



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

Case No: **2024-081373**

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

DATE 24 April 2026

SIGNATURE

In the matter between:

THE BODY CORPORATE OF PARKVIEW

Applicant

and

T[...] N[...] M[...]

First Respondent

N[...] M[...]

Second Respondent

JUDGMENT

MM MOJAPPELO AJ:

Introduction

[1] This is an opposed application for the provisional sequestration of the joint estate of the First and Second Respondents, who are married in community of property. The Applicant is the body corporate of the sectional title scheme known as Parkview, situated at 1[...] S[...] Street, Klippoortje, Boksburg, of which Section 69 ("the Parkview property") forms part. The application is founded on section 9(1) of the Insolvency Act 24 of 1936 ("the Act"), read with sections 8(b) and 10.

[2] The Applicant relies on two grounds: first, that the First Respondent has committed an act of insolvency within the meaning of section 8(b) of the Act; and second, that the Respondents are factually insolvent. The Respondents oppose the application on the narrow basis that a pending sale of the Parkview property will, on their version, satisfy the Applicant's claim in full, rendering sequestration unnecessary and contrary to the interests of justice.

The parties and the property

[3] An issue of some significance, which I address at the outset because it runs through the merits, is the ownership structure of the Parkview property. On the Applicant's founding papers, and as confirmed by the Deeds Office search annexed as "FA2", the Parkview property is registered in the joint names of the First Respondent and his former spouse, Ms X[...] P[...] M[...], in undivided half shares. The First Respondent is, however, presently married in community of property to the Second Respondent. The First Respondent's half share in the Parkview property accordingly falls within the joint estate of the First and Second Respondents, while the remaining half share is held by the former spouse in her personal capacity and does not form part of the estate sought to be sequestrated.

[4] The Respondents are further the joint owners of Portion 9 of Erf 2[...], Meyerton Farms, acquired at a purchase price of R680,000.00, which forms part of the joint estate in its entirety.

The Applicant's claim

[5] The Applicant's claim is for arrear levies. On 07 February 2017, the Applicant obtained a default judgment against the First Respondent in the sum of R15,527.87, together with interest and costs. By February 2020, the arrears had escalated to R114,106.93, and on 12 February 2020, this Court declared the Parkview property specially executable subject to a reserve price of R275,000.00. A sale in execution held on 19 November 2021 yielded no bid. As of June 2024, the levy arrears stood at R385,141.08.

[6] The Applicant's locus standi as a creditor in a liquidated amount exceeding R100 is plainly established and was not seriously disputed.

Act of insolvency

[7] On 09 February 2018, the Sheriff, having served a writ personally on the First Respondent at his place of employment, issued a *nulla bona* return, duly signed by the First Respondent. That return, on a proper construction of section 8(b), establishes an act of insolvency: the First Respondent, upon demand by the officer charged with execution of the judgment, failed to satisfy the judgment or to point out sufficient disposable property to do so. The Respondents' answering affidavit does not meaningfully engage with this jurisdictional fact. I accordingly find that an act of insolvency has been established.

Factual insolvency

[8] Factual insolvency is established on the papers. The Respondents have been in persistent default of their levy obligations for more than seven years. Multiple writs against movables have been returned unsatisfied. A judicial sale in execution produced no bid. The Respondents themselves do not allege that their liabilities, fairly valued, are exceeded by their assets; rather, they contend only that a particular asset, the Parkview property, will, upon sale, generate sufficient proceeds to

extinguish the Applicant's claim. That contention is not an answer to factual insolvency; it is, at best, an answer to advantage.

Advantage to creditors

[9] This is the true battleground. The Respondents' answering affidavit, deposed to on 7 March 2025, makes essentially three points: (a) an offer to purchase the Parkview property has been concluded; (b) the purchase price, as reduced by addendum dated 1 March 2025 to match the bond granted to the purchaser, is R480,000.00; and (c) three payments of R4,000.00 each have been made to the Applicant's attorneys pending transfer. On that basis, the Respondents submit that sequestration is unnecessary and that the Court should postpone the matter to permit the sale to proceed.

[10] I am unable to accept that submission, for the reasons that follow.

The role of the former spouse in the ownership of the Parkview property

[11] The most serious difficulty with the Respondents' defence and the one which, in my view, is dispositive of their advantage argument, is that the Parkview property is not theirs to sell in full. It is owned in undivided half shares by the First Respondent and his former spouse, Ms X[...] P[...] M[...]. That fact is established by the Applicant's own Deeds Office search and is nowhere contradicted in the answering affidavit. It is, with respect, a matter the Respondents conspicuously fail to address.

[12] Several consequences flow from this co-ownership, which the Respondents' defence does not confront.

- 12.1. First, the First Respondent cannot lawfully pass transfer of the whole of the Parkview property without the concurrence of his co-owner. The offer to purchase annexed as "TN7" purports to be a sale of the entire property for R480,000.00. No confirmatory affidavit, consent, power of attorney, or any other document emanating from Ms X[...] P[...] M[...]

has been placed before the Court. Absent her participation, the sale cannot be given effect. The Respondents' assurance that transfer is imminent is, on the papers, untethered from the legal reality that a third party whose cooperation is indispensable has not been shown to be cooperating.

- 12.2. Secondly, even assuming the sale were to proceed, only one half of the net proceeds would accrue to the joint estate. On the Respondents' own figures, a gross purchase price of R480,000.00, from which the outstanding FNB bond (with a principal debt of R400,000.00) and the costs of sale must be deducted before any distribution between co-owners, the share accruing to the joint estate would plainly be insufficient to extinguish the Applicant's claim of R385,141.08, let alone any other indebtedness. The Respondents' arithmetic, which treats the full purchase price as available to settle their liabilities, is therefore flawed at its root.
- 12.3. Thirdly, the fact that the co-owner is a former spouse raises the live prospect of unresolved patrimonial claims between the First Respondent and Ms X[...] P[...] M[...] arising out of the dissolution of their marriage. Whether the First Respondent owes her a share of past capital contributions, bond payments, or improvements, or whether she has claims against his half share, is not disclosed. A trustee, properly appointed, would be in a position to investigate these matters and to bring to light any such claims or counter-claims in the interests of the general body of creditors. The Respondents' proposal that the Court simply await a private sale would foreclose that investigation.
- 12.4. Fourthly, and relatedly, the presence of a co-owner who is a stranger to the joint estate means that any realisation of the Parkview property in insolvency will require the trustee either to negotiate a sale with the co-owner's consent or to institute proceedings for division of the joint property (*actio communi dividundo*). That this may complicate realisation cannot, however, be a reason to refuse sequestration. It is

well established that an insolvent estate comprises all the debtor's property, including an undivided share in co-owned immovable property, which vests in the trustee on sequestration. Co-ownership attenuates the weight to be given to the asset in the advantage enquiry; it does not extinguish it.

[13] In short, the First Respondent's "ex-wife features prominently" in the ownership of the Parkview property in a manner which materially undermines, rather than supports, the Respondents' defence. The Respondents have sought to press into service an asset only half of which falls within the joint estate, without adducing any evidence that the other half-owner is a willing participant in the proposed sale, and without adjusting their arithmetic to reflect that only half of the proceeds can ever be available to creditors of the joint estate.

Other assets and the advantage enquiry more broadly

[14] Even leaving the Parkview property to one side, the joint estate includes Portion 9 of Erf 2[...], Meyerton Farms, acquired for R680,000.00 and in respect of which no bond quotation or valuation suggesting negative equity has been placed before the Court. There is also evidence on the founding papers drawn from the Sheriff's 2018 return that the Parkview property has, at relevant times, been tenanted, giving rise to a reasonable inference of rental income the destination of which a trustee would be entitled to investigate.

[15] The threshold for "advantage to creditors" at the provisional stage is a modest one. The Applicant doesn't need to prove that a substantial dividend will result; it is sufficient that there is reason to believe that sequestration will yield a not-negligible benefit to the general body of creditors. That threshold is, on the evidence before me, comfortably crossed. The combination of (a) the First Respondent's undivided half share in the Parkview property, (b) the jointly-owned Meyerton property, (c) the possibility of undisclosed rental income, and (d) the investigative powers of a trustee to interrogate the financial history of a joint estate which has for many years failed to meet its obligations, together establishes a reasonable prospect of advantage.

[16] The Respondents' submission that the Applicant "need only concern itself with its own debt" misapprehends the nature of a sequestration enquiry. Sequestration is not a debt-collection device for the benefit of a single creditor; it is a collective procedure for the orderly administration of the estate of an insolvent debtor. The formation of a *concursum creditorum*, the prevention of preferences, and the protection of future creditors from further dissipation of the estate are themselves legitimate purposes of sequestration, which a private sale cannot replicate.

Procedural compliance

[17] I am satisfied that the jurisdictional and procedural requirements of sections 9(3), 9(4) and 9(4A) of the Act have been met. The application has been served on the Respondents, on any employees, on SARS, on the Master, and on Standard Bank as a bondholder. The security bond prescribed by section 9(3)(b) has been lodged with the Master, whose certificate was handed up. The practice note and draft order comply with the directives of this Division.

Conclusion and order

[18] The Applicant has established, on a *prima facie* basis, all the requirements for a provisional order of sequestration. The Respondents' opposition, which rises or falls on the proposition that an imminent sale of the Parkview property will extinguish the debt, cannot succeed. That proposition is fatally undermined by the undisputed fact that the Parkview property is co-owned with the First Respondent's former spouse, whose consent to and participation in the sale has not been demonstrated, and whose half share in the property cannot in any event be applied to the debts of the joint estate.

[19] In the result, I make the following order:

1. The joint estate of the First Respondent, Thukela Ntuthuko Mnguni, and the Second Respondent, N[...] M[...], is placed under provisional sequestration in the hands of the Master of the High Court, Pretoria.

2. A *rule nisi* is hereby issued calling upon the Respondents and all interested parties to show cause, if any, before this Court on 27 July 2026 at 10h00, why the Respondents' joint estate should not be placed under final sequestration.
3. A copy of the provisional order shall be served and published on:
 - 3.1. The Respondents via electronic email to [k\[...\]](#) and [i\[...\]](#).
 - 3.2. Once in the Government Gazette;
 - 3.3. Once in the Citizen Newspaper; and
 - 3.4. Standard Bank of South Africa Limited, as bondholder in respect of the Parkview property.
4. The costs of this application are costs in the sequestration.

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

Appearances:

Counsel for the Applicant : **Adv NG Louw**
Attorney for the Applicant : **Beyers Incorporated Attorney (Pretoria)**
Counsel for the Respondent : **Adv S Luwaca**
Attorney for the Respondent : **Mphaho Attorneys Incorporated (Germiston)**