IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2025-112294

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

22 May 2026

Date **K. La M Manamela**

In the matter between:

FIRSTRAND BANK LIMITED Applicant

and

RUDOLF JOHANNES VAN WYK RAUTENBACH Respondent
(married out of community of property)

DATE OF JUDGMENT: This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on CaseLines by the Judge's secretary. The date of the judgment is deemed to be 22 May 2026.

JUDGMENT

Manamela, J

Introduction

[1] FirstRand Bank Limited, the applicant, brought this application for the provisional sequestration of the estate of Mr Rudolf Johannes van Wyk Rautenbach, the respondent on the grounds, among others, that the respondent has committed acts of insolvency, as envisaged in section 8[1] of the Insolvency Act 24 of 1936 ('the IA 1936'), and is unable to pay his debts. The applicant says that it is owed in excess of R3,7 million by the respondent. The debt or claim arises from a suretyship agreement concluded by the applicant and the respondent. In terms of the suretyship the respondent bound himself as surety and co-principal debtor in respect of an overdraft facility under which the applicant availed funds to a private company called Initiative for Specialized Resource Management ('the Principal Debtor'). The respondent is married out of community of property,

[2] The application is opposed by the respondent including on the ground that the founding papers in the application were not served personally on him. The respondent also accuses the applicant of abusing the sequestration process and of ignoring other viable alternative remedies, such as the debtor-enquiry procedure in terms of section 65A[2] of the Magistrates Court Act 32 of 1944. The applicant, in turn, disputes that there is merit in any of the respondent's grounds of opposition or defences.

[3] The application was previously removed from the roll by my colleague Ally AJ on 8 September 2025. It appears from the record that although the respondent had filed a notice of

---

1 Par [39] below, for a reading of section 8 of the Insolvency Act 24 of 1936 in the material part.

2 Section 65A(1)(a) of the Magistrates Court Act 32 of 1944 reads as follows in the material part: 'If a court has given judgment for the payment of a sum of money or has ordered the payment in specified instalments or otherwise of such an amount, and such judgment or order has remained unsatisfied for a period of 10 days from the date on which it was given or on which such an amount became payable or from the expiry of the period of suspension ordered in terms of section 48 *(e)*, as the case may be, the judgment creditor may issue, from the court of the district in which the judgment debtor resides, carries on business or is employed, … a notice calling upon the judgment debtor … to appear before the court in chambers on a date specified in such notice in order to enable the court to inquire into the financial position of the judgment debtor and to make such order as the court may deem just and equitable.'

opposition of the application in late August 2025, no answering affidavit was filed until on 5 September 2025, which was only a few days before the matter was to be heard. But, nothing turns on this for current purposes. The application subsequently came before me on 11 February 2026 in the Insolvency Motion Court. Mr WP Steyn appeared for the applicant, whilst Mr P Marx appeared for the respondent. I reserved this judgment after listening to oral submissions by counsel.

Admittance of the respondent's supplementary affidavit

[4] The respondent filed a supplementary answering affidavit in the morning, shortly, before the hearing of this application. The timing of the delivery of the aforesaid affidavit was notwithstanding the fact that the respondent's own answering affidavit had been filed on 5 September 2025 and the applicant's replying affidavit had been filed on 11 September 2025. Notably, the latter affidavit had been delivered five months to the day of the delivery of the respondent's supplementary answering affidavit. Equally, this was the date of the hearing.

[5] It is explained by the respondent in his supplementary affidavit that it will be in the interests of justice to admit the affidavit, despite its extremely late delivery, so that its contents could be considered by the Court. In other words, the respondent acknowledges non-compliance with the rules of practice of the Court and requests that the Court condone same in its discretion. This would become relevant when I deal with another aspect of this matter, below.

[6] The material in the supplementary answering affidavit, essentially, deals with: (a) the negotiations which took place between the parties for the withdrawal of the sequestration application, to no avail; (b) assertions by the respondent that he may be deemed commercially insolvent, but sequestration of his estate would only benefit the applicant; (c) the respondent would, in turn, have recourse against the other two judgment debtors in the judgment granted

in favour of the applicant, and (d) denial by the respondent that he is factually insolvent when consideration is given to his assets or financial interests in the list provided.

[7] I admitted the supplementary affidavit to form part of the documents before the Court. I did not consider this to be prejudicial to the applicant, and I was not alerted to existence of same. I agree with the respondent that it would please the interests of justice to have regard to what he is saying in his belated affidavit.

Brief background

[8] The issues in this matter are not of any complexity, but a brief narration of some of the issues in the background to the matter, may offer a quick location of the relevant and proper context of the matter. This would be largely constituted from the issues which are common cause between the parties, otherwise, I will point out what is disputed.

[9] On 22 March 2021, the applicant concluded an overdraft agreement with the private company Initiative for Specialized Resource Management (i.e. the Principal Debtor). The agreement was for the provision of funds or credit by way of an overdraft facility made available by the applicant to the Principal Debtor. On the same date, the suretyship agreement between the applicant and the respondent was concluded. The respondent bound himself as surety and co-principal debtor, jointly and severally, with the Principal Debtor for repayment of the monies availed in terms of the overdraft.

[10] The overdraft facility was linked to a cheque account operated by the Principal Debtor with the applicant. It was for a total amount or limit of R4 million.

[11] As at 4 June 2025, according to the applicant, the Principal Debtor owed the applicant an amount of R3 764 305. 67 on the overdraft facility.

[12] The applicant pursued an action against the respondent and the other debtors for the recovery of the monies owing in terms of the overdraft granted to the Principal Debtor. On 26 September 2024, judgment was granted by this Court in favour of the applicant against the judgment debtors, including the respondent, in the amount of R2 855 712.17 plus interest and costs at the scale of attorney and client. The other judgment debtors were the Principal Debtor and a certain Mr Daniël Francois du Toit.

[13] On 21 October 2024, the applicant caused to be issued a writ of attachment against the respondent. The sheriff - in execution of the judgment - attended at the respondent's address chosen in terms of the suretyship agreement on 24 January 2025 and attached certain movables belonging to the respondent. The latter property was sold in execution of the judgment on 1 April 2025. The sheriff paid over an amount of R130 055. 49 from the proceeds of the sale in execution. The sheriff, further, indicated that the respondent has no further disposable property to satisfy the judgment granted in favour of the applicant.

[14] Between October 2024 and June 2025 the parties exchanged correspondences through their respective attorneys. This was with regard to the sale and transfer of an immovable property belonging to the respondent. The value of the transaction was just over R1, 5 million. But nothing came of these engagements.

[15] On 11 July 2025 this application ensued. It came before my colleague Ally AJ on 8 September 2025 and, as already stated, it was removed from the roll. It was re-enrolled for hearing on 11 February 2026, when it came before me in the Insolvency Motion Court, as an opposed motion.

Point in limine

[16] Included in the grounds of the respondent's quest to fend off the sequestration of his estate, is a point in *limine* or preliminary objection. The founding papers in this application for

sequestration were served on the respondent's attorneys and not on the respondent. This, the respondent considered to be a failure - on the part of the applicant - to comply with the prescribed form of service of motions or applications prescribed by Rule 4 of the Uniform Rules of Court. This rule clearly prescribes how new process, such as the sequestration application launched by the applicant in this matter, is to be served. The rule cannot be bypassed through service on the attorneys who acted for a party. This is more so, when such an application concerns the status of an individual as with the respondent in this matter.

[17] The fact that the application was not served on him personally is considered by the respondent to be contrary to the practice directives of this Division. It is also stated that personal service is required in terms of the rules or directives of practice of other Divisions, including by the Western Cape High Division of the High Court, Cape Town. Therefore, as service of the applications of the nature of the one before this Court, can only be effected through personal service, such an application cannot be served by affixing the relevant papers to some object at an address. It, also, cannot be done by way of an e-mail, including an e-mail address of a party's attorneys. The Division requires that this type of applications be served by way of personal service, it is contended. This was not rectified and the respondent is involved in protection of his rights. There is no room for the Court to condone same and, therefore, service is null and void

[18] The applicant's view is that there is no merit in this preliminary objection or defence raised against the application. It is submitted that the respondent had attorneys of record and the application was served on those attorneys or on their address. Therefore, service was compliant and sufficient for purposes of the sequestration application. As to whether there was or was no personal service on the respondent, it is submitted that, this is no consequence as the

matter has since become opposed and, thus, the respondent had gained knowledge of the application.

[19] I agree with the submissions made on behalf of the applicant. The respondent gained knowledge of the proceedings and is before the Court. This appears to have been the case from the early days of these proceedings. The respondent has not pointed out any prejudice arising from the absence of personal or some other type of service. I say this notwithstanding that I agree with the respondent that the rules of practice of this Court are to be respected and complied with. But, in the event of non-compliance, the Court is not to invoke the highest form of its wrath and punish the non-compliant party in a sense that would in itself offend the interests of justice. Service may have not been in terms of prescriptions, but the respondent got notice of the proceedings, retained his attorneys in the matter and acted in protection of his rights. The interests of justice will not be served by unravelling the proceedings due to the form of service of the application. The substance of the rules and directives of this Court has been met and the discretion of the Court cannot be exercised to direct the parties to the starting block. The respondent in this matter is a proven beneficiary of the discretion of this Court with regard to non-compliance. His extremely late supplementary affidavit was admitted to form part of the documents before the Court. After all the rules are made for the Court and the converse doesn't apply. The preliminary objection is dismissed.

Applicant's case (and submissions on its behalf)

[20] The essence of the case put forward by the applicant and the submissions by Mr WP Steyn on behalf of the applicant are summarised under this part. But, some of them may have already been referred to above.

[21] It is submitted that the sequestration application of the respondent's estate is based on section 8(b), (c), (e) and/or (g) of the IA 1936.[3] In this regard, it is stated that the respondent has committed acts of insolvency envisaged in those provisions. One of the acts of insolvency is with regard to the inability by the respondent to point out to the sheriff sufficient disposable property to satisfy the applicant's judgment debt now in an amount over R3,7 million. The sheriff of own accord could not find sufficient disposable property to satisfy the judgment. This remains the situation and is not disturbed by the material belatedly put before the Court by the respondent in his supplementary affidavit. Therefore, on this ground alone the respondent appears to have committed an act of insolvency envisaged in section 8(b) of the IA 1936.[4]

[22] The applicant is no doubt a creditor of the respondent in an amount over R3,7 million. The applicant had admitted that it received proceeds from the sale of the movable property of the respondent, referred to above, but the proceeds were insufficient to satisfy the judgment debt fully. Further, that the respondent made certain payments to the applicant, but a large portion of the debt remains outstanding.

[23] Further, from commenting on the point in *limine*, it is submitted on behalf of the applicant that the respondent in the answering affidavit has indicated that he is in no position to settle the debt due to the applicant. Also, the respondent has indicated insufficient assets to settle same. Consequently, a trustee ought to be appointed to take control of the respondent's estate, liquidate same and distribute the proceeds properly and equitably to settle the claims or the debts of creditors according to the law.

[24] Regarding the respondent's so-called attempts to resolve the matter with the applicant by offering to the latter the proceeds of the sale of the immovable property, it is submitted on

---

3 Pars [39] below for a reading of s 8 of the IA 1936 in the material part.
4 *Ibid.*

behalf of the applicant that this does not change the position. The respondent, it is further submitted, has insufficient funds to settle the judgment debt, even if the applicant had accepted the offer. The respondent's attitude towards settling the applicant's debt is considered by the applicant to be suggestive of lack of *bona fides*. The respondent complains about the fact that the applicant has not demonstrably taking steps against the other judgment debtors. I hasten to state that I agree with submissions on behalf of the applicant that the applicant was entitled to proceed only against the respondent, despite the existence of other two debtors, as there is no need for excussion. In other words, there is no legal impediment in this regard. And the respondent has sold property belonging to his insolvent estate and failed to explain what he did with the proceeds of sale. I also point out that the respondent's belated disclosure in the supplementary affidavit that he holds R1, 6 million is his bank account does not alter the position in as far as sequestration is concerned. The applicant says the respondent's conduct has led to the applicant believing that he was disposing of assets with the intention to avoid payment. It is apparent that the respondent is in no position to meet his obligations. All of the respondent's actions point to someone who rather wishes to avoid or delay payment or satisfaction of the judgment or debts. There is no genuine or *bona fide* dispute of fact in this matter, particularly considering the admissions by the respondent, the submission on behalf of the applicant concludes.

[25] Regarding the allegations of abuse of the process of sequestration, it is submitted on behalf of the respondent that nothing prohibits a creditor from making use of the machinery of the Insolvency Act by first having to enforce the rights under its agreement by way of action instituted and or execution steps.

[26] Considering the other requirements for the Court to grant an order of provisional sequestration the following is put forward on behalf of the applicant. The applicant's *locus*

standi is not in doubt as the respondent does not dispute the judgment nor the amount in millions due to the applicant, stated above. The applicant, as a creditor, only require a liquidated claim of at least R100 against the respondent, as debtor to apply for sequestration of the estate of such debtor.[5] Further, I agree that the evidence of the applicant's claim is reflected above. The applicant has also averred that considering the respondent's conduct there is reason to believe that sequestration will be to the benefit of the respondent's creditors. And that the main object of liquidation or sequestration proceedings is to benefit the general body of creditors and not just one creditor or some of the creditors.

[27] It is also submitted on behalf of the applicant that the respondent is employing lame tactics to divert attention away from his inability to pay his debts and that the papers before the Court make out a case for the relief sought by the applicant in the notice of motion.

Respondent's case (and submissions on his behalf)

[28] The essence of the case put forward by the respondent and the submissions by Mr P Marx on his behalf are summarised under this part. But, as with those for the applicant, some of the submissions for and assertions by the respondent have already been stated above.

[29] I have disposed of the respondent's main ground of opposition by way of the preliminary objection that there was no proper service and personal service of the founding papers.

[30] It is also submitted that it is common cause that judgment was granted against the respondent, the Principal Debtor and Mr Du Toit, the second surety. And that the undisputed fact that no execution steps have been taken against the Principal Debtor and Mr Du Toit, as the second surety, suggests that the applicant is using the sequestration application as a means

---

5 Par [35] below.

to collect debt, which is litigation *ad terrorem*. The applicant has denied this and pointed out that nothing in law forbids it from pursuing the respondent in satisfaction of its claim.

[31] The respondent also denies that he is insolvent as alleged by the applicant. It is submitted in this regard on his behalf that actual insolvency denotes that a debtor's liabilities actually exceed the value of his assets. This, it is further submitted, ought to be established on clear proof of actual insolvency on a balance of probabilities. But, I consider this to be of no aid to the respondent, as the applicant relies on other grounds of insolvency by way of acts of insolvency, including a *nulla bona* return by the sheriff premised on section 8(b) of the IA 1936. Also, it ought to be pointed out that at this provisional stage of sequestration, the onus of proof is only on a *prima facie* basis.[6] I agree with the submission made on behalf of the respondent, though, that there is no place for 'commercial insolvency' as a basis on which a debtor's estate may be sequestrated. That concept befittingly belongs to the world of corporate or juristic entities whose liquidation cannot be granted on the basis of matching the value of assets with the estimate of liabilities or acts of insolvency.

[32] Overall, it is submitted on behalf of the respondent that notwithstanding that a creditor-applicant has established all elements for sequestration, the Court still has a discretion as to whether or not to grant the sequestration order, whether provisional or final. I agree.

Applicable legal principles

[33] Although, I have already dealt with most of these legal principles above, I deem it warranted to reflect the primary legal principles in a sequestration application. These principles will be those from the provisions of the Insolvency Act 24 of 1936 (i.e. the IA 1936) and the common law.[7]

---

6 Pars [36]-[38] below.

7 André Boraine, Jennifer A Kunst and David A Burdette (eds), *Meskin's Insolvency Law* (LexisNexis, November 2024) par 1.2.

[34] Section 9(1)-(3) of the IA 1936 deals with applications or petitions for sequestration and their content, such as the applicant-creditor's *locus standi in judicio* (i.e. 'standing in court').[8] This provision reads as follows in the material part:

> (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.
>
> (2) A liquidated claim which has accrued but which is not yet due on the date of hearing of the petition, shall be reckoned as a liquidated claim for the purposes of subsection (1).
>
> (3) (*a*) Such a petition shall, subject to the provisions of paragraph (*c*), contain the following information, namely—
>
> (i) the full names and date of birth of the debtor and, if an identity number has been assigned to him, his identity number;
>
> (ii) the marital status of the debtor and, if he is married, the full names and date of birth of his spouse and, if an identity number has been assigned to his spouse, the identity number of such spouse;
>
> (iii) the amount, cause and nature of the claim in question;
>
> (iv) whether the claim is or is not secured and, if it is, the nature and value of the security; and
>
> (v) the debtor's act of insolvency upon which the petition is based or otherwise allege that the debtor is in fact insolvent.
>
> (*b*) …
>
> (*c*) The particulars contemplated in paragraph (*a*) (i) and (ii) shall also be set out in the heading to the petition, and if the creditor is unable to set out all such particulars he shall state the reason why he is unable to do so…

[35] It is clear from the above that for a standing or *locus standi* to bring an application for sequestration, as envisaged in section 9(1) of the IA 1936, a creditor should have a liquidated

---

[8] VG Hiemstra and HL Gonin, *Trilingual Legal Dictionary* (3rd edn, Juta 1992).

claim[9] of at least R100 against a debtor who is insolvent or has committed an act of insolvency (as envisaged in section 8[10] of the IA 1936).

[36] The requirements of a substantial nature to be met in an application for provisional sequestration are under section 10 of the IA 1936, which reads as follows in the material part:

> If the court to which the petition for the sequestration of the estate of a debtor has been presented is of the opinion that *prima facie*
>
> *(a)* the petitioning creditor has established against the debtor a claim such as is mentioned in subsection (1) of section *nine*; and
>
> *(b)* the debtor has committed an act of insolvency or is insolvent; and
>
> *(c)* there is reason to believe that it will be to the advantage of creditors of the debtor if his estate is sequestrated,
>
> it may make an order sequestrating the estate of the debtor provisionally.

[37] At the provisional stage, the Court ought to be of the opinion that, the material requirements for sequestration have been met on a *prima facie* basis.[11] The longstanding decision in *Kalil v Decotex (Pty) Ltd and another*[12] is still a useful aid. This authority is to the effect that a provisional order of sequestration does no lasting injustice to a respondent-debtor as, on the return day, he or she would be afforded an opportunity to contest the application for final relief.[13] Section 12 of the IA 1936 deals with the granting or refusal of final sequestration.

---

9 In Boraine, Kunst and Burdette (eds), Meskin's Insolvency Law (at par 2.1) a liquidated claim is explained in the context of s 9(1) as 'a claim for an amount which is fixed, either by agreement or by an order of the Court or otherwise'. See also *Kleynhans v Van der Westhuizen NO* [1970] 3 All SA 105 (A) 107-108, 1970 (2) SA 742 (AD) 748-749, cited in *Hassan and another v De Villiers Berrange NO* 2012 (6) SA 329 (SCA) [35] and *Premier FMCG (Pty) Ltd v ABC Fire Projects Proprietary Limited* (4712/2021) [2021] ZAGPPHC 151 (12 March 2021) [30].

10 Par [39] below, for a reading of the material part of s 8 of the IA 1936.

11 *Kalil v Decotex (Pty) Ltd and another* 1988 (1) SA 943 (A) 979 where the court observed that '*prima facie case*' entails that the balance of probabilities on all affidavits favour the making of provisional sequestration or liquidation order. See also *Afgri Operations Limited v Hamba Fleet (Pty) Limited* (542/2016) [2017] ZASCA 24; 2022 (1) SA 91 (SCA) (24 March 2017) [9]; *Valerio Engineering CC v Designatech (Pty) Ltd* (36816/2021) [2022] ZAGPPHC 706 (21 September 2022) [18]. See further Bertelsmann and others, *Mars: The Law of Insolvency* 10th Ed, 2019, p 125.

12 *Kalil v Decotex (Pty) Ltd and another* 1988 (1) SA 943 (A).

13 *Kalil v Decotex* 1988 (1) SA 943 (A) 979.

[38] Overall, the onus of proof in respect of a provisional order is at the *prima facie* level of proof or satisfaction of the requirements for sequestration. This is a lower threshold than that of a final sequestration order: a balance of probabilities.[14]

[39] Section 8 of the IA 1936, as already above, deals with acts of insolvency which may be committed by a debtor to ground the launch of an application of sequestration of such debtor's estate. Those relied upon by the applicant read as follows:

> A debtor commits an act of insolvency-
> …
> *(b)* if a court has given judgment against him and he fails, upon the demand of the officer whose duty it is to execute that judgment, to satisfy it or to indicate to that officer disposable property sufficient to satisfy it, or if it appears from the return made by that officer that he has not found sufficient disposable property to satisfy the judgment;
> *(c)* if he makes or attempts to make any disposition of any of his property which has or would have the effect of prejudicing his creditors or of preferring one creditor above another;
> …
> *(e)* if he makes or offers to make any arrangement with any of his creditors for releasing him wholly or partially from his debts;
> …
> *(g)* if he gives notice in writing to any one of his creditors that he is unable to pay any of his debts…

[40] There may be other legal principles of significance, but I consider those reflected above to suffice for current purposes.

Conclusion and costs

[41] Considering what appears above including the legal principles just dealt with, the applicant has satisfied the material requirements for the Court to grant an order for the provisional sequestration of the respondent's estate. This includes compliance with the service and notice requirements and other formalities applicable to sequestration applications. I will also order that costs be payable to the applicant as part of the costs in the administration of the

---

[14] *Braithwaite v Gilbert (Volkskas Bpk intervening)* 1984 (4) SA 717 (W) 718B-C. See also Bertelsmann and others, *Mars: The Law of Insolvency* 10th Ed, 2019, p 148. In *Mercantile Bank (A Division of Capitec Bank Limited) v Ross* (2020/19791) [2021] ZAGPJHC 149 (13 August 2021) [41] the court pointed out the distinct standard of proof for a provisional sequestration order and a final sequestration order.

insolvent estate of the respondent. Also, the Registrar of this Court has indicated that the return date for the provisional sequestration should be 6 July 2026. This date is reflected in the order below.

Order

[42] In the premises, I make the order that:

1. the estate of the Respondent, **RUDOLF JOHANNES VAN WYK RAUTENBACH** is hereby placed under provisional sequestration;
2. the Respondent and all other persons affected by this order are called upon to advance the reasons, if any, why the court should not order the final sequestration of the said estate on 6 July 2026 at 09:30 or as soon thereafter as the matter may be heard;
3. a copy of this provisional order shall be published in the Government Gazette;
4. a copy of this provisional order shall be published in a newspaper circulated in the district where the Respondent's address is situated;
5. a copy of this provisional order shall be served upon the Master of the High Court;
6. a copy of this provisional order shall be served upon the South African Revenue Service; and
7. the costs of this application, including costs of opposition of this application, shall be costs in the sequestration.

[redacted]

Khashane La M. Manamela
Judge of the High Court

Date of Hearing : **11 February 2026**

Date of Judgment : **22 May 2026**

Appearances:

For the applicant	:	Ms WP Steyn
Instructed by	:	Thethe Swart Inc Attorneys, Centurion. Pretoria
For the respondent	:	Mr P Marx
Instructed by	:	Gerhard Botha Attorneys, Blairgowrie, Johannesburg c/o Hendrik Haasbroek Attorneys, Villeria, Pretoria