IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No: **2025-014811**

1) REPORTABLE: **NO**

2) OF INTEREST TO OTHER JUDGES: **NO**

3) REVISED.

………….…………… **DATE 02 April 2026**

SIGNATURE

In the matter between:

PEBBLE ROCK GOLF VILLAGE HOMEOWNERS ASSOCIATION NPC	Applicant
and	
TUMELO ROBERT RATLADI	Respondent

JUDGMENT

MM MOJAPELO AJ:

INTRODUCTION

[1] This is an application for the provisional sequestration of the respondent's estate in terms of ss 9 and 10 of the Insolvency Act 24 of 1936 ("the Act").

[2] The applicant is a homeowners' association. The respondent is cited as the owner of immovable property described as Erf 2[...], Pebble Rock Golf Village,

Pretoria. The indebtedness relied upon arises from arrear levies and related charges.

[3] The application is unopposed, but that does not entitle the applicant to relief as of course. Sequestration is an extraordinary remedy with serious consequences. The court must be satisfied that the statutory requirements have been met and that the discretion conferred by the Act should be exercised in favour of the applicant.

THE STATUTORY FRAMEWORK

[4] Section 10 of the Act provides that if the court to which a petition for sequestration has been presented is of the opinion that, *prima facie*: (a) the petitioning creditor has established against the debtor a claim as mentioned in s 9(1); (b) the debtor has committed an act of insolvency or is insolvent; and (c) there is reason to believe that it will be to the advantage of creditors if the estate is sequestrated, the court may make an order provisionally sequestrating the debtor's estate.

[5] The use of the word "may" in s 10 denotes a discretion. The same is true of s 12(1), which governs the grant of a final order. By contrast, s 12(2) provides that if the court is not satisfied that the requirements of s 12(1) have been met, it **shall** dismiss the petition and set aside the provisional order. See *Amod v Khan* 1947 (2) SA 432 (N) at 435.

[6] It follows that the court's function has two dimensions. First, it must determine whether the statutory jurisdictional facts have been established. Secondly, even where they have, it retains a residual discretion whether to grant the order. That discretion must be exercised judicially and in accordance with established principles. See *Julie Whyte Dresses (Pty) Ltd v Whitehead* 1970 (3) SA 218 (D) at 219A-D; *Epstein v Epstein* 1987 (4) SA 606 (C) at 612G-J; *Firstrand Bank Ltd v Evans* 2011 (4) SA 597 (KZD) para 28; and *Body Corporate of Old Trafford v Muronzi* 2024 JDR 2823 (GP).

[7] The authorities also recognise that the requirement of advantage to creditors itself involves an evaluative discretion. In *Gardee v Dhanmanta Holdings and Others* 1978 (1) SA 1066 (N) at 1070, Didcott J held that sequestration cannot be said to be to creditors' advantage unless it suits them better than any feasible and reasonably available alternative.

[8] In addition, even where the applicant has shown a claim, an act of insolvency or sequestration, and reason to believe that sequestration will advantage creditors, the court retains an overall discretion to refuse the order if the circumstances justify that course. See *Amod* supra at 439; *Julie Whyte Dresses* supra at 219; *Evans* supra para 27; and *Old Trafford* supra paras 8-12.

[9] It is correct that, where a respondent seeks to persuade the court to refuse a sequestration order despite compliance with the statutory requirements, the burden ordinarily rests on that respondent to establish special or unusual circumstances. See *Evans* supra para 28 and the authorities there cited. But that principle does not relieve a court, particularly in an unopposed matter, of the obligation to scrutinise whether sequestration is truly justified on the facts placed before it.

[10] Sequestration is not a mere debt-collection device. Its purpose is to bring about a concursus *creditorum* for the benefit of creditors as a body. It is not intended to be employed as a private coercive mechanism where ordinary execution is inconvenient or where the applicant's real object is simply to secure payment of its own debt. See *Naidoo v Absa Bank Ltd* 2010 (4) SA 597 (SCA) para 4.

[11] Finally, the applicant must make out its case in the founding papers. It cannot rely on conjecture, generic formulae, or bare conclusions in relation to the key jurisdictional facts.

THE APPLICANT'S CASE

[12] The applicant relies on:

12.1. A liquidated claim founded upon a Magistrates' Court judgment in the amount of R115 981.58;

12.2. A sheriff's *nulla bona* return, said to constitute an act of insolvency in terms of s 8(b) of the Act; and

12.3. An allegation that sequestration will be to the advantage of creditors.

[13] The applicant's heads of argument focus on the advantage to creditors requirement, which this court raised as a concern. The applicant submits that there is reason to believe sequestration will be to creditors' advantage, relying on the following key points:

13.1. The applicant's security is unique and sui generis, and sequestration will yield a specific advantage to creditors.

13.2. The respondent owns immovable property which can be realised at a market-related price through the curator's powers, including private sale, potentially yielding a better price than execution sales.

13.3. The curator can investigate the respondent's affairs, identify undue preferences, and ensure proper distribution among creditors.

13.4. Sequestration will avoid the prolonged and ineffective process of execution and sale in execution.

13.5. The applicant enjoys a statutory preference in respect of levies, as transfer of the immovable property cannot occur without a clearance certificate issued only upon settlement of levies.

13.6. The sequestration will limit further losses from accruing levies and reduce the risk of the applicant being disadvantaged by other creditors' preferent claims.

13.7. Even if no immediate dividend is paid, sequestration protects the interests of the general body of creditors and the public from persons unable to pay their debts.

13.8. The applicant relies on the well-established principle that it is sufficient to show a reasonable prospect not necessarily a likelihood of pecuniary benefit to creditors, citing *Meskin & Co v Friedman* 1948 (2) SA 555 (W) at 558-559, *FirstRand Bank Ltd t/a First National Bank v Naidoo* (KZD), *London Estates (Pty) Ltd v Nair* 1957 (3) SA 591 (D), and *Gardee v Dhanmanta Holdings* 1978 (1) SA 1066 (N).

13.9. The applicant also relies on *Mercantile Bank Ltd v Ross* [2023] ZAGPJHC 435, which held that the applicant need not prove the exact dividend payable but only a reasonable belief that sequestration will be to creditors' advantage.

13.10. The applicant submits that sequestration is not only for pecuniary benefit but also to protect the public from insolvent persons who may continue contracting without recourse.

13.11. The applicant further submits that the investigation and enquiry powers of the curator may reveal additional assets, benefiting creditors, citing *Stratford and Others v Investec Bank Ltd* 2015 (3) SA 1 (CC).

[14] I have considered these submissions carefully and the authorities cited. They correctly state the law on the advantage to creditors requirement and the court's discretion. The principle that a reasonable prospect, not a certainty, of pecuniary benefit suffices is well established.

[15] However, the applicant's heads do not address certain critical factual deficiencies in the founding papers, which remain determinative:

15.1. The applicant's own papers disclose the respondent's ownership of immovable property but do not provide a current valuation or any evidence of the bond position or encumbrances. Without this, the court cannot assess whether any equity exists to benefit creditors.

15.2. The applicant does not explain why execution against the immovable property was not pursued or why sequestration would be more advantageous than execution, contrary to the requirement in *Gardee* that sequestration must be better than any feasible alternative.

15.3. The assertion that the curator can sell the property privately and obtain a better price is speculative and unsupported by evidence.

15.4. The suggestion that investigation may reveal additional assets is abstract and not supported by any factual basis.

15.5. The applicant's claim that the applicant enjoys a preference by virtue of the clearance certificate requirement under the Sectional Titles Act is correct in principle but does not establish that sequestration will yield a dividend to concurrent creditors or that the estate has sufficient assets to cover costs and claims.

15.6. The heads do not address the contradiction between reliance on the *nulla bona* return and the known immovable property, a point emphasised in *Body Corporate of San Loren v Chipaga* 2025 JDR 5512 (GP).

15.7. The heads do not engage with the court's overall discretion or the risk that sequestration is being used as a debt-collection device rather than a bona fide insolvency remedy.

[16] The authorities cited by the applicant, including *Meskin, Gardee, Naidoo, Stratford,* and *Mercantile Bank Ltd v Ross*, support the legal framework and the

applicant's burden. But they do not relieve the applicant of the obligation to place before the court sufficient factual material to enable a proper assessment of advantage to creditors and the court's discretion.

[17] The applicant's reliance on the public interest in sequestration as a protective measure is noted. However, that principle does not override the statutory requirements or justify sequestration where the applicant's own papers undermine the inference of insolvency or advantage.

[18] In the absence of evidence of the value and encumbrances of the immovable property, the absence of any meaningful comparison with execution or other remedies, and the failure to explain the *nulla bona* return in light of the known asset, the applicant has not discharged the onus to show reason to believe sequestration will be to the creditors' advantage.

[19] The court's overall discretion remains a further safeguard. Even if the jurisdictional facts were established, the discretion would not be exercised in favour of the applicant on these papers. The application appears motivated primarily by the desire to recover arrear levies and to halt further accrual, rather than by a demonstrated benefit to creditors as a body.

[20] The use of sequestration as a debt-collection tool is discouraged by the courts. See *Naidoo*, *Chipaga*, *Old Trafford*, and *Charlemagne*. The court must be vigilant to prevent abuse of the insolvency process.

THE APPLICANT'S CLAIM

[21] The applicant has attached a Magistrates' Court judgment granted against the respondent under case number 354/2023 in the sum of R115 981.58, together with interest and costs.

[22] That judgment debt constitutes a liquidated claim for purposes of s 9(1) of the Act.

[23] The first requirement is accordingly satisfied.

WHETHER THE RESPONDENT COMMITTED AN ACT OF INSOLVENCY

[24] The applicant relies on s 8(b) of the Act. In broad terms, that provision is engaged where the sheriff, acting pursuant to a judgment, demands satisfaction and the debtor fails to satisfy the writ or to indicate disposable property sufficient to do so, or where it appears from the sheriff's return that sufficient disposable property could not be found.

[25] The applicant alleges that after execution against movables and a sale in execution, a further warrant was issued for the balance, whereafter the sheriff returned *nulla bona*.

[26] Ordinarily, a proper *nulla bona* return may constitute evidence of an act of insolvency. But it is not conclusive, and it must be evaluated in the context of the papers as a whole. That is so because the commission of an act of insolvency and the existence of an advantage to creditors are distinct enquiries. See *London Estates (Pty) Ltd v Nair* 1957 (3) SA 591 (N) at 592.

[27] In the present matter, the applicant's own founding affidavit states that the respondent is the owner of Erf 2[...] Pebble Rock Golf Village, Pretoria. A WinDeed search is attached confirming such ownership.

[28] That allegation creates a material difficulty for the applicant's reliance on the *nulla* bona return. The papers disclose, on the applicant's own version, the existence of immovable property owned by the respondent. Yet the return is relied upon as though it demonstrates an absence of sufficient disposable property.

[29] In *Chipaga,* the court was confronted with materially similar circumstances and held, correctly in my view, that an applicant cannot uncritically rely on a *nulla bona* return where its own papers disclose known immovable assets. In such a case, the return, read with the founding affidavit, may undermine rather than establish the inference sought to be drawn from it.

[30] The point is not that immovable property necessarily defeats a *nulla bona* return. The point is that where an applicant knows of such an asset, it must explain its relevance. Is the property executable? Is it bonded? If so, to what extent? Is there equity? Were steps taken toward execution against the immovable property? If not, why not? None of this is addressed in the present papers.

[31] There is a further concern. In *Nedbank Ltd v Norton* 1987 (3) SA 619 (N), it was held that if it is possible for the sheriff to make the demand contemplated by s 8(b), the sheriff should do so, since the debtor is the person best placed to indicate what property exists and where it may be found. The papers here do not provide a sufficiently detailed account to demonstrate proper compliance with the demand component of s 8(b), particularly in circumstances where the applicant itself knew of immovable property.

[32] A failed attempt to execute against movables does not, without more, establish an act of insolvency for sequestration purposes where the same papers disclose a known immovable asset and remain silent on its value, encumbrances and executability.

[33] In my view, the applicant has not established, even on a *prima facie* basis, a proper act of insolvency in terms of s 8(b).

WHETHER FACTUAL INSOLVENCY HAS BEEN SHOWN

[34] The applicant also suggests that the respondent is insolvent because he has failed to pay levies, execution against movables has yielded little, and the arrears have increased.

[35] That is insufficient. Factual insolvency means that a debtor’s liabilities exceed his assets. An inability or failure to pay a particular debt does not by itself establish such insolvency.

[36] The papers contain no valuation of the respondent's immovable property, no evidence of any mortgage bond balance, no schedule of total liabilities, and no balance-sheet type information from which the court can conclude that the respondent's liabilities exceed his assets.

[37] The allegation of factual insolvency is accordingly speculative and unproven.

ADVANTAGE TO CREDITORS

[38] The requirement in s 10(c) that there be reason to believe that sequestration will be to the advantage of creditors is indispensable. It is not a technical afterthought and cannot be satisfied by rote assertion.

[39] The classic statement remains that of *Meskin & Co v Friedman* 1948 (2) SA 555 (W) at 559, namely that there must be "a reasonable prospect not necessarily a likelihood, but a prospect which is not too remote that some pecuniary benefit will result to creditors."

[40] The authorities make clear, however, that the right of investigation under the Act is not itself the advantage. It is merely a means by which material benefit might possibly be obtained. The applicant must still place sufficient facts before the court to show that such a benefit is a realistic prospect. See *Meskin* supra at 559.

[41] The applicant's case is sparse. It says, in substance, that: (a) the respondent's levy indebtedness continues to increase monthly; (b) a curator may realise the immovable property; (c) other creditors may benefit if there is a residue; and (d) insolvency proceedings will prevent further prejudice and bring finality.

[42] Those allegations are inadequate for several reasons.

[43] First, there is no current valuation of the respondent's immovable property. The papers reflect only the historical purchase price.

[44] Secondly, there is no disclosure of the bond position. If the property is bonded, the amount outstanding, the ranking of the secured creditor and the likely free residue are all highly material. Without such evidence, the court cannot assess whether any dividend to concurrent creditors is reasonably foreseeable.

[45] Thirdly, there is no evidence regarding the anticipated costs of sequestration and administration. The courts have long cautioned against deploying the expensive machinery of sequestration where it will consume the estate or achieve no better result than ordinary execution. In *Ex parte Van den Berg* 1950 (1) SA 816 (W) at 817, Ramsbottom J described such use of sequestration as “to use a sledgehammer to break a nut.”

[46] Fourthly, the applicant does not identify any concrete impeachable transactions, hidden assets, or other facts suggesting that an enquiry by a trustee is likely to uncover value for creditors. The reference to investigation is abstract and formulaic.

[47] Fifthly, the comparative exercise required by *Gardee* has not been undertaken. The applicant is already armed with judgment. It does not explain, with reference to facts, why sequestration would be more advantageous than execution against the immovable property or some other feasible and less expensive procedure.

[48] Sixthly, the papers suggest that the applicant’s true concern is to stop the continuing accrual of levies and to secure a change in ownership so that the property is held by a paying owner. That may be understandable from the applicant’s perspective, but it is not the same thing as demonstrating advantage to creditors in the sense contemplated by the Act.

[49] The reasoning in *Old Trafford* is apposite. There was a body corporate that sought sequestration in circumstances where its real grievance was ongoing non-payment and the prospect of having the debtor’s primary residence sold. The court held that the submissions regarding advantage were made in the abstract, did not

establish that sequestration would be more beneficial than execution, and did not justify the drastic consequences sought.

[50] Similar caution appears in *Body Corporate of Charlemagne v Drysdale (2022/039556) [2026] ZAGPJHC 68 (4 February 2026)*, where the court emphasised the need for concrete evidence regarding the property, secured liabilities, administration costs and likely dividend before advantage to creditors can properly be found.

[51] The recent judgment in *Samantha De Jager v Christopher Petrus Kruger and another, Case no 2025-146525 (unreported),* likewise underscores that the "advantage to creditors" requirement is not met by reciting trite principles and invoking a trustee's investigative powers without factual material relating to the debtor's estate, secured debt, costs and realistic dividend.

[52] On the papers before me, there is no proper factual foundation for a finding that there is reason to believe that sequestration will be to the advantage of creditors.

THE COURT'S OVERALL DISCRETION

[53] That finding is dispositive. Once one or more of the jurisdictional requirements are not established, the application must fail.

[54] It is nevertheless appropriate to address the overall discretion of the court, because the applicant's case appears to assume that once a judgment debt and a *nulla bona* return exist, a provisional order should ordinarily follow. That assumption is incorrect.

[55] The court's overall discretion in sequestration matters is a true discretion to be exercised judicially upon a consideration of all relevant facts. It is neither unfettered nor mechanical. See *Pelunsky & Co v Beiles* 1908 TS 370 at 372; *Julie Whyte Dresses* supra at 219A-D; *Amod* supra at 439; *Evans* supra para 28; *Old Trafford* supra paras 8-12.

[56] In *Amod Hathorn*, JP made plain that “may” does not mean “must”. In *Julie Whyte,* the court recognised that the discretion must be exercised judicially. In *Evans* Wallis J confirmed that special or unusual circumstances may justify refusal even where the statutory requirements have been met. And in *Old Trafford* Strydom AJ described the “tale of two discretions”: first, the evaluative judgment inherent in the advantage enquiry; and secondly, the overall discretion to refuse the order despite formal compliance.

[57] In exercising that discretion, courts may consider whether the sequestration application constitutes an abuse of process, whether ordinary execution or another remedy would better serve creditors, whether the application is being used for an ulterior purpose, and, where relevant, whether constitutional considerations arise, *Old Trafford* supra paras 42-49.

[58] I do not decide this matter on constitutional grounds. It is unnecessary to do so. But *Old Trafford* correctly reminds one that where sequestration will, in practical terms, result in the forced loss of a home, the court cannot adopt a blinkered or purely mechanical approach. Judicial oversight remains important where the practical effect of the order may be severe.

[59] Even if I were wrong in my conclusion that the applicant failed to establish an act of insolvency and advantage to creditors, I would, in any event, not have exercised the discretion in favour of granting a provisional order on these papers.

[60] Several considerations lead to that conclusion:

60.1. The applicant seeks to rely on a *nulla bona* return while simultaneously alleging that the respondent owns immovable property;

60.2. It provides no meaningful explanation of the value, encumbrances or executability of that property;

60.3. It does not establish, by concrete facts, that sequestration offers any advantage over execution; and

60.4. The tenor of the founding affidavit suggests that the application is motivated primarily by debt collection and the desire to halt future levy prejudice, rather than by a demonstrated benefit to creditors as a body.

[61] Those features strongly militate against granting sequestration relief. They point to the use of insolvency proceedings as a coercive substitute for more conventional remedies. That is not the purpose of the Act.

ORDER

[62] I therefore make the following order:

1. The application for the provisional sequestration of the respondent's estate is dismissed.

2. There is no order as to costs.

MM MOJAPELO
ACTING JUDGE
HIGH COURT GAUTENG DIVISION, PRETORIA
02 April 2026

APPEARANCES:

Counsel for the Applicant : Adv. D Broodryk

Attorney for the Applicant : Scholtz Attorneys