**REPUBLIC OF SOUTH AFRICA**

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

**Case No: 2025 /166934**

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

2026/05/22 [redacted]
DATE SIGNATURE

In the matter between:

**KRUGERSIG BODY CORPORATE** Applicant

and

**WILLEM WOUTER VILJOEN** Respondent

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**JUDGMENT**

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**MOTHA, J**

*Introduction*

[1] In an attempt to prevent a pending application for a provisional order of sequestration, the respondent raised two points in limine: firstly, Authority to

Depose a Statement, and secondly, Non-Compliance with Regulations of the Oath and Affirmations Act[1]. Upon realizing the futility of those points, he abandoned them at the commencement of the proceedings and instead relied on a new submission that the sheriff had not served the writ personally on him. Needless to state that this was not pleaded. The submission was that, as this was a legal point, it could be raised from the bar.

*Parties*

[2] The applicant, is the Body Corporate, Krugersig, a juristic entity established under Sections 1 and 2 of the Sectional Title Schemes Management Act,[2] read together with section 8(3) of the Sectional Title Act.[3]

[3] The respondent is Willem Wouter Viljoen, an adult male residing at Krugersig complex, which is managed by the applicant.

[4] The applicant is a creditor of the respondent, who is indebted to the applicant in the sum of R120 024.94, plus all other costs. On 10 October 2023, the Applicant issued summons against the respondent in the District Magistrates Court of Mogale City, Krugersdorp, under case number 4435/2023.

[5] In the summons, the applicant prayed for a judgment against the respondent for payment of the amount of R120 024.94 and interest on that amount.

[6] Subsequently, on 17 October 2023, the sheriff served summons on the Respondent.

[7] The respondent did not enter an appearance to defend; hence, the applicant applied for default judgment. On 6 May 2024, the Krugersdorp Magistrates' Court granted judgment against the respondent in favour of the applicant.

[8] Having obtained the judgment, the applicant's attorneys of record instructed the Sheriff to execute the issued warrant of execution. On 17 April 2025, the Sheriff of the Court executed the writ of execution on the respondent's movables.

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[1] 16 of 1963.
[2] 8 of 2011.
[3] 66 of 1971.

[9] On the 13th of May 2025, as the Sheriff of the Court attempted to remove the items under attachment for storage awaiting the sale in execution, she was served with an interpleader summons pertaining to the goods under attachment.

[10] The respondent's attorneys dispatched a letter to the applicant and it read:

> "We confirm having advised you that Mr Viljoen Calvort received a notice from the sheriff of Krugersdorp that a warrant had been issued against him with a view to attaching certain assets on his premises and that after the attachment, the attached goods were removed by the sheriff of Krugersdorp.
>
> Prior to you being appointed as the attorney of record, a payment arrangement was entered into with the previous attorneys of record, being Swanepoel.
>
> Van Zyl Attorneys."

*The Law*

[11] I pause to consider the applicable law.

[12] As a point of departure, this Court must examine s 10 of the Insolvency Act,[4] which reads:

> "10. Provisional sequestration
>
> 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 sub-section (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."

[13] Without having to prove that the debtor is actually insolvent, the creditor can rely on s8 of the Act, which designates certain acts or omissions by the debtor as "acts of insolvency." If the creditor can establish that the debtor has committed

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[4] 24 of 1936.

one or more of these "acts", he may seek an order sequestrating the debtor's estate without having to prove that the debtor is actually insolvent.[5]

[14] In the matter of *De Waard v Andrew & Thienhaus Ltd*,[6] Innes CJ stated:

> "Now, when a man commits an act of insolvency, he must expect his estate to be sequestrated. The matter is not sprung upon him; first a judgment is obtained against him, then a writ is taken out, and he must expect, if he does not satisfy the claim that his estate will be sequestrated. Of course, the Court has a large discretion in regard to making the rule absolute; and in exercising that discretion the condition of a man's assets and his general financial position will be important elements to be considered. Speaking for myself, I always look with great suspicion upon, and examine very narrowly, the position of a debtor who says, 'I am sorry that I cannot pay my creditor, but my assets far exceed my liabilities. To my mind the best proof of solvency is that a man should pay his debts, and therefore I always examine in a critical spirit the case of a man who does not pay what he owes."[7]

[15] The applicant submitted that the respondent has committed various acts of insolvency. Chief amongst them is s 8(b) of the Insolvency Act. The respondent has failed to satisfy or indicate disposable property sufficient to satisfy the judgment handed down by the court.

[16] The other act of insolvency relied on by the applicant is s 8(e).

[17] Finally, the applicant stated that a provisional sequestration order will be to the advantage of the creditors, since an insolvency enquiry will give clarity regarding the status of the Respondent's assets.

[18] Importantly, the respondent does not dispute being indebted to the applicant nor the existence of the court order. In a letter sent by the respondent's attorneys to the applicant, the following is noted:

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[5] See Sharrock at al, *Hockly's Insolvency Law* (7th edition) (Juta, 2002) at p 30; and see *De Villiers NO v Maursen Properties (Pty) Ltd* 1983 (4) SA 670 (T) 676.
[6] 1907 TS 727.
[7] Id at 733.

"(Mr Viljoen) is prepared to make an offer to pay off this judgment debt in the amount of R5000.00 per month and to consent to a garnishee order be set in place to facilitate this arrangement".

[19] It is a matter of record that the debt remains outstanding. After abandoning the points in *limine*, counsel for the respondent contended that their main submission against an order for provisional sequestration was that the sheriff failed to effect personal service of the warrant of execution on the respondent.

[20] This submission is at odds with the letter written by the respondent's erstwhile attorneys dated 15 May 2025. As referenced under paragraph 11, it is worth repeating:

> "We confirm having advised you that Mr Viljoen Calvort received a notice from the sheriff of Krugersdorp that a warrant had been issued against him with a view to attaching certain assets on his premises and that after the attachment, the attached goods were removed by the sheriff of Krugersdorp."

[21] The issue of service is a late invention to ward off the application. From the contents of this letter, there is no dispute that the sheriff served the respondent. In fact, the sheriff managed to raise a measly R400.00 from the sale in execution following the interpleader application. It hardly needs restating that a debtor's failure to pay a debt when due is presumptive proof of insolvency.[8] Therefore, the respondents' failure to pay the amounts due under the judgment debt raised a very strong prima facie case that the debtor was insolvent.[9]

[22] In his answering affidavit, the respondent said:

"17.3. I wish to further state that I am solvent as I am the owner of moveable property to the value of R800 000 (eight hundred thousand rand) therefore not insolvent as alleged by the applicant."

[23] As already stated in *De Waard* this is not good enough, "the best proof of solvency is that a man should pay his debts."

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[8] *De Waard v Andrew & Thienhaus Ltd* 1907 TS 727. See also *Krumm v Black* 14 CTR 148.
[9] *Krumm v Black* (1904) 21 SC 23.

[24] I am persuaded that, on a *prima facie* basis, the applicant has established that the respondent has committed the act of insolvency as contemplated under s 8(b) and that it would be in the best interest of the creditors for the respondent to be placed under provisional sequestration. Now, the question before this Court is whether it should exercise its discretion to grant a provisional order of sequestration.

[25] In the matter of *First Rand Bank Ltd v Evans*[10] the court held:

> "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."[11]

[26] Before this court, the respondent has not established circumstances that are either unusual or special to warrant the exercise of the discretion in his favour. Indeed, body corporates "rely on the payments of levies by all members to maintain the common property and meet their obligations."[12]

[27] However, a body corporate cannot be like a fair-weather friend, simply waiting for a homeowner's levies account to balloon and then handing over the debt to its attorneys; it must do more. That more could take many forms, such as engaging with a homeowner about a possibility of an early sale of the affected property or placing a moratorium on interest on levies.

*Conclusion*

[28] In *casu,* the concatenation of the evidence permits one conclusion, namely: the discretion must be exercised in favour of ordering a provisional sequestration. It is trite that if the court sequestrates the estate of a debtor provisionally, it must simultaneously grant a rule *nisi* calling upon the debtor upon a day mentioned in

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[10] 2011 (4) SA 597 (KZD).
[11] Id at para 28.
[12] Lombardy Home Owners Association NPC v Makgolela and Others (2024/010120) [2026] ZAGPJHC 502 (14 May 2026)

the rule to appear and to show cause why his or her estate should not be sequestrated finally.

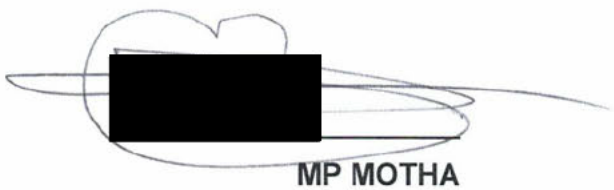
[29] It is hereby ordered as follows;

*Order*

1. The estate of the Respondent is provisionally sequestrated, and the assets thereof are placed in the hands of the Master of the High Court

2. The Respondent or any interested person is called upon to present reasons on 10 August 2026 and at 10h00, or so soon thereafter as counsel for the Applicant may be heard, why the provisional sequestration order should not be made a final order.

3. The costs of this application are costs in the joint insolvent estate.



**MP MOTHA**

**JUDGE OF THE HIGH COURT**

**GAUTENG DIVISION, JOHANNESBURG**

**Appearances**

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|---|---|---|
| For the Applicants | : | Adv L Liebisch |
| Instructed | : | Wynand du Plessis Attorneys |
| For the Respondent | : | Adv Swanepoel |
| Instructed | : | Eastes Incorporated |
| Date of hearing | : | 05 May 2026 |
| Date of Judgement | : | 22 May 2026 |