IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No: 2026-000213

1) REPORTABLE: **NO** 2) OF INTEREST TO OTHER JUDGES: **NO** 3) REVISED.
[redacted] 02 April 2026
SIGNATURE DATE

In the ex parte application of:

LOUISA MOIRA PETERS **Applicant**

JUDGMENT

MM MOJAPELO AJ:

INTRODUCTION

[1] This is an application for the voluntary surrender of the estate of Louisa Moira Peters. The applicant is a widow, unemployed and, in her founding affidavit,

states that she receives no income. She seeks an order accepting the voluntary surrender of her estate in terms of the Insolvency Act 24 of 1936.

[2] The Court may accept a surrender only if it is satisfied that, inter alia, the requirements of section 4 have been complied with, that the estate is insolvent, that the applicant; "*owns realizable property of a sufficient value to defray all costs of the sequestration which will in terms of this Act be payable out of the free residue of his estate and that it will be to the advantage of creditors of the debtor if his estate is sequestrated*" (Insolvency Act 24 of 1936, s 6(1)). The phrase and criteria in s 6(1) are apt to be quoted and applied strictly in the context of voluntary surrenders.

MATERIAL FACTS AND THE AFFIDAVITS

[3] The applicant's sworn statement of affairs records total liabilities of R61,104.82 and total assets of R16,000.00. In her founding affidavit the applicant states:

> *"10.1 I respectfully refer the Honourable Court to the contents of my statement of affairs, in which it reflects that my total liabilities are R 61 104.82 whilst my total assets are R 16 000.00.*
>
> *10.2 I confirm that I sold all of my assets of value to pay the legal fees for this application as well as the amount of R 16 000.00 into the trust account of my attorney in order to provide a suitable dividend to my creditors.*
>
> *10.3 I do not own any other assets and are the [sic] few household items in my possession of no considerable financial value. These household items are in any event excluded from my insolvent estate as provided for by Section 86 (2) of the Insolvency Act."*

[4] The applicant also averred (para 8) that she does not receive an income and her monthly expenses are as provided the following table:

"8.1	*Creditors as listed in Statement of Affairs*	*R 9 165.60*
8.2	*Groceries and cleaning*	*R 2 000.00*
8.3	*Rent*	*R 5 600.00*
8.4	*Water and electricity*	*R 900.00*
8.5	*Telephone and Internet*	*R 400.00*
8.6	*Medical expenses*	*R 3 000.00*
8.7	*Funeral Policy*	*R 400.00*
	Total	*R 21 465.60*
	Shortfall	*R 21 465.60"*

[5] The confirmatory affidavit of the applicant's attorney (H.E. Smalman) states, *inter alia*:

> *"4. I further confirm that I formulated the attached dividend calculation in terms of the Insolvency Act 24 of 1936 (as amended).*
>
> *5. The Applicant sold all her assets of value to pay the amount of R16,000.00 into my trust account in order to proof an advantage to the creditors together with the amount of R10,000.00 for legal fees.*
>
> *6. The Applicant does not own any other assets ..."*

[6] Annexure "F" to the papers (the dividend calculation) is explicit that monies on trust amount to R16,000.00 and sets out the deductions and surplus as follows (quotation condensed from Annexure F):

"Monies on trust: Value:	*R 16 000.00*
MINUS	
Trustee Fee	*R 2,500.00*
VAT 15%	*R 375.00*
Master fees	*R 100.00*

Security 0.57%	*R 91.20*
Total (surplus)	*R 12,933.80*
Concurrent creditors	*R 61,104.82*
Plus 15% interest p.a.	*R 763.81*
Total concurrent creditors	*R 61,868.63*
Total surplus	*R 12,933.80*
Dividend:	*0.21c /R1 (i.e. 21 cents in the Rand)"*

LEGAL PRINCIPLES AND AUTHORITIES

[7] It is axiomatic that an applicant for voluntary surrender must make full, frank and clear disclosure of all material facts. The Court must be satisfied (i) that the estate is in fact insolvent; (ii) that there are realizable assets sufficient to meet sequestration costs; and (iii) that the surrender will be to the advantage of creditors (Insolvency Act s 6(1).

[8] In *Ex parte Arntzen* 2013 (1) SA 49 (KZP), it was stated as follows with regard to the requirement of full and frank disclosure; "*I take the view that there is an even greater risk of abuse and a risk that the interests of creditors will be undermined in voluntary surrender applications, than in 'friendly' sequestration applications. Therefore, the need for full and frank disclosure and well-founded evidence concerning the debtor's estate is even more pronounced. ... Voluntary surrender applications therefore require an even higher level of disclosure than do 'friendly' sequestrations, if the court were to be placed in a position where it can arrive at the findings and exercise the discretion set out in s 6(1) of the Act.*"

[9] The requirement that the surrender be to the "advantage of creditors" has been authoritatively developed; in *Meskin & Co v Friedman 1948 (2) SA 555 (W)* the Court held that the "advantage" must be a reasonable prospect of some pecuniary benefit which is not too remote or speculative. The benefit must be tangible and realistic. The Constitutional Court, in *Stratford v Investec Bank Ltd 2015 (3) SA 1 (CC)*, confirmed that the required benefit is a "not-negligible

pecuniary benefit" and cautioned against a rigid formulaic test, the inquiry is fact-sensitive and pragmatic.

APPLICATION OF THE LAW TO THE FACTS

[10] On the papers before the court, there are several disturbing and decisive features:

10.1. The applicant expressly states that she "does not receive an income" yet her declared monthly expenditure is R21,465.60. That is a material inconsistency which goes to the heart of the applicant's bona fides and the completeness of disclosure. If true, the declared monthly shortfall is R21,465.60.

10.2. The applicant and her attorney state that assets of value were sold and R16,000.00 was placed into the attorney's trust account; R10,000.00 was paid for legal fees. The dividend calculation in Annexure F demonstrates that after the trustee's fee, VAT and small statutory deductions the net surplus from the monies on trust is R12,933.80, which equates to a dividend of approximately 21 cents in the Rand to concurrent creditors.

10.3. If, as the applicant states, she continues to incur a monthly deficit of R21,465.60 with no income, it is manifest that any advantage conferred by R12,933.80 is likely to be rapidly eroded even before the administration of the estate reaches the stage at which dividends are distributed. In other words, the "real" pecuniary benefit to creditors, measured against the test in *Meskin*, and *Stratford*, is dangerously borderline and may be illusory.

BURDEN AND ONUS

[11] The applicant bears the onus of establishing that the surrender will be to the advantage of creditors and of making full and frank disclosure of all material facts (including sources of income or support). The Court cannot accept bald assertions.

[12] The applicant's failure to disclose the source of funds which permitted her to meet her monthly expenses (if indeed she has been meeting them) or to explain how she will meet such expenses after paying legal fees and creating the trust fund is a material lacuna.

[13] The application is materially deficient in respects that strike at both the applicant's bona fides and compliance with the peremptory requirements of section 6(1) of the Insolvency Act. Most notably, there is a complete failure to account for the source of funds utilised to sustain the applicant's stated monthly expenses of R21,465.60 over the preceding months, notwithstanding her professed absence of income. No bank statements, financial records, or corroborating documentation have been furnished to substantiate how these obligations were met at the time the statement of affairs was deposed to. This omission alone undermines the reliability and completeness of the applicant's financial disclosure.

[14] Equally problematic is the absence of full and verifiable particulars concerning the alleged realisation of assets said to have yielded the R16,000.00 held in trust. The papers are devoid of any meaningful detail regarding the nature, value, or disposal of such assets, and are unsupported by elementary proof such as sale agreements, receipts, or transfer records. The Court is accordingly left without a factual basis to verify the existence, provenance, or application of these funds.

[15] Finally, the applicant has failed to provide a comprehensive and properly substantiated account of her financial affairs more broadly. There is no detailed schedule of payments made in respect of the listed monthly expenses, no disclosure or proof of third-party financial support, and no supporting documentation underpinning the dividend calculation presented to the Court. In the absence of such critical information, the application falls short of the standard of full, frank, and candid disclosure required in voluntary surrender proceedings. The cumulative effect is that the Court cannot be satisfied that the surrender is bona fide or that it will yield a real advantage to creditors, rendering the application fatally defective.

CONCLUSION

[16] The Court accepts that the formal requirements of s 4 (publication, lodgement of statement of affairs and notice to creditors) have been complied with the Master's and Magistrate's certificates are on record.

[17] However, the Court is not satisfied on the present papers that; *(a)* the surrender is bona fide; and *(b)* the surrender will be to the real, tangible advantage of the creditors.

[18] The Court will not grant the surrender on the papers as they stand. This Court emphasises the principle that the machinery of voluntary surrender is primarily for the benefit of creditors and must not be lightly used for the private convenience of debtors or as a procedural expedient to avoid creditors. The Court must be satisfied that the advantage is real, not contrived; that the applicant is candid and full in disclosure; and that creditors will receive a meaningful benefit.

[19] The Court is not satisfied on the present papers that the surrender is bona fide or that it will be to the real, tangible advantage of the creditors. The stark inconsistency between the applicant's asserted lack of income and her high

monthly expenditure, without any disclosure of the source of funds, undermines the applicant's credibility and the completeness of her statement of affairs.

[20] Furthermore, the small net surplus (R12,933.80) yielding a borderline dividend of 21 cents in the Rand appears remote and likely to be quickly eroded by ongoing administration costs and the applicant's admitted monthly shortfalls.

[21] This application can therefore not succeed.

ORDER

1. The application for the voluntary surrender of the estate of Louisa Moira Peters is dismissed.

2. No order as to costs.

[redacted]

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

APPEARANCES:

Counsel for the Applicant : Adv. R.P. Loibner
Attorney for the Applicant : Smalman Attorneys