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

CASE NO.: 2024-059200

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO
Date: 22 May 2026
E van der Schyff

In the matter between:

THE BODY CORPORATE MONACO

APPLICANT

and

VHONANI MICHAEL NEMUTANDANI
(Identity Number: 6[...])

FIRST RESPONDENT

NDANDULENI GLORIA NEMUTANDANI
(Identity Number: 6[...])

SECOND RESPONDENT

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JUDGMENT

VAN DER SCHYFF J

Introduction and background

[1] This is an opposed application for the final sequestration of the respondent's joint estate.

[2] The respondents, who are married in community of property, are the registered owners of an immovable property Unit 5[...], in the sectional title scheme known as Monaco, situated at Flat 5[...] Monaco, 2[...] T[...] Street, Muckleneuk.

[3] The applicant is the Body Corporate of the aforementioned sectional title scheme. The respondents are indebted to the applicant in respect of unpaid levies, interest, and legal costs arising from prolonged non-payment. According to the founding papers, the indebtedness amounted to R584 341.21 as at January 2024.

[4] Several legal proceedings were instituted against the respondents over time in respect of different periods of arrear levies. Default judgments were obtained against the respondents in both the Magistrates' Court and this Division. The present application is founded principally upon a default judgment granted by this court under case number 019890/2022.

[5] The applicant contends that the respondents committed an act of insolvency as envisaged in section 8(b) of the Insolvency Act 24 of 1936 ("the Insolvency Act"). Reliance is placed on a *nulla bona* return issued by the Sheriff following service of a warrant of execution at the respondents' traced residential address at Tshifulanani, Limpopo. According to the Sheriff's return, the respondents indicated that they were unable to satisfy the writ.

[6] The respondents oppose the application. They contend that they did not receive notice of the proceedings that culminated in default judgment under case number 019890/2022. They further aver that they are factually solvent and wish to settle the applicant's claim. In this regard, they allege that the property at which they reside in Limpopo consists of a 16-room house containing furniture and movable assets.

[7] The applicant disputes that the respondents' conduct demonstrates any genuine intention or ability to satisfy the judgment debt. It points out that, notwithstanding repeated undertakings and settlement overtures, the respondents have continued to default both in respect of arrear levies and ongoing monthly levies. The applicant avers that the indebtedness has escalated substantially by June 2025.

[8] A provisional sequestration order was issued on 5 November 2025 in the absence of the respondents, with a rule *nisi* returnable on 2 March 2026.

[9] It is common cause that the main application was personally served on both respondents, who thereafter entered opposition and delivered an answering affidavit. The

provisional sequestration order was served personally on the first respondent, who also accepted service on behalf of the second respondent.

[10] On 2 March 2026, the rule *nisi* was extended by agreement to 18 May 2026 at the request of the respondents' counsel, who sought an opportunity to negotiate a settlement agreement with the applicant before the joint estate was finally sequestrated. It is common cause that the terms of the proposed settlement were unacceptable to the applicant and that the parties were ultimately unable to reach an agreement.

Discussion

[11] It is undisputed that default judgment was granted against the respondents in this Division under case number 019890/2022. The respondents deny knowledge of the High Court action instituted under case number 019890/2022, asserting that the applicant deliberately served process at 5[...] Monaco knowing that the respondents resided in Limpopo.

[12] The contention cannot prevail on the papers before this court. The founding affidavit identified 5[...] Monaco, 2[...] T[...] Street, Muckleneuk, as the respondents' *domicilium citandi et executandi*. The answering affidavit does not meaningfully traverse or dispute that allegation. In those circumstances, service at that address was *prima facie* valid. Moreover, although the respondents now complain of lack of notice, no rescission application was brought despite ample opportunity to do so after they became aware of the judgment. The respondents have throughout been legally represented. Their failure to pursue rescission materially weakens the procedural complaint now advanced.

[13] Significantly, the respondents do not dispute service of the warrant of execution that culminated in the *nulla bona* return. Nor do they meaningfully challenge the contents of the Sheriff's return itself.

[14] The respondents' assertion that they possess sufficient movable assets at their Limpopo residence to satisfy the indebtedness remains unsupported by any objective evidence. No inventory, valuation, proof of ownership, bank statements, or other financial

disclosure was produced. The assertion accordingly carries limited evidentiary weight when measured against the Sheriff's *nulla bona* return.

[15] As Innes CJ observed in *De Waard v Andrew and Thienhaus*:¹

“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.”

[16] The respondents rely heavily on the proposition that the indebtedness should instead be resolved through a payment arrangement. The difficulty with that submission is that the respondents have not advanced any concrete or viable proposal demonstrating how the debt will realistically be extinguished within a reasonable period.

[17] The papers reveal that the respondents made settlement overtures and proposed payment arrangements from time to time. The existence of such proposals is, however, not proof of solvency. On the contrary, a proposal to discharge a substantial judgment debt by instalments may equally indicate an inability to satisfy debts as they fall due.

[18] It was submitted on behalf of the applicant during argument, without contradiction, that the continued accumulation of interest and charges has materially impaired the applicant's ability to recover the escalating indebtedness through ordinary delay. That consideration reinforces the applicant's contention that ordinary debt enforcement mechanisms have proved ineffective over a prolonged period.

[19] The respondents further rely on a pending review application under case number 20916/18. The answering papers provide little context regarding the nature, status, or relevance of that review to the judgment debt that underpins the present sequestration application. No review papers were attached, and no explanation was provided as to how the review affects the enforceability of the judgment debt. In those circumstances, the alleged review application does not constitute a cognisable defence to the relief sought.

¹ 1907 (TS) 727 at 733.

[20] Having considered the papers as a whole, I am satisfied that the applicant is a creditor with a liquidated claim well in excess of R100.00. The respondents own immovable property within the court's territorial jurisdiction, establishing jurisdiction. Furthermore, when served with the warrant of execution under case number 019890/22, the respondents failed to satisfy the judgment debt or to indicate to the sufficient disposable property to the Sheriff, thereby committing an act of insolvency.

[21] The remaining enquiry is whether there is reason to believe that the sequestration of the respondents will be to the advantage of creditors.

[22] In *Meskin & Co v Friedman*² it was held that there must be:

“.. 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 none 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.”

[23] The Constitutional Court in *Stratford v Investec Bank Ltd*³ emphasised that the concept of advantage to creditors should not be approached rigidly and that the enquiry remains one directed at the existence of a reasonable prospect of pecuniary benefit to creditors as a body.

[24] Although the evidence regarding the respondents' complete financial position is limited, I am satisfied that there exists a reasonable prospect, not too remote, that sequestration may yield a pecuniary benefit to creditors.

[25] The respondents are the registered owners of Unit 5[...] Monaco. The applicant attached a Windeed valuation reflecting an estimated value of approximately R470 000. The precise extent of any outstanding bond indebtedness is not disclosed on the papers, nor is there sufficient evidence to determine with precision what dividend may ultimately become available to concurrent creditors. That, however, is not decisive.

² 1948 (2) SA 555 (W) at 559.

³ *Stratford and Others v Investec Bank Ltd and Others* 2015 (3) SA 1 (CC) at para 44.

[26] As *Meskin & Co v Friedman, supra*, makes clear, it is sufficient that there is a prospect, not too remote, of some pecuniary benefit to creditors. The appointment of a trustee will, moreover, enable a thorough investigation of the respondents' broader financial affairs, including assets that may not have been disclosed.

[27] The respondents themselves assert the existence of additional assets and proprietary interests associated with the property in Limpopo at which they reside, including movable assets and motor vehicles. Although these allegations are insufficiently substantiated to displace the evidentiary weight of the *nulla bona* return, they nonetheless suggest the possible existence of assets or interests warranting investigation by a trustee.

[28] One further factual distinction requires clarification. Throughout the answering affidavit, the respondents describe Stand 1[...], Tshifulanani, Limpopo as their residential address. They assert that it consists of a 16-room house fully packed with furniture and that motor vehicles are present there. These averments, however, speak to assets located at a place where the respondents reside. They do not establish, nor do they purport to establish, that the respondents are the registered owners of that property. The founding affidavit is explicit on this point: the applicant identifies 5[...] Monaco as the only immovable property owned by the respondents of which it has knowledge. No Deeds Office search confirming ownership of Stand 1[...] is placed before this court, and the answering affidavit itself produces no title deed, no rates account, and no other document consistent with registered ownership. In the circumstances, Stand 1[...] cannot be treated as owned immovable property of the respondents for the purposes of this application. Whether the respondents occupy that property as registered owners, as occupants of a family or communal homestead, or in some other capacity entirely, is a question that falls squarely within the investigative mandate of a trustee appointed under the Insolvency Act. It is precisely this kind of undisclosed or unverified interest that the sequestration process is designed to interrogate.

[29] Although the respondents do not expressly invoke any constitutional rights in their answering affidavit, this court, in exercising the discretion whether to grant a final

sequestration order, is obliged to consider the constitutional dimensions of that order of its own accord.

[30] In *Stratford v Investec Bank Ltd* the Constitutional Court confirmed that sequestration proceedings may implicate constitutional rights, including the rights to dignity and access to adequate housing. The court must therefore consider whether a sequestration order would operate disproportionately or unjustifiably in the circumstances.

[31] The papers indicate that the respondents reside in Tshifulanani, Limpopo, rather than at the Monaco unit. The Monaco property is accordingly not shown on the papers to constitute the respondents' primary residence. The respondents' right to dignity must also be weighed against the rights and interests of creditors, including the other owners within the sectional title scheme who continue to bear the financial burden created by the prolonged non-payment of levies.

[32] Having considered these factors, I am satisfied that no constitutional impediment arises to the granting of a final sequestration order.

[32] The court retains an overriding discretion whether to grant a final sequestration order.

[33] The respondents have not demonstrated special circumstances warranting the exercise of that discretion in their favour. They have not placed sufficient evidence before the court demonstrating factual solvency, nor have they proposed a viable and concrete mechanism by which the indebtedness will be satisfied.

[34] The prolonged non-payment of levies, the escalation of the indebtedness over time, the nulla bona return, and the absence of meaningful financial disclosure cumulatively support the conclusion that a final sequestration order is justified.

Miscellaneous

[35] The provisional sequestration order was extended to 22 May 2026 to facilitate the handing down of the judgment.

Costs

[36] In accordance with the ordinary practice applicable to sequestration proceedings, the costs of the application will be costs in the sequestration.

ORDER

In the result, the following order is granted:

1. The *rule nisi* is hereby confirmed.
2. The joint estate of VHONANI MICHAEL NEMUTANDANI (Identity number 6[...]) and NDANDULENI GLORIA NEMUTANDANI (Identity number 6[...]) is placed under final sequestration.
3. The costs of the application are costs in the sequestration.

**E VAN DER SCHYFF
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

For the applicant: Instructed by:	Adv. N. Diedericks Pretorius Le Roux Incorporated
For the first and second respondents: Instructed by:	Adv. T.P. Matodzi Tshilidzi Makuya Attorneys
Date of the hearing:	18 May 2026
Date of judgment:	22 May 2026