REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2025-084321

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

22 JUNE 2026
DATE

[redacted]
SIGNATURE

In the matter between:

SHACKLETON CREDIT MANAGEMENT (PTY) LTD Applicant

and

PINTO OMONGE KIDIGE Respondent

This Judgment is handed down electronically by circulation to the Applicant's Legal Representative and the Respondent by email, publication on Case Lines. The date for the handing down is deemed to be 22 June 2026 at 10h00.

Insolvency - Compulsory sequestration - Application for a final order of sequestration granted.

JUDGMENT

MUDAU, J:

Introduction

[1] This is an application for a final sequestration order against the estate of the respondent, Mr Pinto Omonge Kidige. The applicant, Shackleton Credit Management (Pty) Ltd, is a judgment creditor of the respondent. This Court granted a provisional sequestration order on 20 February 2026. The respondent filed an answering affidavit on 5 March 2026, a supplementary answering affidavit on 13 May 2026, and heads of argument on 14 May 2026, opposing the confirmation of the rule nisi and seeking the discharge of the provisional order.

[2] At the heart of this dispute is whether the respondent has committed an act of insolvency, or is factually insolvent, and whether there is reason to believe that the sequestration of his estate will be to the advantage of his creditors. Having carefully considered the papers, the heads of argument filed on behalf of both parties, and the law, I am satisfied that the applicant has made out a clear case for a final sequestration order. The respondent's opposition is, in my view, without merit and falls to be dismissed.

Factual Background

[3] The relevant facts are largely common cause or are established by undisputed documentary evidence. The respondent concluded a written credit agreement for a personal overdraft with Absa Bank on 5 January 2021. Absa Bank ceded all its rights, title, and interest in the respondent's debt to the applicant on 15 November 2022. On 16 November 2023, the applicant obtained a default judgment against the respondent in the High Court. The outstanding judgment debt, as of May 2025, was certified as R514,899.22, a fact the respondent does not genuinely dispute.

[4] The applicant attempted to execute on the judgment. A writ of execution against the respondent's movable assets was issued on 3 January 2024. The sheriff attached certain goods, but the attachment was thwarted when the respondent's spouse filed an interpleader claim. Critically, in that interpleader

claim, the spouse disclosed that the respondent held a 100% members' interest in Profound World IT Solutions CC, valued at R2 million.

[5] Armed with this information, the sheriff sought to execute on that members' interest. On 3 February 2025, a mere matter of days before the sheriff could serve the writ, the respondent resigned as the sole member of Profound World CC and transferred his entire 100% members' interest to his 22-year-old son, Troy Isaac Kidige. The respondent's explanation for this transaction is that it was a *bona fide* commercial decision to enable the close corporation to access credit using his son's better credit standing.

[6] After this transfer, the applicant launched these sequestration proceedings on 5 June 2025. In December 2025, the parties entered into a written settlement agreement wherein the respondent acknowledged his indebtedness and undertook to pay R5,000 per month. The respondent failed to make the first payment due in December 2025, causing the agreement to lapse. Despite this breach, the respondent made sporadic payments of R5,000 in February 2026 and R10,000 in April 2026, which the applicant has not accepted as performance under the lapsed agreement.

Legal Framework

[7] Section 12 (1) of the Insolvency Act 24 of 1936 ('the Act') provides that a final sequestration order may be granted if the applicant satisfies the Court that:

a) the applicant has a liquidated claim against the debtor of not less than R100;

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 the debtor's estate is sequestrated.

[8] In motion proceedings, a respondent who disputes the applicant's version must do more than raise a bare denial. As the Supreme Court of Appeal held in *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another*,[1] a party raising a dispute of fact must 'seriously and unambiguously address the fact said to be disputed'. Where the facts are within the respondent's personal knowledge, and he fails to provide a proper answer or countervailing evidence, the Court is entitled to reject his version as bald and uncreditworthy.

Analysis

Locus Standi

[9] The first requirement is easily met. The applicant holds a judgment debt against the respondent, which is a liquidated claim exceeding R100. The respondent attempts to dispute the precise quantum, alleging that his payments have not been accounted for. However, he has failed to put up any proper proof of payment or a detailed reconciliation. His bare assertion is insufficient to create a genuine dispute of fact. The judgment debt stands, and the applicant's *locus standi* is firmly established.

Act of Insolvency: section 8 (c)

[10] The central issue is whether the respondent's disposal of his 100% members' interest in Profound World CC to his son constitutes an act of insolvency under section 8 (c) of the Act. Section 8 (c) provides that a debtor commits an act of insolvency if he makes any disposition of his property which has the effect of prejudicing his creditors. The test is objective: the debtor's subjective intention is irrelevant. One must look at the effect of the disposition on the creditor's ability to recover the debt.

[11] The facts here are compelling. On 23 January 2025, the sheriff was armed with a writ to execute against the respondent's members' interest. On 3 February 2025, just days before the writ could be served, the respondent transferred that

[1] 2008 (3) SA 371 (SCA) at [13].

very interest, valued at R2 million, to his son. The objective effect of this disposition is clear: it placed a valuable, executable asset out of the reach of the respondent's creditors, including the applicant. The transfer was made under the shadow of imminent execution.

[12] The respondent's explanation – that the transfer was to allow the business to access credit through his son's better credit profile – is, with respect, implausible and does not change the objective reality. The timing is far too coincidental. Even accepting his explanation *arguendo*, the law is clear that subjective intent is not the test. The test is whether the disposition prejudiced creditors.[2] It manifestly did. As the court held, in *Fittinghoff and Others v Stockton*[3] by way of analogy that, passing and registration of a mortgage bond over the debtor's immovable property to secure a debt of business to one creditor, at a time when debtor not paying creditors and the business ventures are in financial difficulties amounted to act of insolvency in terms of section 8 (c) of Act.

[13] I therefore find that the respondent committed a clear act of insolvency as defined in section 8 (c) of the Act. This finding alone is sufficient to satisfy the second jurisdictional requirement. For the sake of completeness, I also note the *nulla bona* return obtained by another creditor, Dipula Property Investment Trust, which serves as further evidence of the respondent's inability to satisfy his debts.

Factual Insolvency

[14] Even if I were wrong on the act of insolvency, the applicant has amply demonstrated that the respondent is factually insolvent. The documentary evidence reveals a debtor overwhelmed by liabilities. The respondent has multiple substantial judgment debts: R514,899.22 to the applicant; R2,692,117.80 to S B Guarantee (RF) (Pty) Ltd; R1,463,051.63 to Dipula Property Investment Trust; and a judgment debt to Absa Bank which, even after

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[2] *De Villiers No v Maursen Properties (Pty) Ltd* 1983 (4) SA 670 (T) at p675 – 676.
[3] 1997 (1) SA 535 (W) at p545F – H.

a sale of property, left a shortfall of R160,317. He is in significant arrears on municipal rates and levies, owing over R300,000.

[15] The respondent's claim that he is solvent rests on the most speculative of foundations: an unliquidated, disputed claim against the Road Accident Fund (RAF) and claims against attorneys for fees. The RAF claim is for R43 million but remains subject to ongoing litigation. It is contingent, disputed, and cannot be realised in the short term. Such a claim cannot be relied upon to demonstrate solvency or to ward off sequestration. As the court famously observed in *De Waard v Andrew & Thienhaus Ltd*,[4] 'the best proof of solvency is that a man should pay his debts'. The respondent does not pay his debts. He is demonstrably insolvent.

Advantage to creditors

[16] The final requirement is that there is reason to believe sequestration will advantage creditors. This does not require proof that a dividend is guaranteed. It is sufficient that there is a reasonable prospect – not too remote – that some pecuniary benefit will result.[5] This includes the prospect that a trustee's investigation may reveal or recover assets for the benefit of creditors.

[17] Here, the respondent still owns two immovable properties with a combined value of over R7.6 million. A trustee can realise these properties. Furthermore, the circumstances surrounding the transfer of the Profound World members' interest cry out for investigation. There is a real prospect that a trustee may be able to set aside that disposition as an impeachable transaction under the Act. The respondent's opaque financial affairs, with multiple corporate entities, also warrant a proper enquiry.

[18] The respondent argues that sequestration would 'destroy value' and that he has a 'concrete plan' to pay his creditors from imminent litigation proceeds. This

[4] 1907 TS 727 at 739.
[5] *Meskin & Co v Friedman* 1948 (2) SA 555 (W) at p559.

argument is a mirage. The litigation proceeds are uncertain and not imminent. The sporadic payments he has made are a fraction of what he owes. His 'plan' is nothing more than a hope. In the meantime, his other creditors remain unpaid. A debtor who is factually insolvent and who has committed an act of insolvency cannot avoid sequestration by promising future payment from speculative sources. To hold otherwise would render the sequestration remedy meaningless.

The Respondent's onus and the settlement agreement

[19] The respondent has failed to discharge the onus resting on him to rebut the applicant's prima facie case. His answering affidavit is replete with bald denials, unsupported assertions, and a failure to engage seriously with the damning objective facts. His argument regarding the settlement agreement is a red herring. He admitted breaching it by failing to make the first payment. The agreement lapsed. Any subsequent payments were voluntary and do not revive the agreement. The applicant was under no obligation to disclose a lapsed agreement that no longer governed the parties' relationship.

Conclusion and costs

[20] The applicant has satisfied all three jurisdictional requirements for a final sequestration order. The respondent has committed an act of insolvency under section 8 (c). He is, in any event, factually insolvent. There is a clear and reasonable prospect that sequestration will benefit his creditors by enabling the orderly realisation of his remaining assets and an investigation into his past dealings. The respondent's opposition, characterised by vague promises and an implausible explanation for the transfer of his members' interest, is without substance.

Order

[21] In the result, the following order is made:

1. The provisional sequestration order granted by this Court on 20 February 2026 is hereby confirmed.

2. The estate of the respondent, PINTO OMONGE KIDIGE, is finally sequestrated.

3. The costs of the sequestration application be included in the costs of the sequestration, on the scale as between party and party in accordance with scale B. The costs of this application shall be costs in the sequestration of the respondent's estate.

MUDAU J

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

Date of Hearing: 08 June 2026

Date of Judgment: 22 June 2026

APPEARANCES:

For the Applicant:	Adv TL Smith
Instructed by:	Lynn & Main Attorneys
For the Respondent:	Adv I Mureriwa
Instructed by:	CSM Attorneys