IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1) REPORTABLE: **YES**	
(2) OF INTEREST TO OTHER JUDGES: **YES**	
(3) REVISED.	
	[redacted]
9 April 2026	______________________
Date	**K. La M Manamela**

CASE NO: 2025-161004

In the *ex parte* application of:

CLIVE GERARD DINSDALE First Applicant

and

NATASJA DINSDALE Second Applicant

CASE NO: 2025-185019

In the *ex parte* application of:

SUSARAH MAGDALENA ALETTA PRINSLOO Applicant

CASE NO: 2025-178555

In the *ex parte* application of:

HENDRIK JACOBUS DU PREEZ Applicant

CASE NO: 2025-178553

In the *ex parte* application of:

ASHLEIGH EVELYN SCHOULTZ Applicant

SUMMARY: Insolvency law - voluntary surrender – four applications in which monies (amounts not disclosed to the Court) were paid to the attorney in advance and to be retained as fees - section 6(1) of the Insolvency Act 24 of 1936 ('the Act') requires existence of enough free residue to defray all costs of sequestration – voluntary surrender requires utmost good faith and full and frank disclosure of an applicant's financial position – - non-disclosure of the monies paid to the attorney jeopardises the oversight function of the Court, the trustees, creditors and the Master - the attorney filed explanatory affidavit upon request - source of funds paid as fees or costs on behalf of the applicants irrelevant, as the funds received form part of the estate for purposes of the Act and not a private contractual issue - section 97 of the Act envisages taxation of legal fees, as costs of sequestration - formalities for surrender met, but determining sufficiency of the free residue and advantage to creditors depends on the inclusion of the monies as part of the estate -applications postponed for disclosure by the attorney and the applicants of the amounts paid.

DATE OF JUDGMENT: This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on CaseLines by the Judge's secretary. The date of the judgment is deemed to be **9 April 2026.**

JUDGMENT

Manamela, J

Introduction

[1] In these four applications or petitions[1] for voluntary surrender, no provision is made for attorneys' fees or costs in the costs of sequestration.[2] This appears to be contrary to section 6(1) of the Insolvency Act 24 of 1936 ('Act') requiring that an applicant for acceptance of the surrender of her estate, as a debtor, among others, establishes in her application that there will be enough free residue[3] to defray all costs of sequestration. It is stated in these applications

[1] The petition procedure was abolished and replaced - as a mode to institute proceedings - with notice of motion in terms of Petition Proceedings Replacement Act 35 of 1976 with effect from 1 July 1976. See DE van Loggerenberg, Erasmus: Superior Court Practice (Revision Service 24, 2024, Jutastat e-publications October 2024) RS 24, 2024, D1 Rule 6- 60.

[2] Section 6(1) of the Act. See also s 97 of the Act on costs of sequestration.

[3] Section 2 of the Act defines 'free residue' with regard to an insolvent estate as 'that portion of the estate which is not subject to any right of preference by reason of any special mortgage, legal hypothec, pledge or right of retention'. See also RD Sharrock, 'Insolvency' in *The Law of South Africa (LAWSA)* (LexisNexis 2008) ('Sharrock *LAWSA*') at 317.

that the attorneys' costs or fees ('legal fees') have already been paid, prior to the launch of the applications. The amounts reportedly paid as legal fees are not even disclosed in the applications and an explanatory affidavit by the attorney subsequently filed upon request of the Court. Therefore, the Court is expected to accept the surrender of the respective estates, despite the fact that some of the costs of sequestration – in the form of the legal fees in the unknown amounts – have been paid out of the estates and will not be subjected to the oversight of the trustees to be appointed; the Master of the High Court ('the Master'); the taxing master and this Court. All these applications reflect that there will be a dividend payable to the concurrent creditors, after payment of the specified costs of sequestration, excluding legal fees. Assuming for a moment that the issue of legal fees has no bearing on the other substantive requirements, the applications appear to have met all requirements for the voluntary surrender of the estates.

[2] The pre-application payment of the legal fees and exclusion of those fees from other costs of sequestration did not seem to me to comport with the provisions of the Act and, generally, with the principles and objectives of our insolvency law. The principal purpose of the Act is to provide a method for collective debt-collection resulting in an orderly and fair distribution of the insufficient assets of an insolvent debtor to satisfy all claims of the creditors.[4] The general acceptance is that a *concursus creditorum*[5] arises from the moment an order for the sequestration of a debtor's estate is granted.[6] Although this concept is focussed on the rights of creditors and, to the extent possible, the satisfaction of their claims, it does not exclude the orderly and fair calculation and payment of costs of sequestration including legal fees,

4 Eberhard Bertelsmann and others, *Mars: The Law of Insolvency* 10th Ed, 2019 ('*Mars: The Law of Insolvency*') par 1.1 at p 2.

5 The literal meaning of *concursus creditorum* is 'a rush (concourse) of creditors') simultaneous claim by several creditors; simultaneity of creditors' claims'. See VG Hiemstra and HL Gonin, *Trilingual Legal Dictionary* (3rd edn, Juta 1992). The concept is considered one of the key concepts of the law of insolvency in South Africa. See also *Mars: The Law of Insolvency* par 1.1 at pp 3-4; *Walker v Syfret NO* 1911 AD 141 at 166.

6 *Walker v Syfret NO* 1911 AD 141 at 166. See also *Mars: The Law of Insolvency* par 1.1 at p 3.

which precede the payment of the concurrent claims of creditors.[7] When the applications came before me in the Insolvency Motion Court during the week of 9 to 13 February 2026, I stood them down to later in the week to allow counsel to take further instructions and, possibly, prepare to make further submissions, on the issue of the impugned legal fees.

[3] Mr B Lee appeared as counsel in all four applications on brief from Michael Senekal Attorney. When he finally appeared on Friday, 13 February 2026, he drew my attention to an affidavit deposed to by the attorney, Mr Senekal, the previous day in one of these matters explaining the position regarding the legal fees. He passed an opportunity to file written submissions on the issue for full reliance on the affidavit filed by his instructing attorney. Judgment was reserved in these applications.

[4] The applications are based on distinct sets of facts, as applications of this nature always are, but what requires to be determined for purposes of the disposal of the applications is the crisp issue of the implications of the exclusion of the legal fees from all other costs of sequestration. I am, generally, satisfied that the other substantive and procedural requirements for relief have been met.[8] But a final view on the outcome of the four applications hinges on finality on the issue of legal fees, which issue has a bearing on the determination of whether sequestration of the respective estates will be to the advantage of the creditors. For these reasons, I decided that a joint judgment is appropriate for all four applications. But, the areas

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7 Section 97, read with s 103, of the Act.

8 Section 6(1) of the Act provides that an applicant debtor for voluntary surrender ought to meet both substantive and procedural requirements for relief. The substantive requirements are those relating to: (a) the debtor's insolvency; (b) her ownership of 'realisable property' of sufficient value to yield the free residue to defray all costs of the sequestration, and (c) sequestration being ('will be') to the advantage of the debtor's creditors. The procedural requirements are those under s 4 of the Act in the form of a notice of surrender and statement of the debtor's affairs. See also s 3 of the Act. See, generally, André Boraine, Jennifer A Kunst and David A Burdette (eds), *Meskin's Insolvency Law* (LexisNexis, November 2025) ('*Meskin's Insolvency Law*)' pars 3.2 and 3.3.

of divergence in the facts of the matters appear in the specific summaries of the matters, I deal with first.

Ex parte Clive Gerard Dinsdale and Another, Case Number: 2025-161004 ('Ex parte Dinsdale')

[5] The voluntary surrender application of *Ex parte Dinsdale*, brought by Mr Clive Gerard Dinsdale and Mrs Natasja Dinsdale, came before me on 11 February 2026 and was stood down to 13 February 2026.

[6] The Dinsdales are married to each other in community of property. They are both unemployed and reside in East Lynne, Pretoria. Mr Dinsdale, deposed to the founding affidavit. He stated that he was declared medically unfit in 2024 and, thereafter, lost his employment. He is currently a beneficiary of the unemployment insurance fund ('UIF'). His net monthly income is in the region of R7000. Mrs Dinsdale, deposed to a confirmatory affidavit. She confirmed that she is unemployed and that they currently stay for free with other family members. They contribute towards utilities in the amount of R1 500. Their total monthly expenses are in the amount of R16 126.

[7] The Dinsdales say that their debts or liabilities arose from loans and credit facilities. They are now unable to repay these debts. They also relied on their children and other members of their extended family in payment of these debts, but this has proven unsustainable. They do not own any immovable property. And their movable assets comprise household furniture and appliances with estimated value of R22 800. Their list of creditors reflects financial institutions and credit retailers with concurrent claims in the total amount of R81 008, 57. They state that the creditors would receive about 23 cents in the rand from a free residue amount of R18 882.05. The costs of sequestration – excluding the impugned legal fees – are stated as the

amount of R3 917.95. The legal fees are simply stated as 'Nil' and accompanied by the words 'already paid' in the founding affidavit.[9]

[8] As already indicated, the attorney, Mr Senekal deposed to an affidavit on 12 February 2026 in which he explained the situation regarding the legal fees paid to his law firm. It is necessary to quote extensively from Mr Senekal's affidavit as follows:

> 2.
>
> **PURPOSE OF THIS AFFIDAVIT**
>
> This affidavit is delivered at the request of the above Honourable Court in order to clarify the arrangement relating to the legal fees incurred in bringing this application.
>
> 3.
>
> **PAYMENT OF ATTORNEY'S FEES**
>
> 3.1 Prior to the launching of this application, my firm rendered a quotation to the Applicants in respect of the professional fees and disbursements associated with the preparation and prosecution of this application.
>
> 3.2 The Applicants' family elected to pay such fees personally and in advance.
>
> 3.3 Payment of the agreed professional fees was made to my firm before the application was instituted.
>
> 3.4 The funds received in payment of such fees were not received from the insolvent estate, nor from any asset which would otherwise form part of the free residue of the estate.
>
> 4.
>
> **NO CLAIM AGAINST THE ESTATE**
>
> 4.1 I confirm unequivocally that:
>
> 4.1.1 My firm will not submit any bill of costs for taxation in respect of the work performed in bringing this application;
>
> 4.1.2 No claim will be lodged against the insolvent estate for legal fees in respect of this application;
>
> 4.1.3 The fees already paid will not form part of the costs of administration of the estate;
>
> 4.1.4 No further legal costs in respect of this application will be sought from the estate.
>
> 4.2 The arrangement between myself and the Applicants is a private contractual arrangement which does not affect the *concursus creditorum* and does not diminish the assets available to the creditors.
>
> 5.
>
> **LEGAL POSITION**
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> 5.1 It is respectfully submitted that there is no prohibition in the Insolvency Act 24 of 1936 against an applicant funding litigation personally prior to sequestration or rehabilitation proceedings.
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> 5.2 Where legal fees are paid from independent funds and no claim is made against the estate, such payment does not constitute a cost of administration.
>
> 5.3 As no claim will be made against the estate and no taxation will follow, creditors suffer no prejudice.
>
> 6.
>
> **CONCLUSION**

[9] Founding Affidavit ('FA') par 14, CaseLines ('CL') 005-6.

6.1 I confirm that the fees relating to this application have been fully discharged and that no portion thereof will be recovered from the insolvent estate.

6.2 This affidavit is furnished to assist the Court in determining that the administration costs of the estate remain unaffected by the private funding of this application.[10]

[9] Mr B Lee, appearing for the applicant in this matter and the three other matters, informed the Court that the explanatory affidavit filed in this matter should be considered in all other three matters. The affidavit is not uploaded on the electronic files for the other matters on CaseLines. This does seem proper and the other matters have their own unique facts. I deal with each of the matters, next.

Ex Parte Susarah Magdalena Aletta Prinsloo, Case Number: 2025-185019 ('Ex parte Prinsloo')

[10] *Ex parte Prinsloo* came before me on 12 February 2026 and was also stood down to the next day. It concerns Ms Susarah Magdalena Aletta Prinsloo, a 68 year old applicant-debtor, who earns a living as a manager of an old age home (i.e. retirement village'). She takes home an amount of R12 000 monthly. This is insufficient to cover her living expenses in the amount of R22 045 per month. She is married out of community of property and resides in Eloffsdal, Pretoria with her husband, who is a pensioner.

[11] The applicant stated the cause of her insolvency to be the closure of her own retirement village she previously operated until it closed down, due to financial constraints. She, thereafter, had to make ends meet through the use of credit facilities. As in *Ex parte Dinsdale*, Ms Prinsloo also states that she is financially reliant on family and friends to survive. The applicant stated that she is unable to pay her debts in the region of R100 045, 23. Her assets are valued in the amount of R24 400. She says that creditors would receive a dividend of 21 cents in the rand from the amount of R21 072 which would be available from the proceeds of

[10] CL 020-2 to 020-4.

sale of her assets, after costs of sequestration in the amount of R3 328 is deducted. Similarly to *Ex parte Dinsdale* the applicant stated in her founding affidavit that the legal fees have already been paid, without disclosing the amount thereof. Therefore, this cost element does not form part of the calculation made on the costs of sequestration. Mr Lee, as stated above, informed the Court that the explanation on legal fees filed in *Ex parte Dinsdale* should be considered for purposes of the same issue in this matter.

Ex parte Hendrik Jacobus du Preez, Case Number: 2025-178555 ('Ex parte du Preez')

[12] The voluntary surrender of Mr Hendrik Jacobus du Preez (i.e. '*Ex parte du Preez*') was heard on 12 February 2026. It was stood down to 13 February 2026. Mr Du Preez is divorced. He is employed as a mobile plant administration trainee and resides in Pinehaven Estate, Krugersdorp.

[13] Mr Du Preez attributed the cause of his insolvency to be his previous bout of unemployment for a period of more than three years. This led to him being unable to pay for his house, household furniture and motor vehicle. He lost everything, save for the household furniture now valued at R15 000. His current employment pays him a net income of R20 376, 07, which he says is much less than what he earned from the lost job. He, thus, is unable to provide for his bare necessities and repayment of his debts in the amount of R24 720.

[14] According to Mr Du Preez there is no way out of his financial situation, but to apply for the surrender of his estate. In addition to the amount of R15 000 to be derived from the sale of his household furniture, he says there is an amount of R10 000 stated as 'cash in hand/financial institution'.[11] This, he asserts, would be sufficient to pay for costs of sequestration in the amount of R3 328. The balance of R21 672 would be shared amongst his creditors to yield to them a dividend of 21 cents in the rand in satisfaction of their claims. The

[11] FA par 14, CL 05-6.

claims against his estate are in the total amount of R102 369.25. As with the other two applications above the costs of administration do not include legal fees, as the legal fees have already been paid prior to the launch of this application for the same reasons given in *Ex parte Dinsdale*. But, interestingly, for the paramount issue in this judgment the applicant in this matter (i.e. *Ex parte du Preez*') stated that his parents assisted him financially to bring this application. In the other applications this averment came from the affidavit deposed to by the attorney.

***Ex parte Ashleigh Evelyn Schoultz*, Case Number: 2025-178553 ('*Ex parte Schoultz*')**

[15] *Ex parte Schoultz* was heard on Friday, 13 February 2026. Unlike the other three, there was no opportunity for it to be stood down to another date, but counsel once more referred the Court to the affidavit filed in *Ex parte Dinsdale* to pass an opportunity (for a specific explanation or submissions in this matter) of the pre-application payment of legal fees of Michael Senekal Attorney.

[16] This application concerns the insolvent estate of Ms Ashleigh Evelyn Schoultz of Mayville, Pretoria. She is divorced and works as an accounts manager for an undisclosed employer. She states that she has been struggling financially since her divorce. She is unable to make ends meet from her income and small amount she receives as maintenance from her former spouse. Her net monthly income is R21 796. She is unable to pay her debts on a monthly basis, despite gratuities from family and friends. Her monthly expenses are in the amount of R24 766. Therefore, she sees the voluntary surrender of her estate as the only viable solution to her situation.

[17] Ms Schoultz does not own any fixed property and the movable assets to her name are valued at R22 000. Her liabilities are in the amount of R90 586, 48. From the remaining R18672 after payment of costs of sequestration (in amount of R3 328), the applicant is of the

view that sequestration would benefit the creditors in her estate, as they would derive at least 21 cents in the rand. As with the other applications, discussed above, the costs of administration in this matter do not include legal fees. They have been already paid in an amount both the applicant and her attorney, Mr Senekal, have not bothered to disclose to the Court. I turn to the explanation given by Mr Senekal for this approach in all four matters before the Court.

Payment of the legal fees before the hearing of the applications (in general)

[18] A court seized with a surrender of an estate of a debtor may accept such surrender and make an order for sequestration of the estate if it is satisfied that the formalities or procedural requirements in section 4 of the Act and the substantive requirements in section 6(1) of the Act have been met.[12] The latter requirements include that there is sufficient free residue (i.e. value of the debtor's realisable property not subject to any security) to defray all costs of sequestration.[13]

[19] I am satisfied that the formalities have been complied with in all four matters. Equally, I am convinced that the respective estates of the applicants in these matters are insolvent. I cannot determine the requirement whether there is sufficient free residue to defray all costs of sequestration, when not all costs have been accounted for. The issue of the payment (or retention of) the legal fees by the attorney ought to be settled prior to a ruling that this requirement has been satisfied. And before such ruling is made I cannot accept the so-called 'dividends' put forward in these matters to bolster the contention that sequestration of the respective estates will be to the advantage of the creditors in the estates.

[20] At face value the issue – novel as it may seem – appears inconsequential. But its shrouding by the palpable level of secrecy also drew my attention. Voluntary surrenders belong

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12 Footnote 8 above.

13 *Ibid*.

to the realm of utmost good faith and full and frank disclosure on the part of the applicant-debtor of all facts relating to her financial position.[14] An intense interrogation of the issue against the aspects of the explanation given by the attorney would reveal the hallmarks of improper and unfair conduct which cannot be countenanced by this Court. I look into the attempt by the applicants' attorney, Mr Senekal, to explain the situation in the four matters and have, largely, adopted his choice of words, as subheadings.

Pre-litigation quotation of legal fees by the attorneys

[21] The applicants' attorney, Mr Senekal, explained to the Court that prior to the launch of the application, his firm provided the applicants with quotations on the fees to be charged and, ostensibly, disbursements to be recovered in 'the preparation and prosecution' of their applications.

[22] So far nothing seems improper. An attorney providing his client, a prospective client, with a quotation or estimation as to fees is proper. In fact, it may be a regulatory requirement by the Legal Practice Council of which Mr Senekal, no doubt, is a member.

[23] But, a quotation is only an estimate or projection of the fees which may be charged on the basis of the activities which are ordinarily expected from the matter. A quotation does not reflect the work actually done, but a postulation of what may be the activities in the matter and the associated costs, such as counsel's fees. Its purpose is to provide the client with an idea of the fees or costs that may be charged. Once the actual work is done or part thereof, the attorney would have to send an account or a bill of costs, drafted on the basis of the actual work done in the matter. Mr Senekal could not have presented an account or a bill of costs because at the

14 *Fesi and Another v ABSA Bank Ltd* [1999] JOL 5634 (C); 2000 1 SA 499 (C) 502 at 502-503; *Ex parte Arntzen (Nedbank Ltd as Intervening Creditor)* 2013 (1) SA 49 (KZP) [5]-[6], [12]; *Ex Parte Q.R.E and Another* (55075/2014) [2014] ZAGPPHC 919; 2015 (1) SA 540 (GP) (15 October 2014) [7]-[8]; *Ex parte Oberholzer; Ex parte Nchabeleng and Another; Ex parte Van der Walt and Another* (4251/2017) [2017] ZAGPPHC 566 [39]; *Ex parte Mc Bride* (2024-003235) [2024] ZAGPPHC 1166 (15 August 2024). See also Sharrock *LAWSA* at 317.

material stage he had not yet done any work in the matters. Evidently, these matters are not yet finalised.

[24] Perhaps, Mr Senekal, is referring to an agreed fee on the work still to be done once a quotation was given to the applicants, as his clients. The applicants in these four matters would need to be actually insolvent to require the services of Mr Senekal in the voluntary surrenders. Meaning the applicants in the matters would have been already insolvent by the time they set foot on Mr Senekal's door. For current purposes, I am not commenting on whether an insolvent may conclude such agreement.

[25] What is rather concerning – so far in the discussion – is the fact that the applicants and Mr Senekal have decided not to divulge how much was paid to Mr Senekal in these four matters following his so-called quotations or my ventured 'agreed fee' scenario. He did not provide the Court with a copy of the quotations and proof of payment by the applicants or the third parties he alleges paid the money on behalf of the applicants. This, notwithstanding, an opportunity given to him by the Court in standing down the matters (i.e. three of the four matters) for a hearing later in the week. The quantum and source of the funds paid are critical, as would become clear in the next rubric from Mr Senekal's explanation, I am now turning to.

Third party or family paid the legal fees in terms of legitimate private contractual arrangements

[26] It is stated by Mr Senekal that after the applicants were, ostensibly, satisfied with the quotation by his law firm, they requested one or more of their family members to pay the quoted amounts. This was done in advance, Mr Senekal pointed out.

[27] He, further, emphasised that the funds received in payment of such fees were not received from the applicants' insolvent estates or from an asset of the estates forming part of the free residue in the estates. But it really does not matter the origin of the funds, once paid

for purposes of the surrender applications, the 'gifted' funds form part of the estate to be considered in terms of the provisions of the Act. After all, they were 'gifted' for exactly that purpose. The Practice Manual of this Division appears to have been alive to payments made by third parties on behalf of applicants, albeit for a different reason, from a reading of this part:

> 4.4 Where the applicant seeks to establish advantage to creditors by relying on a sum of money paid into an attorney's trust account to establish benefit for creditors, an affidavit by the attorney must be attached to the application in which he/she confirms that the money has been paid into his/her trust account and will be retained until the appointment of a trustee.
>
> <u>The source of the funds paid into the attorney's trust account must be clearly disclosed under oath by the person providing the money</u>.[15]
>
> [underlining added for emphasis]

[28] Mr Senekal, further, considers the payment of the legal fees a private contractual arrangement between him or his law firm and the individuals involved. The arrangement does not affect the *concursus creditorum* and does not diminish the assets available to the creditors, he explained. He also added – for good measure, I suppose - that there is no prohibition in the Act against an applicant funding litigation personally prior to sequestration or rehabilitation proceedings.

[29] Mr Senekal, with respect, cannot blow hot and cold on the issue. If the arrangement is a private affair the applicants cannot invoke it to motivate that section 6(1) have been met in that all costs of sequestration would be paid. When this is done the statutory mechanism is engaged and there is no room to carve out some area in the determination as being out of bounds. Simply put, legal fees in voluntary surrender are subject to statutory regulation and, thus, subjected to judicial oversight and even that of the taxing master and the Master. This is borne by section 97 of the Act, quoted below.[16]

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15 Practice Manual of the Gauteng Division Pretoria Chapter 15 par 15.14.

16 Par [34] below.

[30] Therefore, all these assertions by Mr Senekal cannot justify his retention of the impugned funds, if the applications are to succeed. The fact that the legal fees were paid in advance to Mr Senekal's law firm and the payment was made by some benefactor on behalf of the applicants, does not alter the ultimate identity of the funds (i.e. costs of sequestration as statutorily defined).[17] The same applies to the timing of the payment (i.e. that payment made to the attorney in advance or before the application was instituted). The funds were paid to satisfy the Court that all costs of administration required to be paid in terms of the Act would indeed be paid. This is the reason the applicant relied on this in their quest to convince the Court that the substantive requirements of the Act have been met. It would have been unnecessary to involve the Court in a private arrangement.

No claim against the estate, no taxation of bill of costs and, thus, no prejudice to the estates

[31] Mr Senekal assured the Court that there will be no claim lodged against the insolvent estate for the legal fees in respect of these applications. He will not submit any bill of costs for taxation in respect of the work performed in bringing these applications, he further explained. Therefore, the creditors will not suffer any prejudice due to these fee arrangements, he concluded.

[32] Regarding the assertion that no claim will be lodged against the estate, I immediately point out that the costs of sequestration are not claims against the estate. Provided they are found reasonable (through taxation) costs of sequestration have to be paid in full.[18] There is no real risk in this regard. But claims by creditors have to settle for some form of dividend,

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17 *Ibid.*

18 *Ex parte Oberholzer; Ex parte Nchabeleng and Another; Ex parte Van der Walt and Another* (4251/2017) [2017] ZAGPPHC 566 [44]-[45].

hence the laborious attempt by our Courts to suggest a minimum percentage or cents in the rand, still standing at 20 cents in the rand (equating to 20% of each claim) for this Division.[19]

[33] Regarding the view by Mr Senekal that he would not be presenting bills of costs to the trustees, once appointed, and that no taxation of such bills of costs would follow, I consider this view a non-starter. Mr Senekal as a member of the legal profession cannot be proud that his fees quoted to the applicants in these matters during their most desperate of times (read insolvency circumstances) would escape the scrutiny of the trustees, the Master and that of the taxing master. He has also sought to preclude the Court from knowing how much he charged and for what he charged for. This does not augur well for his membership of the legal profession and as an officer of this Court.

[34] But legal fees recognised as costs of sequestration in terms of the Act are 'taxed costs'. This is provided by section 97(3) (read with section 97(2)(c)) of the Act, as follows in the material part:

> … the expression **'taxed costs of sequestration'** means the costs (as taxed by the registrar of the court) incurred in connection with the petition of the debtor for acceptance of the surrender of his estate or of a creditor for the sequestration of the debtor's estate…

[35] The taxed costs of sequestration form part of the free residue from which all costs of sequestration are paid.[20] Presentation of a bill of costs and taxation thereof are statutory requirements for recovery of legal fees from voluntary surrenders by Mr Senekal in all four matters. And there is only one payment model for such costs in sequestrations, namely, by the trustees in terms of a liquidation and distribution account confirmed by the Master. The novel arrangements by Mr Senekal and his law firm are not recognised by our law for voluntary

19 Practice Manual par 15.14, sub-par 4.5.6. See also *Ex Parte Q.R.E and Another* (55075/2014) [2014] ZAGPPHC 919; 2015 (1) SA 540 (GP) [5]; *Ex parte Slabbert* (099263/2024) [2025] ZAGPPHC 286; [2025] 3 All SA 264 (GP) (20 March 2025).

20 Section 97(1) of Act.

surrenders and, therefore, cannot form part of the determination of these applications before the Court.

[36] To avoid doubt, creditors do not suffer prejudice due to payment of costs of sequestration. It is a statutory requirement to be complied with prior to the concurrent dividend being paid to creditors. Therefore, the purported favour to creditors from Mr Senekal is not established.

Costs of sequestration or administration (generally)

[37] In the light of the assertions by Mr Senekal in his quest to explain his retention of the funds for legal fees, I deem it necessary to state a few principles regarding costs of sequestration or, as otherwise known, costs of administration generated by our courts and academic commentators. This should not detain the Court.

[38] It is trite that fees and costs (i.e. expenses incurred) for drawing the application and its accompanying affidavits, as well as attendances, form part of the costs of sequestration and, thus, are payable out of the estate.[21] These costs form part of the general (or all) costs of administration.[22]

[39] An applicant for voluntary surrender is saddled with an onus of establishing the substantive requirement that there is sufficient realisable property or free residue to cover the costs of sequestration, failing which the surrender ought to be refused.[23] Where there is doubt as to the sufficiency of the free residue towards this end, a guarantee, satisfactory to the Master,

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21 *Mars: The Law of Insolvency* par 3.2.4.

22 Section 97 of the Act. See also Sharrock *LAWSA* at 317.

23 *Ex parte Steyn* [1962] 3 All SA 35 (O); 1962 3 SA 121 (O) 122; *Ex parte Anthony en 'n Ander en Ses Soortgelyke Aansoeke* 2000 (4) SA 116 (C) [8]; *Ex parte Mc Bride* (2024-003235) [2024] ZAGPPHC 1166 [11]. See also Sharrock *LAWSA* at 317; *Meskin's Insolvency Law* at 3.2.

may be required to be furnished.[24] To avoid doubt, the guarantee is not to add to the free residue, but to eliminate any doubt as to the sufficiency of the free residue.[25]

Other relevant considerations

[40] The arrangements on the legal fees by Mr Senekal raises other concerns.

[41] First, the non-disclosure of the legal fees improperly places in jeopardy the oversight jurisdiction of this Court, the trustees, any proven creditor of the estate and the Master. As part of its jurisdiction the Court need not only be aware of the amount to be charged as legal fees for the surrender, but the Court is enjoined to satisfy itself of the reasonableness of the amount charged. Towards fulfilment of this responsibility the Court may even deprive a practitioner of costs (or part thereof) as a sanction deemed appropriate by the Court to address conduct in litigation involving voluntary surrender.[26] The trustees may challenge the fees in taxation before the taxing master of the Court. And, on the other hand, the creditors who have proven claims against the estate may object to confirmation of a liquidation and distribution account containing items for such legal fees they are disgruntled about. Overall, the Master may query or, based on valid cause, disallow such legal fees when a liquidation and distribution account is lodged for confirmation. The quest by Mr Senekal is to insulate himself or his law firm from all these control measures. These are unwelcome prying eyes into his private contractual matters.

[42] Secondly, providing for costs of administration at the application stage is not equivalent to payment of such costs. This is not to denigrate the quality of the evidence often placed before the Court and the laudable efforts which, often, go into preparing such evidence. For costs of

[24] *Mindel v Shaer* 1937 TPD 378 at 380-381. See also Sharrock *LAWSA* at 317.
[25] *Ex parte McKechnie* 1938 WLD 45 at 47. See also Sharrock *LAWSA* at 317.
[26] Practice Manual par 15.14, sub-par 4.5.7. See also *Ex Parte Q.R.E and Another* (55075/2014) [2014] ZAGPPHC 919; 2015 (1) SA 540 (GP) [17].

sequestration are supposed to reflect a calculation of the relevant costs arrived at with some level of precision as much as possible and not just rough estimation of the costs payable out of the free residue of the insolvent estate.[27] But the reality of life remains that, at the application stage, the quantum of most of what is considered free residue (from which the costs are to be paid) emanates from the valuations furnished on movable assets. In the real world of willing buyer and willing seller the impugned assets may not fetch exactly what they are postulated to fetch. But Mr Senekal does not want such risks, he had already secured his payment in advance.

Conclusion

[43] The attempts by Mr Senekal to place the funds paid as legal fees for these applications would fail for the reasons set out above. The fees paid cannot be kept a secret and out of reach of the trustees to be appointed once the surrender of the estates of the respective applicants in these matters is accepted. I will include in the order to be made a term to this effect.

[44] As for the applicants in these matters before the Court and anyone who is to invoke the remedy of voluntary surrender, it ought to be borne in mind that the discretion of the Court in determining this remedy is wide. Even within its restraints requiring that the discretion be exercised judicially, it still allows the Court to refuse applications not made by the applicant-debtor in good faith and devoid of a full and frank disclosure of the applicant's financial position.[28] And, where deemed appropriate, such applications may be postponed on specific directives of the Court. The primary mischief being guarded against in this regard is risk of abuse of the process.[29]

[27] *Ex parte Anthony* 2000 (4) SA 116 (C) [8]. See also Meskin at 3.2. Section 6(1) of the Act.

[28] *Ex parte Swart* 1935 NPD 432; *Fesi v ABSA Bank Ltd* [1999] JOL 5634 (C); 2000 1 SA 499 (C) 502 at 502-503; *Ex parte Arntzen* 2013 (1) SA 49 (KZP) [5]-[6], [12]. See also Sharrock *LAWSA* 317.

[29] *Ex parte Concato and Similar Cases* 2016 (3) SA 549 (WCC) [7]; *Ex parte Arntzen* 2013 (1) SA 49 (KZP) [12]. See also Sharrock *LAWSA* 317.

[45] The applications would have to be postponed to allow disclosure of the amounts paid as fees to the attorney. The postponement would be to a specific date when I am in the unopposed motion court in the next term, as my sitting in the insolvency court would come a bit earlier than the time periods in the order would allow. The attorney would not be allowed to charge or recover any fees regarding anything done pursuant to the order made below.

Order

[46] In the premises,

[46.1] in the *ex parte* application of **Clive Gerard Dinsdale and Another** under Case Number: **2025-161004**, I make the order, that:

1. the application is postponed to 10 June 2026;

2. Mr Michael Senekal of Michael Senekal Attorney shall furnish an affidavit in which he discloses the amount of money received as attorney's fees and costs in respect of this matter within twenty (20) days from the date of this order;

3. Clive Gerard Dinsdale and Natasja Dinsdale shall furnish an affidavit in which they disclose the amount of money paid to Mr Michael Senekal or Michael Senekal Attorney as attorney's fees and costs, either by themselves or on their behalf by other person(s), in respect of this matter within thirty (30) days from the date of this order; and

4. Costs of the activities relating to 2 and 3 hereof shall be borne by Mr Michael Senekal and/or Michael Senekal Attorney.

[46.2] in the *ex parte* application of **Susarah Magdalena Aletta Prinsloo** under Case Number: **2025-185019**, I make the order, that:

1. the application is postponed to 10 June 2026;

2. Mr Michael Senekal of Michael Senekal Attorney shall furnish an affidavit in which he discloses the amount of money received as attorney's fees and costs in respect of this matter within twenty (20) days from the date of this order;

3. Susarah Magdalena Aletta Prinsloo shall furnish an affidavit in which she discloses the amount of money paid to Mr Michael Senekal or Michael Senekal Attorney as attorney's fees and costs, either by herself or on her behalf by other person(s), in respect of this matter within thirty (30) days from the date of this order; and

4. Costs of the activities relating to 2 and 3 hereof shall be borne by Mr Michael Senekal and/or Michael Senekal Attorney.

[46.3] in the *ex parte* application of **Hendrik Jacobus du Preez** under Case Number: **2025-178555**, I make the order, that:

1. the application is postponed to 10 June 2026;

2. Mr Michael Senekal of Michael Senekal Attorney shall furnish an affidavit in which he discloses the amount of money received as attorney's fees and costs in respect of this matter within twenty (20) days from the date of this order;

3. Hendrik Jacobus du Preez shall furnish an affidavit in which he discloses the amount of money paid to Mr Michael Senekal or Michael Senekal Attorney as attorney's fees and costs, either by himself or on his behalf by other person(s), in respect of this matter within thirty (30) days from the date of this order; and

4. Costs of the activities relating to 2 and 3 hereof shall be borne by Mr Michael Senekal and/or Michael Senekal Attorney.

[46.4] in the *ex parte* application of **Ashleigh Evelyn Schoultz** under Case Number: **2025-178553**, I make the order, that:

1. the application is postponed to 10 June 2026;

2. Mr Michael Senekal of Michael Senekal Attorney shall furnish an affidavit in which he discloses the amount of money received as attorney's fees and costs in respect of this matter within twenty (20) days from the date of this order;

3. Ashleigh Evelyn Schoultz shall furnish an affidavit in which she discloses the amount of money paid to Mr Michael Senekal or Michael Senekal Attorney as attorney's fees and costs, either by herself or on her behalf by other person(s), in respect of this matter within thirty (30) days from the date of this order; and

4. Costs of the activities relating to 2 and 3 hereof shall be borne by Mr Michael Senekal and/or Michael Senekal Attorney.

[redacted]

Khashane La M. Manamela
Judge of the High Court

Dates of Hearing	**:**	**11,12 and 13 February 2026**
Date of Judgment	**:**	**9 April 2026**

Appearances:

For the Applicants (all cases)	:	Mr B Lee
Instructed by	:	Michael Senekal Attorney, Ninapark, Pretoria