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

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

09 June 2026 ______________
DATE SIGNATURE

Case No: 48495/2021

THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE **Applicant**

and

ROY MULEYA
Respondent

__Delivered:__ By transmission to the parties via email and uploading onto Case Lines the Judgment is deemed to be delivered.

JUDGMENT

MBOWENI AJ:

INTRODUCTION:

[1] This matter serves before this Court on the return day of a provisional sequestration order granted by Malindi J on 29 October 2025 against the estate of the Respondent, Mr Roy Muleya.

[2] The Applicant, the Commissioner for the South African Revenue Service ("SARS"), seeks confirmation of the provisional sequestration order and the granting of a final sequestration order in terms of section 12 of the Insolvency Act 24 of 1936.

[3] The Respondent opposes the granting of final relief and seeks the discharge of the rule nisi.

[4] The matter has a lengthy procedural history. It has its origins in investigations conducted by SARS into the importation of tobacco products and tobacco refuse through entities associated with the Respondent, as well as substantial income tax assessments raised against him.

[5] The dispute has generated multiple interlocutory proceedings, review proceedings, Tax Court litigation and earlier judgments of this Court. The issues presently before this Court are therefore considerably broader than a conventional sequestration application and require consideration of the interaction between insolvency law, the Tax Administration Act 28 of 2011 ("the TAA"), and the Customs and Excise Act 91 of 1964 ("the Customs Act").

[6] The Respondent contends, amongst other things, that SARS lacks locus standi to bring the application, that section 177(3) of the TAA required prior leave before sequestration proceedings could be instituted, that the application constitutes an abuse of process designed to derail pending Tax Court proceedings, that the alleged debts are genuinely disputed on reasonable grounds, that no act of insolvency has been established, that factual insolvency has not been proven, and that sequestration will not be to the advantage of creditors.

[7] SARS disputes those contentions and maintains that the Respondent is indebted to it in an amount exceeding R188 million, comprising approximately R32 million in

income tax liabilities and approximately R155 million in customs liabilities. SARS further contends that the Respondent has dissipated assets, has committed acts of insolvency and is factually insolvent.

[8] The Court is accordingly required to determine whether SARS has established, on a balance of probabilities, the jurisdictional requirements prescribed by section 12(1) of the Insolvency Act and whether a final sequestration order should follow.

FACTUAL BACKGROUND:

[9] The material facts emerge from the affidavits and are substantially reflected in the chronology recorded by my Brother Judge Malindi.

[10] The Respondent is a businessman with commercial interests in both South Africa and Zimbabwe. He was associated with several entities, including Afri Teecee Investments (Pty) Ltd ("Afri Teecee"), of which he was the sole director, and Verbena Freight and Logistics Management CC ("Verbena"), which he managed together with his wife.

[11] During 2019 SARS commenced investigations into the importation of tobacco and tobacco refuse through Verbena.

[12] According to SARS, documentation submitted in respect of those imports described the imported goods as "tobacco refuse" or "core tobacco", thereby attracting lower duties than would otherwise have been payable.

[13] SARS contends that its investigation revealed that Verbena acted as clearing agent for substantial quantities of tobacco imported on behalf of several entities, including Afri Teecee.

[14] SARS further contends that documentation and information requested during the course of the investigation were either not provided or were inadequate.

[15] As a consequence of those investigations SARS concluded that customs duties in an amount exceeding R155 million were payable and that the Respondent was personally liable in terms of section 103 of the Customs Act.

[16] Parallel to the customs investigation, SARS conducted an audit of the Respondent’s income tax affairs for the period 2015 to 2019.

[17] On 23 July 2020 SARS issued audit findings to the Respondent.

[18] On 16 October 2020 SARS finalised the audit and issued additional assessments in respect of the relevant tax years.

[19] SARS contends that the resulting income tax liability exceeded R32 million.

[20] The Respondent objected to those assessments.

[21] On 15 January 2021 the Respondent donated Erf 7[…] Bartlett Extension 78 to the Roy Muleya Trust.

[22] SARS contends that this transfer constituted a dissipation of assets and forms part of a broader pattern of conduct designed to place assets beyond the reach of creditors.

[23] The Respondent disputes that contention and maintains that the transaction was lawful and does not constitute an act of insolvency.

[24] During January 2021 SARS issued third-party appointment notices in terms of section 179 of the TAA to certain banking institutions.

[25] On 1 February 2021 the Respondent lodged an objection to revised assessments relating to the 2015 to 2019 tax years.

[26] On 23 February 2021 SARS withdrew an earlier section 103 demand and simultaneously issued a notice of intention to hold the Respondent personally liable for customs duties allegedly owed by Afri Teecee.

[27] On 12 March 2021 the Respondent requested suspension of payment in respect of the assessed income tax debt pending the determination of his objection and appeal proceedings.

[28] SARS ultimately declined the request for suspension of payment.

[29] On 30 April 2021 SARS issued a final demand in terms of section 103 of the Customs Act asserting that the Respondent was personally liable for customs duties in excess of R155 million.

[30] On 5 July 2021 SARS obtained a certified statement judgment in respect of the income tax debt.

[31] During August 2021 the Respondent's objections to the income tax assessments were disallowed.

[32] The Respondent thereafter pursued an appeal in terms of section 107 of the TAA and the Tax Court Rules.

[33] SARS launched the present sequestration application during September 2021.

[34] The Respondent opposed the application and raised numerous substantive and procedural defences.

[35] The matter first came before my Brother Judge Mokose on an urgent basis.

[36] Thereafter the matter ultimately served before Judge Malindi, who granted a provisional sequestration order on 29 October 2025.

[37] It is that provisional order which now serves before this Court for final determination.

THE JUDGMENT OF JUDGE MOKOSE:

[38] Before considering the merits of the return day, it is necessary to examine the significance of the judgment delivered by Judge Mokose.

[39] The sequestration application initially served before Judge Mokose as an urgent application.

[40] SARS approached the Court on an urgent basis seeking the provisional sequestration of the Respondent's estate.

[41] SARS relied upon two principal categories of indebtedness.

[42] The first was an income tax debt arising from assessments issued against the Respondent in respect of the 2015 to 2019 tax years.

[43] The second was a customs debt allegedly arising from the importation of tobacco products and tobacco refuse through Afri Teecee and Verbena.

[44] SARS alleged that the Respondent's total indebtedness exceeded R188 million and contended that he was both factually insolvent and had committed acts of insolvency.

[45] SARS further alleged that the Respondent was dissipating assets and that urgent intervention by the Court was necessary.

[46] The Respondent opposed the urgent application.

[47] He contended that the income tax debt formed the subject matter of pending Tax Court proceedings instituted in terms of section 107 of the Tax Administration Act and the Tax Court Rules.

[48] The Respondent further contended that he had instituted proceedings to review and set aside SARS' refusal to suspend payment pending the determination of the Tax Court appeal.

[49] In relation to the customs debt, the Respondent denied personal liability and contended that SARS had failed to establish any basis upon which he could be held personally liable for the alleged customs obligations of Afri Teecee.

[50] The Respondent also disputed urgency and contended that SARS had delayed in bringing the application despite being aware of the transfer of immovable property months earlier.

[51] Judge Mokose did not determine the merits of those disputes.

[52] The Court confined itself to the issue of urgency.

[53] Having considered the papers, Judge Mokose concluded that SARS had failed to establish urgency sufficient to justify a departure from the ordinary procedures of the Court.

[54] The Court further observed that the founding affidavit was scant in detail in certain material respects.

[55] The urgent application was accordingly struck from the roll.

[56] Importantly, Judge Mokose did not determine whether the Respondent was indebted to SARS.

[57] Nor did the Court determine whether the Respondent was insolvent, whether the Commissioner possessed locus standi, whether section 177(3) of the Tax Administration Act required prior leave, whether the Badenhorst principle applied, or whether sequestration would be to the advantage of creditors.

[58] The significance of the judgment of Judge Mokose is therefore limited.

[59] It establishes only that SARS failed to demonstrate urgency at that stage of the proceedings.

[60] The substantive issues remained open for determination in the ordinary course.

THE JUDGMENT OF JUDGE MALINDI:

[61] Following the judgment of Mokose J, the litigation continued through various interlocutory processes and further exchange of affidavits.

[62] The matter ultimately served before my Brother , Judge Malindi.

[63] By that stage a substantial record had been assembled.

[64] Judge Malindi identified the principal issues requiring determination.

[65] These included:

(a) whether the Commissioner possessed the requisite locus standi;

(b) whether leave was required in terms of section 177(3) of the Tax Administration Act;

(c) whether the alleged indebtedness established a claim for purposes of sequestration;

(d) whether the application constituted an abuse of process;

(e) whether the Respondent had committed acts of insolvency or was factually insolvent; and

(f) whether sequestration would be to the advantage of creditors.

[66] The Respondent raised a number of preliminary objections.

[67] The first was that the Commissioner was not the creditor contemplated by the relevant legislation and therefore lacked standing to institute sequestration proceedings.

[68] The second was that section 177(3) required prior leave before sequestration proceedings could be instituted.

[69] The third was that the indebtedness relied upon by SARS was genuinely disputed and therefore incapable of supporting sequestration proceedings.

[70] The fourth was that the sequestration application constituted an abuse of process because SARS was allegedly seeking to circumvent the statutory dispute resolution mechanisms established by Chapter 9 of the Tax Administration Act.

[71] Judge Malindi rejected those preliminary objections.

[72] The Court concluded that SARS had established a prima facie case entitling it to interim relief.

[73] A provisional sequestration order was accordingly granted on 29 October 2025.

[74] It is however important to recognise the procedural nature of that order.

[75] A provisional sequestration order does not finally determine the rights of the parties.

[76] Nor does it finally determine disputed questions of indebtedness, insolvency, locus standi, abuse of process or advantage to creditors.

[77] The findings made by Judge Malindi were necessarily provisional and directed at determining whether a prima facie case had been established.

[78] The return day requires this Court to undertake a fresh enquiry and determine, on a balance of probabilities, whether the requirements of section 12 of the Insolvency Act have been established.

[79] While considerable weight must be accorded to the careful reasoning of Malindi J, this Court remains obliged independently to evaluate the evidence and the applicable legal principles.

ISSUES FOR DETERMINATION:

[80] The issues requiring determination on the return day may conveniently be formulated as follows.

[81] First, whether the Commissioner possesses the requisite locus standi to seek the sequestration of the Respondent's estate.

[82] Second, whether section 177(3) of the Tax Administration Act required SARS to obtain leave before instituting sequestration proceedings.

[83] Third, whether the present application constitutes an abuse of process.

[84] Fourth, whether SARS has established a claim against the Respondent as contemplated in section 12(1)(a) of the Insolvency Act.

[85] That issue requires consideration of both the income tax debt and the customs debt relied upon by SARS.

[86] Fifth, whether the disputes raised by the Respondent concerning those debts are bona fide and reasonable within the meaning of the Badenhorst principle.

[87] Sixth, whether the Respondent has committed an act of insolvency or is factually insolvent.

[88] Seventh, whether there is reason to believe that sequestration will be to the advantage of creditors.

[89] Finally, whether the Court should exercise its discretion in favour of granting a final sequestration order.

LEGAL FRAMEWORK:

[90] The present matter lies at the intersection of insolvency law, tax administration law and customs law.

[91] The Court must therefore consider the Insolvency Act, the Tax Administration Act and the Customs and Excise Act together with the authorities relied upon by the parties.

[92] Section 12(1) of the Insolvency Act provides that a court may grant a final sequestration order if it is satisfied that the petitioning creditor has established a claim against the debtor, that the debtor has committed an act of insolvency or is insolvent, and that there is reason to believe that sequestration will be to the advantage of creditors.

[93] The jurisdictional requirements are cumulative.

[94] Failure to establish any one of them is fatal to the application.

[95] The return day is a final-order enquiry.

[96] Accordingly, the facts relied upon by the applicant must be established on a balance of probabilities.

[97] The Respondent relies heavily upon the principle articulated in **Badenhorst v Northern Construction Enterprises (Pty) Ltd** 1956 (2) SA 346 (T).

[98] Badenhorst established that sequestration proceedings are not debt-collection proceedings and should not be used to enforce a debt that is bona fide disputed on reasonable grounds.

[99] The rationale is that insolvency proceedings are designed to address insolvency and not to resolve ordinary disputes concerning indebtedness.

[100] The principle was reaffirmed by the Supreme Court of Appeal in **Exploitatie-en Beleggingsmaatschappij Argonauten 11 BV v Honig** 2012 (2) All SA 22 (SCA).

[101] The Court in **Honig** confirmed that sequestration proceedings remain inappropriate where the indebtedness relied upon is genuinely disputed on reasonable grounds.

[102] The enquiry is therefore not whether a dispute has merely been asserted but whether the dispute is genuine, bona fide and supported by facts.

[103] Similar considerations informed the decisions in **Kalil v Decotex (Pty) Ltd** and Another 1988 (1) SA 943 (A) and **Investec Bank Ltd v Lewis**.

[104] Those authorities require a court to distinguish between genuine disputes and disputes that are illusory, contrived or unsupported by evidence.

[105] The approach to factual disputes in motion proceedings was authoritatively considered in **Wightman t/a JW Construction v Headfour (Pty) Ltd** 2008 (3) SA 371 (SCA).

[106] The Supreme Court of Appeal held that a respondent who seeks to create a genuine dispute of fact must engage seriously and unambiguously with the facts relied upon by the applicant.

[107] Bare denials and speculative assertions are insufficient.

[108] The Respondent also relies upon the Court's inherent power to prevent abuses of process.

[109] The governing authority is **Beinash v Wixley** 1997 (3) SA 721 (SCA).

[110] Beinash confirms that courts possess an inherent power to prevent their procedures from being employed for ulterior or improper purposes inconsistent with the administration of justice.

LOCUS STANDI:

[111] The first substantive issue concerns the standing of the Commissioner to institute the present sequestration proceedings.

[112] The Respondent contends that the Commissioner lacks locus standi because the debts relied upon by SARS are not debts owed to the Commissioner personally.

[113] The Respondent submits that income tax debts are debts owed to SARS and that customs duties are debts owed to the State.

[114] On that basis, the Respondent argues that the Commissioner is not a creditor for purposes of section 9 of the Insolvency Act and therefore lacks standing to seek sequestration.

[115] The Respondent further submits that neither the Tax Administration Act nor the Customs and Excise Act expressly authorises the Commissioner to seek sequestration in his own name.

[116] SARS disputes those contentions.

[117] SARS contends that the Commissioner is the statutory functionary charged with the administration of both the Tax Administration Act and the Customs and Excise Act.

[118] It submits that the Commissioner acts in an official capacity and exercises powers conferred upon him by Parliament for the collection and recovery of tax and customs debts.

[119] The issue must be determined with reference to the statutory framework.

[120] Section 3 of the Tax Administration Act establishes SARS as an organ of state responsible for the efficient and effective collection of tax.

[121] The Act vests substantial powers in the Commissioner to administer the legislation and to perform the functions assigned to SARS.

[122] Sections 169 and 177 of the Tax Administration Act expressly contemplate legal proceedings being instituted for the recovery of tax debts.

[123] The Commissioner is the functionary through whom those statutory powers are exercised.

[124] The present proceedings are not instituted by the Commissioner in a personal capacity.

[125] They are instituted by the Commissioner acting in his official capacity as the statutory representative of SARS.

[126] The Respondent's argument draws a distinction between SARS, the Commissioner and the State.

[127] While that distinction may be conceptually correct, it does not follow that the Commissioner lacks standing to institute proceedings authorised by legislation and undertaken in the exercise of statutory powers.

[128] The question is not whether the Commissioner is personally owed the debt.

[129] The question is whether the legislation authorises the Commissioner, acting in his official capacity, to invoke legal remedies for the collection and recovery of tax and customs debts.

[130] In my view, it plainly does.

[131] To hold otherwise would undermine the statutory framework created by Parliament and artificially separate SARS from the statutory office through which its powers are exercised.

[132] I accordingly conclude that the Commissioner possesses the requisite locus standi to institute the present proceedings.

SECTION 177(3) OF THE TAX ADMINISTRATION ACT:

[133] The Respondent further contends that the application is fatally defective because SARS failed to obtain prior leave in terms of section 177(3) of the Tax Administration Act before instituting sequestration proceedings.

[134] According to the Respondent, section 177(3) requires a separate judicial authorisation process before sequestration proceedings may be commenced.

[135] The Respondent submits that the leave enquiry and the sequestration enquiry are distinct and that the failure to obtain leave is fatal to the application.

[136] SARS disputes that interpretation.

[137] SARS contends that section 177 forms part of the statutory collection machinery created by Parliament and that no separate preliminary application for leave is required.

[138] SARS relies upon authorities dealing with the recovery powers conferred by the Tax Administration Act and the predecessor legislation.

[139] The proper interpretation of section 177 requires consideration of its language, context and purpose.

[140] Statutory interpretation requires the Court to consider the text of the provision in light of the legislative scheme as a whole.

[141] The Tax Administration Act was enacted to create a comprehensive framework for the administration and collection of taxes.

[142] One of its central objectives is to ensure the efficient recovery of tax debts.

[143] Section 164 embodies the so-called “pay now, argue later” principle.

[144] That principle was recognised and approved by the Constitutional Court in **Metcash Trading Ltd v Commissioner, South African Revenue Service and Another** 2001 (1) SA 1109 (CC).

[145] The Constitutional Court recognised that the effective collection of taxes is fundamental to the functioning of the State and that Parliament may legitimately create mechanisms ensuring that disputes do not automatically suspend collection.

[146] The collection provisions of the Tax Administration Act must be understood within that broader context.

[147] The interpretation advanced by the Respondent would require SARS to institute separate leave proceedings before commencing sequestration proceedings.

[148] Such an interpretation would introduce an additional procedural layer not clearly required by the wording of the statute.

[149] It would also potentially frustrate the efficient collection mechanisms which the Act seeks to establish.

[150] I am unable to find anything in the language of section 177 that compels the conclusion that Parliament intended a separate and distinct judicial leave process as a jurisdictional prerequisite to sequestration proceedings.

[151] The section must instead be interpreted in a manner consistent with the legislative purpose of facilitating effective tax collection while preserving judicial oversight through the sequestration proceedings themselves.

[152] I therefore conclude that the Respondent's interpretation of section 177 cannot be sustained.

[153] The objection founded upon section 177(3) accordingly falls to be dismissed.

ABUSE OF PROCESS:

[154] The Respondent contends that the present application constitutes an abuse of process.

[155] The essence of the complaint is that SARS has elected to pursue sequestration proceedings while Tax Court proceedings and related review proceedings remain pending.

[156] The Respondent submits that SARS is improperly attempting to obtain through insolvency proceedings what it has not yet obtained through the statutory dispute resolution mechanisms established by the Tax Administration Act.

[157] The Respondent further argues that the sequestration proceedings interfere with the Tax Court process and create unfair litigation advantages.

[158] SARS disputes those allegations.

[159] SARS contends that the Tax Administration Act expressly authorises collection measures notwithstanding pending objections and appeals, subject only to suspension in terms of section 164.

[160] SARS points out that the Respondent's application for suspension of payment was refused and that the refusal remains operative.

[161] The governing authority is **Beinash v Wixley** 1997 (3) SA 721 (SCA).

[162] Beinash confirms that courts possess an inherent power to prevent their procedures from being employed for ulterior purposes inconsistent with the proper administration of justice.

[163] However, the mere fact that proceedings place pressure upon an opposing litigant does not establish abuse.

[164] The enquiry is whether the proceedings are being employed for a purpose foreign to the purpose for which they were created.

[165] Sequestration proceedings serve legitimate insolvency objectives.

[166] They are designed to protect creditors collectively and to secure the orderly administration of insolvent estates.

[167] The Tax Administration Act expressly recognises sequestration as one of the mechanisms available for the recovery of tax debts.

[168] The fact that SARS has elected to invoke that remedy does not, without more, establish abuse.

[169] Nor does the existence of pending Tax Court proceedings automatically render sequestration proceedings impermissible.

[170] The statutory framework expressly contemplates that tax debts remain recoverable notwithstanding objections and appeals unless payment has been suspended.

[171] The Respondent’s complaint is therefore directed not at an illegitimate use of sequestration proceedings but at the consequences flowing from the legislative scheme enacted by Parliament.

[172] Having considered the evidence as a whole, I am not persuaded that SARS instituted the present proceedings for an ulterior purpose.

[173] The evidence establishes that SARS seeks to recover debts which it contends are due and payable and that it relies upon insolvency legislation for that purpose.

[174] Those objectives fall squarely within the recognised purposes of sequestration proceedings.

[175] The abuse of process defence accordingly cannot succeed.

CLAIM AGAINST THE RESPONDENT: THE BADENHORST PRINCIPLE

[176] The next enquiry concerns whether SARS has established a claim against the Respondent for purposes of section 12(1)(a) of the Insolvency Act.

[177] This issue lies at the heart of the dispute between the parties.

[178] The Respondent relies heavily upon the principle articulated in **Badenhorst** and reaffirmed in **Honig**.

[179] It is therefore convenient first to consider the Badenhorst principle before turning separately to the customs debt and the income tax debt.

[180] Badenhorst established that sequestration proceedings should not be used to enforce a debt that is bona fide disputed on reasonable grounds.

[181] The rationale is straightforward.

[182] Insolvency proceedings are not designed to resolve ordinary commercial disputes concerning indebtedness.

[183] Where a genuine dispute exists, the creditor must ordinarily pursue ordinary proceedings to establish the debt.

[184] **Honig** reaffirmed that principle and emphasised that the dispute must be genuine and bona fide.

[185] **Kalil** similarly requires a court to distinguish between genuine disputes and disputes that are contrived or lacking evidential foundation.

[186] **Wightman** further makes clear that a respondent cannot create a genuine dispute merely through bare denials.

[187] The respondent must engage seriously and unambiguously with the facts relied upon by the applicant.

[188] The question before this Court is therefore whether the disputes advanced by the Respondent in relation to the customs debt and the income tax debt are genuine, bona fide and reasonable.

[189] It is to those debts that I now turn.

THE CUSTOMS DEBT:

[190] SARS relies upon a customs debt which it contends exceeds R155 million.

[191] The debt arises from customs investigations conducted into the importation of tobacco products and tobacco refuse through entities associated with the Respondent, principally Afri Teecee and Verbena.

[192] SARS contends that those investigations revealed substantial underpayment of customs duties and excise obligations.

[193] According to SARS, documentation submitted to customs authorities described imported products as tobacco refuse or core tobacco when, in reality, the products attracted substantially higher customs duties.

[194] SARS further contends that Afri Teecee was the beneficial importer and that the Respondent exercised effective control over the relevant transactions.

[195] Following the investigation, SARS issued notices to the Respondent indicating its intention to invoke section 103 of the Customs and Excise Act.

[196] Representations were invited from the Respondent.

[197] Thereafter SARS issued a final demand on 30 April 2021 asserting that the Respondent was personally liable for the customs debt.

[198] The Respondent disputes both the factual basis of the debt and the legal basis upon which personal liability is imposed.

[199] He contends that SARS has failed to establish the liability of Afri Teecee and has further failed to establish the jurisdictional facts necessary to invoke section 103.

[200] The Respondent submits that these disputes are genuine, bona fide and reasonable and that the **Badenhorst** principle accordingly prevents SARS from relying upon the alleged customs debt for sequestration purposes.

[201] The Court must therefore determine whether the disputes advanced by the Respondent are of the nature contemplated in **Badenhorst** and **Honig**.

[202] The Court does not determine in these proceedings whether the section 103 determination is ultimately correct.

[203] Nor does the Court determine whether SARS will ultimately succeed in any proceedings directed at enforcing the customs debt.

[204] The enquiry is narrower.

[205] The question is whether SARS has established a claim and whether the Respondent has demonstrated a genuine and bona fide dispute on reasonable grounds.

[206] The evidence reveals that the customs investigation was extensive.

[207] It was conducted over a significant period.

[208] Numerous documents were examined.

[209] SARS issued notices, invited representations and ultimately issued a formal determination under section 103.

[210] The Respondent disputes the conclusions reached by SARS.

[211] However, the Respondent does not merely face an unparticularised allegation of indebtedness.

[212] SARS has identified the transactions relied upon, the statutory basis of liability and the amount claimed.

[213] The Respondent’s challenge is therefore directed at the correctness of SARS’ conclusions rather than the absence of a factual foundation for the claim.

[214] Having regard to the evidence as a whole, I am unable to conclude that the customs debt is so genuinely and fundamentally disputed that SARS is deprived of creditor status for purposes of section 12 of the Insolvency Act.

[215] The Respondent has demonstrated that disputes exist.

[216] However, the existence of disputes does not in itself invoke the Badenhorst rule.

[217] The Court must consider whether the disputes are supported by evidence sufficient to show that the debt is genuinely disputed on reasonable grounds.

[218] Applying the principles articulated in **Badenhorst, Honig, Kalil** and **Wightman**, I am persuaded that SARS has established a claim based upon the customs debt for purposes of the Insolvency Act.

THE INCOME TAX DEBT:

[219] SARS further relies upon income tax liabilities arising from assessments issued against the Respondent in respect of the 2015 to 2019 tax years.

[220] SARS contends that those assessments resulted in tax liabilities exceeding R32 million.

[221] The Respondent objected to the assessments.

[222] The objections were disallowed.

[223] Thereafter the Respondent pursued appeal proceedings in terms of Chapter 9 of the Tax Administration Act.

[224] The Respondent also sought suspension of payment pending the determination of the appeal.

[225] SARS declined the request.

[226] The Respondent contends that because the assessments remain the subject of pending appeal proceedings, they cannot properly support sequestration proceedings.

[227] The Respondent further argues that SARS is attempting to use insolvency proceedings to circumvent the statutory dispute resolution mechanisms created by the Tax Administration Act.

[228] Those submissions must be evaluated against the statutory framework.

[229] Section 164 of the Tax Administration Act provides that the obligation to pay tax is not suspended merely because an objection or appeal has been lodged.

[230] Suspension occurs only where SARS directs otherwise or where a competent court intervenes.

[231] The Constitutional Court considered the constitutionality of that legislative choice in **Metcash Trading Ltd v Commissioner, South African Revenue Service and Another**.

[232] The Court recognised that Parliament deliberately adopted a pay-now-argue-later system to ensure the efficient collection of revenue.

[233] The Constitutional Court held that such a system serves an important public purpose and is constitutionally permissible.

[234] SARS further relied upon **Capstone 556 (Pty) Ltd v Commissioner for the South African Revenue Service, Commissioner for the South African Revenue Service v United Manganese of Kalahari (Pty) Ltd, Commissioner for the South African Revenue Service v Zikhulise Cleaning Maintenance and Transport Services, and Commissioner for the South African Revenue Service v Miles Plant Hire (Pty) Ltd**.

[235] Those authorities recognise the extensive collection powers conferred upon SARS and underscore the importance of preserving the efficacy of the statutory tax collection system.

[236] The Respondent's appeal proceedings remain pending.

[237] However, the assessments have not been set aside.

[238] The refusal to suspend payment likewise remains extant.

[239] The existence of pending appeal proceedings therefore does not, in itself, extinguish the tax debt or deprive SARS of creditor status.

[240] The Court must nevertheless consider whether the Respondent has demonstrated a genuine and bona fide dispute regarding the indebtedness.

[241] The Respondent disputes the correctness of the assessments.

[242] Those disputes are being ventilated in the specialised dispute-resolution mechanisms created by the Tax Administration Act.

[243] However, the fact that a taxpayer disputes an assessment does not automatically render the debt incapable of supporting sequestration proceedings.

[244] Were that so, the pay-now-argue-later principle embodied in section 164 would be substantially undermined.

[245] Having regard to the statutory framework and the authorities relied upon by SARS, I am satisfied that SARS has established a claim based upon the assessed tax liabilities.

[246] The income tax debt accordingly constitutes a claim for purposes of section 12(1)(a) of the Insolvency Act.

INSOLVENCY:

[247] The next enquiry is whether the Respondent has committed an act of insolvency or is factually insolvent.

[248] SARS relies upon both forms of insolvency.

[249] It points to the transfer of immovable property to the Roy Muleya Trust, the liquidation of Verbena, the existence of substantial liabilities and the alleged inability of the Respondent to satisfy those liabilities.

[250] The Respondent disputes that any act of insolvency has been established.

[251] He contends that the property transfer was lawful and that SARS has failed to demonstrate that his liabilities exceed his assets.

[252] The Court accepts that not every disposition of property constitutes an act of insolvency.

[253] Nor is every transfer to a trust indicative of insolvency.

[254] The enquiry is whether the evidence, viewed holistically, establishes either an act of insolvency or factual insolvency.

[255] The liabilities relied upon by SARS exceed R188 million.

[256] Those liabilities arise from both the customs debt and the income tax debt.

[257] The Respondent has not placed before the Court a comprehensive statement of assets demonstrating an ability to satisfy liabilities of that magnitude.

[258] The Court is therefore confronted with substantial established liabilities and insufficient evidence of assets capable of meeting them.

[259] The transfer of the Bartlett property to the Roy Muleya Trust is not decisive in itself.

[260] It nevertheless forms part of the broader factual matrix relevant to the Respondent's financial affairs.

[261] When the evidence is considered cumulatively, I am satisfied that SARS has established factual insolvency on a balance of probabilities.

ADVANTAGE TO CREDITORS:

[262] The final jurisdictional requirement concerns advantage to creditors.

[263] The Respondent contends that SARS has failed to establish that sequestration will produce any meaningful benefit for creditors.

[264] SARS disputes that contention.

[265] The governing principles are well established.

[266] In **Estate Logie v Priest** the Appellate Division emphasised the collective nature of insolvency proceedings and the protection of creditors as a class.

[267] In **Fundstrust (Pty) Ltd (in liquidation) v Van Deventer** the Court reiterated that sequestration proceedings are concerned with the orderly administration of insolvent estates for the benefit of creditors collectively.

[268] The leading authority remains **Court v Standard Bank of South Africa Ltd; Court v Bester NO and Others.**

[269] That decision established that an applicant need not prove with certainty that a dividend will result.

[270] It is sufficient if there is reason to believe that sequestration may yield a pecuniary benefit to creditors.

[271] The Constitutional Court reaffirmed that approach in **Stratford and Others v Investec Bank Ltd and Others.**

[272] Stratford emphasised that the threshold is relatively low.

[273] The Court recognised that one of the principal benefits of sequestration lies in the investigative powers conferred upon trustees.

[274] Trustees are able to investigate transactions, trace assets, examine witnesses and determine whether dispositions may be impeached for the benefit of creditors.

[275] The present matter involves trust structures, substantial transfers of property, corporate entities associated with the Respondent and significant financial transactions.

[276] A trustee would be able to investigate those matters in a manner not presently available to ordinary creditors.

[277] There is a reasonable prospect that such investigations may reveal assets, claims or transactions capable of producing a pecuniary benefit.

[278] Applying **Estate Logie, Fundstrust, Court v Standard Bank** and **Stratford**, I am satisfied that there is reason to believe that sequestration will be to the advantage of creditors.

CONCLUSION:

[279] SARS has established claims arising from both the customs debt and the income tax debt.

[280] The Respondent has failed to demonstrate disputes of the nature contemplated in Badenhorst and Honig that would deprive SARS of creditor status for purposes of the Insolvency Act.

[281] The Commissioner possesses locus standi to institute the proceedings.

[282] The objection founded upon section 177(3) cannot be sustained.

[283] The abuse of process defence has not been established.

[284] SARS has established that the Respondent is factually insolvent.

[285] SARS has further established that sequestration will be to the advantage of creditors.

[286] The jurisdictional requirements prescribed by section 12(1) of the Insolvency Act have therefore been satisfied.

ORDER:

The following order is made:

1. The rule nisi issued on 29 October 2025 is confirmed.
2. The estate of the Respondent, Mr Roy Muleya, is placed under final sequestration.
3. The costs of the application, including all reserved costs, shall be costs in the sequestration of the Respondent's estate.

LJ MBOWENI

ACTING JUDGE OF THE HIGH COURT GAUTENG DIVISION, PRETORIA

Date of Hearing : 13 May 2026
Date of Judgment : 09 June 2026

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