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**IN THE HIGH COURT OF SOUTH AFRICA  
FREE STATE DIVISION, BLOEMFONTEIN**

**Not reportable**

Case no: A51/2025

In the matter between:

**MARGARETHA ALETTA NOTLEY**

**APPELLANT**

And

**THE SMALL ENTERPRISE FINANCE AGENCY SCO LIMITED**

**RESPONDENT**

**Neutral citation:** *Notley v The Small Enterprise Finance Agency SCO Ltd* (A51/2025)  
[2026] ZAFSHC 319 (29 May 2026)

**Coram:** Van Zyl, Loubser *et* Chesiwe, JJ

**Heard:** 23 March 2026

**Delivered:** 29 May 2026

**Summary:** Appeal against final order of sequestration – whether the court *a quo* had the necessary jurisdiction to make such an order.

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**ORDER**

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The appeal is dismissed with costs on the party and party scale, including the fees of counsel on scale B.

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**JUDGMENT**

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**Loubser J (Van Zyl *et* Chesiwe JJ concurring)**

[1] This is an appeal against an order of final sequestration handed down by the court *a quo* against the appellant on 14 November 2024 in this Division. The appeal came before this Court with the leave of the court *a quo*. However, leave was granted to appeal only against the finding of the court *a quo* that it had the necessary jurisdiction to order a final sequestration. This finding was based on the alleged place of residence of the appellant.

[2] In its founding affidavit for sequestration the now respondent, then featuring as the applicant, claimed that the Free State High Court had the necessary jurisdiction to entertain the matter by virtue of the fact that the now-appellant was domiciled within the area of jurisdiction of the court. It further alleged that the appellant was indebted to it in the amount of some R40 million in terms of a summary judgment granted against her by the Free State High Court on 4 November 2021. The respondent then stated that the appellant was unable to pay her debts and that she was factually insolvent. The respondent concluded by pointing out that a WinDeed search had shown that the appellant had no immovable properties registered in her name, but that the application would be served on the appellant at her domicilium and business addresses. The appellant's domicilium address was stated as 1[...] D[...] Street, Bayswater, Bloemfontein, and her business address as 7 Chris Hani Street, Westdene, Bloemfontein.

[3] The appellant did not oppose the application for provisional sequestration and as a consequence her estate was placed under provisional sequestration by Daniso J of this Division on 18 July 2024. When the return date for the granting of a final order of sequestration was approaching, the appellant did indeed file an opposing affidavit, and the matter came before the court *a quo* for adjudication.

[4] In her opposing affidavit, the appellant stated that she is not domiciled in the Free State and that she permanently resides in Cape Town since the end of 2022 at Esra Towers. For these reasons, the Free State court has no jurisdiction to order her sequestration, she submitted. She went further to say that the application papers were

never served on her, with the result that she did not know that she had to oppose the provisional application before a given date. In any event, she denied that she ever chose a domicilium at Dersley street, Bloemfontein, for purposes of sequestration. In addition, she has no business address in the Free State as alleged, she said.

[5] In response to these allegations, the respondent filed a replying affidavit. In this affidavit it is pointed out that some seven months before the order of provisional sequestration was made, the Bloemfontein attorneys of the appellant advised the respondent's attorneys in writing that "our client is currently in Cape Town and is it our instruction to accept the application on her behalf". This information was provided in response to a letter from the respondent's attorneys that an application for the appellant's sequestration would be lodged. The respondent therefore concluded in the affidavit that the application was, as a result, furnished to the appellant in the manner chosen by her. Her reliance on the alleged failure to effect personal service on her, was of no consequence, it was stated.

[6] As for the question of jurisdiction, the respondent submitted in the replying affidavit that the appellant had failed to place any evidence before the court of her alleged relocation to Cape Town. In this respect the attention of the court *a quo* was drawn to a tracing report dated during or about July 2024 in which the residential address of the appellant was reflected as Unit 1[...], B[...] W[...] G[...], N.P. Van Wyk Louw Street, Langenhovenpark, Bloemfontein. In addition, a CIPC Director Report drawn from the electronic record keeping system of the Companies and Intellectual Property Commission, was placed before the court via this affidavit. The report shows that the appellant was affiliated to at least 26 different entities, the respondent alleged. She is shown as an active member of two close corporations which have their registered addresses in Bloemfontein. The result is that the appellant conducts business within the jurisdiction of the Free State court, and that she did have assets in the form of a members interest in the close corporations concerned, it is submitted in the replying affidavit.

[7] These were then the allegations relating to the jurisdiction of the court that served before the court *a quo*. In his judgment, Hefer AJ mainly relied on the fact that

the appellant had failed to place any evidence before court of her alleged relocation to Cape Town. Contrary hereto, the respondent presented a tracing report indicating that the residential address of the appellant is in Langenhovenpark, Bloemfontein. He then alluded to the fact that the CIPC report only deals with the business known as Retmil Consulting CC and not with the other businesses alleged as well. Retmil Consulting CC has its registered address at 7 Chris Botha Street, Westdene. In the tracing report, this address is also indicated as the employment address of the appellant. The learned Judge then went on to indicate that the sheriff was unable to effect personal service of the papers on the appellant at her alleged domicile address, or at her residential address in Langenhovenpark or at the address of Retmil Consulting CC, because she was not present at any of those addresses. On the other hand, he took note of the letter of the appellant's Bloemfontein attorney which stated that the appellant is 'currently' in Cape Town. The learned Judge took this to mean that the appellant was only visiting Cape Town on a temporary basis and not residing there permanently.

[8] In conclusion, the trial Judge 'was satisfied' that the respondent has succeeded in proving on a balance of probabilities that the appellant is indeed residing in Bloemfontein, and that the court is consequently vested with the necessary jurisdiction to adjudicate the matter.

[9] Before us it was submitted by counsel appearing for the appellant that the court *a quo* should have found that the respondent had failed to prove that the appellant is residing and/or domiciled in the jurisdiction of the trial court. Despite its best efforts, the respondent never made any factual allegations indicating that the appellant was domiciled or resided in Bloemfontein. On the contrary, the sheriff could not find the appellant in Bloemfontein to serve the papers on her. In such circumstances, the version of the appellant that she is residing in Cape Town, could never have been rejected as palpably false, it was submitted.

[10] Now as a point of departure reference must be made to the provisions of s 21(1) of the Superior Courts Act 10 of 2013. This section provides that a Division has

jurisdiction over all persons residing or being in its area of jurisdiction. The question in this matter is therefore whether the court *a quo* was correct to find that, on a balance of probabilities, the appellant was residing in Bloemfontein.

[11] In this respect the respondent presented a tracing report indicating that the appellant is residing in Langenhovenpark, Bloemfontein. In addition, the respondent relied on a domicilium address of the appellant in Bayswater, Bloemfontein, in its founding papers. This domicilium address appears to have come from a prior written agreement between the appellant and the respondent. This evidence cannot be regarded as insignificant or without any factual import.

[12] The appellant made an effort to contradict this evidence by merely stating that she resides permanently at Esra Towers in Cape Town. No additional evidence was offered by the appellant to substantiate this allegation. Her attorney's letter indicating that she was 'currently' in Cape Town also did not underscore the notion that she was residing there permanently. The court *a quo* was therefore correct in finding that the appellant had failed to place any evidence before the court of her alleged relocation to Cape Town.

[13] Having regard to the fact that the court *a quo* was dealing with motion proceedings, the following words of Heher JA in the Supreme Court of Appeal matter of *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another*<sup>1</sup> are apposite in the present circumstances:

'Recognizing that the truth almost always lies beyond mere linguistic determination the courts have said that an applicant who seeks final relief on motion must in the event of conflict, accept the version set up by his opponent unless the latter's allegations are, in the opinion of the court, not such as to raise a real, genuine or *bona fide* dispute of fact or are so far-fetched or clearly untenable that the court is justified in rejecting them merely on the papers: *Plascon-Evans*

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<sup>1</sup> *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* [2008] ZASCA 6; 2008 (3) SA 371 (SCA) paras 12-13.

*Paints Ltd v Van Riebeeck Paints (Pty) Ltd* [1984] ZASCA 51; 1984 (3) SA 623 (A) at 634E-635C. . . . A real, genuine and *bona fide* dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. . . . When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied.'

[14] Based on this exposition of the law in motion proceedings where final relief is sought, this court has to find that the appellant has failed to seriously and unambiguously address the fact that she was permanently resident in Cape Town. As a consequence, this court also has to find that the court *a quo* was correct in coming to the conclusion that the respondent has succeeded in proving that the appellant is indeed residing in Bloemfontein within the jurisdiction of the court.

[15] Apart from the question whether the appellant was resident or present in the court's area of jurisdiction in terms of s 21(1) of the Superior Courts Act, the provisions of s 149 of the Insolvency Act no 24 of 1936 must also be considered by this court. Section 149 provides as follows:

'(1) The Court shall have jurisdiction under this Act over every debtor and in regard to the estate of every debtor who -

(a) on the date on which a petition for the acceptance of the surrender or for the sequestration of his estate is lodged with the registrar of the Court, is domiciled or owns or is entitled to property situate within the jurisdiction of the Court ; or

(b) at any time within twelve months immediately preceding the lodging of the petition ordinarily resided or carried on business within the jurisdiction of the Court.'

[16] The question is then whether the respondent has succeeded in showing that the appellant had carried on business within the jurisdiction of the court as a further

ground for the finding of jurisdiction. In this respect the abovementioned CIPC report presented by the respondent in the papers, is relevant. The report shows that the appellant is the only active member of the close corporation Retmil Consulting, and that its registered address is situated in Bloemfontein. The appellant has been a member of the corporation since 1 December 2005, and the corporation is indicated to be in business. The report is dated 14 October 2024. It further appears that the corporation had been deregistered for some periods of time over the years due to its failure to submit returns, but on 14 July 2023 the deregistration process was cancelled.

[17] The notice of motion for the appellant's sequestration was filed with the registrar on 28 May 2024. The appellant therefore carried on business within the area of jurisdiction of this court at a time falling within the period of twelve months preceding the lodging of the application .

[18] It follows that in addition to the ground of residence, the appeal can also not succeed on the ground of carrying on business within the area of jurisdiction of the Free State High Court.

[19] The following order is made:

The appeal is dismissed with costs on the party and party scale, including the fees of counsel on scale B.

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**P J LOUBSER**  
**JUDGE OF THE HIGH COURT**

**I concur.**

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**C VAN ZYL**  
**JUDGE OF THE HIGH COURT**

**I concur.**

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**S CHESIWE**  
**JUDGE OF THE HIGH COURT**

**Appearances**

For the plaintiff:

S J Reinders

Instructed by:

Van Wyk and Preller Attorneys,  
Bloemfontein

For the first defendant:

R van der Merwe

Instructed by:

Tim du Toit & Co. Incorporated, Pretoria  
c/o Phatsoane Henney Attorney, Bloemfontein