IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case number: 2025-056752

In the matter between: -

FLEET AFRICA (a division of SUPERGROUP AFRICA (PTY) LTD) Applicant

and

MAHMOOD KHATIB
Identity number: 7[...]
Residential address: 3[...] K[...] Road,
Gatesville, Western Cape First respondent

ZAHIERA BANDERKER
Identity number: 7[...]
Residential address: 3[...] K[...] Road,
Gatesville, Western Cape
(cited in her capacity as the wife of Mahmood Khatib,
married in terms of Muslim Rites) Second respondent

***Coram*:**	Van Zyl, AJ
Heard on:	12 May 2026
Judgment: :	19 May 2026

Summary: Application for provisional sequestration – citation of applicant as "a division" of a juristic person – whether competent to establish that debt owed to it as contemplated in section 10(a), read with section 9(1), of Insolvency Act 24 of 1936 – citation acceptable in the circumstances, especially as no prejudice to the first respondent – provisional order of sequestration granted

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ORDER

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1. The first respondent's estate is placed in provisional sequestration in the hands of the Master of this Court.

2. A rule *nisi* is issued calling upon the respondents and all interested persons to show cause, if any, on <u>Thursday, 6 August 2026</u> on the semi-urgent roll at 10:00 or as soon thereafter as counsel may be heard, why:

   2.1. the first respondent's estate should not be placed in final sequestration;

   2.2. the costs of this application should not be costs in the administration of the first respondent's estate.

3. A copy of this provisional order of sequestration must be served:

   3.1. upon the first respondent at 3[...] K[...] Road, Gatesville, Cape Town, and on the first respondent's attorneys via email at r[...];

   3.2. upon the second respondent at 3[...] K[...] Road, Gatesville, Cape Town, and on the second respondent's attorneys via email at r[...];

   3.3. upon the South African Revenue Service at 1[...] L[...] L[...] Street, Cape Town;

3.4. upon the first respondent's employees, if any, and upon any trade union to which such employees may belong, by affixing a copy of the order to any notice board to which the employees have access inside the first respondent's premises, or if there is no access to the premises by the employees, by affixing a copy to the front gate, where applicable, failing which to the front door of the premises from which the first respondent conducted any business at the time of the institution of the application for sequestration.

JUDGMENT

VAN ZYL, AJ:

Introduction

1. The applicant seeks the provisional sequestration of the first respondent's estate.[1]

2. Section 10 of the Insolvency Act 24 of 1936 provides as follows:

"*If the court to which the petition for the sequestration of the estate of a debtor has been presented is of the opinion that prima facie-*

(a) the petitioning creditor has established against the debtor a claim such as is mentioned in subsection (1) of section nine; and

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

(c) there is reason to believe that it will be to the advantage of creditors of the debtor if his estate is sequestrated,

it may make an order sequestrating the estate of the debtor provisionally."

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[1] The notice of motion seeks a final sequestration order, but counsel were agreed during oral argument that a provisional order is the appropriate relief to be sought at this stage.

3. It is undoubtedly so, as counsel for the first respondent[2] emphasised, that the grant of an order sequestrating a person's estate is a drastic measure. It is for this reason that the argument on the respondents' behalf centred on what may be described as a technical issue, but which is nevertheless fundamental in determining whether the applicant is a creditor as contemplated in section 9(1), read with section 10(a), of the Insolvency Act.[3] The issue entails the manner in which the applicant is cited. Counsel for the first respondent acknowledged in oral argument that, should the court find in favour of the applicant on this point, the grant of a provisional order should follow.

4. I briefly set out the background to this application before considering whether the applicant's citation torpedoes its case. The facts are largely common cause.

<u>The applicant's claim</u>

<u>The arbitration award</u>

5. The applicant's claim arises from an arbitration award made on 3 November 2022 under the Arbitration Act 42 of 1965. The award was made an order of court on 31 January 2024, pursuant to the provisions of section 31[4] of the Arbitration Act.

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2 The second respondent is joined to these proceedings in compliance with this court's Consolidated Practive Note 30(1), as she is deemed to be married out of community of property to the first respondent (with reference to the orders granted in *Women's Legal Centre Trust v President of the Republic of South Africa and others* 2022 (5) SA 323 (CC)). No relief is sought against her.

3 "***9 Petition for sequestration of estate***
(1) A creditor (or his agent) who has a liquidated claim for not less than fifty pounds [R100], … against a debtor who has committed an act of insolvency, or is insolvent, may petition the court for the sequestration of the estate of the debtor."

4 "***31 Award may be made an order of court***
(1) An award may, on the application to a court of competent jurisdiction by any party to the reference after due notice to the other party or parties, be made an order of court.
(2) …
(3) An award which has been made an order of court may be enforced in the same manner as any judgment or order to the same effect."

6. The events leading up to the grant of the court order were as follows: On 10 May 2016, the applicant and an entity known as MK Exotics CC ("MK") concluded a lease agreement in terms of which MK leased vehicles from the applicant. The first respondent signed a suretyship in terms of which he bound himself as surety and co-principal debtor together with MK.

7. When MK defaulted on its obligations under the lease agreement, the applicant, as plaintiff, issued summons out of the High Court against MK and the first respondent, defendants, for the sum of R5 999 706,44. The defendants raised a special plea contending that the applicant should have proceeded by way of arbitration, as provided for in the lease agreement. The applicant accordingly applied for the stay of the action and referred the matter to arbitration. The defendants opposed the stay application (despite the fact that they had been the ones raising the issue) but it was granted, and the matter proceeded to arbitration.

8. MK and the first respondent did not play any meaningful part in the arbitration despite being invited to do so.[5] On 3 November 2022 the arbitrator granted an award in the applicant's favour jointly and severally against MK and the first respondent for R5 999 706,44.

9. The applicant applied to have the award made an order of court. The application was opposed, and a counter-application was brought, aimed at having the award set aside on the grounds that the arbitrator had misdirected himself. MK and the first respondent failed to deliver heads of argument. On the day of the hearing of the applications they sought a postponement, which was refused. On 31 January 2024, the arbitration award was made an order of court, and the counter-application was dismissed.[6] Well outside of the prescribed time period, MK and the first respondent applied for leave to

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[5] The details of their conduct are set out in the arbitration award. It is not necessary to repeat them.

[6] Unreported judgment (*coram* Golden AJ) under case number 6455/2018, delivered on 31 January 2024.

appeal, which was refused. No further applications for leave to appeal were brought.

The writ of execution issued against the first respondent

10. On 29 April 2024, a writ of execution in relation to movable property was issued against the first respondent for payment of R5 999 706,44, plus interest and costs. The writ was served on the first respondent's daughter on 30 September 2024. Various movable assets were attached, including household items and four motor vehicles.

11. Two weeks later, on 13 October 2024, the first respondent's son stated on affidavit that one of the motor vehicles was his (the son's) and that the other three belonged to a company of which he was the sole director, South African Destination Management Company (Pty) Ltd ("SADMC"). He deposed to a further affidavit on the same day, indicating that the household goods attached at the first respondent's house belonged to SADMC on the basis that the latter had purchased the house and its contents from the first respondent on 17 May 2024. A copy of the deed of sale was attached to the affidavit, as well as a deed of transfer reflecting that the immovable property was transferred to SADMC on 25 July 2024.

12. The first respondent alleges that the reason for the sale was that SADMC had *"on several occasions advanced monies which were to be paid to the mortgagor".* He states that the *"balance of the proceeds of the sale were used to settle the mortgage bond"* - The property was thus allegedly sold to pay two creditors, namely SADMC and the mortgagor.

13. On 12 February 2025, the Sheriff, on the applicant's instructions, telephoned the first respondent to enquire whether he had disposable property sufficient to satisfy the judgment debt. The first respondent informed the Sheriff that he owned nothing. On the same day, the first respondent provided the Sheriff with an affidavit alleging that he does not possess or own any assets: "*I do*

not possess or own any assets (movable or immovable) and have no assets either movable or immovable registered in my name".

The act of insolvency

14. Section 8 of the Insolvency Act provides for a variety of acts of insolvency, but the applicant relies on section 8(b):

"***Acts of insolvency***

A debtor commits an act of insolvency-

…

(b) if a court has given judgment against him and he fails, upon the demand of the officer whose duty it is to execute that judgment, to satisfy it or to indicate to that officer disposable property sufficient to satisfy it, or if it appears from the return made by that officer that he has not found sufficient disposable property to satisfy the judgment; … "

15. As indicated, on 31 January 2024 this court gave judgment against the first respondent for R5 999 706,44 by making the arbitration award an order of court. The first respondent has failed, on the demand by the Sheriff, to satisfy that judgment, and has indicated to the Sheriff that he does not possess any disposable property sufficient to satisfy it. The Sheriff has not found assets sufficient to satisfy the judgment.

16. In his answering affidavit the first respondent denies that he committed an act of insolvency. He says that the Sheriff served the writ on his daughter, not him, which means that the demand was not to him, but to his daughter. This may be so, but it cannot be denied that a demand was made to him personally by the Sheriff on 12 February 2025. On that day the Sheriff specifically enquired of the first respondent whether he had disposable property sufficient to satisfy the judgment debt. Not only did the first respondent tell the Sheriff that he did not have any disposable assets, he also deposed to an affidavit to that effect. The affidavit admittedly does not record the requisite details of the commissioner of oaths, and thus does not comply

with the provisions of the Justices of the Peace and Commissioners of Oaths Act 16 of 1963. It nevertheless followed after the first respondent's oral advices to the Sheriff. Whilst there was some murmuring about the shortcomings of the affidavit in the first respondent's heads of argument, counsel sensibly did not press the issue in oral argument.

17. I am of the view that the applicant is, in the circumstances, entitled to a finding that the first respondent has committed an act of insolvency under section 8(b) of the Insolvency Act.

Is the applicant a creditor of the first respondent?

18. The first respondent says "no". He relies, in this respect, on the issue of the applicant's description to which I have referred at the outset of this judgment. As indicated, the fate of the application hinges on this aspect.

19. The first respondent points out that the applicant relies upon a judgment debt. The judgment, and the order issued pursuant thereto, reflects the applicant as "*Fleet Africa (a division of Supergroup Africa (Pty) Ltd)*". The claimant in the arbitration was similarly "*Fleet Africa, a division of Supergroup Africa (Pty) Ltd*". In the heading to all of the applicant's papers in this application, the applicant is stated to be "*Fleet Africa (a division of Supergroup Africa (Pty) Ltd)*". In the founding and replying affidavits it is stated that Supergroup Africa (Pty) Ltd is the applicant.

20. The upshot, so the argument goes, is that the applicant's founding papers do not reflect a judgment in favour of Supergroup Africa (Pty) Ltd, and accordingly the applicant has failed to satisfy the statutory requirement set out in section 10(a) of the Insolvency Act. In addition, the first respondent argues that the writ of execution was issued at the behest of "*Fleet Africa (a division of Supergroup Africa (Pty) Ltd)*", and not Supergroup (Pty) Ltd. It was thus issued on behalf of a non-existent entity, and cannot satisfy the requirements of section 8(b) of the Insolvency Act.

21. The first respondent's counsel referred to a series of cases in which the citation of a plaintiff as a "division" was, for the most part, deprecated. I set them out chronologically, as counsel did during argument. The Uniform Rules do not make any specific provision for the description of parties to applications. Counsel argued the matter on the basis that the citation of parties to an application should be approached in the same way as parties to an action.[7] What is clear, in any event, is that the applicant's *locus standi* should appear from the founding papers, including, for present purposes, its status as creditor of the first respondent.

22. The judgment in *Spoornet v Watson*[8] was delivered in 1991, but only reported in 1994. The plaintiff was described as "*Spoornet, 'n divisie van Transnet Bpk"*. The court held as follows in this respect:

"*It is common cause that the words '. . . 'n publieke maatskappy . . .' refer to Transnet Bpk and not to Spoornet. This is furthermore clear when reference is had to the written contract on which the claim is based. It is a contract between 'Spoornet, 'n divisie van Transnet' and the defendant, …*
Rule 17(4)(b) of the Uniform Rules of Court provides:

> *'17(4)*
> *Every summons shall set forth -*
> *. . .*
> *(b) the full names, sex and occupation and the residence or place of business of the plaintiff, and where he sues in a representative capacity, such capacity.'*

… It is of general application and includes natural persons, companies and those plaintiffs contemplated in Rule 14. Indeed it covers every plaintiff who has the right in law to sue.
In my view the object of Rule 17(4)(b) is to require every plaintiff to furnish sufficient details which enable the Court and the defendant to establish whether or not the plaintiff has the requisite locus standi to sue.
The 'associations', 'firms' and 'partnerships' referred to in Rule 14 are not, because of the implications of that Rule, excused from complying with Rule 17(4)(b). To

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7 See Cilliers *et al Herbstein & Van Winsen's The Civil Practice of the High Courts of South Africa* (online version, RS 3, 2025) at pp 4-4 to 4-5.
8 1994 (1) SA 513 (W). See the discussion at 514C-515C.

simply describe a plaintiff as, for example, 'Eureka', without stating that it is an association or a firm will simply not be in compliance with Rule 17(4)(b).

Reverting to the instant matter the question must be posed, what is Spoornet. A division of Transnet Bpk is not a juristic person. …

…

I repeat that, ex facie this summons, Spoornet is an unidentified thing which certainly cannot be accepted as a juristic person."

23. In *Volkskas Bank ('n divisie van Absa Bank Beperk) v Pietersen*[9] (a judgment of this Division) the court was seized of the return date of a provisional order of sequestration. The court expressed the view that the citation of the applicant as "*Volkskas Bank, a division of Absa Bank Limited, a registered commercial bank* …" was not competent:[10]

"*Sodat daar nie gedink word dat ek die sitering van die applikant goedkeur nie, wil ek vlugtig opmerk dat, as dit nie vir die feit was dat daar reeds 'n voorlopige sekwestrasiebevel teen die respondent verleen is en dat die respondent nie beswaar gemaak het teen die sitering (en trouens erken het dat hy die skuldenaar van die applikant is nie), ek ernstig sou oorweeg het om die aansoek van die hand te wys op grond daarvan dat daar in ons reg geen regspersoon soos 'n divisie bestaan nie. As Absa Bank Bpk wil beweer dat hy handeldryf as Volkskas Bank dan moet hy hom in verstaanbare taal uitdruk, en nie maak asof Volkskas Bank 'n regspersoon is nie; of as Volkskas Bank nog steeds 'n maatskappy is en die uitdrukking 'divisie' dalk bedoel word om na 'n filiaal te verwys, moet hy natuurlik as 'n maatskappy met 'n aandelekapitaal of deur garansie beperk gesiteer word.*"

24. The court thus pointed out that in South African law there is no legal *persona* such as a division, and that if a company wished to allege that it carried on business under another name then it should do so in comprehensible language and not create the impression that the other name is a legal *persona*. As there was already a provisional sequestration order in place, and as the respondent had not objected to the citation of the applicant, a final order was granted but the court commented that it would otherwise have

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9 1993 (1) SA 312 (C).

10 *Volkskas Bank supra* at 314A-C.

seriously considered dismissing the application on the ground that the applicant is not a juristic person.

25. The court in *Two Sixty Four Investments (Pty) Ltd v Trust Bank*[11] declined to follow the same approach:

"*It is sought, in the first instance, to set aside the judgment on the ground that the respondent did not have locus standi to institute the proceedings. In the summons the respondent was cited as follows:*

'Trust Bank, 'n divisie van Bankorp Bpk, 'n maatskappy met beperkte aanspreeklikheid, …..'

The argument was advanced that the use of the word 'division' postulated a portion of a whole. It was then said that there could be no portion of a juristic person, that such portion did not enjoy separate personality and therefore that the respondent, in instituting action in the manner cited, did not have locus standi to institute the current proceedings.

Under our law no juristic person is capable of being divided into a number of separate juristic personalities, all forming a division of the whole. …

If in addition thereto it is said that the business is a division of a named company, registered according to the laws of the Republic, there is only one possible further inference and that is that the incorporated company trades through the medium of the business under that particular trading name. Indeed, an incorporated company may trade through the medium of a number of such businesses, each with a separate trade name. I know of no rule of law which disentitles it from doing so. None of them will thereby acquire separate corporate personality.

Until the introduction of the current Uniform Rules of Court, a business in this sense, not being a juristic person, did not have locus standi to sue or be sued. … Now the position is governed by Rule 14 of the Uniform Rules of Court. Subrule (2) provides that a partnership, firm or association can sue or be sued in its own name. According to subrule (1) 'firm' means a business carried on by the sole proprietor under a name other than his own.

…

<u>I have no doubt that the respondent falls squarely within the definition of 'firm'. It has a sole proprietor, the name of which is set out in the citation in the summons as 'Bankorp Bpk'. … In my opinion, while the word 'division' may not be the most</u>

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11 1993 (3) SA 384 (W) at 385E-386E.

appropriate ('firm' or 'business' would have been better), it is perfectly clear that the respondent is a business concern owned by the company Bankorp Bpk."

26. In *Absa Bank Limited v Blignault and another and four similar cases*[12] the plaintiff was cited as "*ABSA Bank Ltd (United Bank Division)*". The court referred[13] with approval to the remarks made in *Volkskas Bank*, and held that a division does not enjoy *locus standi* independently of, or apart from, the body of which it is a constituent or by which it is owned. It held as follows:[14]

"*There is of course no objection at all, from a business point of view, to each division maintaining an identity distinct from another division, and each division handling those affairs of the corporation to which it belongs which relate to the division in question as long as it is understood that anything thus transacted by it is an act of the corporation itself, and nothing less. Thus, if any such division needs to institute legal proceedings, it can only do so if it institutes those proceedings in the name of the corporation to which it belongs, and if it enjoys the authority of the corporation so to do.*
Rule 14 of the Uniform Rules of Court does not avail the 'plaintiff'. That Rule does nothing more than allow a party to be cited in a business name. Implicit in at least the provisions of subrules (1) and (2) is that the actual party which trades thus is the actual plaintiff. The Rule does not purport to vest with locus standi something which, but for the Rule, did not enjoy any."

27. In *Trust Bank v Dittrich,*[15] in this Division, the appellant had been cited as "*a division of Bankorp Ltd*". The court held that Rule 14(2) did not remove the necessity to give a full and correct description of the trading entity.[16] It nevertheless remarked as follows, indicating a trend towards a less formalistic approach at the time:[17]

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12 1996 (4) SA 100 (O). These matters concerned applications for default judgment. Judgment was handed down in 1992 but the matter was reported in 1996.
13 At 101F-I.
14 At 102B-D.
15 1997 (3) SA 740 (C) (judgment was handed down in 1995).
16 At 747G.
17 At 747B-G. My emphasis.

"*Na my mening in die onderhawige gevalle, en ten spyte van die ietwat slordige wyse waarop die eiser beskryf is, is dit tog na my mening duidelik dat daar altyd 'n regspersoon was wat 'n eis teen die verweerder gehad het wat ingestel kon word, en gaan dit hier bloot om die wanbeskrywing van daardie eiser wat by wyse van 'n wysiging reggestel kan word.*

Die borgakte is by die besonderhede van eis aangeheg. Dit gaan dan inderdaad oor die beskrywing van die eiser gebaseer op die borgakte wat in hierdie geval 'n amalgamasie was van verskeie bankinstansies. Die algemene neiging, soos gemeld, in ons regspraak is 'n neiging tot 'n minder formalistiese benadering en het trouens daartoe gelei dat die gemeenregtelike reël dat 'n vereniging of liggaam van persone sonder regspersoonlikheid nie in eie naam aan gedingvoering kan deelneem nie, gewysig is deur …. Hooggeregshofreël 14.

…

Dit doen natuurlik nie afstand van die noodsaaklikheid om 'n volledige en korrekte beskrywing te verskaf van die bestaande firma, vennootskap of vereniging wat handel dryf, of dan wel die geregistreerde maatskappy of instansie nie."

28. Counsel for the first respondent also duly referred me to a more recent judgment in this Division, namely *Ford v Alphera Financial Services (A Division of BMW Financial Services (South Africa) (Pty) Ltd)*.[18] It was on this judgment that counsel for the applicant relied. It was delivered in 2012, and concerned an application under Rule 31(2)(b) for the rescission of a default judgment. Relying on *Two Sixty Four Investments*, the court in *Ford v Alphera* held that it was permissible for the plaintiff to have been described in the summons as "*Alphera Financial Services (A Division of BMW Financial Services)*":

"*[14] The defendant's complaint about lack of locus standi is based on the form of citation of the plaintiff, namely as 'Alphera Financial Services (A Division of BMW Financial Services (South Africa) (Pty) Ltd)', the argument being that a 'Division' is not a legal persona and accordingly lacks capacity to contract or to sue.*

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18 [2012] ZAWCHC 185 (20 November 2012). See also *Mega Flex ('n Divisie van Sentrachem Bpk) v White River Motor Trading (Edms) Bpk* 1996 (1) SA 616 (T) at 618D, and *Cupido* v *Kings Lodge Hotel* 1999 (4) SA 257 (E) at 260Iff.

[15] <u>This argument has its genesis in an obiter remark by Conradie J (as he then was) in Volkskas Bank ('n Divisie van Absa Bank Beperk) v Pietersen, where the learned judge pointed out that in our law there was no legal persona such as a division</u>.[19] A similar approach was followed by Roux J in Spoornet v Watson, …

[16] Mr Ford, who appeared on behalf of the defendant, strongly relied on both these decisions in support of his complaint about lack of locus standi on the part of the plaintiff. He failed to refer, however, to a series of cases, cited by Mr Groenewald on behalf of the plaintiff, where this line of reasoning has not been followed or expressly disapproved."

29. The court proceeds to quote from the judgment in *Two Sixty Four Investments,* and concludes as follows:

"[18] In Trust Bank Bpk v Dittrich, this court (per Van Niekerk J, Farlam J concurring) quoted the above extract from Two Sixty Four Investments and … did not expressly disagree with the approach adopted in that case.

[19] Having regard to the principles laid down in the above cases, it would obviously have been preferable had the plaintiff been cited the other way around, namely as 'BMW Financial Services (South Africa) (Pty) Ltd), trading as Alphera Financial Services', or even as 'Alphera Financial Services, a firm owned by BMW Financial Services (South Africa) (Pty) Ltd)'. Mr Ford conceded during oral argument, rightly in my view, that had the plaintiff been cited in that way, the whole basis for the defendant's objection would have fallen away. <u>This concession amply demonstrates that the defendant's objection is based on nothing but pure semantics, which runs counter to the more pragmatic and less dogmatic approach followed by our courts in matters of this kind</u>.[20]

30. Counsel for the first respondent argued that what was stated in *Ford v Alphera* in relation to the plaintiff's citation was context-specific, and should be confined to matters such as those involving the rescission of default judgments. It should not be followed in the context of applications such as the present one. I do not agree. There is no reason why the approach taken

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19 My emphasis.
20 My emphasis.

by the court in *Ford* should not apply in the current matter, especially as there is no prejudice to the first respondent. He could not have been under any misapprehension as to who the creditor was that was pursuing him over the span of several years, culminating in these proceedings. In the words of the court in *Spoornet v Watson*, the applicant has furnished "*sufficient details which enable the Court and the [first respondent] to establish whether or not the [applicant] has the requisite locus standi to sue".*

31. The objection to the applicant's citation was raised for the first time in opposition to this application – it had never previously been in issue. I think that the words underlined in the extract from *Ford* quoted above are of equal application to the first respondent's objection.

32. I am in any event bound by the judgment in *Ford v Alphera* unless I am of the view that it is clearly wrong. I do not think that it is wrong at all, as I agree with the "more pragmatic and less dogmatic approach" taken by the court. An objection of this nature, particularly on the facts of this matter, elevates form over substance. The description of the claimant in the arbitration proceedings and the application to have the award made an order of court as "*Fleet Africa, a Division of Supergroup South Africa (Pty) Ltd*" was therefore acceptable, as is the citation of the applicant in the present application. There can be no doubt, in the circumstances, that there was always, and is, only one juristic person involved as creditor.

33. The applicant has therefore established that it is the first respondent's creditor as contemplated in section 10(a), read with section 9(1), of the Insolvency Act.

Advantage to creditors

34. The first respondent argues in his heads of argument that the applicant is his only alleged creditor, and there is thus no body of creditors who would be advantaged by the sequestration of his estate. This contention was not pursued with any vigour during oral argument.

35. As indicated earlier, the first respondent informed the Sheriff on 12 February 2025 that he owned no assets, and he deposed to an affidavit to that effect on the same day.

36. In *Meskin & Co v Friedman*[21] the court held as follows:

> *"[T]he facts put before Court must satisfy it that there is a reasonable prospect – not necessarily a likelihood, but a prospect which is not too remote that some pecuniary benefit will result to creditors. It is not necessary to prove that the insolvent has any assets. Even if there are not at all, but there are reasons for thinking that as a result of enquiry under the Act some may be revealed or recovered for the benefit of creditors, that is sufficient."*

37. I have referred to the fact that in October 2025 the first respondent's son deposed to an interpleader affidavit alleging that one of the vehicles that had been attached belonged to him. He also deposed to an interpleader affidavit as the sole director of SADMC, alleging that the other three vehicles, as well as the first respondent's house and its contents, belonged to SADMC, as the latter had purchased the house on 17 May 2024 and had taken transfer on 25 July 2024.

38. The applicant points out that SADMC was established on 17 January 2019, that is, after summons had been issued by the applicant against the first respondent, and when the first respondent's son – who has always been its sole director – was only 17 years old. It is nowhere explained what the business of SADMC is, or how the first respondent's son is able to be involved in that business given that he is a student at the University of Cape Town.

39. SADMC purchased the first respondent's property barely three and a half months after the arbitration award was made an order of court. The first respondent does not explain the *causa* for the sale. As the applicant puts it,

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21 1948 (2) SA 555 (W) at 559.

one requires little imagination to realise that all of this may well be a sham, and that SADMC was established so that the first respondent could avoid owning assets in his own name. This calls for investigation by a duly appointed trustee under the relevant provisions of the Insolvency Act. The position was stated as follows in *Dunlop Tyres (Pty Ltd) v Brewitt*:[22]

> *"It will be sufficient if the creditor in an overall view on the papers can show, for example, that there is reasonable ground for coming to the conclusion that upon a proper investigation by way of an enquiry under s 65 of the Act a trustee may be able to unearth assets which might then be attached, sold and the proceeds disposed of for distribution amongst creditors."*

40. In these circumstances, I am of the view that there is reason to believe that the sequestration of the first respondent's estate will be to the advantage of his creditors.

Conclusion and costs

41. The applicant has made out a case for the relief it seeks. An order for the provisional sequestration of the first respondent's estate should accordingly follow. The Master has raised no objection against the grant of such an order, and no dispute exists as to the fulfilment of the other formal requirements pertaining to applications for provisional sequestration.

42. As is the practice, the costs of the application for provisional sequestration will be dealt with on the return day.

Order

43. In the premises it is ordered as follows:

    1. The first respondent's estate is placed in provisional sequestration in the hands of the Master of this Court.

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22 1999 (2) SA 580 (W) at 583F-G.

2. A rule *nisi* is issued calling upon the respondents and all interested persons to show cause, if any, on <u>Thursday, 6 August 2026</u> on the semi-urgent roll at 10:00 or as soon thereafter as counsel may be heard, why:

2.1 the first respondent's estate should not be placed in final sequestration;

2.2 the costs of this application should not be costs in the administration of the first respondent's estate.

3. A copy of this provisional order of sequestration must be served:

3.1 upon the first respondent at 3[...] K[...] Road, Gatesville, Cape Town, and on the first respondent's attorneys via email at r[...];

3.2 upon the second respondent at 3[...] K[...] Road, Gatesville, Cape Town, and on the second respondent's attorneys via email at r[...];

3.3 upon the South African Revenue Service at 1[...] L[...] L[...] Street, Cape Town;

3.4 upon the first respondent's employees, if any, and upon any trade union to which such employees may belong, by affixing a copy of the order to any notice board to which the employees have access inside the first respondent's premises, or if there is no access to the premises by the employees, by affixing a copy to the front gate, where applicable, failing which to the front door of the premises from which the first respondent conducted any business at the time of the institution of the application for sequestration.

P. S. VAN ZYL

Acting Judge of the High Court

<u>**Appearances**</u>:

<u>**For the applicant**</u>**:**	Mr D. Baguley
<u>Instructed by</u>:	Assheton-Smith Ginsberg Inc. Attorneys
<u>**For the first respondent**</u>:	Mr F. S. G. Sievers SC
<u>Instructed by</u>:	Schrueder Inc. Attorneys