REPUBLIC OF SOUTH AFRICA

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

CASE NO: 2025-094251

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

....
DATE SIGNATURE

In the matter between:

THEMBA MBONGENI NKOSI Applicant

and

NONTSIKELELO MAZWAI Respondent

JUDGMENT

ILES AJ:

INTRODUCTION

1. The applicant seeks a provisional sequestration of the respondent's estate in terms of sections 8(b) and 8(g) of the Insolvency Act 24 of 1936. The applicant is a creditor of the respondent by virtue of two costs orders granted against the respondent and in favour of the applicant and which have only been partially satisfied. The application originally relied on three costs orders, but the third of them was satisfied by a third party who had been ordered, jointly and severally with the respondent, to pay those costs and had done so. Reliance was thus placed at the hearing of the application on only two costs orders, both of which were orders against the respondent alone. The respondent has made some payment towards these costs orders, but an amount in excess of R150,000 remains owing.

2. In February 2023, the costs orders not yet having been satisfied, the applicant caused a writ of execution to be issued and the sheriff issued a *nulla bona* return. The respondent not only failed to point out movables sufficient to discharge the debt owed, but stated in an affidavit to which she deposed at that time that she did not have the means to satisfy the costs orders.

3. In an email written by the respondent to the applicant's attorneys in March 2023 the respondent admitted the debt to the applicant and undertook to pay it when she was in a position to do so. She repeated that she did not have the means to settle the costs orders. Similar sentiments were expressed in a subsequent email written by the respondent to the

applicant's attorneys in April 2025.

4. That the applicant thus had the necessary *locus standi* in terms of section 9(1) of the Insolvency Act to bring this application was not in dispute between the parties.

5. The respondent contended that she had not committed an act of insolvency as *'An inability to pay a debt immediately and in full does not, in law, constitute an act of insolvency. At most, it reflects temporary financial distress'.* The respondent is mistaken in this regard. Given the common cause facts, the necessary acts of insolvency contemplated by sections 8(b) and 8(g) of the Act are established.

ADVANTAGE TO CREDITORS

6. The primary debate between the parties was whether sequestration would confer an advantage to creditors. It was common cause that the respondent owns no immovable property. She stated on oath that she was not the owner of any meaningful assets and the applicant had no means of refuting that contention.

7. The applicant advanced two main contentions in this regard. First, he contended that an investigation into the applicant's affairs was required as there was a possibility, if not a likelihood, that assets and/or income would be uncovered by trustees. The respondent was further criticised for not identifying her creditors and it was contended on behalf of the applicant that this failure raised '*a reasonable apprehension that there may be unequal*

treatment or potential preference of certain creditors over others which would amount to a further act of insolvency, and is worthy of investigation by a trustee.'

8. Second, the applicant bemoaned the respondent's failure to disclose her income and expenses or any financial information pertaining to the income-producing entity of which she is a director and contended that this lack of transparency alone warranted a provisional sequestration order. It was contended on his behalf that he should not have to content himself with the applicant's say-so that satisfaction of the costs orders was presently unaffordable for her, and that a trustee should be appointed so as to investigate the true state of affairs.

9. The latter contention, namely that an investigation is necessary in order to verify that which the respondent has stated concerning her financial position, is insufficient to constitute an advantage to creditors. An investigation is, in and of itself, not a sufficient advantage to creditors to warrant sequestration. What is necessary is that there be a reasonable prospect that the investigation, if carried out, will result in some pecuniary, non-negligible, benefit to creditors.[1]

10. It was common cause that the respondent was a member of two close corporations and a director of two companies, at least one of which was income producing. The respondent earned an income from the income-

---

[1] *Meskin & Co v Friedman* 1948 (2) SA 555 (WLD) at 559

producing company.

11. The respondent alleged that the close corporations were in final deregistration and had no assets. One of the two companies was dormant and had no assets and no banking account. The applicant submitted that as the respondent had not explained the purpose of these entities, the nature of their operations, or what had become of any assets or income generated, or the reasons for their deregistration or dormancy, there was a need for investigation by a trustee, who would be in a position to interrogate these matters and trace any assets that may be available for the benefit of creditors. The respondent proffered an explanation in this regard, but as it was an explanation advanced in argument, and not in the answering affidavit, I do not take it into account in reaching my decision.

12. She uses a phone and a laptop computer and drives a car, although she claims not to be the owner of any of these items.

13. The applicant had sent notices in terms of section 26 of the Companies Act 71 of 2008 to the two companies, and the notices had gone unanswered. The respondent explained in her answering affidavit that the companies did not have securities registers. She did not say whether the notices were received and, if so, why they were not responded to.

14. On the strength of these facts, the applicant contended that it was probable that the respondent was earning a salary and that she had other creditors. The respondent denied having any other creditors. She offered, during the course of oral argument, to make available for inspection whatever

information was considered necessary, presumably on the basis that this would confirm her contention that she did not have the requisite means to satisfy the applicant's costs orders. She also in argument stated what the extent of the income was which was being generated. However, whatever disclosure the respondent considered appropriate to make needed to occur in her answering affidavit, not by way of oral argument. The tender thus cannot cure any deficiencies in the respondent's answer, nor can I place any reliance on factual contentions not contained in the answering affidavit.

15. The respondent also submitted that she has not concealed assets, dissipated property, absconded, or acted fraudulently. The applicant does not in this application suggest that she has done of any of these things, nor are these necessary requirements for the grant of a sequestration order.

16. The above notwithstanding, I am not satisfied that an advantage to creditors has been demonstrated on the present facts. It is speculative to conclude that an enquiry will yield material benefit for creditors.

17. Reliance was placed in argument by Mr Nowitz for the applicant on the recent decision of *Firstrand Bank Ltd v Nel* [2025] ZAGPJHC 617. In that decision Senyatsi J, after a review of the authorities, ordered sequestration in the face of a defence that sequestration would not confer a benefit to creditors because the respondent had no assets.

18. The authorities recited by the court in *Firstrand Bank* included *Hillhouse v Stott; Freban Investments (Pty) Ltd v Itzkin; Botha v Botha* 1990 (4) SA 590 (W) where, at 585C-F Leveson J interpreted 'reason to believe' that there

would be an advantage to creditors as requiring 'good reason to believe', with the belief being reasonable or rational and supported by sufficient facts. Those facts were present in *Firstrand Bank,* notwithstanding the respondent's contentions that he held no assets with which to satisfy the judgment debt. There the court noted that the respondent had overseen a business through which over R40 million in funding had disappeared. He had stood surety for a debt of R40 million, suggesting he had assets at the time he concluded the suretyship. The respondent had owned a share in immovable property but had disposed of it to his wife. An enquiry would thus assess these dispositions which the respondent had made immediately prior to his sequestration.[2] Those factors are not present in this application. Nor is the instant application the situation adverted to in *Mercantile Bank Limited, A Division of Capitec Bank Limited v Ross and Another* [2023] ZAGPJHC 435 at para 25 where a need exists to protect the general body of the public.

19. On the present facts, the only evidence of any assets that the respondent has is her share in the income-producing company, which generates an unspecified income through Youtube and Google, and from which the company she earns an unspecified income. She has stated that she owns no assets and there is nothing on affidavit to gain-say that allegation. The applicant may be, understandably, dissatisfied that he does not know whether the respondent is able to afford to satisfy the costs orders, or how quickly she may be able to do so, but it does not flow from this that one can

---

[2] At para 15 and 16

conclude that there is a reasonable possibility of the applicant recovering more upon sequestration than he would through the ordinary execution processes. There is no evidence of undisclosed income, hidden assets, misdirected benefits, loan accounts, or impeachable dispositions. There is no suggestion that the respondent holds assets through other structures nor any indication that the respondent's disclosed financial position is at odds with her apparent lifestyle. In those circumstances the mere non-disclosure of her financial position does not justify the inference that assets are being withheld from the applicant to avoid execution.

20. I am thus unable to find that there are sufficient facts to conclude that the reasonable possibility exists of an advantage to creditors.

THE ABUSE CONTENTION

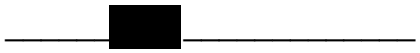
21. The respondent contended that sequestration was being pursued by the applicant as a means to extract a public apology from her (the apology relating to the original dispute that culminated in the costs orders). She contended that this sequestration application had thus been brought for an ulterior and abusive purpose. Given the conclusion I have reached, it is not necessary for me to consider this issue, although it is doubtful that this issue would have been determinative even had I considered there to be an advantage to creditors.

22. As the respondent represented herself and thus did not incur legal costs, it is appropriate that each party pay their own costs.

23. I thus grant the following order:

23.1. The application is dismissed.

23.2. Each party is to pay their own costs.



K D ILES
Acting Judge of the High Court, Johannesburg

Appearances:

On behalf of the applicant: Instructed by:	M Nowitz HBG Schindlers Inc
On behalf of the respondent:	Self-represented
Date of hearing:	17 June 2026
Date of judgment:	20 June 2026