IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2026-096276

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

[redacted]

22 June 2026 — **Date**

K. La M Manamela

In the matter between:

CLIVE MALCOLM ELLISON	Applicant
and	
ABSA BANK LIMITED	First Respondent
MR RICHARD HICKEN	Second Respondent
MR DEVALD BREYTENBACH	Third Respondent
MASTER OF THE HIGH COURT	Fourth Respondent

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 June 2026.

JUDGMENT

Manamela, J

> Like all things in life, like the best of times and the worst of times, litigation must, at some point, come to an end.[1]

Introduction

[1] The facts in this matter deserve the prologue above, fittingly in the form of the *dicta* (observations, pronouncements, remarks, sayings, utterances)[2] from the Constitutional Court, the apex court in South Africa. The *dicta* sum up the attributes of the principle of finality of litigation.[3] For, litigation cannot be pursued forever on the same issues no matter the personal convictions of a litigant about its importance or the implications thereof for his personal interests.

[2] The applicant, Mr Clive Malcolm Ellison, approached this Court by way of an urgent application seeking relief on substantially the same facts as those that formed part of the litigation which churned not less than three orders of this Division and two orders of the Supreme Court of Appeal. Details of the orders are set out below.[4] Even the current absence of legal representation on his part did not impair his pursuit of endless litigation. The applicant's conduct – no doubt – contradicts the principle that it is in the public interest that litigation be brought to finality.[5]

[3] The applicant was declared bankrupt in the United Kingdom ('the UK') in 2000. Almost two decades later, in April 2018, the applicant's UK insolvency or bankruptcy was recognised in South Africa in terms of the order of this Court and the third respondent, Mr

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1 *Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State and Others* (CCT 52/21) [2021] ZACC 28; 2021 (11) BCLR 1263 (CC) (17 September 2021) [1].

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

3 DE van Loggerenberg, *Erasmus: Superior Court Practice* (Jutastat e-publications, 30 January 2026 (Revision Service 29, 2026)) ('*Erasmus: Superior Court Practice*') RS 27, 2025, D1 Rule 42-1 to 42-2 and the authorities cited there.

4 Pars [10]-[13] below.

5 Footnote 3 above.

Marthinus Jacobus Dewald Breytenbach[6] ('Mr Breytenbach' or the third respondent, interchangeably) was appointed by the fourth respondent, the Master of the High Court, Pretoria ('the Master'), as a trustee. Mr Breytenbach was initially appointed jointly with the second respondent, Mr Richard Hicken ('Mr Hicken'), but the latter subsequently resigned from his position as a trustee. The effect of the recognition order of the applicant's UK bankruptcy is that assets owned by the applicant in South Africa at the time formed part of his insolvent estate administered by Mr Breytenbach. The applicant's assets included an immovable property situated in Waterkloof Extension 2, Pretoria ('the Property'). The first respondent, ABSA Bank Limited ('the Bank'), held security over the Property due to monies previously lent and advanced to the applicant, ostensibly, towards acquisition of the Property.

[4] The relief currently sought by the applicant is rather unclear due to the nature and extent of its formulation in both the notice of motion and the founding affidavit. This is not surprising as the applicant appeared in person at the hearing, without the benefit of legal representation, and this appears to have been the position when his papers were drafted. The applicant seeks the following relief, quoted verbatim (word for word; literally),[7] from the notice of motion:

- Condoning non-compliance with ordinary forms and service due to urgency.
- Interdicting any sale, transfer, attachment, dissipation, or further administration steps pending final determination.
- Directing Respondents to suspend reliance on any alleged insolvency / bankruptcy process concerning Applicant.
- Directing the Fourth Respondent to produce the complete file, claims, minutes, appointments, and supporting documents.
- Reviewing and setting aside any unlawful appointments, recognitions, meetings, or acts founded on unproven claims.
- Costs against opposing Respondents.[8]

[5] In the heads of argument – also seeming to have been prepared without the benefit of legal representation - the applicant stated the relief sought to include the following: (a)

6 The full names of the trustee as reflected on FA annexure 'MB1' certificate of appointment, CL 011-15.
7 Hiemstra and Gonin, *Trilingual Legal Dictionary*.
8 Notice of motion, CaseLines ('CL') 006-4.

declaring that the first respondent's (i.e. the Bank's) authority under the recognition order has expired; (b) declaring that no lawful basis exists for execution against the Property; (c) directing the respondents to disclose all documents relied upon, and (d) costs of the application to be paid jointly and severally by the respondents. The applicant says he launched the urgent application due to ongoing prejudice, which continues through reliance on an allegedly unlawful insolvency process.

[6] The application is opposed only by Mr Breytenbach as the third respondent and the trustee of the applicant's insolvent estate. In the main, Mr Breytenbach labels the application an abuse of the process of this Court and a pure attempt to further avoid the legal consequences of binding orders previously granted by the Court. He also criticises the timing of the launch of the application, whose primary target he considers to be an attempt to interdict the sale and transfer of the Property. The Property was sold on auction during late April 2026 following the applicant's eviction from the Property in February 2026.[9]

[7] The application came before me on 5 May 2026 and was stood down to 8 May 2026. This, in the main, was to allow the applicant – appearing in person - to file a replying affidavit, but he instantaneously declined the offer to do so. The applicant was resolute in his rejection, despite the Court conscientising him about the importance of the legal step (i.e. delivery of a replying affidavit). In the end the matter was stood down for him to familiarise himself with the contents of the answering affidavit, as he disputed the clear proof that same had been emailed to him. Mr GJ Lötter appeared for the third respondent on both occasions. This judgment was then reserved. I deemed it necessary to hand down a written judgment, significantly, to accommodate the applicant as a litigant in person. The judgment, gratefully, benefitted from the written submissions filed by counsel.

[9] The applicant's eviction from the Property was first ordered on 17 June 2022. See par [12] below.

Brief background

[8] This matter has a long history, but it is only necessary to state a few issues in its background in order to give context to the relief sought and opposition thereto.

[9] The applicant was declared bankrupt in the UK by an order granted on 4 October 2000 by the High Court in that country at the instance of the Commissioner for Inland Revenue, also of that country. Mr Hicken was appointed a trustee in the UK on 21 November 2004, following the release from that position of another trustee appointed earlier. Following investigations, Mr Hicken came to know that the applicant owned the Property and held a bank account in South Africa ('SA').

[10] In his capacity as the trustee of the insolvent estate of the applicant in the UK, Mr Hicken approached this Division, on application, in 2016 seeking the recognition in SA of the applicant's insolvency or bankruptcy in the UK. A provisional order was granted in the form of a *rule nisi*[10] during January 2017. On 18 April 2018, Kollapen J (before his elevation) granted final relief, essentially, recognising in SA the applicant's bankruptcy order from the UK (respectfully, 'the Kollapen Judgment'). The order made in the Kollapen Judgment, in its full nature and extent, reads as follows:

> 1. The rule nisi issued on the 30th of January 2017 is confirmed and a final order is issued:
>
> 1.1 Recognising the insolvency of the First Respondent ordered in terms of Mr Deputy Registrar Schaffer of the High Court of Justice in Bankruptcy (United Kingdom) on 4 October 2000 under case number 3873-2000.
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> 1.2 Recognising the Applicant's appointment as trustee of the Insolvent Estate of the First Respondent in terms of the Certificates of Appointment of Trustee by Creditors' Meeting of 21 November 2014.
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> 1.3 Once the Applicant has provided security to the satisfaction of the Master:

10 'A *rule nisi* is an order of court to which a fixed period of validity has been assigned; when that period of validity has once expired the rule lapses': RC Claassen and M Claassen, *Claassen's Dictionary of Legal Words and Phrases* (LexisNexis 2024).

1.3.1 Empowering the Applicant to administer the estate of the First Respondent in respect of all his assets which are or may be found or are situated within South Africa.

1.3.2 Granting the Applicant all the rights, powers and title of a trustee in terms of the insolvency Act No. 24 of 1936, including but not limited to protecting and realising any assets which the First Respondent may have in South Africa for the benefit of the Bankruptcy Estate.

1.3.3 Entitling the Applicant to administer the estate of the First Respondent as if a sequestration order had been granted against him by a South African court.[11] [underlining added]

[11] The applicant's efforts to appeal the Kollapen Judgment were to no avail. On 6 March 2019, the first meeting of creditors in the applicant's insolvent estate was held. Thereafter, on 18 March 2019, the Master appointed Messrs Breytenbach and Hicken, as joint trustees.[12] But, on 1 December 2021, Mr Hicken resigned as trustee. On 22 February 2022, Mr Breytenbach was appointed sole trustee by the Master.

[12] The applicant refused to vacate the Property and had to be evicted. The trustees launched court proceedings for his eviction, which he opposed. He coupled his opposition with a counterapplication geared towards overturning the Kollapen Judgment and for a declaratory order that the Property fell outside of his insolvent estate. On 17 June 2022, Collis J granted an eviction order and dismissed the counterapplication in terms of the following order ('respectfully, 'the Collis Judgment'):

58.1 The First Respondent is evicted from the premises situated at … Waterkloof, Pretoria ('the premises').

58.2 The First Respondent is to vacate the premises within 30 days of the date of this order.

58.3 The sheriff and his/her lawful deputy is authorised and directed to take such steps as are necessary to evict the First Respondent from the premises in the event that the First Respondent does not vacate the premises within 30 days from the date of this order.

58.4 The First Respondent is to pay costs of this application on the attorney and client scale.[13]

11 FA annexure 'MB2' Judgment by Kollapen J handed down on 12 April 2018, CL 011-26 to 011-27.
12 FA annexure 'MB1' certificate of appointment, CL 011-15.
13 FA annexure 'MB3' Judgment by Collis J handed down on 17 June 2022, CL 011-70.

[13] The applicant was granted leave to appeal against the Collis Judgment. His appeal against the Collis Judgment before the Full Court of this Division was unsuccessful in terms of its judgment handed down on 5 June 2025.[14] He was, equally, unsuccessful with his application for leave to appeal at the Supreme Court of Appeal ('the SCA').[15] And, on 2 December 2025, Molemela P of the SCA dismissed his application for reconsideration in terms of section 17(2)(f) of the Superior Courts Act 10 of 2013.[16]

[14] On 22 December 2025, the Master rejected the applicant's request or application for the removal of Mr Breytenbach as trustee of his insolvent estate.

[15] On 27 February 2026, the applicant was evicted from the Property, which was subsequently sold on auction during late April 2026. This urgent application ensued on 28 April 2026.

Applicant's case

[16] As I have already indicated, the nature and extent of the relief sought by the applicant, set out in its full extent above,[17] is not crafted or set out in very clear terms. As also indicated, the applicant launched the current proceedings and participated in them without legal representation.

[17] The relief sought by the applicant may be summarised (with some considerable loyalty to its original form on my part) as being for: (a) an interdict against the sale and transfer of the Property, as well as any attachment or execution process against the Property; (b) an interdict against further or continuation of the administration of his insolvent estate, pending the final determination of some unspecified step(s); (c) directing the respondents to pause or suspend

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14 FA annexure 'MB4' Full Court Judgment, *coram* (before): Davis J, Van der Westhuizen J and Mazibuko AJ, handed down on 5 June 2025, CL 011-74 to CL 011-75.

15 FA annexure 'MB5' SCA Judgment, *coram*: Hughes JA and Henney AJA of 30 July 2025, CL 011-77.

16 FA annexure 'MB6' Reconsideration order, *per* Molemela P granted on 2 December 2025, CL 011-78.

17 Par [4], read with par [5], above.

their reliance on any alleged insolvency or bankruptcy process in as far as the applicant is concerned; (d) directing the Master to produce a complete file of documents including claims, minutes and appointments; (e) reviewing and setting aside of unlawful appointments, recognitions, meetings, or acts founded on unproven claims; (f) declaring that the first respondent's (i.e. the Bank's) authority under the recognition order has expired, and (g) joint and several liability for the respondents towards payment of costs of the application. The relief in (a) to (d) constitutes interdictory relief with (a) and (b) being in the form of prohibitory interdict and (c) and (d) mandatory interdict.[18]

[18] The applicant states that the steps purportedly taken by the respondents to create or administer a bankruptcy or sequestration process affecting him are not lawful. He complains about the events at the first creditors' meeting held on 6 March 2019, including the submission of further claims which were unsupported or rejected for want of proof. Reliance, according to him, appears to have been placed on claims that were not properly proven or supported by admissible documentation. And there was material procedural unfairness in the convening of the meetings, treatment of claims, and the opportunity afforded to challenge the allegations. Further, that material facts were omitted or not candidly disclosed to relevant decision makers. The applicant also seeks that the respondents be compelled to discover and produce 'the full record' of the relevant documents or information. The applicant says that he has attempted to investigate the basis upon which the respondents act, but the Master has refused or failed to provide him access to the relevant records. Similarly, the Bank has refused to disclose its dealings with the purported trustee. This obstructive conduct has materially prejudiced him with regard to his ability to understand and challenge the actions taken against him, the

18 Pars [53]-[57] below on the requirements for interdicts.

applicant contends. Notably, these complaints mainly relate to events which took place several years ago and were either ruled upon by the Court or overtaken by subsequent events.

[19] The applicant, further, complains that information held by the Bank regarding his mortgage bond, ostensibly relating to the Property, was utilised without proper authority. The information is confidential and, thus, should not have been used or circulated without proper authority or informed consent, the applicant further complains. These complaints, notably, are not matched by the relief currently sought by the applicant tabulated above. The applicant doesn't say what should happen in the event that his complaints or claims are established in this regard. But I hasten to state that the claims are, clearly, not established.

[20] The applicant, further, complains that, at the relevant times, his mortgage payments to the Bank were up to date. Prejudicial conduct was visited on him despite the clear evidence that his relevant accounts were current or not in arrears. According to the applicant any suggestion of insolvency is unfounded and unsupported by admissible evidence. I understand this to mean that the Property should not have been affected by the insolvency or bankruptcy process as he was paying the required amounts in compliance with his mortgage bond or loan agreement with the Bank. But, this wouldn't matter for purposes of insolvency as it is a collective debt-collection process affecting all assets and liabilities in an insolvent estate. The Collis Judgment effectively confirmed that the Property forms part of the insolvent estate.[19]

[21] Overall, the applicant's case is that: (a) the cumulative effect of these irregularities renders the process 'unsafe and unreliable'; (b) he continues to suffer prejudice and harm to his creditworthiness, reputation and commercial standing; (c) he has endured significant amount of distress, uncertainty and expense in attempting to protect his rights; (d) there is a real risk of loss of assets due to the enforcement steps and continued impairment of his legal

[19] Pars [12]-[13] above.

rights. Therefore, the applicant seeks the relief set out in the notice of motion, particularly the preservation of the status *quo* pending final determination. But the applicant failed to disclose what is still to be finally determined, when and in what form.

[22] The applicant sought to expand or supplement his case in the heads of argument. This is impermissible. The assertions in this regard include that the recognition order granted on 12 April 2018 (i.e. the Kollapen Judgment) of the applicant's UK bankruptcy expressly limited the powers' of the trustees to those which would have existed had the sequestration being ordered in SA on 4 October 2000. The latter date, it is to be remembered, is the date when the applicant was declared bankrupt in the UK.[20] The applicant argues that considering the latter date the sequestration ought to have terminated under SA law after 10 years, being on 4 October 2010, due to his rehabilitation 'by operation of law'. In my view, this is a purported reliance upon the provisions of section 127A of the Insolvency Act 24 of 1936 ('the IA 1936') providing for rehabilitation by effluxion of time.[21] But the latter provision does not reinvest the rehabilitated insolvent with his estate or assets from the insolvent estate. The exception provided in the IA 1936 is under its section 129(2) where rehabilitation was granted by the court under section 124(3) of the IA 1936, on the basis that no claims have been proven against the estate of rehabilitated insolvent. This is not applicable to the applicant as claims have been proven against his estate. Therefore, the trustee is entitled to deal with the Property as an asset in the applicant's insolvent estate.

[23] Under the heading 'constitutional prejudice', the applicant states, among others, that the Property is his primary residence. Therefore, the attempted sale thereof constitutes a severe infringement of his constitutional rights, including protection against arbitrary deprivation of

20 Par [9] above.

21 Section 127A of the Insolvency Act 24 of 1936 reads in the material part: '(1) Any insolvent not rehabilitated by the court within a period of ten years from the date of sequestration of his estate, shall be deemed to be rehabilitated after the expiry of that period …'

property and right of access to adequate housing. The infringement in this regard is not authorised by law and is procedurally substantively unfair, the applicant's contention concludes. But, obviously, the court would have considered this when granting the latest eviction, including earlier in the Collis Judgment. Those orders remain intact and this Court, as currently constituted, is incapacitated to interfere with the eviction order.

Third respondent's case

[24] The case put forward by Mr Breytenbach, as the third respondent, garnered from his answering affidavit and the submissions by his counsel, Mr GJ Lötter, may be summarised as appearing below. More details would appear, further below, in the discussion of the issues identified as requiring determination.

[25] The third respondent's paramount ground of opposition is that the application represents the applicant's quest to relitigate or revisit issues that have been finally determined. The impugned issues or relief sought is incompetent, moot and *res judicata* (a matter adjudged; matter settled by judgment)[22] and that the application is doomed for failure, as they concern that: (a) the applicant's bankruptcy in the UK was recognised in SA; (b) the trustees are empowered to administer the applicant's insolvent estate in SA, including realisation of the assets in the insolvent estate for the benefit of the creditors; (c) the Property forms part of the applicant's insolvent estate; (d) the applicant was liable to be evicted from the Property, and (e) the applicant has already been evicted from the Property in February 2026. The third respondent is also of the view that this urgent application was launched by the applicant in an attempt to suspend the transfer of the Property. As stated above the Property was sold at an auction a few days before the launch of this application. The application, it is submitted, is an abuse of process which should not be countenanced by the Court.

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[22] Hiemstra and Gonin, *Trilingual Legal Dictionary*.

[26] On the procedural front, the third respondent states that service of the urgent application was defective due to non-compliance with Rule 4 of the Uniform Rules of this Court. Rule 4 prescribes that new court proceedings, such as motion or application proceedings, ought to be served by the Sheriff of the High Court.[23] The application was served by hand at the attorneys of record for the third respondent, despite the proceedings not being an interlocutory process. Service upon the rest of the respondents may also be defective. Therefore, the application ought to be dismissed due to the defective service on the respondents.

[27] The applicant, it is also submitted, has embarked on an impermissible journey of attacking the orders of the court, despite their final form and effect. But this Court, it is further submitted, is not cloaked with the jurisdiction to vary or suspend the material previous orders. This leaves the applicant with no option, but to obey the orders granted against him by the court as they remain binding until set aside, regardless of whether they are valid or not. This is so as the applicant has unsuccessfully exhausted all of his appeal options.

[28] Be that as it may, it is submitted that the application ought to fail for another reason: the failure of the applicant to satisfy the requirements for an interim or interlocutory interdict. For example, the applicant purports to exercise a *prima facie* right to occupy or possess the Property when he has no such right, as the Property belongs to his insolvent estate administered by Mr Breytenbach, as the trustee. Also, there is no apprehension of irreparable harm that may befall the applicant from the exercise of a statutory mandate by Mr Breytenbach under the IA 1936.

[29] The application lacks a factual or legal basis for the relief sought, especially with regard to an error allegedly committed by the Master in rejecting his complaint. The application is significantly based on conjecture flavoured with sweeping statements devoid of any *factum*

[23] Rule 4 of the Uniform Rules of this Court.

probans (probative fact).[24] It is materially defective and does not identify precisely the relief sought. Even where it attempts to identify the relief sought it does not provide in the affidavit (which takes the place of pleadings and evidence in motion proceedings) any particulars or substance for the relief sought. For example, it appears that part of the relief sought by the applicant is by way of a review. But the applicant has not clearly identified the impugned administrative decision or conduct and the decision-maker involved, including the ground on which the review is premised, be it from the Promotion of Access to Justice Act 3 of 2000 ('PAJA') or the principle of legality. Be that as it may, a review is not competent for the orders or judgments of the High Court which ought to be varied through the appeal process, the submission concludes.

Issues for determination

[30] Identification of the issues requiring determination in this matter is largely affected by the condition of the craft of the founding papers. I have already lamented the absence of precision in the relief sought and the evidence to establish the facts to be determined. But the situation is not without solution.

[31] From the applicant's papers and the defences put forward by the third respondent the following are the issues to be determined to dispose of this matter: (a) urgency of the application; (b) service of the application and condonation; (c) recognition of the UK bankruptcy order in SA; (d) declaring that the first respondent (i.e. the Bank) authority under the recognition order has expired; (e) suspension of the insolvency or bankruptcy process; (f) compliance with the mortgage payment requirements; (g) interdict against the sale and transfer of the Property; (h) the Property as a primary residence; (i) interdict against further or continuation of the administration of his insolvent estate; (j) directing the production of the

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24 Hiemstra and Gonin, *Trilingual Legal Dictionary*.

complete documents in the Master file; (k) utilisation of the applicant's confidential information without proper authority; (l) reviewing and setting aside of unlawful appointments etc; (m) *res judicata*; (n) mootness; (o) vagueness; (p) unenforceability of the relief; (q) impermissible attack on final court orders; (r) requirements for an interdict and (s) costs.

[32] The above issues are not necessarily all the issues raised by the parties in the papers before the Court, but they are – in my view – dispositive of the matter. The issues will serve as rubrics to guide the discussion below and, due to their nature, some of the issues will be discussed jointly. I turn to the issues, next.

Urgency, service of the application and condonation

[33] The third respondent complains that the application as a document initiating motion or application proceedings ought to have been served by the sheriff of this Court directly on the respondents, as required by Rule 4 of the Uniform Rules. The applicant was served by hand on the third respondent's attorneys of record. I agree with the third respondent that there was non-compliance in this regard. But with regard to the view I take on the matter, I will 'dispense with the forms and service provided for' in the Uniform Rules, without implying that the matter is indeed urgent, to which I turn.[25]

[34] The applicant says the matter is inherently urgent and that he would not obtain substantial redress in due course. He has lost his home in the form of the Property. But there is no explanation as to why the other terms of the relief should be adjudicated upon on an urgent basis. On the other hand, the third respondent denies that the matter is urgent. The third respondent points out to the fact that the applicant has already been evicted from the Property in February 2026 and the Property has already been sold in April 2026. The real purpose of this application, the respondent contends, is to delay the transfer of the Property. The third

[25] Rule 6(2) of the Uniform Rules.

respondent says the application constitutes an abuse of process of the Court. The applicant has not explained why no steps were taken prior to the Property being sold to approach the Court on an urgent basis. The proverbial horse has bolted on the sale of the Property, the contention continues. As for the other issues in the matter also indicated as requiring determination on an urgent basis, the submissions on behalf of the third respondent are to the effect that they have all been litigated to finality and the applicant has exhausted all of his options at the appellate level without success.

[35] Considering the nature and substance of the relief sought by the applicant, I had no doubt that none of the issues raised in the matter required urgent determination. In fact almost all of the issues, including the very issue that sparked this application, namely, the sale of the Property, have been already pronounced upon by the Court. Anything else that did not previously form part of the issues determined by the Court is also not urgent and does not place the applicant in a position where no substantial relief is impossible in due course. The matter remained on my urgent court roll due to the submission on behalf of the third respondent that it is geared towards impeding the sale of the Property in a manner that constitutes nothing but an abuse of the process of the Court. The latter consideration, if established, weighed heavier on the mind of the Court than to prolong the alleged abuse through an order striking the matter off the urgent roll. Overall, the interests of justice appeared to me to favour this approach of the Court.

Recognition of the UK bankruptcy order in SA and its implications (including authority of the trustee and time-period of the insolvency process)

[36] The applicant, as stated above, was declared bankrupt in the UK in 2000 and in 2018 the UK bankruptcy was recognised in SA in terms of the Kollapen Judgment. The effect of the latter judgment or order was that: (a) the administration of the applicant's insolvent estate ought to be conducted as if the sequestration order had been granted against the applicant by a court

in SA; (b) the trustee is empowered to administer the applicant's insolvent estate 'in respect of all his assets which are or may be found or are situated within [SA]', and (c) the trustee obtained 'all the rights, powers and title of a trustee' in terms of the IA 1936 for the administration of the applicant's insolvent estate.[26]

[37] The applicant claims that the respondents ought to be directed to suspend their reliance on any alleged insolvency or bankruptcy process flowing from the Kollapen Judgment. In his view, the Kollapen Judgment no longer has authority as the sequestration or insolvency process has expired in terms of SA law in 2010, being a period of ten years from 2000 when the applicant was declared bankrupt in the UK. The applicant is of the view that in SA insolvency or sequestration is time bound. This is obviously incorrect. It is the period for rehabilitation which is time-bound, not the sequestration process. Rehabilitation of an insolvent would be automatic by effluxion of a time-period of ten years from date of sequestration. This is provided by section 127A of the IA 1936.[27] But, as I already stated, this is applicable to rehabilitation and has no relevance to the rehabilitated person's insolvent estate. The latter estate would remain under the control of the trustee and the proceeds from all assets therein would be used to meet creditors' claims. The rehabilitated insolvent is free to accumulate assets in his or her new estate or has, actually, been entitled to do so from the moment the sequestration order of the insolvent estate was granted (or from the recognition order in case of the applicant in this matter). This means that the trustee is still in 2026 empowered to deal with the assets in the applicant's insolvent estate, including the Property. His authority remains valid.

Mortgage payments to the Bank were up to date

[38] The applicant's case is also that when the recognition order was granted he was up to date with payments or obligations in respect of the mortgage agreement with the Bank and,

26 FA annexure 'MB2' Judgment by Kollapen J, CL 011-26 to 011-27.
27 Par [22] above.

ostensibly, the sequestration should not have been ordered. This caused him some prejudice. This claim by the applicant does not appreciate that once the recognition order was made in 2018 the applicant's estate in SA, even if it was solvent (i.e. with the value of the assets exceeding the amount or estimate of liabilities), it would *ex lege* (by force (operation) of law; as a matter of law; according to law)[28] be treated as if it was insolvent.

Interdict against the sale and transfer of the Property, a primary residence

[39] The applicant also seeks an order that the sale and transfer of the Property be interdicted. The sale of the Property had occurred by the time the application was launched. The transfer of the Property is, indeed, still pending, but that does not alter the position. The Property belongs to the insolvent estate and may be subjected to all processes necessary in terms of SA's insolvency laws. As for the fact that the Property may be a primary residence and, thus, impacting the applicant's right to housing, I find solace in the fact the applicant was evicted in terms of an order of court. That court would have ordered the eviction whilst mindful of the fact that the Property is a primary residence, if it indeed was, and that the applicant's constitutional right of access to adequate housing may be implicated. Eviction of the applicant from the Property was first ordered in June 2022 terms of the Collis Judgment,[29] even though the applicant ultimately vacated the Property in February 2026. The Property has been part of the applicant's insolvent estate since 2018 in terms of the Kollapen Judgment,[30] a fact subsequently confirmed in the Collis Judgment. The proverbial horse is long gone; it has bolted.

Interdict against further or continuation of the administration of his insolvent estate

[40] The applicant's interdict against further or continuation of the administration of his insolvent estate has been addressed above. I am referring to its lack of merit. With the

28 Hiemstra and Gonin, *Trilingual Legal Dictionary*.
29 Par [12] above.
30 Par [10] above.

sequestration process in respect of the applicant’s insolvent estate still valid and authorised in terms of the Kollapen Judgment - which has withstood challenges - there is no valid reason for the interdict, whether interim or final.

[41] Mr Breytenbach, as trustee, is mandated to administer the insolvent estate and to deal with all assets of the estate, including the Property. The latter empowerment includes the sale and transfer of the Property.

Directing the Master to produce complete file of documents

[42] The relief sought by the applicant includes that the Master be directed to produce a complete file of documents including claims, minutes and appointments. These documents, according to the applicant, are apparently required to understand the basis upon which the respondents conducted themselves. The Master has apparently not provided the applicant with access to the relevant records. Equally, the Bank has refused to disclose its dealings with Mr Breytenbach, as the trustee. But it is unclear what documents the applicant expect the respondents to possess which are not already in the public domain or his possession after the tumultuous litigation he pursued. Also, it is unclear what right the applicant intends to exercise which he has not by now done so. There is no merit in this claim as no document would contradict the force of the Kollapen Judgment and other rulings made by the Court. The applicant has failed to precisely indicate the relevance of the impugned documents to the urgent relief sought in this matter.

Utilisation of confidential information without proper authority

[43] Another complaint by the applicant is that his confidential information held by the Bank relating to his mortgage bond was utilised without proper authority. The applicant has not provided details or evidence of this. But the Bank as a party to the agreement would ordinarily be entitled to disclose such information as it is required when enforcing or protecting its rights.

I do not think that the applicant's consent would be required for this purpose. Also, the applicant has not stated why such information would be confidential to whoever it has been divulged to without his consent.

Reviewing and setting aside of unlawful appointments etc

[44] The applicant also refers to a review and setting aside of unlawful appointments, recognitions, meetings, or acts founded on unproven claims. He refers to the first creditors' meeting held on 6 March 2019 and creditors' claims submitted at the meeting or following the meeting which were not properly proven or supported by admissible documentation. These events occurred years ago and the applicant has not shown why they should be revisited.

[45] This complaint also related to the discovery and production of a 'full record' of the relevant documents or information. I agree with the third respondent that there is no factual basis for this. The applicant attended the impugned creditors meetings and did not take any steps to challenge the rulings made in those meetings. The length of time which has since elapsed is unreasonably long to seek that those meetings be set aside, even if there was any semblance of merit in all these.

Res judicata, mootness, vagueness and unenforceability of the relief sought

[46] The applicant seeks in terms of this application substantially the same relief as previously sought and disposed of through orders of the court. The same issues or cause of action have been already litigated to finality between the same parties. This is impermissible in terms of the principle of *res judicata*.[31] Also, some of the relief sought appear to be moot or unenforceable. But overall there is general vagueness in the nature and extent of the relief sought. I discuss these further below.

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31 Par [25] above for a meaning of *res judicata.*

[47] Starting with the applicant's claims regarding the validity of the recognition order incorporated in the Kollapen Judgment. The latter was handed down on 18 April 2018. This is over eight years ago. The applicant was unsuccessful in appealing the Kollapen Judgment. Therefore, I agree with counsel for the third respondent that the challenge of the validity of the recognition order is moot and academic. Otherwise, the incorrect claim of a ten-year validity period has been dealt with above.[32]

[48] What I have just mentioned would equally apply to the applicant's challenge or assertion of invalidity of the appointment of Mr Breytenbach as the trustee of his insolvent estate. His appointment was in March 2019, jointly with Mr Hicken, and as sole trustee in February 2022, after Mr Hicken resigned as trustee. Further, the Master dismissed the applicant's demand for the removal of the trustee in December last year. The dismissal appear to have been on sound grounds.

[49] The declaration that the Property falls within the applicant's insolvent estate was made in June 2022 in terms of the Collis judgment confirmed by a Full Court of this Division on appeal. I agree with the third respondent that this issue is now *res judicata*.

[50] The principle of *res judicata* ensures the finality in litigation and affords protection to litigants against repetitive legal proceedings concerning substantively the same issues which have already been decided.[33] For litigation cannot continue endlessly, but ought to reach finality.[34] The applicant remains bound by the decisions or orders of the court already made. And this Court, as currently constituted, cannot overturn, vary or suspend those decisions or orders. I also agree with the third respondent that the fact that the applicant did not disclose the

32 Pars [22]-[37] above.
33 *Smith v Porritt and Others* 2008 (6) SA 303 (SCA).
34 *Visagie v Health Professions Council of South Africa And Others* 2023 (2) SA 626 (GP) [14] *per* Potterill J; *Nestlé (South Africa) (Pty) Ltd v Mars Incorporated* 2001 (4) SA 542 (SCA) [16].

decisions or orders granted against him amounts to an impermissible approach of the Court with unclean hands.[35]

[51] The applicant's main objective in this application is to regain title to and the right to occupy the Property. He was evicted from the Property in February 2026 and the Property has now been sold. All these flowed from valid court orders or processes. Therefore, the relief sought by the applicant is moot and would have no practical effect. There cannot be legally actionable 'ongoing prejudice' emanating from lawful execution of orders of the court.

[52] I agree with submissions on behalf of the third respondent that the applicant's conduct manifested by this application constitutes an impermissible attack of the orders of the court, at this and appellate levels. It is also correct that this Court lacks jurisdiction to vary or suspend the impugned decisions or orders. Therefore, the applicant ought to obey the orders until they are set aside, despite his complaints or sentiments about them.[36]

Requirements for an interdict

[53] The relief sought by the applicant includes interdictory relief: (a) against the execution process, sale and transfer of the Property; (b) against further or continuation of the administration of his insolvent estate, pending some unspecified future step(s); (c) for the respondents to be directed to pause or suspend insolvency process involving the applicant, and (d) for the Master to be directed to produce a complete file of documents. I have already mentioned that the first two constitute what is referred to as prohibitory interdict (i.e. an interdict that requires that a person abstains from 'committing a threatened wrong or from continuing an existing one') whilst the other two constitute mandatory interdict (i.e. order issued by the court that requires a person to do something as a form of remedying a state of

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35 *Villa Crop Protection (Pty) Ltd v Bayer Intellectual Property GmbH* 2024 (1) SA 331 (CC).

36 *Department of Transport and Others v Tasima (Pty) Ltd* 2017 (2) SA 622 (CC). See also section 165(5) of the Constitution.

affairs which is wrongful, which the person is responsible for, or ordering a person to do something which he or she ought to do to realise his or her rights).[37] I have already ruled above against the granting of the interdictory relief sought by the applicant. All that appears under this part is stated merely for completeness of the discussion.

[54] The requirements for an interlocutory or interim interdict and a final interdict are different. To succeed in obtaining a final interdict an applicant ought to satisfy three requirements that, there is: (a) a clear right on the part of the applicant; (b) an injury actually committed or reasonably apprehended, and (c) an absence of other satisfactory remedy to the applicant.[38] Interlocutory interdict requires that the following be established: (a) a *prima facie* (at first sight; on the face of it; at first blush)[39] right; (b) a well-grounded apprehension of irreparable harm; (c) a balance of convenience favouring the granting of interim relief, and (d) the absence of other satisfactory remedy.[40]

[55] It is submitted that the interdict sought by the applicant appears to be interlocutory or interim in nature, as it appears to be sought pending some unspecified future event or other litigation to be instituted. The lack of specification of the future event may mean that the applicant, actually, seeks interdictory relief with final effect. Be that as it may, I agree with submissions on behalf of the third respondent that the applicant has not met the requirements for either an interim or final interdict, as set out above.

[56] For example, the applicant purports to exercise a right to occupy or possess the Property when he has no such right. There is no doubt in this regard as the Property belongs to the applicant's insolvent estate. But, there is nothing before the Court to establish such right on the

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37 *Erasmus: Superior Court Practice* at RS 25, 2024, D6-3.
38 *Erasmus: Superior Court Practice* at RS 27, 2025, D6-18 and RS 28, 2025, D6-19 to RS 28, 2025, D6-24.
39 Hiemstra and Gonin, *Trilingual Legal Dictionary*.
40 *Erasmus: Superior Court Practice* RS 28, 2025, D6-24 to RS 28, 2025, D6-25 and, further, at RS 28, 2025, D6-25 to RS 28, 2025, D6-33.

part of the applicant, be it a clear right (required for a final interdict) or a *prima facie* right (for an interim interdict). The applicant has already been evicted from the Property and the Property has been sold. The same applies to the suspension of the administration of the applicant's insolvent estate or the insolvency process, which would only delay the finalisation of the estate and not benefit the general body of creditors, anxiously awaiting payment.

[57] Therefore, none of the orders sought by the applicant for interdictory relief has satisfied the applicable requirements. As already indicated, the impugned relief is not only dealt with under this part, but was traversed above.

Conclusion and costs

[58] On the basis of what is stated above, the application would fail. It simply lacks a factual or legal basis for the relief sought. There was no valid basis for the application to be launched considering the litigation history of the matter and the advanced stage in the administration of the applicant's insolvent estate. It is a clear abuse of process of this Court.

[59] The applicant may have been encouraged in his pursuit of this pointless litigation by the fact that he does not run the risk of payment of a cost order, since he is an insolvent. But, there is no such insulation against costs orders, since any such order would have to be satisfied from the applicant's new estate he started building immediately after the Kollapen Judgment. It doesn't really matter the size of such new estate. Therefore, I will mark the disapproval of the Court of this vexatious and *mala fide* litigation by ordering that the applicant should pay the costs of this application at an attorney and client scale. But, I do not agree that such costs should include the costs of two counsel. There was no basis to involve two counsel considering the facts of this matter, in particular the participation of the applicant in person or without legal representation.

Order

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

(1) the application is dismissed, and

(2) the applicant is liable to pay the costs of this application on attorney and client scale.

[redacted]

Khashane La M. Manamela
Judge of the High Court

Dates of Hearing	**:**	**5 and 8 May 2026**
Date of Judgment	**:**	**22 June 2026**

Appearances:

For the applicant	:	Mr CM Ellison (in person)
For the third respondent	:	Mr GJ Lötter
Instructed by	:	Serfontein, Viljoen & Swart Inc, Brooklyn, Pretoria
For the first, second and fourth respondents	:	No appearance