IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NO: 16133/2024P

In the matter between:

THE PRUDENTIAL AUTHORITY	**APPLICANT**
and	
LESLEY MABHOKO MAHLANGU	**FIRST RESPONDENT**
MNTUTHUZEKO PURETY MAHLUNGU	**SECOND RESPONDENT**

ORDER

In the premises the following order is made:

The application is dismissed with costs on scale C.

JUDGMENT

Mathenjwa J

Background

[1] The Prudential Authority (the applicant) seeks a provisional order of sequestration of the first and second respondent's estates**.** The application is based on the grounds that the respondents have committed an act of insolvency by failing to comply with a directive issued by the applicant in terms of s 83(1) of the Banks Act 94 of 1990 (the Banks Act) directing them to pay money that they had obtained by

carrying on the business of a bank in contravention of that Act and that in terms of s 84(1A)*(a)*, they are/were factually insolvent.

[2] The dispute arises from an investigation into the activities of the respondents, which was initiated following an inspection ordered by the Deputy Governor of the South African Reserve Bank. This inspection aimed to ascertain whether the respondents were operating as a bank. On 12 August 2016, it was concluded that the respondents had engaged in banking operations in violation of ss 17 and 18A of the Banks Act. The findings revealed that the respondents had raised funds while acting as a bank by running a pyramid scheme through an entity known as Travel Venture International and/or TVI Express (the scheme).

[3] On 18 August 2016, the applicant issued a repayment directive to the respondents, mandating them to repay the funds received under s 83(1) in conjunction with s 84 of the Banks Act. Mr Kruger was appointed to serve as a repayment administrator. The administrator assessed that the amount unlawfully acquired by the respondents through this scheme totalled R1 852 050 excluding interest and directed them to pay this sum within ten days. The respondents did not comply with this directive regarding payment.

[4] The repayment administrator subsequently compiled a solvency report, concluding that the respondents are insolvent. This determination was based on an estimated value of their movable and immovable assets totalling R1 119 915.15, which when adjusted for capital inflows and interest of R2 990 086 resulted in a net negative value of -R1 870 171.41. In light of the findings in the solvency report, the administrator recommended that the respondents’ estate be sequestrated. On 18 January 2017, the administrator sent a letter of demand dated 16 January 2017, requesting payment of R1 852 050 within ten days from the respondents at an interest rate of 9% per annum calculated from the date of delivery of the repayment directive. Additionally, the respondents were informed that they had the right to appeal the decision including the issuance of the directive under s 83 of the Banks Act within 30 days following their receipt of said directive.

Parties contentions

[5] The respondents acknowledged their involvement in the scheme beginning in 2009 until they ceased participation in January 2011. They argued that they believed it was a legitimate business model focused on selling vouchers and asserted that purchasers received value for their money. The respondents claimed they halted their involvement immediately upon realizing it operated as a pyramid scheme. They denied any obligation to reimburse investors or the applicant since they merely sold an existing item (a voucher), asserting that purchasers received valid value in return for their transactions. Furthermore, although they were charged by the South African Police Services for operating as a bank without authorization under the Banks Act, they were ultimately found not guilty and exonerated by a court of law.

[6] The respondents contest the applicant's assertion that sequestration would benefit creditors, challenging the accuracy of the amount claimed to have been unlawfully paid by investors into their bank account. They assert that a deposit of R780 000 in their account was actually their pension payout from the Department of Education. Additionally, they dispute the repayment administrator's valuation of their immovable property. The respondents claim that the administrator's valuation of their BMW vehicle at R277 400 and their Hyundai vehicle at R212 000, both of which were stated to have no outstanding finance was incorrect. To support their position, they provided financial statements from Nedbank indicating that as of 15 January 2025, the outstanding capital on the BMW vehicle was R225 977.19 and on 14 March 2025, the outstanding capital for the Hyundai vehicle was R133 638.16.

[7] Counsel for the respondents argued that the inordinate delay by the applicant in instituting the sequestration proceedings which is supposed to be a speedy remedy should be favourable to the respondents when this court exercises its discretion to grant or refuse the provisional order. The notice of motion for sequestration was issued 13 years and 7 months after the inspectors were appointed to manage and control the repayment of funds by the respondents. It was submitted on behalf of the respondents that the process followed by the repayment administrator in the investigation and drawing of the report failed to satisfy the requirements of s 84 of the Banks Act because the administrator failed to establish the true amount of money unlawfully obtained by the respondents and the identities

of all persons to whom such money was so unlawfully obtained.

[8] Additionally, the respondents counsel argued that the investigation report relies on hearsay evidence, as the inspector who prepared the report indicated they were informed by the police that evidence had been secured under oath from all alleged travel partners. These individuals denied any knowledge of TVI, or the supposed discounts tied to purchasing a TVI voucher. However, there were no affidavits provided by any members of the SAPS or travel partners to substantiate this claim, rendering the evidence inadmissible as hearsay. Moreover, the report mentions submissions from 21 investors who purportedly invested a total of R479 900 with the respondents; however, it noted significant difficulties in accurately identifying both investors and distributors without access to the TVI database, which is believed to be located overseas.

[9] On the other hand the applicant argued that since the respondents accepted funds from the public, they are effectively operating as a bank and their inability to repay these debts indicates insolvency. The applicant pointed out that the respondents claim regarding the inherent value of the vouchers contradict their admissions of having sold TVI discount vouchers to raise investments in the scheme while depositing these funds into their personal bank accounts. The applicant submitted that the respondent's assertion about any intrinsic value of TVI vouchers lacks validity, as it is contradicted by findings from an administrator supported by sworn testimony obtained from alleged service partners through the SAPS, indicating that any benefits claimed in association with TVI vouchers do not exist.

[10] Counsel representing the applicant contended that the respondents claim of not engaging in a pyramid scheme lacks merit, as the Supreme Court of Appeal (the SCA) has ruled that the TVI scheme operated unlawfully as both a bank and a pyramid scheme. Additionally, it was argued on behalf of the applicant that the respondents cannot contest the investigator's report in these proceedings since they have not sought its review.

[11] The issue for determination in this case is whether the evidence on the papers constitutes a *prima facie* case for the provisional order of sequestration that would

entitle the court to exercise its discretion in favor of the applicant and grant the order for provisional sequestration.

Analysis and applicable legal principles

[12] It is pertinent to note that this court is not reviewing either the investigation report or the solvency report prepared by the repayment administrator, as the respondents have not sought a review of those reports. Consequently, the question of whether evidence accepted and utilised by the inspectors in generating the report is inadmissible is not significant for this judgment, as it pertains directly to the legality of the report itself. It is relevant that the respondents' liability to the applicant is founded on the conclusions drawn in the inspectors' report, and their insolvency is determined by the administrator's assessments indicating that the respondents are indeed insolvent. Therefore, regarding whether to grant or refuse the sequestration order, both the content of these reports and the statements provided by each party in their affidavits are relevant factors for consideration.

[13] Regarding the respondents submission that they were not aware that the scheme was a pyramid scheme and that they their activities of marketing the TVI selling vouchers to the public and accepting deposits which they refer to as payment for the objects sold, that issue has already been determined by the SCA in *Kruger v Joint Trustees of the Insolvent Estate of Paulos Bhekinkosi Zulu and Another*.[1] In that case the respondents were involved in the TVI scheme in a similar manner as the respondents in the instant case. The SCA held that where the administrator takes steps to enforce repayment of the money in terms of s 84(4)*(b)* of the Banks Act, assets honestly acquired are not excluded from consideration for realisation for purposes of raising repayment funds.[2] Therefore even if the respondents might not have been aware that they were involved in an unlawfully scheme the income received from such scheme is recoverable.

[14] It is trite that s 83(3)(*b*) allows the applicant to bring a sequestration application where a person, who is subject to a directive, has failed to repay the amount unlawfully obtained and does not challenge the directive, since that person's

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[1] *Kruger v Joint Trustees of the Insolvent Estate of Paulos Bhekinkosi Zulu and Another* [2016] ZASCA 163; [2017] 1 All SA 1 (SCA).
[2] Ibid para 36.

failure to comply with the directive, shall be deemed an act of insolvency. Furthermore, it is not in dispute that the applicant is entitled to rely on the findings of the repayment administrator that the respondents were factually insolvent. Thus, the respondents could be sequestrated on either of the following two grounds, which is their failure to pay in terms of the applicant's directive and on the fact that they are factually insolvent.

[15] Section 10 of the insolvency Act 24 of 1936 provides that a court may make an order sequestrating the estate of the debtor provisionally if the creditor has established against the debtor an indebtedness of at least R100; that the debtor has committed an act of insolvency or is insolvent; and that there is reason to believe that it will be to the advantage of creditors of the debtor if his estate is sequestrated. In determining the question of whether the respondents are insolvent it is trite that generally in applications the question of 'as to whether the evidence adduced by the party bearing the *onus* constitutes a *prima facie* case is thus undertaken purely on a consideration of that evidence and without regard to any evidence which may be, or may have been, adduced in rebuttal'.[3] However in instances where the application for provisional liquidation is opposed and real and fundamental issues arise on the affidavits, it is appropriate that the applicant, upon whom the onus lies, has to establish a prima facie case for the sequestration of the respondents.[4] Thus the applicant is not only required to prove that the respondents are insolvent, but has to show that the sequestration of their estate will be to the advantage of creditors.

[16] The process that the repayment administrator should follow in the management and control of repayment of money unlawfully obtained is regulated by 84(4) of the Banks Act which provides that:

'It shall be the duty of the repayment administrator-

(a) to conduct such further investigation into the affairs or any part of the affairs of the person subject to the direction as the repayment administrator may deem necessary in order to establish-

(i) the true amount of money unlawfully obtained by that person as contemplated in section 83 (1);

[3] *Kalil v Decotex (Pty) Ltd and Another* 1988 (1) SA 943 (A) at 976G-H.

[4] *Prudential Authority v Dlamini and Another* [2024] ZASCA 133; 2025 (1) SA 365 (SCA) (*Dlamini*) para 37.

(ii) the identities of all persons from whom such money was so unlawfully obtained;

(iii) where any such money or any assets into which such money was converted, is kept or can be located; or

(iv) any other fact which in the opinion of the Authority or the repayment administrator needs to be established in order to facilitate the repayment of such money in terms of the relevant direction;'

[17] It is common cause that the applicant has stated in its founding affidavit that while the inspectors recorded submissions of 21 investors who alleged to have cumulatively invested R479 900 with the respondents, due to incomplete information they could not match any of the alleged amounts with the bank statements of the respondents. Therefore, on the applicant's own version it could not establish the true amount of money since there was incomplete information and the payments could not be matched with the respondent's bank statements.

[18] Furthermore the applicant did not dispute the respondents' version that there is an amount of R780 000 which is their pension payout from the Department of Education that the applicant relied on in calculating the total amount allegedly unlawfully received and payable by the respondents to the applicant. In relation to the applicants' inability to verify the identities of the investors who contributed funds to the respondents' bank account, I am bound by the majority decision in *Dlamini* where it was held that:

'…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'.[5]

However, this case differs from *Dlamini* in that the applicant failed not only to determine the accurate amount that was unlawfully received and owed by the respondents but also incorrectly grounded its calculations of the total amount owed to the applicant on the respondents' pension funds.

[19] This brings me to the applicant's argument about benefit of the sequestration to creditors. I disagree with the applicant's counsel who asserts that there is no obligation for the applicant to demonstrate that the sequestration will be

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[5] Ibid para 38.

advantageous to creditors. In *Dlamini*, the majority stated that:

'…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.'[6]

In this particular case, it is clear that the repayment administrator's determination that the respondents' liabilities surpassed their assets was founded on an inaccurate calculation of the total payable amount by the respondents and erroneous data regarding the value of their movable assets.

[20] Furthermore, I am of the view that the excessive delay in initiating the sequestration proceedings is significant when deciding whether to grant a sequestration order. It is well established that sequestration serves as a prompt remedy for individuals confronting insolvency. The applicant has delayed the application for nearly ten years after the respondents failed to comply with the directive requiring payment, and following the repayment administrator's determination of their insolvency, which was communicated through a letter of demand. There is no indication that the respondents contributed in any way to this delay in commencing sequestration proceedings. In my view, it seems unjust for the applicant to have waited such an extended period without either enforcing the debt or pursuing sequestration proceedings, which carry serious implications for an individual.

[21] For these reasons, I am not satisfied by the evidence presented by the applicant in this court; therefore, the application for sequestration against the respondents must fail. Regarding costs, there are no grounds to deviate from the principle that costs follow the results. Since both parties engaged senior counsel, the applicant should bear the respondents' costs on scale C.

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[6] Ibid para 40.

Order

[22] In the premises the following order is made:

The application is dismissed with costs on scale C.

MATHENJWA J

Appearances

Applicant's counsel:	Mr W Nicholson SC
Instructed by:	Mac Robert Inc.
	Pretoria
Respondents' counsel:	Mr C J Snyman SC
Instructed by:	SN Nxumalo Attorneys Inc.
	Pietermaritzburg
Date of hearing:	2 February 2026
Date of judgment:	15 April 2026