REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case Number: 104325/2023

(1) REPORTABLE: ~~YES~~ / NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

(3) REVISED: ~~YES~~/NO

DATE 16/4/2026

SIGNATURE

In the matter between:

THE BODY CORPORATE OF GLENTUI **Applicant**

and

ELMO HAMILTON DAVIE **Respondent**

Delivered: *This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be* ***16 April 2026****.*

JUDGMENT

MANAMELA, AJ

Introduction

[1] This is an application for the final sequestration of the estate of the Respondent. A provisional sequestration order was granted on 2 April 2024. The rule nisi was subsequently removed from the roll on 12 August 2025, and the matter now serves before this Court for determination on the merits of whether a final order should be granted.

Background

[2] The Applicant, the Body Corporate of Glentui, a sectional title scheme established under scheme number SS308/1984, seeks an order for the final sequestration of the estate of the Respondent, Elmo Hamilton Davie, an adult male and registered owner of Units 6 and 30 in the Glentui sectional title scheme, located at 7[...] A[...] Street, Arcadia, Pretoria, Gauteng.

[3] The Respondent is a member of the Applicant by virtue of his ownership of sectional units and is statutorily obliged to contribute to levies raised for the administration, maintenance, and repair of the scheme. It is common cause that the Respondent has failed, over an extended period, to comply with these obligations.

[4] At the time of the launch of the sequestration proceedings, the Respondent's arrears amounted to R70 224.18. Subsequent to this, the arrears escalated significantly and now exceed R830 000, excluding ongoing levies, interest, and costs.

[5] The Applicant obtained multiple judgments against the Respondent for unpaid levies:

a. Case No. 47235/2015 – 3 November 2015
b. Case No. 24355/2020 – 15 June 2023
c. Case No. 24360/2020 – 15 June 2023
d. Case No. 20/2021 – 15 June 2023

[6] A warrant of execution was issued in respect of case number 47235/2015, and a nulla bona return was issued by the Sheriff on 13 July 2023.

[7] Despite attempts to recover the outstanding levies through execution steps, including the issuance of a warrant of execution and attachment of movables, the Applicant asserts that these efforts have been fruitless, leaving the Body Corporate with no alternative but to seek sequestration.

[8] The Applicant further submits that the Respondent has committed acts of insolvency under section 8(b) of the Insolvency Act,[1] and that the sequestration of the Respondent's estate would be to the advantage of creditors, including the Body Corporate and other members of the sectional title scheme.

[9] This application is supported by the founding affidavit of Jacobus Christoffel Erasmus, the CEO of Sectional Titles Portfolio Management (Pty) Ltd, who is duly authorised to act on behalf of the Applicant. The Applicant emphasises the importance of ensuring the financial stability of the Body Corporate to protect the interests of compliant members and maintain the communal property. Mr Erasmus' affidavit outlines the Respondent's obligations, the history of non-compliance, and the legal basis for the relief sought.

The Applicant has also provided the necessary security for costs and complied with the statutory requirements under the Insolvency Act.On the return date of the extended *rule nisi*, the Applicant seeks the final sequestration of the Respondent's estate on the basis of unpaid arrear levies totalling R830 097,67.

Issues of determination

The Court must determine whether the Applicant has established, on a **balance of probabilities**, that:

(a) it is a creditor with a liquidated claim;

(b) the Respondent has committed an act of insolvency or is factually insolvent; and

(c) there is reason to believe that sequestration will be to the advantage of creditors.

The Applicant's case

[1] Act 24 of 1936.

[10] The Applicant contends that the Respondent has committed acts of insolvency under Section 8(b) of the Insolvency Act, by failing to satisfy the judgment debts emanating from arrear levies and by failing to provide sufficient disposable property to satisfy the debts.

[11] The applicant argues that the Respondent's failure to pay these levies directly impacts the financial stability of the Body Corporate and places an undue burden on other compliant members of the sectional scheme, who are required to subsidise the shortfall caused by the Respondent's non-payment. This statutory obligation is essential to ensure the proper functioning of the Body Corporate and the upkeep of the communal property, which protects the interests and investments of all members.

[12] The Applicant further asserts that the sequestration of the Respondent's estate would be to the advantage of creditors, as it would enable the Body Corporate to recover outstanding levies, ensure the proper maintenance of the sectional title scheme, and alleviate the financial burden on other compliant members.

[13] The Applicant has complied with all statutory requirements under the Insolvency Act, including the provision of security for costs and service of the application on relevant parties, and now seeks the Court's intervention to grant the relief sought.

[14] The Applicant has demonstrated compliance with the requirements for service as follows: the Notice of Motion, Founding Affidavit, Annexures, Notice of Set Down, and Rule 41A Notice, Notice of Opposition to Mediation were served personally on the Respondent, Mr. Elmo Hamilton Davie, at Farm Boschkloof 896, [...] M[...] Road, St Francis Bay Road, on 7 March 2024 by the Sheriff, Hankey & Humansdorp, as evidenced by the Return of Service annexed as Annexure "S1." Additionally, the Applicant ensured service of the relevant documents on the Master of the High Court by hand on 6 March 2024, with proof of service annexed as Annexure "S3." Furthermore, the Notice of Motion, Founding Affidavit, Annexures, and Notice of Set Down were served on the Receiver of Revenue via email on 5 March 2024, as per their stipulated service requirements, with proof of email delivery annexed as

Annexure "S4." These actions confirm the Applicant's adherence to the procedural rules governing service in this matter.

Respondent’s basis of opposition

[15] The Respondent, Mr Elmo Hamilton Davie, opposes the granting of a final sequestration order. He disputes that he has committed an act of insolvency in terms of section 8(b) of the Insolvency Act and contends that the Applicant has materially misrepresented the relevant facts relating to service, execution, and his financial position.

[16] The Respondent states that he formally changed his domicilium address in October 2011 to his residence at Farm Boschkloof, [...] M[...] Road, St. Francis Bay, and that this notification was communicated in writing to the Applicant’s then managing agent, Huurkor Admin. He avers that, since that date, all statements, invoices and correspondence issued by the Applicant have been consistently addressed to the new *domicilium*. He accordingly disputes that the service of summonses and notices at the sectional units was valid, and asserts that he remained unaware of the default judgments, save for one judgment, until receipt of the sequestration application.

[17] The Respondent disputes that the Sheriff executed the writ at the address of the sectional title unit. He maintains that the execution occurred at his correct domicilium and residential address.

[18] He further disputes the existence of a lawful *nulla bona* return. According to him, when the Sheriff attended, he pointed out scaffolding and other building material for attachment and advised the Sheriff that additional items were available at various building sites. He also informed the Sheriff that he owned two immovable properties. The Sheriff, he states, declined to proceed further, indicated that he did not have time to inspect other locations, took the Respondent’s contact details, and left without reverting.

[19] The Respondent avers that he never received notice of the release of any attached items, nor any indication that the goods identified were insufficient to satisfy

the writ. He thus disputes that the execution process produced a *nulla bona* return or established an act of insolvency.

[20] The Respondent asserts that he is not factually insolvent. He owns two sectional title units with significant equity based on valuations obtained by his legal representatives. He further holds a matured annuity valued at approximately R675 000. He contends that his assets exceed his liabilities and that the Applicant, as a secured creditor in respect of levies, improperly seeks to use sequestration proceedings as a debt-collection mechanism.

[21] He submits that the Applicant has failed to demonstrate the absence of realisable property and argues that the sequestration application is neither necessary nor appropriate.

[22] In addition, the Respondent claims that the sequestration proceedings have been launched for an ulterior purpose. He highlights the involvement of Mr Danie Muller, chairperson of the body corporate and the individual who signed the sequestration resolution. The Respondent refers to a failed transaction in which Mr Muller allegedly attempted to purchase a property linked to the Respondent, which ended acrimoniously. He contends that this history underlies the current proceedings and is aimed at acquiring his immovable property through a sequestration process rather than execution.

[23] The Respondent seeks condonation for the late filing of his answering affidavit. He explains that he relied on his erstwhile attorneys, appointed through a legal insurance provider, and that they failed to act timeously despite repeated follow-ups. He describes numerous unsuccessful attempts to obtain updates, culminating in his unrepresented attendance at court on the return date. He terminated their mandate thereafter and sought immediate legal assistance.

[24] He submits that the delay was neither deliberate nor reckless, that he has reasonable prospects of success on the merits, and that no prejudice will accrue to the Applicant or creditors should condonation be granted.

Legal framework

[25] For a final sequestration order, an applicant must satisfy the Court on a balance of probabilities, as opposed to the prima facie standard applicable to provisional sequestration proceedings. This distinction was articulated in *Mercantile Bank (a division of Capitec Bank Limited) v Ross* [2021] ZAGPJHC 149 at paragraph 41.

[26] It is trite law that to be granted a final sequestration order under the Insolvency Act, the Applicant must prove legal standing, a liquidated claim, the existence of a valid and enforceable claim, an act of insolvency or factual insolvency and an advantage to creditors. For compulsory sequestration of a debtor's estate, the applicant must show that: (a) The applicant has established a claim which entitles the applicant to apply for the sequestration of the debtor's estate. (b) The Respondent debtor is actually/factually insolvent, i.e., his/her liabilities, fairly estimated, exceed his/her assets, fairly valued; or the debtor has committed an act of Insolvency. (c) There is reason to believe that it will be to the advantage of creditors if the debtor's estate is sequestrated.

Legal standing and liquidated claim

[27] The Applicant must show that it is a creditor with a liquidated claim of not less than R100.This principle is affirmed in *De Waard v Andrew & Thienhaus Ltd*[2] and reinforced in *Investec Bank Ltd v Mutemeri.*[3] The Applicant has produced proof of four unsatisfied judgments arising from unpaid levies. These judgments constitute liquidated claims well in excess of the statutory minimum. The Applicant therefore clearly has standing to seek sequestration.

Existence of a valid and enforceable claim

[28] The Applicant must demonstrate the existence of a liquidated claim, ordinarily by producing a judgment debt or other unequivocal proof of indebtedness. Default judgments for unpaid sectional title levies constitute such liquidated claims and ordinarily suffice to establish standing in sequestration proceedings. This requirement has been articulated in cases such as *Kalil v Decotex (Pty) Ltd and Another*, subject to the well-established principle that sequestration

[2] 1907 TS 727.

[3] [2009] ZAGPJHC 64; 2010 (1) SA 265 (GSJ) at para 31.

proceedings must not be permitted to be used as a mere debt-collection mechanism, as cautioned by the Constitutional Court in *Stratford and Others v Investec Bank Ltd and Others* 2015 (3) SA 1 (CC).

Act of insolvency or factual insolvency

[29] The Applicant must prove, on a balance of probabilities, that the Respondent has committed an act of insolvency as contemplated in section 8(b) of the Insolvency Act 24 of 1936, including a failure to satisfy a judgment or to point out sufficient disposable property to satisfy such judgment[4].

Advantage to creditors

[30] The Applicant must satisfy the Court that sequestration will be to the advantage of creditors. It is settled law that even a modest advantage will suffice, provided that such advantage is real and not speculative, as explained in *Meskin & Co v Friedman*. That principle, however, does not operate in the abstract. In *Body Corporate of Old Trafford v Muronzi*, the Court refused to grant a final sequestration order and emphasised that, where the applicant is a sole or dominant creditor, it must demonstrate a tangible advantage arising from sequestration which would not be achieved through ordinary execution proceedings. In considering advantage, the Court must therefore examine the particular facts of each case, including the nature of the debt, the history of non-payment, the efficacy of execution, and the broader impact on other creditors. More recently, in *Body Corporate Acubens v Foforane*, the Court recognised that in the context of a sectional title scheme, persistent non-payment of levies and failed execution attempts may render sequestration advantageous, not only to the body corporate but also to the concursus creditorum, provided the statutory requirements are satisfied.

Analysis

[31] This Court is required to determine whether the Applicant has discharged the onus of proving, on a balance of probabilities, that (a) it holds a liquidated claim against the Respondent; (b) the Respondent has committed an act of insolvency or

[4] See *Kalil v Decotex (Pty) Ltd and Another* 1988 (1) SA 943 (A) at 979C–E; *Mars: The Law of Insolvency in South Africa* 10 ed at 121–123.

is actually/factually insolvent; and (c) there is reason to believe that the sequestration of the Respondent's estate will be to the advantage of creditors.

[32] The Court has considered the Founding Affidavit, the Respondent's Answering Affidavit, and the Applicant's detailed Replying Affidavit. The replying papers directly challenge the core allegations made by the Respondent and place material evidence before the Court regarding service, indebtedness, arrear levies, the *nulla bona* return, and alleged solvency.

[33] It is common cause that four separate judgments were obtained against the Respondent between 2015 and 2023 for arrear levies owed to the Body Corporate. These judgments remain unsatisfied. In its replying papers, the Applicant further demonstrates that the levy indebtedness on both units has escalated dramatically and presently totals more than R830 000.

[34] The Applicant therefore clearly qualifies as a creditor with a liquidated claim. The Respondent's vague assertions that the indebtedness is "disputed" are not supported by either evidence or any explanation for non-payment extending over several years.

[35] The Respondent alleges that the summonses in respect of the judgments were served at the sectional title units rather than his domicilium. The replying affidavit places this allegation firmly in dispute. The Applicant attaches all four sheriff's returns of service, demonstrating that each summons was served at the address chosen by the Respondent: Farm Boschkloof, [...] M[...] Road, St Francis Bay. One of the summonses was served personally on the Respondent. I find the Respondent's assertions in this regard false and misleading. No objective evidence was produced to support his contention that the Applicant persisted in using an outdated address. To the contrary, the returns of service demonstrate substantial compliance with both rule 4(1) and the management rules applicable under the Sectional Titles Schemes Management Act.

[36] In light of the reliable documentary evidence, the Court is satisfied that the underlying judgments were properly served and that the Respondent was aware or reasonably ought to have been aware of the debts giving rise to those judgments.

[37] With regards to the warrant of execution and the *nulla bona* return, it is apparent that the Respondent attempts to dispute the validity of the sheriff's *nulla bona* return, contending that the sheriff did not inspect all assets and failed to return after a promised follow-up. The replying affidavit, however, clarifies the matter. The sheriff's return attached to the founding papers is unequivocal: movable assets with an estimated value of R7 000 were identified, and these were insufficient to satisfy the judgment debt.

[38] The Respondent does not dispute that the sheriff personally served him with the warrant of execution, nor does he explain why no attempt was made to satisfy the judgment debt, except for a payment of R15,027.00. His version that the sheriff declined to perform his duties is uncorroborated and inconsistent with the formal return. A sheriff's return of service is prima facie correct and may only be impugned with clear, convincing evidence. No such evidence has been produced. On the totality of the evidence, the Court is satisfied that the sheriff's return constitutes a valid *nulla bona* return for purposes of s 8(b) of the Insolvency Act.

[39] The Respondent contends that he is not factually insolvent because he owns two immovable properties and a matured annuity. The Respondent places reliance on informal Windeed-generated valuations but presents no sworn valuation, inspection report, or market appraisal. The Applicant's reply corrects these deficiencies and notes that the Respondent also fails to disclose the true condition of the properties, any other creditors, or any liabilities apart from the Applicant's claim. In addition, the Applicant demonstrates that the total arrear levies now exceeding R830 000 alone exceed the alleged free residue in the properties even if the Respondent's valuations were accepted at face value. The Respondent provides no credible plan to settle these arrears, does not explain the continued non-payment despite rental income, and offers no evidence of available cash flow.

[40] The Court accepts the Applicant's contention that the Respondent is unable to pay his debts as they fall due, and that his assertion of solvency is unsubstantiated and not reasonably supported.

[41] The Respondent's levy arrears continue to escalate monthly. The replying affidavit illustrates that the continued non-payment places a burden on other owners in the scheme. In contrast, sequestration will halt the accumulation of further debt, allow the properties to be sold by the trustee, and enable creditors to share *pro rata* in the proceeds of the estate. In that regard, the Court is satisfied that sequestration will be to the advantage of creditors.

[42] The Respondent seeks condonation for the late filing of his answering affidavit, attributing the delay to the failures of his former legal representatives. Given the serious consequences attendant upon sequestration proceedings and the importance of allowing disputes of substance to be fully ventilated, the Court is satisfied that condonation should be granted. The Applicant's replying affidavit was likewise delivered out of time, and condonation for the late filing thereof is granted on the same basis. The granting of condonation in respect of either affidavit does not, however, cure the substantive deficiencies in the Respondent's case.

[43] The Respondent advances allegations concerning the chairperson of the body corporate that cannot be overlooked. It is evident that the Applicant categorises these allegations as irrelevant. The Respondent's speculation about motive does not negate the existence of valid judgments, his failure to pay arrear levies, or the sheriff's *nulla bona* return. In that regard the Court accordingly finds these allegations immaterial to the statutory requirements for sequestration.

Conclusion

[44] The Applicant has satisfied the statutory requirements for final sequestration. A final order for the sequestration of the Respondent's estate is accordingly granted.

IT IS ORDERED THAT

1. the provisional sequestration order herein is confirmed, and the

estate of the Respondent, **ELMO HAMILTON DAVIE**, with Identity Number: 6[...], is placed under final sequestration and

2. the costs of this application be costs in the sequestration.

P N MANAMELA

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Date of hearing: 13 October 2025

Judgment delivered: 16 April 2026

APPEARANCES:

Counsel for the Applicant: Adv Z Schoeman

Attorneys for the Applicant: Kleynhans and Swanepoel Attorneys

Counsel for the Respondent: Adv AR van der Merwe (trust account advocate)