

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

Reportable: No

Of interest to other judges: No

Revised: No

  
Signature

20/05/2026  
Date

**Case Number:** 2025-183510

In the matter between:

**JACOBUS PETRUS FOURIE N.O.**  
**SIMONE LIESEL MAGARDIE N.O.**

First Applicant  
Second Applicant

and

**ANDRIES JAN GYSBERT NAUDE**  
Identity Number: 660929 5031 084  
**MARRIED OUT OF COMMUNITY OF PROPERTY**

Respondent

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**JUDGMENT**

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This Judgment was handed down electronically by circulation to the parties / their legal representatives by e-mail and by uploading to the electronic file on Case Lines. The date of hand-down is deemed to be 22 May 2026.

**WESSELS AJ**

**INTRODUCTION:**

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

- [2] The application came before me on the unopposed motion roll on 26 February 2026.
- [3] The applicants are the duly appointed liquidators of Aficionada Protection Services (Pty) Ltd (in liquidation)(“*the company*”).
- [4] The respondent, Mr Andries Jan Gysbert Naudé, was the sole director of the company prior to its voluntary liquidation.
- [5] The application is founded upon an alleged debt of R88,797.40 owed by the respondent to the company. The respondent’s indebtedness arises from various payments made from the company’s bank account to the respondent or for his benefit which, according the applicants, constituted monies lent and advanced by the company to the respondent.
- [6] The applicants allege that they *ex officio* have a claim against the respondent for the said amount either *ex contractu*, *ex delicto* or *ex variis causarum viguris* and accordingly have the necessary *locus standi* to launch the application for the sequestration of the respondent’s estate.
- [7] Applicants also allege in their founding affidavit that the payments from the company’s bank account constitute impeachable dispositions for the respondent’s benefit. For reasons I will elaborate on, I disagree.
- [8] Counsel for the applicants drew my attention to a recent judgment in this division by my learned colleague Greyling AJ in **Fourie and Cook v**

**Rootman**,<sup>1</sup> wherein he concluded that a claim based on an impeachable disposition does not become a liquidated claim for purposes of establishing locus standi to a liquidator to bring an application for the sequestration of the beneficiary of the disposition's estate, not at least until a Court has set the disposition aside.

[9] Counsel for the applicants' attention was drawn by the Court to the judgment, in this division, in a similar matter by my other learned colleague Khashane Manamela AJ in **Victor N.O. and Others v Liebenberg**,<sup>2</sup> wherein he seemingly held a contrary view.

[10] In order to consider the question if a possible conflict exists between the referred judgments, I am obliged consider the relevant principles relating to an applicant's *locus standi* in applications of this nature.

#### **FACTUAL BACKGROUND:**

[11] Although the applicants adopted a somewhat scattergun approach in their founding affidavit, the material facts, distilled to their essence, are straightforward and are, in any event not in dispute.

[12] The company was placed in voluntary liquidation by special resolution on 19 June 2024. The applicants were appointed as joint liquidators by the Master of the High Court on 11 July 2024.

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<sup>1</sup> Unreported judgment, Case Number 2025/0136970 Gauteng Division, Pretoria, 20 February 2026

<sup>2</sup> 2025 JDR 0600 GP

[13] In the course of their statutory duties the applicants investigated the company's financial affairs. They discovered that a total amount of R88,797.40 had been paid from the company's bank account to the respondent or to third parties for his benefit. These payments are meticulously detailed in the bank statements attached to the founding affidavit.<sup>3</sup>

[14] The applicants allege that at the time that these payments were made, the company's liabilities already exceeded its assets.

[15] The applicants' attorneys dispatched a letter of demand<sup>4</sup> to the respondent on 28 August 2025 claiming repayment of the R88,797.40.

[16] The respondent replied via e-mail on 1 September 2025.<sup>5</sup> His response is telling. He states:

*"These payments which they demand were done on my behalf and I did not realise that payments from the overdraft would be considered benefitting one creditor above another and that they would be dispositions as explained by them. I unfortunately do not have the means to repay this as I have limited income and which is much less than I used to earn, with more liabilities due to me being unemployed for a while. It is a struggle on a daily basis."*

[17] The respondent admits the payments of the amounts in question.

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<sup>3</sup> Annexure "C"

<sup>4</sup> Annexure "D1"

<sup>5</sup> Annexure "D2" to the founding affidavit

**THE STATUTORY REQUIREMENTS FOR PROVISIONAL SEQUESTRATION:**

[18] In terms of section 10 of the Insolvency Act, 24 of 1936 ("*Insolvency Act*"), a Court may grant a provisional sequestration order if it is satisfied on a *prima facie* basis that:

- i) The applicant has established a liquidated claim of not less than the statutorily prescribed amount of R100.00 against the respondent;
- ii) The respondent has committed an act of insolvency or is in fact insolvent; and
- iii) There is reason to believe that it will be to the advantage of creditors of the respondent if his estate is sequestrated.

[19] I shall consider each of these requirements in turn, commencing with the pivotal issue of *locus standi*.

**ANALYSIS OF THE APPLICANTS' LOCUS STANDI:**

[20] In terms of section 9(1) of the Insolvency Act a creditor (or his agent) who has a liquidated claim for not less than R100, or two or more creditors (or their agent) who in the aggregate have liquidated claims for not less than R200 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.

- [21] The applicants' *locus standi* hinges on whether their claim for R88,797.40 constitutes a "*liquidated claim*" in terms of section 9(1) of the Insolvency Act.
- [22] In **Kleynhans v Van der Westhuizen N.O.**,<sup>6</sup> the Appellate Division defined a liquidated claim in the context of section 9(1) as a "*a claim for an amount which is fixed, either by agreement or by an order of Court or otherwise*".
- [23] In **Hassan and Another v De Villiers Berrange N.O.**,<sup>7</sup> the Supreme Court of Appeal confirmed the approach adopted in **Kleynhans v Van der Westhuizen N.O.** that a liquidated claim in terms of section 9(1) of the Insolvency Act means a claim where the amount is fixed either by agreement or by an order of Court or otherwise. What the legislature intended was, that there should be certainty in connection with the amount of the claim, which was not affected by the legal basis and nature thereof.
- [24] In **Victor N.O. and Others v Liebenberg**,<sup>8</sup> Khashane Manamela AJ with reference to **Kleynhans v Van der Westhuizen N.O.** and **Hassan and Another v De Villiers Berrange N.O.**, found that the respondent's gambling debts and other expenses, which were funded from the company's bank account constituted liquidated claims against the respondent on the facts in that case. It is noteworthy that in **Victor N.O. and Others v Liebenberg** the applicants were the appointed liquidators of a company to wit, Tariomix (Pty) Ltd, which brought an application for the

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<sup>6</sup> 1970 (2) SA 742 (A) at 748 to 749

<sup>7</sup> 2012 (6) SA 329 (SCA) at par 35

<sup>8</sup> 2025 JDR 0600 (GP) at par 27

- sequestration of Tariomix's erstwhile director, Mr Liebenberg and a result of payments from Tariomix's bank account for his benefit.
- [25] If regard is had to the definition of "*disposition*" contained in the Insolvency Act, it is clear that the funds misappropriated from Tariomix's bank account by the respondent cannot be classified as dispositions within the meaning of the Insolvency Act.
- [26] In terms of section 1 of the Insolvency Act a disposition means "*any transfer or abandonment of rights to property and includes a sale, lease, mortgage, pledge, delivery, payment, release, compromise, donation or any contract therefore, but does not include a disposition in compliance with an order of the Court.*"
- [27] It is clear from the aforesaid definition that a "*disposition*" within the meaning of section 1, comprises both an act as well as an intention by the company to dispose of the property in question. Consequently, a loan would not constitute a disposition and neither would the theft or misappropriation of funds qualify as such.
- [28] In **Tariomix**, the evidence presented by the applicants established that the respondent misappropriated the monies from the company's bank accounts, which constituted theft.
- [29] Greyling AJ in **Fourie and Cook v Rootman** held, on the fact presented to him, that a claim based on an impeachable disposition under sections 26,

29 or 30 of the Insolvency Act, does not constitute a liquidated claim, until such disposition had been set aside.

[30] His reasoning was that such a disposition is not void *ab initio* but remains valid until set aside by a Court. Therefore, the obligation to restore the property or its value only arises once a Court has exercised its power to set the disposition aside. The “*debt*” only arises once the Court has made the order to set aside the disposition.

[31] Until such order is granted, no debt exists, and consequently no liquidated claim upon which a liquidator can found an application for sequestration exists either.

[32] Greyling AJ found that in the absence of a Court order declaring the dispositions impeachable and setting them aside, the transactions remained valid and effective and, in the absence, of an order converting it into a debt in terms of section 32 of the Insolvency Act, no claim existed for purposes of section 9(1) of the Insolvency Act.

[33] In **Exotic Fruit Company (Pty) Ltd v Zakharov and Another**<sup>9</sup>, the applicants, in their capacities as the appointed liquidators for the company, sought an order for the provisional sequestration of the first respondent’s estate. In their application, which was opposed, they relied on certain payments to the first respondent, who they allege was the controlling master mind of the company prior to its liquidation. They contended that

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<sup>9</sup> [2021] ZAWHC 60

these payments constituted impeachable dispositions within the meaning of sections 29 and 30 of the Insolvency Act.

[34] The Court in considering the application formulated the critical question as follows: *“The critical question to determine is whether the disposition relied on by the liquidators is in fact a “debt” which would entitle the to bring the application for the sequestration of the respondent”*.

[35] In dismissing the application, Hockey AJ, with reference to **Duet and Magnum Financial Services CC (In liquidation) v Koster**<sup>10</sup> held that what was required was a declaration by a Court, setting aside the dispositions, which would bring the debt into existence that did not exist before. In **Duet and Magnum**, the Court dealt with the issue of prescription relating to an impeachable disposition and the findings were made in that context.

[36] Hockey AJ further referred to the judgment of Cachalia JA in **Off-Beat Holiday Club and Another v Sanbonani Holiday Spa Shareblock Ltd and Others**<sup>11</sup>, wherein he confirmed the conclusion reached in **Duet and Magnum** and opined (at par 45):

*“The provisions of the Insolvency Act (ss 26 – 31)...referred to in Duet and Magnum Financial Services v Koster, which the High Court considered comparable to a shareholder's entitlement under s 266, dealt with declarations that had the effect of bringing into existence a debt that did not previously exist. The liquidator's right to approach the Court for*

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<sup>10</sup> 2010 (4) SA 499 (SCA)

<sup>11</sup> 2016 (6) SA 181 (SCA)

*such relief arises when certain events occur, for example, a disposition of property under ss 26 31 of the Insolvency Act. The liquidator becomes entitled to approach the Court to set the disposition aside and to declare the liquidator entitled to recover the property. And the corresponding 'obligation' or 'liability' of the debtor arises immediately upon the liquidator's entitlement to recover the property."*

[37] Hockey AJ found that in the absence of a "debt" the applicants were not creditors of the respondent and consequently lacked *locus standi* as required in section 9(1) of the Insolvency Act.

[38] It is trite that in ascertaining the intention of the legislature in enacting section 9(1) of the Insolvency Act, the words used must be interpreted according to their normal grammatical meaning. Section 9(1) of the Insolvency Act provides:

*"(1) A creditor (or his agent) who has a liquidated claim for not less than fifty pounds, or two or more creditors (or their agent) who in the aggregate have liquidated claims for not less than one hundred pounds 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."*

[39] It is evident that what is required is the existence of a liquidated claim, which by necessity would be premised on a valid debt. As remarked in **Hassan**, what the legislature intended was, that there should be certainty in connection with the amount of the claim, which was not affected by the

legal basis and nature thereof. Certainty can be obtained by agreement, by other of Court or otherwise.

[40] In **Exotic Fruit Company**, the respondent opposed the application, consequently there was no agreement regarding the claim amount. Neither was an order of Court present which could provide certainty regarding the claim amount. In the absence of either of these I am of the view that Hockey AJ correctly concluded that the existence of a liquidated claim was not established and consequently the applicants *locus standi* was also not established.

[41] In **Fourie and Cook v Rootman**, Greyling AJ, on the facts before him, found that the applicants relied on alleged dispositions that were not declared void by order of Court and consequently no debt existed which could support a liquidated claim.

[42] Whether Greyling AJ's decision was correct is however not something I have to consider or decide upon.

[43] In the present the evidence reveals that payments to the respondent constituted a loan as alleged by the applicants.<sup>12</sup> If no loan existed then the payments constituted theft of the company's monies, absent any intention of the company to dispose of its property. On either construction the payments do not constitute dispositions within the meaning of section 1 of the Insolvency Act.

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<sup>12</sup> Founding affidavit at par 11.1

- [44] I am satisfied that the applicants have established the existence of a debt (in the form of a loan or the theft of monies) and a liquidated claim on a *prima facie* basis and consequently they have established their *locus standi* within the meaning of section 9(1) of the Insolvency Act.
- [45] In view of my findings, the present matter is distinguishable from Greyling AJ's findings and judgment.
- [46] **Victor N.O. and Others v Liebenberg** are furthermore distinguishable from **Fourie and Cook v Rootman** on the facts, as illustrated.
- [47] Although these authorities may have appeared at first blush to be in conflict an analysis of the factual findings dispels this notion.
- [48] In **Estate Saltzmann v Van Rooyen**,<sup>13</sup> the Court, faced with an application for the sequestration of a respondent's estate by the liquidators of a company of which the respondent was managing director, found that the liquidators possessed sufficient *locus standi* to seek an order for the respondent's sequestration on the basis of a claim for monies that were misappropriated from the company's bank by the respondent. The respondent did not dispute the debt nor was it challenged in argument. The Court held that the claim was an enforceable one and that it was a just claim, established as due.
- [49] Returning to the matter at hand, I am inclined to agree with and follow the judgments of **Estate Saltzmann** and **Victor** referred to *supra*.

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<sup>13</sup> 1944 OPD 1

[50] For these reasons I am satisfied that the applicants have established on a *prima facie* basis, that the company possess a liquidated claim against the respondent in the amount of R88,797.40. They have therefore established their *locus standi* to bring this application.

**ACT OF INSOLVENCY / FACTUAL INSOLVENCY:**

[51] The applicants submit that the respondent has committed an act of insolvency in terms of section 8(c) of the Insolvency Act. Section 8(c) provides that a debtor commits an act of insolvency if he makes or attempts to make any disposition of any or his property, which has or would have the effect of prejudicing his creditors or of preferring one creditor above another.

[52] I am not convinced that the respondent disposed of any of his property in the manner contemplated in section 8(c) of the Insolvency Act. If anything, it was the property of the company, which was disposed of in the manner contemplated in section 8(c). This is however not the end of it.

[53] If regard is had to the correspondence addressed by the respondent to the applicants' attorneys on 1 September 2025, the Court is of the view that this written notice of the respondent's inability to pay his debts constitutes an act of insolvency within the meaning of section 8(g) of the Insolvency Act, which provides that a debtor commits an act of insolvency if he gives notice in writing to any of his creditors that he is unable to pay any of its debts.

[54] Furthermore, the evidence contained in the founding affidavit *prima facie* establishes the respondent's factual insolvency. The applicants conducted a deed search which revealed that the respondent does not own any immovable property. While the applicants admittedly have no first-hand knowledge of the respondent's other assets or liabilities, the respondent's own admission of his financial struggles and "*more liabilities*" strongly supports at least a *prima facie* inference that his liabilities, including the debt to the company exceeds his assets.

[55] I am therefore satisfied that the applicants' have established, *prima facie*, that the respondent has committed an act of insolvency within the meaning of section 8(g) of the Insolvency Act and that the respondent's estate is factually insolvent.

#### **ADVANTAGE TO CREDITORS:**

[56] The final requirement is that there must be reason to believe that sequestration will be to the advantage of the respondent's creditors.

[57] In **Stratford and Others v Investec Bank Ltd and Others**,<sup>14</sup> the Constitutional Court confirmed that this implies that:

*"The facts put before the Court must satisfy it that there is a reasonable prospect – not necessarily a likelihood, but a prospect which is not to 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*

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<sup>14</sup> 2015 (3) SA 1 (CC) at par 43

*none at all, but there are reasons for thinking that as a result of enquiry under the [Insolvency] Act some may be revealed or recovered for the benefit of creditors that is sufficient."*

[58] The correct approach in evaluating advantage to creditors is for a Court to exercise its discretion guided by the *dicta* outlined in **Stratford** by the Constitutional Court who, in turn, quoted with approval from **Meskin and Co v Friedman**.<sup>15</sup>

[59] From the evidence it appears that the respondent only has meagre personal assets to his name and a mountain of debt or liabilities. The applicants, however, submit that a trustee, once appointed, will be able to launch a proper investigation into the respondent's affairs to establish whether the respondent is the owner of any further assets, which could be liquidated for the benefit of the respondent's creditors.

[60] The applicants further submit that the respondent will have to undergo insolvency enquiries to assist in the investigation of the respondent's affairs. The applicants further submit that the respondent has already confirmed that he is employed and receives income and accordingly his appointed trustees may investigate and may apply to the Master of the Court, in terms of section 23(5) of the Insolvency Act, to attach and utilise the disposal income of the respondent to the benefit of his creditors.

[61] It has been held that the belief that sequestration would yield an advantage for creditors may not only be established by the debtor having property but

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<sup>15</sup> 1948 (2) SA 555 (W) at 559

may also be indicated by facts to the effect that the estate administration process may lead to the acquisition or recovery of property beneficial to creditors. The unearthing of assets and recovery through the setting aside of voidable or undue preferences have been recognised by our Courts as factors which could yield an advantage to creditors.<sup>16</sup>

[62] On the facts of the present case, the respondent admitted he possesses very few assets in his name. As illustrated, this is, however, not the only factor to be taken into consideration.

[63] The respondent admittedly received substantial sums of money from the company shortly before its liquidation. An appointed trustee would be empowered to conduct an insolvency inquiry to determine what became of these funds, and also to investigate the respondent's broader financial affairs. The possibility that such an investigation may unearth further assets or lead to the recovery of funds constitutes a distinct advantage to creditors.

[64] Furthermore, the respondent confirms that he is employed and receives an income. A trustee would be able to investigate this income and, if appropriate, apply to the Master for a portion thereof to be made available to the creditors in terms of section 23(5) of the Insolvency Act.

[65] I am accordingly satisfied that there is reason to believe that the sequestration of the respondent's estate will be to the advantage of creditors.

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<sup>16</sup> **Stratford and Others v Investec Bank Ltd and Others**, par 46

**CONCLUSION:**

[66] The applicants have complied with all the formal requirements for the application and have also established the material requirements for the Court to grant an order for the provisional sequestration of the respondent's estate.

[67] The provisional sequestration order will have a return date. In order to cater for the return date to be reflected in the body of the order, I will allow the applicants to avail a draft order for signature on the exact terms of the order appearing below, save that a specific date obtained from the Registrar of this Court shall be inserted in paragraph 2 of the order below.

**THE ORDER:**

[68] In the result I make the following order:

1. The estate of the respondent, Andries Jan Gysbert Naudé, Identity Number 660929 5031 084, be and is hereby placed under provisional sequestration in the hands of the Master of the High Court, Pretoria.
2. The respondent and any other interested parties are called upon to show cause, if any, to this Court on **[A date to be obtained from the Registrar of Court]** 2026 at 10h00 or so soon thereafter as the matter may be heard why a final order for sequestration should not be granted against the respondent's estate.

3. A copy of this Order shall be forthwith served upon the respondent personally.
4. A copy of this Order shall be published in the Government Gazette and in the Citizen newspaper.
5. A copy of this Order shall be served on:
  - 5.1. The South African Revenue Services, Pretoria; and
  - 5.2. The Master of the High Court, Pretoria.
6. The costs of this application shall be costs in the sequestration of the respondent's estate.

  
**WESSELS AJ**  
**ACTING JUDGE OF THE HIGH COURT**  
**PRETORIA**

**Heard:** 26 February 2026  
**Delivered:** \_\_\_ May 2026

**APPEARANCES:**

Applicants' counsel: **R Loibner**  
Applicants' attorneys: **Herman Esterhuizen Smalman Attorneys**