

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case No: 26849/2025

- 1. REPORTABLE: NO
- 2. OF INTEREST TO OTHER JUDGES: NO
- 3. REVISED: NO

In the matter between:

**BODY CORPORATE OF PEBBLESTONE CREEK
RIVER ESTATE**

Applicant

and

TAU ELIAS KOENANE

Respondent

JUDGMENT

This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail and uploading it onto the electronic platform. The date and time of hand-down is deemed to be 10h00 on Tuesday 28 April 2026.

COOKE AJ:

1. I intend to grant an order provisionally sequestrating the respondent. As the matter will come before another judge on the return day, it will then again be fully considered and ventilated to ascertain whether the heightened threshold of section 12 of the Insolvency Act 24 of 1936 ("**the Act**") has been complied with, I thus make, and intend to make, no findings that could be said to be binding on that court or otherwise have a bearing on its judgment. I give these brief reasons to illustrate why I am of the view that the respondent stands to be sequestrated on a *prima facie* basis.
2. The foundation of this application is a series of judgments obtained by the applicant against the respondent. The combined capital portion of those judgments exceeds half a million Rand. While he has recently made a number of substantial payments toward these debts, the amount of the remaining indebtedness is sufficient to satisfy the requirement of section 10(a) of the Act.
3. In 2022 and 2023 the respondent gave written notice of his inability to pay the debts owing to the applicant – an act of insolvency under section 8(g) of the Act. That satisfies the requirement of section 10(b) of the Act.
4. The respondent has an immovable property, the value of which is between R 660 000.00 and R 780 000.00. If sold, there is certainly reason to believe that the proceeds would provide a not insubstantial advantage to creditors. That satisfies the requirement of section 10(c) of the Act.
5. In Firststrand Bank v Evans,¹ Wallis J (as he then was) held:

¹ 2011 (4) SA 597 (KZD) at 607 D - E

Once the applicant for provisional sequestration has established on a prima facie basis the requisites for such an order, the court has a discretion whether to grant the order. There is little authority on how this discretion should be exercised, which perhaps indicates that it is unusual for a court to exercise it in favour of the debtor. Broadly speaking, it seems to me that the discretion falls within a class of cases generally described as involving a power combined with a duty. In other words, where the conditions prescribed for the grant of a provisional order of sequestration are satisfied, then in the absence of some special circumstances, the court should ordinarily grant the order. It is for the respondent to establish the special or unusual circumstances that warrant the exercise of the court's discretion in his or her favour.

6. There certainly appear to be factors that might weigh in favour of that discretion being exercised against the grant of a provisional order, however the respondent's affidavit presents an extremely narrow front. Ms Kriek, who appeared on behalf of the applicant, asserted that this must count against the respondent. I agree. On the dearth of facts presented in the respondent's answering affidavit, he has not put this Court in a position to exercise a discretion in his favour.
7. On the return day, the respondent is permitted to show cause why the provisional order should not be made final. Should he wish to do so, I suggest that he show more candor on that occasion than he has on this one. It may well be that certain of the defenses raised in the heads of argument filed on the respondent's behalf carry more weight once he exposes a clear and full picture to this Court.

I make the following order:

1. *The respondent is provisionally sequestered;*
2. *The respondent, and any persons having an interest in the matter, are called upon to advance reasons and show cause why the order should not*

*be made final at 10:00 on Monday 8 June 2026 or so soon thereafter as
counsel may be heard.*



M J COOKE
ACTING JUDGE OF THE HIGH COURT
GAUTENG, JOHANNESBURG

DATE OF HEARING	22 April 2026
DATE OF JUDGMENT	28 April 2026
APPLICANT'S COUNSEL	R Kriek
APPLICANT'S ATTORNEYS	Sutherland Kruger Inc
RESPONDENT'S COUNSEL	R de Leeuw
RESPONDENT'S ATTORNEYS	WPC Attorneys