetja Motimele) who is an alleged TVI Operator, subject to a separate TVI investigation;

2.4. Deposits in the amount of R 109 600.00 are possible TVI investor deposits (based on the evidence gathered by the Inspectors);

2.5. Two transactions totaling an amount of R 88 000.00 reflected the description "Absa bank Rachel Transfer". The investigators are of the view that the reference to "Rachel" may be related to Mrs Raesetja Motimele;

2.6. One transaction of an amount of R 11 000.00 reflected the description "Capitec System Deposit Thandi Mahlangu Transfer 0172276979". The source of the funds has been established to be Mrs Lovedalia Thandekile Mahlangu ("Mrs Mahlangu"). Mrs Mahlangu confirmed that she loaned the respondent this money for TVI.

3. The balance of the funds flowing through the account were unrelated to the institution's involvement in the TVI Scheme.

(b) Standard Bank Account:

1. The respondent had 561 transactions consisting of 91 inflows for an aggregate amount of R 811 014.19 and 470 outflows for an aggregate amount of R 812 038.47 for the period between 1 July 2009 to 10 May 2013.

2. From these transactions approximately:

2.1 Deposits in the amount of R 21 600.00 are probable TVI deposits (based on evidence gathered by Inspectors).

2.2 The balance of the funds flowing through the account were identified or unrelated to the Institution's involvement in the TVI Schemes.

[8] As a result of the investigation, it was found that the respondent participated in the TVI Scheme and the conduct of receiving money and paying it from and to various investors in the TVI Schemes constituted conducting the business of a bank in accordance section 11(1) of the Banks Act and such conduct was not approved in accordance with the provisions of section 18A (1) of the Banks Act hence, it is unlawful and illegal. The respondent was thus found to be in contravention of the Banks Act, and the Mutual Banks Act in addition to conducting the business of a bank without authorisation.

[9] On or about 25 April 2014, Kruger was then appointed by the former Deputy Registrar of Banks Nkosana Mashiya ("Mashiya") as the Repayment Administrator in order to facilitate the recovery and repayment of the monies attributable to the respondent in terms of the investigation conducted and this was done in terms of section 84(1) read with section 83(1) of the Banks Act. Following this appointment, Mashiya directed, by means of a notice issued in terms of Section 83(1) read with section 84 of the Banks Act, the respondent to repay all the monies obtained pursuant to the TVI Schemes ("The Section 83 Notice").

[10] The Section 83 Notice contained the following contents:

10.1 The Applicant concurred that there had been a contravention of the Banks Act by the respondent in that *inter alia*, the respondent is deemed to have conducted the business of a bank whilst not being registered as such in terms of the Banks Act;

10.2 The respondent is to pay all monies obtained from members and/or participants and/or investors under the TVI Scheme, insofar as such money has not been repaid;

10.3 The repayment amounts are to include, where applicable, any bank interest that may have lawfully accrued on such amounts;

10.4 Repayment by the respondent and the rest of the institution of all monies shall, subject to the relevant provisions of the Banks Act, be controlled by Kru-ger, being the duly appointed Repayment Administrator and completed within such a period and/or on such date as the authority, may determine;

10.5 Failure or refusal to comply with the directive contained in the notice may result in the respondent being found guilty of an offence and be deemed unable to pay her debts and/or to have committed an insolvency.

[11] This section 83 Notice, although issued on 1 April 2014, was only served to the respondent on 1 December 2015 alongside the letter of appointment of Kruger as the Repayment Administrator. The respondent has, since the issuance of the notice to her, been unable to settle the money asked for by the applicant.

[12] The respondent is thus deemed to be owing investors/members/participants of the TVI Scheme who deposited or invested monies in the TVI Scheme through the respondent an amount of not less than R 691 800.00. In addition, the respondent is required to also pay the interest on the amount mentioned above, of which the pre-scribed interest at the time of demand being 10 May 2023 accumulated to R 506 844.89 and the total amount (capital+ interest) owed is sitting at R 1 199 644.89. The respondent is yet to pay this amount to the applicant.

[13] According to the Solvency Report drafted by the Repayment Administrator, the respondent is factually insolvent because her assets amount to approximately R 256 000.00, which is lower than the amount owed to the TVI Schemes' investors/members/participants.

[14] The applicant submits, with regard to the non-joinder defence, that for a person to be joined in an ongoing proceeding, such person must have a direct and substantial interest in the subject matter of the proceedings.

[15] The applicant submits that Mr Midas only has an interest in the immovable property jointly owned with the respondent. That interest does not transcend beyond those confines to a legal interest in the subject matter of the litigation. Thus, Mr

Midas has no direct or substantial interest in the sequestration proceedings in question.

[16] The applicant further avers that a party will only be joined in an ongoing proceeding if that party is going to be prejudiced by the judgement of the ongoing proceedings. In this case Mr Midas will still legally retain his half share in the property he co-owns with the respondent. Thus, no harm or prejudice will befall Mr Midas as alleged by the respondent.

[17] The applicant lastly avers that the trustee to be appointed to deal with the administration of the respondent's estate is the one who is going to make sure that all affected parties are properly accommodated for in the sequestration of the respondent's estate and that is how Mr Midas is going to be catered for, thus avoiding any prejudice to him and any other affected person who has an interest in the respondent's estate.

[18] The applicant submits that sequestration proceedings must be initiated by way of motion proceedings in accordance with the Insolvency Act 24 of 1936. The applicant relied on the case of *Fakie v CCLL Systems (Pty) Ltd* 2006 (4) SA 326 (SCA), where the court held that no party can be allowed to allege or claim a dispute of fact, uncreditworthy denial or palpably implausible version that is far-fetched or clearly untenable in hopes of obtaining recourse to oral evidence as this would result in the long and expensive trial process.

[19] The applicant submits that, following this, the respondent's claim of a material dispute of fact likely to emerge is ambiguous, and that the dispute of fact has not been directly addressed in the answering affidavit as required. The applicant submits that the only recognizable dispute of fact is the respondent's denial that she was selling fraudulent credit, and that she was instead selling travel vouchers on behalf of TVI Schemes. Such contention of selling travel vouchers by the respondent is, however, irrelevant as she has admitted that she received commission for every single "travel voucher" she sold from the proceeds of the sale, and this is irrelevant because such conduct is in violation of the Banks Act sections 83 and 84.

[20] The applicant further submits that the respondent compares her conduct of selling TVI Schemes purported travel vouchers to the public as similar to the conduct of selling Tupperware or being a Tupperware distributor. Such an analogy, however, is legally and factually flawed because Tupperware's sales are not fraudulent dealings, given that the company is registered and authorised to operate as it does. TVI Schemes, on the other hand, is not a registered company or authorised to operate as it does, and thus receiving monies from the public and commissions from the sale of the purported travel vouchers are a violation of the Banks Act.

[21] The respondent's conduct is thus deemed to amount to an act of insolvency in accordance with section 83(1) of the Banks Act. This Section empowers the applicant to issue a written directive to any person or entity that has illegally obtained money by conducting banks business without registration or the necessary authorisation to do so. This directive orders one to repay all such money including the interest accrued. A person or entity that fails to comply with a section 83(1) notice is deemed to have committed an act of insolvency.

[22] The applicant lastly avers that there is no real or genuine dispute of fact as alleged by the respondent.

[23] The applicant submits that the sequestration of the respondent will be to the advantage of the respondent's creditors because the trustee to be appointed will investigate further for other assets under the ownership of the respondent and this will ensure that the amount to be paid to the creditors is not insignificant or insufficient.

[24] The applicant submits that the Solvency Report indicates that the respondent's estate amounts to approximately R 828 12.59. If the order of sequestration is granted, this amount will be distributed among the creditors in accordance with their legal order of preference. The applicant further submits that the fact that the respondent has various liabilities which need to be settled is irrelevant in respect of the requirement of "advantage to creditors. This is simply because these liabilities will be paid in their legal order, except for the bondholder. The applicant further submits that, since the respondent is the sole member of

N'washilenge, the trustee to be appointed will have the opportunity to investigate the financial affairs of this entity with the objective of determining whether funds can be recovered from it to the benefit of the creditors.

[25] The applicant submits that on or about 18 November 2014, an application by Kruger ("Repayment Administrator") was made to court to recover and take possession of all the respondent's assets in accordance with section 84(1A) b) (i) of the Banks Act and a rule nisi was granted and the applicant was granted an order to take possession of the assets of the respondent. On 18 June 2015, the respondent failed to show cause why the assets should not remain in Kruger's possession and as a result, the rule nisi was confirmed and the assets remain in Kruger's possession to date. The assets which Kruger took possession of include:

- a) Erf 1[...], Rabie Ridge, Extension 2, situated at 1[...] H[...] Street, Rabie Ridge, Midrand Gauteng,
- b) A 2011 Nissan Navara 2.5Dcu 4x2 bearing the registration number B[...], and
- c) A 2006 Mazda 3 1.6 Litre bearing the registration number T[...].

[26] The applicant further submits that it is very likely that more assets may be unearthed as the investigation and inquiry continue, to the benefit of the creditors. In conclusion, the applicant submits that the respondent's sequestration will be to the advantage of the creditors.

[27] The applicant submits that the respondent only denied that there will be an advantage to the creditors should the sequestration order be granted. But such denial is not accompanied by any explanations or justification for such claim. The respondent also failed to provide explanations why her conduct does not constitute the business of a bank as she claims.

[28] The applicant avers that the respondent's argument that because she had no idea that TVI Scheme was fraudulent, the court should exercise discretion in her favour when adjudicating the matter. The applicant submits that the respondent's unawareness or obliviousness is irrelevant because ignorance of the law is not a defence. The relevant case in this instance, as submitted by the applicant, is not

whether the respondent knew that what she was participating in was lawful or not, but what matters is was she conducting the business of a bank. The investigation findings indicate that indeed her conduct constituted the business of a bank and these findings have not been challenged by the respondent.

[29] The applicant further submits that because the TVI Scheme was at the expense of the public, this is a public interest issue, and such interest cannot be outweighed by that of the respondent. This is also in the interest of banking and insolvency legislation. The scheme, as submitted, targeted vulnerable people in the rural areas who had no or limited means of verifying the authenticity of the scheme and the scheme was vouchered for by various people that are highly regarded such religious ministers, politicians, policemen, nurses, teachers and even magistrates and prosecutors who acted as promoters of the scheme, people in the rural areas thought the scheme was legit. It is thus in the interest of justice for the respondent's estate to be sequestrated to the benefit of the victim of this scheme. The applicant submits that the respondent failed to make out its case why sequestration should not be granted.

[30] The applicant submits that the Founding and Supplementary affidavits indicate that the respondent received the section 83 notice, a copy thereof is attached as annexure "FA6" to the founding affidavit contains the respondent's signature acknowledging receipt on 1 December 2015 at 07h05. To further prove that respondent was served, she does not dispute the authenticity of the signature contained in annexure "FA6" and no explanation or justification for her denial is provided. As a result of no meaningful denial of proof of service from the respondent, no genuine dispute of fact arises on this issue.

[31] To further prove receipt of the section 83 notice by the respondent, the respondent's former legal representatives, as shown in the supplementary affidavit on 20 November 2017, directed a letter to the applicant's legal representatives inquiring about whether the amount the respondent was required to settle in terms of the issued Notice had been quantified. The applicant's legal representatives responded on 23 November 2016 and 28 March 2018 respectively and in both instances the amount to be paid was stated and the reasons behind such amount

were provided. This is proof that the respondent was served with the notice and that she was aware of it during these ex-changes.

[32] The applicant submits that the respondent contends that "this matter would best be dealt with through action proceedings as a dispute of facts, which is genuine and real is likely to emerge in this matter...". The applicant avers that this assertion alone does not automatically render any matter a genuine or material dispute and that a dispute of fact cannot be manufactured by a mere claim that a dispute of fact is likely to emerge at a later stage. The applicant submits that the respondent changes her course, as shown in her supplementary affidavit, by stating that there are certain depositors who have been repaid their monies or received value for them, but there is no proof of any sort that has been provided to that effect. As such, the applicant submits that this bald and uncorroborated assertion does not give rise to a genuine dispute of fact.

[33] The applicant submits, relying on the case of ***Maharaj v Barclays National Bank Ltd 1976 (1) SA 418 (A)***, where the Appellate Division held that to determine whether a litigant has established a bona fide defence, the court must consider whether the party has disclosed the nature and grounds of the defence and the material facts on which it rests, with sufficient particularity.

[34] The applicant submits that the respondent's switching of versions is an indication of the absence of a bona fide dispute of fact. In addition, the applicant submits that in the case of ***Wightman t/a JW Construction v Headfour (Pty) Ltd and Another 2008 (3) SA 371 (SCA)***, the Supreme Court of Appeal (SCA) highlighted that an alleged dispute of fact by a party must seriously and unambiguously address the fact said to be disputed because mere allegations without evidential support cannot defeat a claim advanced on affidavit.

[35] The applicant further submits, in reliance on the *Plascon-Evans* rule, which states that in an instance where disputes of fact arise in motion proceedings, the applicant's version must prevail unless the respondent's denial is real, genuine and *bona fide*. The respondent merely denies indebtedness and makes an unsubstantiated claim of repayment. A mere denial without any meaningful

explanation of why such denials are made cannot give rise to a genuine dispute of fact.

[36] The applicant avers that the respondent contends that the applicant has failed to identify the creditors who remain unpaid and that most of these creditors have already been repaid or benefited from the scheme. The applicant submits that such contention is misconceived and addresses the issue as follows:

1. The applicant is basing its claim on objective banking data as opposed to subjective estimates or investor affidavits. These objective banking data include deposits made in the respondent's personal bank accounts that were identified as TVI deposits as indicated in the Inspectors Solvency Report. These deposits are calculated using a transparent methodology based on the respondent's own bank statements. As such, the claim is for a liquidated amount: one which is either ascertained or readily ascertainable. The methodology for classifying and quantifying these inflows is detailed in the Solvency Report and further elaborated upon in the founding and replying affidavits.
2. The applicant submits that the respondent did not deny receiving the deposits in question, and her claim that repayments were made to investors holds no weight if there is no evidence provided to that effect. Such failure to produce evidence to this effect undermines the respondent's credibility in her denial. The applicant submits that it is not required to establish that every inspector remains unpaid in this situation. The onus rather lies with the respondent to raise a plausible factual defence, which she failed to do.
3. Regarding the issue of the list of creditors, the applicant submits that it has identified depositors based on the banking records and the outcome of the regulatory investigation as stipulated in the founding affidavit. Since the respondent claims that there are depositors who were repaid, the applicant submits that as the person who made those payments directly, the respondent ought to have the evidence to such effect.

4. The applicant submits that its claim is not based on whether certain depositors were repaid their monies, but rather on the contravention of the Banks Act of taking deposits without being authorised to do so by the relevant institution. Therefore, liability under section 84(1A) (c) is not extinguished by *ad hoc* repayments unless and until the full value of deposits has been repaid in full.

5. The applicant submits that the respondent's indebtedness was determined by a statutory regulator, and administrative decisions are challenged through review proceedings. The respondent has not challenged the inaccuracy of the figures, nor proposed an alternative computation. In the matter of ***Prudential Authority v MacDonald Bailey and another***, **unreported judgement of the Western Cape Division, 2356/2024 (24 April)** at paragraph 11, the court held as follows:

"... Instead, there was an investigation and the registrar was satisfied that, among others, the first and second respondents were unlawfully conducting the business of a bank, and he proceeded to exercise his powers under section 83. The power to issue a directive under section 83 is not depending on the prior obtaining of a court order nor does it call for subsequent judicial sanction. That does not mean that a person who receives a directive under section 83 may not challenge it. There's a special process of appeal established by section 9 of the banks act - an appeal or review to an especially constituted panel. The procedure set out and certain grounds of challenge may be raised there. I need not decide for present purposes with a section 9 constitutes the exclusive remedy of an aggrieved recipient of a section 83 directive. What seems to be clear is that, unless that remedy or some other remedy of review is pursued, the directive under section 83 stands

6. The applicant also submits, relying on the case of ***Oudekraal Estates (Pty) Ltd v City of Cape Town and Others 2004 (6) SA 222 (SCA)***, where the following question was regarded, was the respondent entitled to disre-

gard an administrative decision merely because it believed that the decision was invalid ? The court held as follows at paragraph 26:

"Until the Administrator's approval (and thus also the consequences of the approval) is set aside by a court in proceedings for judicial re-view it exists in fact, and it has legal consequences that cannot simply be overlooked. The proper functioning of a modern state would be considerably compromised if all administrative acts could be given effect to or ignored depending upon the view the subject takes of the validity of the act in question. No doubt it is for this reason that our law has always recognised that even an unlawful administrative act is capable of producing legally valid consequences for so long as the unlawful act is not set aside."

7. The applicant submits that a similar challenge was also raised and the approach taken above was also endorsed in the case of ***Registrar of Banks v Khambule and Others (26009/2014) ZAGPJHC 318 (23 March 2016)***, and the decision still stands.

8. Fifth, the applicant submits that the respondent never raised this alleged dispute in her prior correspondence from 2017 and 2018. Further, the applicant submits that the methodology employed by the Inspectors was never challenged by the respondent, nor is she proposing any alternative mechanism. The applicant avers that the only thing the respondent is claiming is that many investors may have been repaid or "benefited" from the scheme, but does not outline the identities of the investors who were repaid or benefited from the scheme and what it is that they received, the amount of money they were paid and neither does she explain how this claim extinguishes her from liability for the funds received unlawfully.

9. Finally, the applicant submits that R100 is the threshold of the insolvency proceedings, not the exact details of rands and cents owed. With that said, the applicant submits that the respondent has admitted that she received deposits into her accounts that are well beyond R100 without any authorisation to do so. The applicant further avers that the solvency directive stipulates the following: "the total

inflow of investors' deposits into accounts held by institutions amount to, at least, the respondent received at least R691,800.00 in investor deposits, with interest accruing to a total of R 1,199,644.89" which is considered the representation of the minimum proven amount. The applicant submits that a similar matter was addressed in the unreported judgment of ***Kruger v Dhlamini and others (2914/2015) (2016] ZAKZPHC 46 (27 May 2016)***, in which the court held as follows:

"[10] The respondents' contention that there are disputes of fact regarding the amount to be paid to the applicant and the actual amount received by the respondent is, in my view, irrelevant. What is relevant is the attachment of the respondents' assets in terms of the Banks Act pursuant to a written directive issued by the Registrar of Banks in terms of s83(1) of the Act. This directive is contained in annexure 'JGK8' to the founding papers. The respondents have not taken any steps to review or otherwise set aside the Registrar's decision and the directive therefore stands¹".

[37] The applicant submits that it has met the minimum threshold and that this defence must therefore cease to exist in this case. Further, the defences regarding the claim not being liquidated and investors being refunded, as made by the respondent, lack any substantiation for them to stand and constitute credible evidence.

[38] The applicant submits that the respondent states that she is not insolvent, but such statement is contradicted by objective financial evidence on record, such as the Solvency Report and the subsequent Deed Report, which reflect a clear shortfall even when the respondent's immovable property and vehicles are included, her liabilities to the investors substantially exceed her assets.

[39] The applicant relies on the SCA decision of the ***Prudential Authority v Dlamini and Another (36/2023) [2024] ZASCA 133; [2025] 1 All SA 76 (SCA); 2025 (1) SA 365 (SCA) (2 October 2024)***, on which the respondent also relied, a decision that, if read in full, does not support the respondent's argument. The SCA decision in full is as follows:

"[26] An act of insolvency is a statutory concept which obviates the necessity of proving actual insolvency. A debtor's estate may be sequestrated even though he or she is technically solvent. However, it was submitted on behalf of the Dlamini's that the Banks Act provides differently. This is because s83(1) expressly states that repayment under a repayment directive is 'subject to the provisions of s84'. As already noted, s84(1A)(c) permits the Authority to apply for a person's sequestration if the administrator finds that he or she is insolvent. The argument proceeded that the two sections must be read together, such that the deemed act of insolvency on its own is insufficient. In addition, it was argued, the Authority must show actual insolvency to establish a lawful ground for sequestration. In bolstering the argument, it was pointed out that sequestration should be ordered only as a last resort.

[27] I am not persuaded by the Dlamini's' interpretation of these sections. Whilst it is correct that there is a reference in s83 to s84, on the plain wording of the sections the entirety of s83 is not made subject to s84. Significantly, s83(3)(b) is not made subject to s84. This on its own discounts the correctness of the Dlamini's' interpretation. The cross-reference to s84 is in s83(1) alone, the relevant portion reading '... the Authority may in writing direct that person to repay, subject to the provisions of s84 and in accordance with such requirements and within such period as may be specified in the direction, all money so obtained... '

[28] Section 84 is headed 'Management and control of repayment of money unlawfully obtained'. It permits the administrator to control and manage the as-sets and funds of the person subject to a repayment directive with the objective of ensuring that the repayment is made. The purpose of s84 is simply to provide a practical mechanism for securing and managing the repayment of the amount identified in the repayment directive. It outlines the powers and obligations of the administrator and his or her relationship with the Authority. Properly interpreted, the cross reference in s83(1) to s84 means no more than that the repayment of the amount identified in the repayment directive is governed by the scheme outlined in s84. It cannot be interpreted to limit the Authority's power to seek sequestration under the deemed act of

insolvency provision in s83(3)(b) by making it necessary, in addition, to establish that the affected person is insolvent. This does not accord with the plain wording and purpose of the sections.

[29] There is also no public policy reason for reading the sections so as to limit the power of the Authority to seek sequestration as contended for by the Dlamini's. On the contrary, the whole purpose of the provisions is to ensure that people who have contravened the Act should be held accountable to repay the monies unlawfully obtained. Public policy requires that the Authority ought to be properly empowered to secure this objective, not hamstrung by having to establish two bases for sequestration, as suggested by the Dlamini's.

[30] For these reasons, I do not accept the correctness of the Dlamini's' interpretation of s83. The Authority did not have to rely on the s84 report to establish a case based on s83. Section 83(3)(b) is a self-contained provision that allows the Authority to bring the sequestration application in an instance where a person, who is subject to a directive, has failed to repay the amount unlawfully obtained and does not challenge the directive. The Dlamini's were, by virtue of their failure to comply with the directive, deemed to have committed an act of insolvency. This is a separate ground upon which a sequestration order may be granted, and the Authority was entitled to proceed on that ground alone, without, in addition, having to establish actual insolvency under s84.

[31] Of course, the Authority may, on the other hand, or in addition, seek to rely on s84(1A)(c) of the Banks Act as a ground for sequestration on the basis that the person subject to the directive is insolvent. It is apparent from s84 that a finding of insolvency in the administrator's report is a prerequisite before the Authority can bring the sequestration application under s84. However, the court faced with the sequestration application would, in addition, have regard to all evidence relevant to the status of the estate before granting or refusing a sequestration order based on s84(3)(b).

[32] The next question is whether the word 'insolvent' appearing in s84(1A)(c) of the Banks Act includes both factual and technical insolvency. It was submitted on behalf of the Authority that the ordinary, grammatical meaning of the word 'insolvent' is not limited to a factual determination. It was argued that, in the context of sequestration, the word is used to describe either factual or commercial insolvency and that either, if established, will suffice to establish a prima facie case of insolvency.

[33] I disagree. In terms of s9(1) of the Insolvency Act sequestration of the debtor's estate may be brought either on the basis that he or she is factually insolvent or has committed an act of insolvency. Proof of commercial insolvency will be sufficient in the case of winding-up of a company, but it will not be sufficient for the purpose of obtaining a sequestration order. In the case of a natural person, the respondent's liabilities must actually exceed the value of his or her assets. Actual insolvency may be proved by the applicant by setting out the respondent's liabilities and assets valued on oath at their market value, or by setting out such facts from which the inference can be drawn that the respondent's liabilities exceed his or her assets.

[34] The draft insolvency report on which the Authority relied concluded the joint estate of the Dlamini's was insolvent. That conclusion was based on the findings of the administrator that the likely net value of the assets he had secured was R2 296 865 with the outstanding capital liability payable to the investors of R2 946 050, leaving a shortfall of R649 185. Based on these figures, the administrator formed the opinion that the Dlamini's did not have sufficient capital to repay the investors and that they were deemed to be 'cash flow' or 'legally' insolvent'. The high court interpreted the administrator's conclusion to mean that the Dlamini's are commercially insolvent rather than actually insolvent. According to the high court, this conclusion did not mean that their liabilities exceeded their assets fairly valued. In terms of s 84(1A)(c), reasoned the high court, the Authority could only apply for the sequestration of the Dlamini's joint estate if the report concluded that that they were actually insolvent.

[35] As I have already noted, the high court erred in approaching the matter on the basis that, despite the deemed act of insolvency under s83(3)(b) the Authority in addition, had to establish insolvency under s84(1A)(c). For this reason, the question of whether the administrator had concluded that the Dlamini's were commercially, as opposed to actually, insolvent was irrelevant to the underlying issue of whether the Authority's application was well-founded. Section 83(3)(b) provided a lawful basis for the application. However, the question of whether the Dlamini's' estate is insolvent is not entirely irrelevant. It is relevant to the exercise of the court's discretion to grant or refuse the application."

[40] The applicant submits that from the SCA decision above, it is evident that section 83(3)(b) is not reliant on section 84 to be enforced and thus can exclusively be relied upon to initiate sequestration of a person who failed to comply with a section 83 notice directive directed against that person. The applicant submits that in this case, it is within its rights to proceed with the sequestration application against the respondent even if she is solvent.

[41] The applicant further relies on the above case at paragraph 29, where the court held as follows:

"... the whole purpose of the provisions is to ensure that people who have contravened the Act should be held accountable to repay the monies unlawfully obtained. Public policy requires that the Authority ought to be properly empowered to secure this objective, not hamstrung by having to establish two bases for sequestration, as suggested by the Dlamini's."

[42] Lastly, the applicant submits that the respondent's denial of being insolvent re-mains just a mere denial since it is not accompanied by any evidence to make it hold weight, and as a result, no weight should be attached to such baseless denial.

[43] The applicant relies on the case of ***Stratford and Others v Investec Bank Limited and Others*** (CCT 62/14) [2014] ZACC 38; 2015 (3) BCLR 358 (CC); 2015

(3) SA 1 (CC); (2015) 36 ILJ 583 (CC) (19 December 2014), whereby the court held that the concept of 'advantage to creditors' is broad and should not be forced within confines. The applicant then submits that, in a hostile sequestration where there is a potential for many creditors, it should not be required that cents be specified in the rand or that "not-negligible" benefit be provided, as this could be unhelpful. What is required is that a court should exercise its discretion, taking into account whether there is a reason to believe that there is a reasonable prospect of an actual payment to be made to each creditor who proves a claim, regardless of the extent of such payment, unless some other means of dealing with the debtor's predicament is likely to yield a larger payment.

[44] The respondent contends that the applicant has failed to properly identify the victims of the scheme. The applicant to counter this argument relies on the case of ***Registrar of Banks v Khambule and Others (26009/2014) ZAGPJHC 318 (23 March 2016)***, where the court held the following at paragraph 44:

"... There are two main advantages that the sequestration/winding up of the respondents will bring. It will enable the investigations to be conducted to determine what has been done by the respondents with the funds appropriated by them and it will enable unidentified Investors to come forward and stake a claim for repayment."

[45] The applicant submits that, from the respondent's already known assets, creditors could yield a real benefit. Such assets include the two motor vehicles already attached as well as the caveat registered over her immovable property. It is for this reason that the applicant believes this sequestration could be beneficial and yield a tangible dividend to creditors, contrary to the respondent's assertion.

[46] The respondent submits that she was never served with any directive and, as a result, could not have failed to comply with something she had no idea existed. She further submits that because she has refunded most of the people who purchased tickets from her, she cannot be indebted to any creditor as far as she is concerned. She further submits that because the transactions (inflows & outflows) in question took place years back, these are termed "possible and probable"

transactions and cannot be deemed conclusive proof of a liquidated claim in the absence of a schedule of creditors and that the claim is bona fide disputed. She submits that this issue can only be dealt with orally.

[47] The respondent submits that if a debt is disputed on *bona fide* and reasonable grounds, a payment of the debt should not be enforced by sequestration proceedings, and thus no order to that effect should be granted. The respondent submits that the onus to disprove the alleged indebtedness on *bona fide* and reasonable grounds will only rest on her if a *prima facie* case on her indebtedness has been made by the applicant. She then submits that, in this instance, that has not been the case since the applicant has not provided any evidence to justify why the inflow transactions are possible and probable TVI deposits.

[48] The respondent submits that the court enjoys discretion as to whether to grant a sequestration order, despite a creditor being able to establish all the elements required for a sequestration. She further adds that, in this current situation, no creditor has been identified, and the report the applicant is relying on to apply for the respondent's sequestration is incomplete and based on assumptions that the transactions in question may be from TVI participants or, rather, alleged investors. The respondent submits that, according to the Insolvency Act, the following trite principles are relevant and required:

- (a) In the case of a natural person, s9(3) provides that an act of insolvency or actual insolvency is required;
- (b) The claim must be liquidated, and not less than R 100;
- (c) These should be an advantage to creditors.

[49] The respondent submits that the last two have not been proven by the applicant. The respondent further submits that it is necessary for the claim regarding the sequestration of a natural person to be made with sufficient particularity, as such proceedings have an impact on the status of such a person. She submits that in this case, the claim has not been made with sufficient particularity, as the claim is based on assumptions. She further submits that it is the repayment administrator's

obligation to prove that he established the true amount owed, the identity of the creditors, and that would be to the advantage of the victims of the unlawful enterprise.

[50] The respondent submits that, in accordance with section 84, the repayment administrator is required to establish the true amount unlawfully obtained by the person to whom the section 83(1) notice applies, including the identities of the persons who deposited funds into that person's accounts. The respondent submits that the above requirements have not been satisfied by the repayment administrator in this case because the draft report does not identify the depositors. She further submits that section 84 requires the amount owed to be established as a "true" amount, and in this case, that has not been done. The respondent submits that, because an exhaustive and accurate assessment has not been conducted, solvent people are at a great risk of sequestration.

[51] The respondent submits that section 84 of the Banks Act is not intended merely to penalize, but rather to restore the status quo. With that said, it does not automatically result in the sequestration of the guilty party in cases where such a party engaged in unlawful conduct. Such sequestration occurs only when people have suffered a loss and are entitled to be reimbursed. The respondent submits that the investigation and determination required by section 84 appear to have been done defectively by the repayment administrator, and certain discrepancies within this report are noted. She submits that in paragraph 5.4.1 of the report, the repayment administrator refers to deposits in the sum of R 2 700.00 or multiples thereof. However, the only confirmed investor deposit is R 151 000.00, not multiples of R 2 700.00, which is contrary to the true amount establishment requirement. Such is also in violation of the principle re-quiring the claim to be made out with sufficient particularity. Lastly, she submits that a schedule of creditors to be reimbursed exists.

[52] The respondent submits that the repayment administrator failed to trace the investors in question, resulting in non-compliance with the second process, as evidenced by the lack of investors' affidavits. The repayment administrator, per the respondent's submission, only refers to a probable investor deposit of R 381 700.00 and a possible investor deposit of R 2 413 350, and this does not establish the

creditors to be repaid. And as such, the jurisdictional requirements have not been complied with, and this is rather speculative.

[53] The respondent submits that the Dlamini case pointed out that to establish a prima facie proof for the sequestration of a natural person, the following must be proven or taken into consideration: advantage to creditors, and in this context of this case and the purpose of the Banks Act, the repayment to creditors if indeed such a person is insolvent. This requirement, on its own, demonstrates that the repayment administrator failed to make a prima facie case for the sequestration of the Dlamini's.

[54] The respondent submits that the High Court, in the Dlamini case, correctly held that, to establish locus standi, insolvency law requires a creditor to demonstrate an indebtedness of at least R 100. She further submits that because the repayment administrator ought to demonstrate that she is insolvent, then the quantum is relevant. The respondent avers that in accordance with section 84, the person subjected to a section 83 directive ought to be determined whether he or she is solvent or insolvent and if such a person is insolvent, the nature of such insolvency ought to be outlined, as well as the true amount owed and the actual value of assets. It is the respondent's submission that an inaccurate and incomplete report relied upon is in violation of the spirit of the purpose of section 84, read with Section 83(1).

[55] The respondent submits that the applicant has failed to prove that, should the sequestration against the respondent be granted, it would be to the advantage of the creditors, and that, as a result, no creditor has been identified, thereby violating the sequestration requirements outlined in section 84.

[56] The respondent submits that there is a distinction between the obligations of a repayment administrator and those of a trustee. A repayment administrator is required to perform the following functions:

- (a) A repayment administrator must investigate, bring her or his own mind to bear on the information before him or her to justify the solvency of the parties;
- (b) report on their findings;

- (c) quantify the amount owed; and
- (d) identify the victims of the unlawful enterprise.

[57] The respondent further submits that should the repayment administrator ascertain that the parties are solvent, that is not the end of the matter. Payment demand can still be made by the applicant, and if this is not viable, the parties' assets can be attached for sale execution to facilitate payment to the victims of the unlawful enterprise. These are the functions of a repayment administrator under section 84, not those of an appointed trustee.

[58] The respondent submits that the aforementioned findings are supported by the Treasury notes appearing in the draft of 'The Banks Amendment Bill: Summary of Amendments to Bank Act, 1990, July 2006, on sections 81-84- Control of certain Activities of Unregistered person and it states the following:

'30.1 One of the main problems and frustrations in enforcing sections 81 to 84 of the Act is the fact that once inspectors have been appointed to investigate a person operating an illegal scheme, it invariably happens that such a person is liquidated or sequestered. Such a liquidation or sequestration negates the work done by the inspectors and the higher fees charged by the appointed liquidator/trustee of the insolvent estate are to the detriment of depositors in such a scheme. 30.4 It is also proposed that a duly appointed fund manager should report to the Registrar on the solvency of the person operating the illegal scheme. When the person is found not to be insolvent, the manager may repay depositors as provided for in section 84 of the Act. When a person is found to be insolvent, the Registrar may apply for the liquidation of the person and will be able to recommend the liquidator to be appointed as well as agree to the liquidator's fee structure in this regard.'

[59] The respondent submits that no creditors have come forward with claims against the respondent's estate despite the respondent being well known and making news at that time. This means that, should the respondent's estate be sequestered, it will not be to the advantage of any creditor, as none is identified; rather, it will be to the advantage of the trustees. Lastly, the respondent submits that

the views expressed in the Treasury documents are in line with the arguments she made that liquidation or sequestration ought not to occur automatically upon finding that one operated an un-lawful enterprise. She further avers that it is necessary to determine the solvency of the person in question, as well as the creditors relevant to the unlawful enterprise, who are to be benefited by the liquidation or sequestration, should it be carried out.

[60] In the case of ***Prudential Authority v Duma (21546/2020) [2024] ZAGPJHC 789 (20 August 2024)*** - paragraph 9, the following was said about the conduct of a bank, Section 11(1) of the Banks Act:

"no person shall conduct the business of a bank unless such person is a public company and is registered as a bank in terms of the Banks Act". The concept of "business of the bank" has been explained to also mean the acceptance of deposits from the public as a regular feature of the business of the bank according to the declaration by the Governor of the Reserve Bank. Where there is a violation of section 11(1) of the Banks Act, section 83(3) of the Banks Act comes into play as an instrument or tool.'

[61] Section 83 (3) of the Banks Act

"Any person who refuses or fails to comply with a direction under subsection (1)... (b) shall for the purposes of any laws relating to the winding up of juristic persons or to the sequestration of insolvent estates, be deemed not to be able to pay the debts owed by such person or to have committed an act of insolvency, as the case may be, and the Authority shall, notwithstanding anything to the contrary contained in any law, be competent to apply for the winding-up of such a juristic person or for the sequestration of the estate of such a person, as the case may be, to any court having jurisdiction."

[62] In the case of ***Prudential Authority v Duma (21546/2020) [2024] ZAGPJHC 789 (20 August 2024)*** at paragraph 15 Mudau J stated as follows:

"As to whether the provisional liquidation of the respondent will be to the advantage of the creditors, Brand J (as he then was) summarised in *Payslip Investment Holdings CC v Y2K TEC Ltd* 2001 (4) SA 781 (C) at 783-1, in summarising the legal approach said the following:

"Guidelines as to how factual disputes should be approached in an application such as the present were laid down by the Appellate Division in *Kalil v Decotex (Pty) Ltd and Another* 1988 (1) SA 943 (A). According to these guidelines a distinction is to be drawn between disputes regarding the respondent's liability to the applicant and other disputes. Regarding the latter, the test is whether the balance of probabilities favours the applicant's version on the papers. If so, a provisional order will usually be granted. If not, the application will either be refused or the dispute referred for the hearing of oral evidence, depending on, inter alia, the strength of the respondent's case and the prospects of viva voce evidence tipping the scales in favour of the applicant. With reference to disputes regarding the respondent's indebtedness, the test is whether it appeared on the papers that the applicant's claim is disputed by respondent on reasonable and bona fide grounds. In this event it is not sufficient that the applicant has made out a case on the probabilities. The stated exception regarding disputes about an applicant's claim thus cuts across the approach to factual disputes in general."

[63] From this extract, it is evident that the respondent's contention regarding the satisfaction of the 'advantage to creditors' requirement needs to be grounded on *bona fide*, reasonable grounds. Which means such contention needs to be sincere, rational, logical, and supported by facts rather than speculation or feelings. Anything less than these standards will not hold weight in the respondent's favour.

[64] In the case of ***Prudential Authority v Dlamini and Another- 2025 (1) SA 365 (SCA)*** in paragraphs 26-35, the SCA made remarks regarding the interpretation and application of sections 83 and 84 of the Banks Act. (See paragraph 39 above)

[65] The SCA in *Prudential Authority v Dlamini and Another - 2025 (1) SA 365 (SCA)* said the following regarding the identity of/ list of creditors:

"[38] In this case, the evidence established that the Dlamini's obtained money through their participation in the 1VI scheme which entailed carrying on the business of a bank without being authorised to do so. The amount which they were directed to repay was disclosed in the directive that was issued and they failed to repay it as directed. In terms of s 83, they were deemed to have committed an act of insolvency. In terms of s 84(1A)(f), the Authority is regarded as a creditor, and he or she has the same rights of a creditor in terms of the law relating to liquidation and insolvency. Whilst it is correct that the list containing the amounts collected by the Dlamini's does not specify the creditors, in my view, the lack of such information is not fatal to the Authority's case because, as already stated, the Authority is regarded as a creditor, and it must collect all money unlawfully obtained and distribute same to the investors once their identity is established."

[66] The same court said the following regarding the requirement of "advantage to creditors":

"[40] I am also satisfied that from the evidence adduced by the Authority that there is reason to believe that it will be to the advantage of creditors if the Dlamini's joint estate is sequestrated. The Authority does not have to furnish positive proof that sequestration will be to the advantage of creditors. All that it is required to show, is that there is a reason to believe that sequestration will be to the advantage of creditors. According to the administrator, the value of the Dlamini's' joint estate is approximately R2,3 million and their liabilities are about R2,95 million leaving the difference of approximately R650 000. It is clear from these facts that there is a reasonable prospect that some pecuniary benefit will result to creditors. In the circumstances, the requirements for the provisional sequestration of the joint estate of the Dlamini's were met and the High Court therefore erred in dismissing it."

[67] The SCA in the case of ***Judicial Service Commission and another v Cape Bar Council and another*** [2013] 1 All SA 40 (SCA) paragraph 12 said the following regarding the joinder issue;

"It has by now become settled law that the joinder of a party is only required as a matter of necessity - as opposed to a matter of convenience - if that party has a direct and substantial interest which may be affected prejudicially by the judgment of the court in the proceedings concerned (see e.g. *Bowring NO v Vrededorp Properties CC and another* 2007 (5) SA 391 (SCA) at paragraph 21 [also reported at [2007] JOL 20008 (SCA) - Ed]). The mere fact that a party may have an interest in the outcome of the litigation does not warrant a non-joinder plea. The right of a party to validly raise the objection that other parties should have been joined to the proceedings, has thus been held to be a limited one (see e.g. *Burger v Rand Water Board and another* 2007 (1) SA 30 (SCA) at paragraph 7 [also reported at [2006] JOL 18323 (SCA) - Ed]; *Andries Charl Cilliers, Cheryl Loots and*"

[68] The Appellate Division said the following regarding disputes of facts arising from affidavits in the notice of motion proceedings in the case of ***Plascon-Evans Paints Ltd V Van Riebeeck Paints (Pty) Ltd*** [1984] 2 All SA 366 (A) page 367-368:

"Secondly, the affidavits reveal certain disputes of fact. The appellant nevertheless sought a final interdict, together with ancillary relief, on the papers and without resort to oral evidence. In such a case the general rule was stated by VANWYK J (with whom DE VILLIERS JP and ROSENOW J concurred) in *Stellenbosch Farmers' Winery Ltd v Stellenvale Winery (Pty) Ltd*, 1957 (4) SA 234 (C) at p 235 E-G, to be:

" where there is a dispute as to the facts a final interdict should only be granted in notice of motion proceedings if the facts as stated by the respondents together with the admitted facts in the applicant's affidavits justify such an order ... Where it is clear that facts, though not formally admitted, cannot be denied, they must be regarded as admitted".

This rule has been referred to several times by this Court (see *Burnkloof Caterers Ltd v Horseshoe Caterers Ltd*, 1976 (2) SA 930 (A), at p 938 A-B; *Tamarillo (Pty) Ltd v B N Aitken (Pty) Ltd*, 1982 (1) SA 398 (A) at pp 430-1; *Associated South African Bakeries (Pty) Ltd v Oryx & Vereinigte Backereien (Pty) Ltd en Andere*, 1982 (3) SA 893 (A), at pp 923 G - 924 D). It seems to me, however, that this formulation of the general rule, and particularly the second sentence thereof, requires some clarification and, perhaps, qualification. It is correct that, where in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant's affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order. The power of the court to give such final relief on the papers before it is, however, not confined to such a situation. In certain instances, the denial by respondent of a fact alleged by the applicant may not be such as to raise a real, genuine or bona fide dispute of fact (see in this regard *Room Hire Co. (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd*, 1949 (3) SA 1155 (T), at pp 1163-5; *Da Mata v Otto*, NO, 1972 (3) SA 585 (A), at p 882 D - H). If in such a case the respondent has not availed himself of his right to apply for the deponents concerned to be called for cross-examination under Rule 6(5)(g) of the Uniform Rules of Court (cf. *Petersen v Cuthbert & Co Ltd*, 1945 AD 420, at p 428; *Room Hire case*, supra, at p 1164) and the court is satisfied as to the inherent credibility of the applicant's factual averment, it may proceed on the basis of the correctness thereof and include this fact among those upon which it determines whether the applicant is entitled to the final relief which he seeks (see e.g. *Rikhotso v East Rand Administration Board*, 1983 (4) SA 278 (W), at p 283E-H). Moreover, there may be exceptions to this general rule, as, for example, where the allegations or denials of the respondent are so farfetched or clearly untenable that the Court is justified in rejecting them merely on the papers (see the remarks of BOTHA AJA in the *Associated South African Bakeries case*, supra, at p 924A)."

[69] Turning to the matter before the court, the respondent raised several defences. The first defence is that she was not served with the section 83 notice.

The applicant avers that the respondent was served and this is evidenced by her signature on the section 83 notice. Furthermore, the respondent does not dispute the authenticity of her signature.

[70] I am of the view that the applicant has proven that the respondent was duly served with the section 83 notice and her defence of non-service stands to be rejected by the court.

[71] The second defence raised by the respondent is that of non-joinder of Mr Midas to the proceedings. The respondent contends that Mr Midas has a direct and substantial interest in the matter as he co - owns an immovable property with her. The applicant submits that Mr Midas' interest is in the property jointly owned with the respondent and thus has no direct and substantial interest in the sequestration proceedings against the respondent.

[72] It is trite that for a party to be joined in an ongoing proceeding, such party must have a direct and substantial interest in the subject matter of the proceedings or if that party is going to be prejudiced by the judgement of the ongoing proceedings. In the matter before me, Mr Midas' ownership of the one half share of the property remains intact regardless of the outcome of the proceedings and he will therefore not be prejudiced by the decision of the court.

[73] The third defence raised by the respondent is that there is a dispute of fact and motion proceedings are not competent to deal with the factual dispute and that action proceedings would be better under the circumstances. The respondent denies that she was selling fraudulent credit and submits that she was selling travel vouchers on behalf of the TVI Schemes. The applicant on the other hand submits that that such contention by the respondent is irrelevant as she has admitted that she received commission for every travel voucher she sold and further that her conduct is in violation of the Banks Act.

[74] It is trite that an admitted fact need not be proven. The respondent admitted conducting a business that is in violation of the Banks Act and thus this alleged dispute of fact has no merit.

[75] Furthermore, the applicant submits that the respondent compares her conduct of selling TVI Schemes purported travel vouchers to the public as similar to the conduct of selling Tupperware or being a Tupperware distributor. I am of the view that such a comparison is legally and factually flawed because Tupperware's sales are not fraudulent dealings, given that the company is registered and authorised to operate as it does. TVI Schemes, on the other hand, is not a registered company or authorised to operate as it does, and thus receiving monies from the public and commissions from the sale of the purported travel vouchers are a violation of the Banks Act. I am satisfied that there is no real or genuine dispute of fact as alleged by the respondent.

[76] The fourth defence is that the respondent contends that the claim by the applicant is not a liquidated claim as she has repaid some of the investors and the amount of R 1 199 644.00 claimed in the section 83 notice is disputed. The applicant on the other hand submits that the respondent's indebtedness was determined by a statutory regulator, and administrative decisions are challenged through review proceedings. After careful consideration of the pleadings and the submissions in court, it is clear that respondent has not challenged the inaccuracy of the figures, nor proposed an alternative computation. The Supreme Court of Appeal in the matter of **Oudekraal Estates (Pty) Ltd v City of Cape Town and Others** has ruled that an administrative decision remains valid until it is reviewed and set aside by a court of law and it has legal consequences that cannot simply be ignored.

[77] The respondent has not taken the decision on review and therefore the amount claimed in the section 83(1) notice by the Repayment Administrator is an administrative act or decision which must be complied with. The respondent has not been able to make any payment of the amount demanded and in terms of section 83(3)(b) of the Banks Act the respondent is deemed to have committed an act of insolvency.

[78] Not only has the respondent committed an act of insolvency in terms of section 83(3)(b) of the Banks Act, but the solvency report has also indicated that the respondents' liabilities far exceed her assets. The respondent insists that she is

solvent however nothing was placed before court to prove this. However, since the respondent has already been found to have committed an act of insolvency, it is irrelevant whether she is factually solvent or not.

[79] The respondent contends that to sequester her will not be to the advantage of creditors. She submits that no creditors have come forward with claims against her estate despite the respondent being well known and making news at that time. This means that, should the respondent's estate be sequestered, it will not be to the advantage of any creditor, as none is identified; rather, it will be to the advantage of the trustees.

[80] The applicant relies on the case of ***Stratford and Others v Investec Bank Limited and Others* (CCT 62114) [2014] ZACC 38; 2015 (3) BCLR 358 (CC); 2015 (3) SA 1 (CC); (2015) 36 ILJ 583 (CC) (19 December 2014)**, whereby the court held that the concept of 'advantage to creditors' is broad and should not be rigidified or forced within confines. The applicant then submits that, in a hostile sequestration where there is a potential for many creditors, it should not be required that cents be specified in the rand or that "not-negligible" benefit be provided, as this could be unhelpful. What is required is that a court should exercise its discretion, taking into account whether there is a reason to believe that there is a reasonable prospect of an actual payment to be made to each creditor who proves a claim, regardless of the extent of such payment, unless some other means of dealing with the debtor's predicament is likely to yield a larger payment.

[81] The applicant submits that it has identified depositors based on the banking records and the outcome of the regulatory investigation as stipulated in the founding affidavit. It is apparent from the facts of the matter that the respondent preyed on the unsuspecting vulnerable members of our society in her fraudulent and unlawful activities. I am of the view that the principle laid by the Constitutional court in the matter of ***Stratford and Others v Investec Bank Limited and Others***, where the court held that the concept of "advantage to creditors" is broad and should not be rigidified or forced within confines, is the most realistic and reasonable approach to follow. Once the order is granted the trustees will have to extensively investigate and find the creditors who were unfortunately defrauded by the respondent. Also, having

regard to the solvency report some of the creditors have been identified and all that is left is for the trustees to find them and reimburse them. Fortunately, there are already assets of the respondent that have been preserved and I am of the view that these assets may be realised for the benefit of the creditors, and there is a reasonable believe that the sequestration will result in a meaningful benefit for the general body of creditors.

[82] I am satisfied that the applicant has met the requirements for a final sequestration order and the respondent has failed to show cause why her estate should not be finally sequestrated.

[83] Under the circumstances the following order is made:

1. The estate of the respondent, Elsie Rifomane Mathebula, Identity Number 7[...], is hereby placed under final sequestration;
2. The costs of this application are to be the costs in the administration of the respondent's insolvent estate.

MMD LENYAI J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances

For the Applicant: Adv Mokale
Instructed by ENS Africa Inc

For the Respondent: Adv Mamabolo
Instructed by Madihalbe Makgobatlou Attorneys Inc

Date of hearing: 13 November 2025

Date of Judgment: 12 March 2026