REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

Case No: 59040/2024

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

In the matter between:

ABSA BANK LIMITED	Applicant
And	
BHAVANISHA PILLAY N.O	First Respondent
KEVIN VALLOO N.O.	Second Respondent
KOBILAN PILLAY N.O.	Third 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. The respondents are the trustees of the Valloo Family Trust ("**the Trust**"). The Trust holds the following immovable properties:

1.1. Erf 1[…] H[…] E[…] (valued at approximately R 15 million);

1.2. Erf 1[…] H[…] E[…] (valued at approximately R 14,5 million);

1.3. Erf 7[…] S[…] H[…] E[…] (valued at approximately R 6 million);

1.4. Unit […] I[…] E[…] (valued at approximately R 5 million)

("**the Properties**").

2. I[…] E[…] is a commercial building, while the Houghton properties are residential:

2.1. Erf 1[…] is inhabited by the second respondent, his partner, three children, various members of their domestic staff and related persons;

2.2. Erf 1[…] is inhabited by the first respondent and her son; and

2.3. Erf 7[…] is a penthouse property. The papers are not clear on whether or not it is occupied.

3. The applicant ("**the Bank**") holds various mortgage bonds over the Properties, suretyships by the first and second respondents in their personal capacities and a guarantee by an entity called GTS Petroleum (of which no mention whatsoever was made at the hearing before me). There is some justifiable concern by the Bank of the value of the suretyships, particularly as it is the Trust's version that correspondence on which the Bank relies to evidence an act of insolvency by the Trust was sent in the first respondent's personal capacity.

4. Mr Cohen appeared on behalf of the Trust. He confirmed, as is borne out by the papers, that there is no real dispute in the following respects:

   4.1. the Bank made a suite of financial facilities available to the Trust;

   4.2. all told, the Bank had made advanced nearly R 50 million to the Trust in accordance with the terms of the agreements between them;

   4.3. during 2022 the Trust failed to make certain repayments as they became due to the Bank and, by 2023, was in arrears in respect of every facility;

   4.4. in consequence of the Trust’s default, each of the debts has been called up by the Bank, the cumulative sum of which is approximately R 63 million; and

   4.5. the Trust cannot repay the debt owed to the Bank.

5. A significant portion of the affidavits are devoted to whether or not the Trust has committed an act of insolvency. It is not necessary to consider the parties competing versions in this regard as it is uncontentious that:

   5.1. the Trust is unable to repay the debt it owes to the Bank; and

   5.2. the Trust has an excess of liabilities over assets by, on a version most favourable to the Trust, at least R 10 million.

6. In the circumstances, and regardless of whether an act of insolvency has been committed, the jurisdictional requirement of section 9(1) of the Insolvency Act 24 of 1936 has been met. That is, on any metric, the Trust is insolvent.

7. The Trust's only real defence is that, in seeking a sequestration, the Bank seeks to avoid the protective mechanism of Uniform Rule 46A. In support of the contention, the Trust's heads of argument refer to two judgments that are contended to support its position. They are:

7.1. Body Corporate of *Old Trafford v Muronzi* (016676/2023) [2024] ZAGPPHC 623 (21 June 2024); and

7.2. *Waterkloof Boulevard Homeowners Association (Association Incorporated under Section 21) v Yusuf and Another* (028945/2022) [2023] ZAGPPHC 737 (28 August 2023).

8. The decision in *Waterkloof* was referred to, and appears to underpin the finding in *Old Trafford*. The facts of both cases are similar: a homeowner faced sequestration[1] by their lone creditor – in each case the body corporate – over unpaid levies and like dues which were relatively small, against property values that were fairly substantial.

9. In finding that the Court's discretion would be best exercised by refusing to grant an order for sequestration because there was no advantage to creditors in the circumstances of those cases, the courts made reference to and relied on:

9.1. section 15B(3)(a)(i)(aa) of the Sectional Titles Act 95 of 1986 and the preference it affords to a body corporate on execution of a property. In view of that preference, there was found to be no real advantage to a sole creditor who had a statutory preference in any event; and

[1] Provisionally in *Waterkloof* and finally in *Old Trafford*

9.2. the apparently heightened costs of a sequestration.

10. This case is different to those in *Waterkloof* and *Old Trafford* in a number of respects. In particular, in this case:

10.1. the applicant is a bank and not a body corporate with a statutory preference;

10.2. there are a number of creditors who are likely to benefit, not just one;

10.3. the assets of the Trust are comprised of both commercial and residential property, and not just a respondent's primary residence;

10.4. there was, at the instance of the I[…] E[…] B[…] C[…], an attempted execution of the I[…] E[…] property. However, no bids were received for it and the property remains unsold;

10.5. the debt owed by the Trust exceeds R 50 million (at least) – which is a far cry from the *trifling* debt that was owed in *Waterkloof* and *Old Trafford*;

10.6. the value of the Properties is, on any party's version, eclipsed significantly by the debts owed by the Trust; and

10.7. the Bank seeks to sequestrate an inanimate being – the Trust – which is the owner of the Properties, whereas in the cases relied on by the Trust, the natural person sought to be sequestrated was the owner of the home in which they resided.

11. Mr Cohen sought to overcome the latter point of distinction by referring me to the decision in *Bestbier v Nedbank Ltd*.[2] There the Constitutional Court held that the application of Uniform Rule 46A is not affected where a trust owns immovable property in which a natural person resides. The Court found:[3]

> *As stated above, whether property can be classified as 'residential immovable property' is determined by the characteristics and actual use of the property. It does not matter that the judgment debtor is not herself occupying the property. It also does not matter that the judgment debtor is a trust. If a trust owns a residential house, it is 'residential immovable property', if the beneficiaries reside in it, even though the trust itself as a legal entity cannot reside in the property.*

12. While the decision in *Bestbier* clarified the ambit of applicability of Uniform Rule 46A where execution is sought, it did not consider the position in a sequestration and so is not authority for the proposition advanced. Accordingly, and as the Supreme Court of Appeal found in *Brummer v Gorfil Bros Inv (Pty) Ltd,*[4] unless a demonstrable abuse is shown, a creditor is entitled to exercise the lawful and legitimate remedies that are available to it. As there is no demonstrable abuse by the Bank in this case, sequestration is both a legitimate and lawful remedy.

13. A further consideration that militates against affording the respondents (as occupiers of the Properties) the protective measure of Uniform Rule 46A is that they, through the Trust, had the means and wherewithal to raise R 60 million in debt that funded the purchase of R 40 million in luxury properties. This fact immediately excludes them from the category of litigant afforded protection, and rightly so, in *Jaftha*.[5]

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[2] 2024 (4) SA 331 (CC)
[3] *Bestbier* para 25
[4] 1999 (3) SA 389 (SCA) at 418A
[5] v Schoeman and Others; Van Rooyen v Stoltz and Others 2005 (2) SA 140 (CC)

14. While our courts have been careful to ensure that the socio-economic rights of truly indigent people are not unduly trammeled, the protections crafted by the legislature and rule makers, and widely implemented by the judiciary, were not designed to be an opportune shield behind which financially savvy people, and the structures they employ to protect their bounty of assets, find reprieve from execution.

15. What is all too often overlooked is that access to finance is the lifeblood of an economy. Banks are the gatekeepers of that lifeblood and determine (in line with applicable legislation) the conditions under which, and to whom, the gates may be opened for finance to flow. In a legislative framework that hinders contractual enforcement and collateral seizure in instances of default, legal risk is increased and the number of non-performing loans rises. An increase in non-performing loans, coupled with a restrictive attitude to debt enforcement, necessitates that banks adopt a cautious approach and policies that restrict the grant of finance. This increases the cost of credit and limits its supply to the borrowing public at large.

16. A limited credit supply and bolstered costs of finance are inimical to the plight of many hard-working South Africans who, given the chance of accessing credit from an established bank, may well use that privilege to buy property to house their family, or start small businesses that feed the mouths of people who depend on them. The dignity that comes with owing a home of your own, or from building a business that sustains a family, must not be disregarded as the people who sense that accomplishment often work hardest to attain it, and thereafter maintain it.

17. These are the very people whose interests are unwittingly overlooked each time that a court comes to the assistance of an undeserving defaulter. In a single instance, the application of a protective measure such as Uniform Rule 46A might seem to have little impact on the system at large, and greatly benefit the individual respondent who, armed with a tale of woe, stands before a judge and pleads *ad misericordiam*. However, that line of thought is a trap into which Courts must be cautious not to fall, or be lured. Given the sheer number of bank related enforcement applications that come before courts on a daily basis, the potential for undue assistance given to a string of what are thought to be *individual respondents*, quickly piles up and becomes a systemic risk factor.

18. While courts must undoubtedly be unwavering in the application of protective measures in appropriate cases, they must also be mindful of the unseen consequence of being too liberal in their protection where it is not truly warranted. In cases where an adverse consequence may befall a respondent, the point of departure is not, and must not be, that every protective measure must be employed, merely because the applicant is a bank. By all accounts, and no doubt a bank's own, being repaid what was promised to it is greatly preferable to the costly endeavor of chasing a debt and receiving only cents in the rand many years later. Ironically, and again an underappreciated consequence is that this too increases the cost of credit and tightens the banks' propensity to advance it.

19. This matter is a prime example of how a bank would much rather have had the money owed to it, and avoided these proceedings entirely. Indulging the Trust's request to sell the Properties by private treaty, the Bank appointed a realtor to

secure a sale. The Trust blithely bemoans the Bank's efforts, but made none of its own. In all this time, the Bank received no further payment from the Trust while it waited.

20. There is no merit in the Trust's only defence. The significant bounty of assets held by the Trust is an advantage to the Trust's creditors, and one which the Bank evidently prefers to the Trust's persistent non-payment that it has endured for too long.

I make the following order:

1. *The Valloo Family Trust (I[…]) is provisionally sequestrated;*
2. *The respondents, and any persons having an interest in the matter, are called upon to advance reasons and show cause why the Court should not order the final sequestration of the Valloo Family Trust (I[…]) at a hearing on Monday 27 July 2026 at 10:00 or so soon thereafter as counsel may be heard.*

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

DATE OF HEARING	21 April 2026
DATE OF JUDGMENT	28 April 2026
APPLICANT'S COUNSEL	R Scholtz
APPLICANT'S ATTORNEYS	Lowndes Dlamini Attorneys
RESPONDENT'S COUNSEL	S Cohen
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