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

CASE NO.:018627/23

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

In the *ex parte* application of:

GERHARDUS CHRISTIAAN BREEDT **FIRST APPLICANT**
IDENTITY NUMBER: 9[...]

JOANETTE ADRIJANE BREEDT **SECOND APPLICANT**
IDENTITY NUMBER: 9[...]

and

DANIESE ELAINE STEYN N.O. **FIRST RESPONDENT**

VIMBAI ANGELA TSOPOTSA N.O. **SECOND RESPONDENT**

MASTER OF THE HIGH COURT, PRETORIA **THIRD RESPONDENT**

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JUDGMENT

VAN DER SCHYFF J

Introduction

[1] This is an application for the rescission of a sequestration order. The applicants, who are married in community of property, seek to set aside the order granted by this Court on 6 September 2023 under case number 018627/23. In terms of that order, the

voluntary surrender of their joint estate was accepted and placed under sequestration in the hands of the Master of the High Court.

[2] The applicants themselves launched the initial voluntary surrender proceedings. They now contend that the sequestration order ought neither to have been sought or granted.

The factual basis for the relief sought

[3] The voluntary surrender order was granted on 6 September 2023. That application was prepared, and the resulting order obtained, through the same attorney of record currently instructed in these proceedings.

[4] In their founding affidavit, the applicants contend that the surrender order was erroneously sought and granted. They aver that the initial application was brought *bona fide*, but maintain that material facts subsequently came to light which, had they been known at the time, would have altered their course of action.

[5] In the initial application, the applicants disclosed a cash amount of R69,000.00 as the sole asset in their joint estate.

[6] It subsequently transpired that additional movable assets existed, comprising two paid-up motor vehicles and a caravan inherited after the surrender. These assets were omitted from the initial statement of affairs because the applicants erroneously believed that paid-up vehicles, as daily necessities, were exempt from attachment in an insolvent estate.

[7] The applicants depend on these vehicles for employment-related travel and contend that public transport is unviable. They argue that forfeiting these assets would imperil their livelihood and submit that the omission arose from a *bona fide* misconception.

[8] The applicants state that these undisclosed assets have prevented the trustees from winding up and finalising the insolvent estate. This impasse was brought to the

applicants' attention in August 2024. They attribute the subsequent delay in launching this application to administrative challenges in securing a court date.

[9] The applicants disclaim any *mala fides* or ulterior motive, maintaining that the omission was an innocent error and that they never intended to mislead the Court. They state that their attorney would have advised against the voluntary surrender had the true asset position been known.

[10] Finally, the applicants aver that family members have pledged financial assistance to settle their debts. They note, however, that they lack the legal capacity to compromise with creditors while the sequestration order remains in force.

[11] Consequently, the applicants submit that the interests of justice and convenience dictate that the order be rescinded, thereby allowing for an outcome more advantageous to their creditors.

The Legal Framework

[12] The statutory authority for the rescission or variation of a sequestration order is governed by section 149(2) of the Insolvency Act 24 of 1936 (the Act)**.** This section provides that a court may rescind or vary any order made by it under the provisions of the Act.

[13] While the High Court retains its ordinary powers to rescind judgments under Uniform Rule 42(1)(a) or the common law, standard commercial practice dictates that applications affecting a sequestration order must be adjudicated under Section 149(2). As observed by this Court in *Maree and Another v Kayinja and Others,*[1] Uniform Rule 42 is generally an inappropriate remedy because sequestration orders do not merely bind the immediate litigants; they inherently alter the status and rights of third parties, including the Master, appointed trustees, and the broader body of creditors

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[1] [2025] ZAGPJHC 751 (31 July 2025) at para 6.

[14] Section 149(2) grants the Court wide discretion, not limited to common-law grounds, to rescind orders based on "unusual, special, or exceptional circumstances".[2] As established in *Storti v Nugent and Others*[3] and reaffirmed in *Matji v Van Straten NO*,[4] this discretion cannot be used for a mere rehash of the original merits. Furthermore, it requires either demonstrating "sufficient cause",[5] or proving that the applicant faces unnecessary hardship and that standard rehabilitation is inadequate. The Court will refuse relief if it produces undesirable commercial consequences

[15] Importantly, this discretion must be exercised while upholding the *concursus creditorum*. As highlighted in *Hassan v Berrange NO*,[6] a sequestration order is not a simple *inter partes* judgment but a "species of execution" that protects the interests of all creditors, ensuring equitable distribution by the trustee

Analysis and application of law to the facts

[16] To succeed under section 149(2) of the Act, the applicants must establish circumstances that are unusual, special, or exceptional so as to justify the exercise of the court's discretion. On the facts before me, they have failed to do so.

[17] The applicants contend that they omitted two paid-up motor vehicles and a caravan from their statement of affairs because they believed those assets were exempt from attachment. Even accepting that explanation, a mistaken understanding of the law does not constitute an exceptional circumstance for purposes of s 149(2), nor does it amount to sufficient cause warranting rescission.

[18] Applicants seeking voluntary surrender are under a duty of utmost good faith to place a full and accurate disclosure of their financial affairs before the Court. The omission of substantial assets from the statement of affairs was plainly material. To permit debtors to rescind a sequestration order on the basis of their own failure to make

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[2] *Ward v Smit: In re Gurr v Zambia Airways Corporation Ltd* 1998 (3) SA 175 (SCA) at 180G/H-I.

[3] 2001 (3) SA 783 (W) at 784D-E.

[4] (28118/12) [2022] ZAGPJHC 362 (27 May 2022) at para 7.

[5] *Matji, supra*, at para 11 with reliance on *Chetty v Law Society, Transvaal* 1985 (2) SA 756 (A).

[6] 2012 (6) SA 329 (SCA) at para 19.

proper disclosure would undermine the integrity of the voluntary surrender process and create an undesirable precedent.

[19] The applicants further contend that the undisclosed assets have impeded the trustees in finalising the administration of the estate. The precise nature of those difficulties is not explained. In any event, difficulties encountered in the administration of an insolvent estate do not, without more, justify rescission of the sequestration order. The Act provides trustees with various investigative and enforcement mechanisms to address non-disclosure and secure cooperation from insolvents. Administrative challenges in the winding up of an estate are therefore not a basis for dissolving the *concursus creditorum*.

[20] More fundamentally, the applicants do not allege that their estate is solvent. Even after taking into account the previously undisclosed assets and subsequent inheritance, there is no suggestion that their assets exceed their liabilities. Instead, they contend that rescission will enable family members to provide financial assistance so that arrangements may be made with creditors.

[21] That contention is insufficient. The absence of any allegation of solvency is a significant obstacle to the relief sought. The purpose of sequestration is to ensure the orderly administration and distribution of an insolvent estate for the benefit of creditors. In the circumstances, the applicants effectively seek to be released from sequestration while remaining insolvent.

[22] The possibility of financial assistance from family members does not alter that position. No binding commitment has been placed before the Court, nor is there any evidential basis upon which the Court can conclude that rescission would produce a more advantageous outcome for creditors than the continued administration of the estate under the Act. The existence of a *concursus creditorum* requires that creditors' interests be dealt with collectively and under the supervision of the trustee

[23] Finally, the applicants submit that the loss of the motor vehicles would prejudice their ability to earn an income. While that concern is understandable, personal hardship does not in itself constitute an exceptional circumstance warranting rescission. The Act contains mechanisms through which necessary assets may, where appropriate, be excluded from realisation. The applicants' remedy lies in pursuing such relief within the

statutory framework, or in due course seeking rehabilitation, rather than in setting aside the sequestration order.

[24] In the result, the applicants have failed to establish any unusual, special or exceptional circumstance justifying the rescission of the sequestration order under s 149(2) of the Act. Nor have they demonstrated that rescission would advance the interests of creditors or otherwise serve the purposes of the insolvency regime. The application therefore stands to be dismissed.

ORDER

In the result the following order is granted:

The application is dismissed.

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

For the applicant:	Adv. B. Lee
Instructed by:	Scheepers Attorneys
Date of the hearing:	18 May 2026
Date of judgment:	1 June 2026