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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case number: 2026 - 016174

(1) REPORTABLE: **No**

(2) OF INTEREST TO OTHER JUDGES: **Yes**

(3) REVISED: **Yes**

6 May 2026

SIGNATURE

In the *ex parte* application of:

P[...] B[...] L[...] R[...] Applicant

[Identity Number: 7[...]]

[Divorced]

[For his rehabilitation ito. section 124(2)(a)]

[Master's Reference: T001764/2022]

The judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties' legal representatives by e-mail and uploading it to the electronic file of this matter on Caselines. The date and time of hand-down is deemed to be ______ on 6 May 2026.

JUDGMENT

J Vorster, AJ

[1] On 5 May 2026, I dismissed the applicant's application for rehabilitation and undertook to furnish reasons for doing so. These are my reasons.

[2] The applicant seeks an order for the rehabilitation of his estate in terms of section 124(2)(a) of the Insolvency Act. In his founding affidavit, the applicant alleges that an application for the voluntary surrender of his estate was accepted on 24 August 2022, and that thereafter he surrendered his estate into the hands of his joint insolvency practitioners, Retha Stockhoff N.O. and Zanet Kajee N.O.

[3] In paragraph 4 of his founding affidavit, the applicant testifies that, at the time he surrendered his estate, he had unencumbered assets of R40,000, whilst his liabilities amounted to R161,802.42. It is important to bear in mind that an application for voluntary surrender is made *ex parte*, and that an applicant is accordingly under a duty to make a full and frank disclosure of all relevant facts and circumstances.

[4] Annexure "C2" to the founding affidavit is the First and Final Liquidation and Distribution Account (**L&D account**), which was confirmed by the Master of the High Court on 13 August 2024.

[5] The L&D account reveals that eight creditors proved claims against the applicant's insolvent estate to a total value of R710,231.30. These creditors are all commercial banks, to wit First National Bank (five claims), Nedbank (one claim), and Standard Bank (two claims). All these claims are concurrent in nature. The total amount available for distribution was R27,356.55, with the result that the proven creditors received only nominal dividends (approximately 4c/R1).

[6] The applicant has made no attempt to explain the considerable difference between the value of claims disclosed in his voluntary surrender application, and the claims later proven in his insolvent estate.

[7] A rehabilitation order is discretionary in nature. The *onus* rests on an applicant to demonstrate that the discretion should be exercised in his favour by making a full and frank disclosure of all relevant information, thereby enabling the Court to properly exercise such discretion.

[8] One of the factors to consider in a rehabilitation application is whether the applicant is a fit person again to participate in the commercial life of the community free of the constraints and disabilities affecting an insolvent. This consideration was described in **Ex Parte Harris v (Fairhaven Country Estate (Pty) Limited Intervening Party)**,[1] as follows:

> "*In his application for rehabilitation Harris must satisfy the court that he is a fit and proper person to be permitted to trade with the public on the same basis as any other honest business person. The test was formulated thus by Wessels J nearly a century ago, but despite the myriad changes in commercial practice and business ethics in that time, it remains very much applicable today –*
>
> > *'I have to enquire whether the applicant is such a person as ought to be rehabilitated - is he a person who ought to be allowed to trade with the public on the same basis as any other honest man? That depends entirely on how he conducted his trade before he became insolvent. If he conducted himself in a negligent manner, or so as to deceive others, he is not a person who ought to be rehabilitated until it is clear that he intends to adopt better methods. His rehabilitation ought to be withheld from him, or at any rate it ought to be postponed for such a time that he will receive a severe lesson as to the necessity of trading honestly.'* "

1 [2016] 1 All SA 764 (WCC); 2016 JDR 0159 (WCC) at [84].

[9] In **Ex Parte Purdon**,[2] the court explained that an application for rehabilitation is not a formality and that a full and frank disclosure is required. The following apposite finding was made:

> "*An application for rehabilitation is not a formality. It requires frankness and a full disclosure of all relevant facts. At the very least, the applicant has to satisfy the court of three aspects. First, a full and frank disclosure of the circumstances that led to his or her sequestration. Second, a demonstration that he or she had learnt lessons from the insolvency, and third, that he or she is rehabilitated and ready to re-enter the commercial world and the economic mainstream. For the latter requirement, it does not suffice that since sequestration, the insolvent had lived strictly on a cash basis. That is a forced, natural, and intended, consequence of insolvency, and it is by no means an indication of prudence on the part of the applicant for which he or she should be applauded.*"

[10] The evidence presented by the applicant falls far short of what is required of an *ex parte* applicant in a rehabilitation application. In fact, the founding affidavit is generic and non-specific. When dealing with his current monthly expenses, the applicant provides rounded figures, and the list of expenses is limited, making no provision for, for instance, travelling or any expenses related to a motor vehicle. The applicant testifies that his monthly income amounts to R22,734.20, and that the total of his combined expenses is R15,136.00. According to him, the balance of R7,598.20 is "*saved for unforeseen expenses*". In practical terms, the applicant rid himself of liabilities exceeding R710,000 in return for a 4c/R1 dividend, and can now set aside monthly savings.

[11] A further factor to consider is whether, in the application for voluntary surrender, the court was misled as to the available assets or the value of the claims of creditors. For the reasons already advanced, the evidence creates the strong impression that the Court which granted the voluntary surrender order was not placed in possession of accurate and complete information concerning the applicant's liabilities.

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2 2014 JDR 0115 (GNP) at [9].

[12] In **Ex Parte Mc Bride**,[3] the applicant (i.e. Mr Mc Bride) was represented by the same attorney and counsel involved in this application when he moved an application for his rehabilitation. Much like in the present matter, the court concluded that the applicant therein had understated his liabilities when he surrendered his estate, and ultimately refused the application for rehabilitation. The facts and circumstances of that judgment are strikingly similar to those in this application. I find it necessary to quote from paragraphs [17] and [18] of the judgment:

> "*[17] I find it extremely difficult to believe that any person could have such little grasp of his financial affairs. I accept that an applicant may make an error, but in this case the "error" resulted in the applicant under reporting his liabilities by a factor of 3.5. In my view it is much more likely that the applicant's liabilities were purposely understated in order to create the illusion that there would be an advantage to creditors. For that reason, I intend to refer this matter to the Director of Public Prosecutions for investigation.*
>
> *[18] Even if I am wrong on this finding, at best for the applicant he was extremely negligent in the manner in which he approached the matter. It was incumbent on the applicant to ensure that the most accurate figures possible were provided to the Court. He clearly failed in that duty.*"

[13] Courts have historically refused to grant rehabilitation orders in instances of fraud, recklessness, and false or overstated information in statements of affairs.[4] I align myself with this approach.

[14] Considering the above, I resolved to dismiss the rehabilitation application.

J VORSTER, AJ.

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3 (2024-003235) [2024] ZAGPPHC 1166 (15 August 2024).

4 **Ex Parte Friedman** 1925 GWL 19.

Acting Judge of the High Court

Date heard: 5 May 2026.
Judgment date: 5 May 2026.
Reasons provided: 6 May 2026.

Appearance:
Counsel: RP Loibner
Instructed by: Herman Esterhuizen Smalman Attorneys