

REPUBLIC OF SOUTH AFRICA



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

Case Number: 2025-185522

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

In the matter between:

BIDVEST BANK LTD

Applicant

and

ERNEST ADRIAN BAYNES

Respondent

JUDGMENT

WENTZEL -THOMPSON J

Introduction

- [1] This is an opposed provisional sequestration application of the respondent. At the hearing, the respondent appeared in person and sought a postponement to enable him to obtain legal representation. This is not the first time that he has done this. At a prior hearing during April 2026 when a postponement was sought, the court warned the respondent that this would be last postponement afforded to him.
- [2] Despite this, the matter was postponed out of necessity at the previous hearing as the respondent's answering affidavit had not been pulled through from Caselines to Court on line.
- [3] The matter was accordingly set down again for 3 August 2023 and was heard by me.
- [4] This notwithstanding, applicant, again, sought a postponement.
- [5] The applicant opposes the postponement.
- [6] The chronology of events is relevant to the respondent's opposition to the postponement.

The relevant chronology

- [7] On 5 September 2022, the applicant and Baynes Transformers Technology (Pty) Ltd ("BTT") entered into an instalment sale agreement with BTT in the amount of R11 million. The respondent provided a guarantee as sole director and shareholder of BTT in favour of the applicant. In providing this guarantee, the respondent verified that he had assets in his personal capacity totalling R19 million, thus providing sufficient security to the applicant for the facility afforded to the respondent.
- [8] From the Bar, the respondent, who is hard of hearing, explained to me that although BTT's business was a thriving one and the best in all of Africa, it fell on hard times due to alleged unfair competition and improper acts by his competitors that forced him out of the market and caused the business to fail and rendered BTT unable to service its indebtedness to the applicant. He indicated that this was the subject of an investigation by the Competitions Commission and the Public Protector's Office.
- [9] None of this was on the papers under oath before me.
- [10] On 15 March 2024, the applicant instituted proceedings against BTT and the respondent under case number 2024-128635 pursuant to BTT's default under the instalment sale

agreement and a judgment under the instalment sale agreement and the guarantee was granted against BTT and the respondent.

- [11] 10 February 2025: BTT was placed under provisional liquidation by order granted by Flatela J under case number 2024-031538 with a return date set for 28 July 2025.
- [12] On 21 July 2025, the matter under case number 2024-128635 proceeded against the respondent as guarantor and an order was granted by McAslin AJ against the respondent in the amount of R 11 281 913.17, together with interest and costs.
- [13] On 1 August 2025, BTT was placed under final liquidation by order granted by Davis J under case number 2024-031538.
- [14] On 15 September 2025, a warrant of execution was served personally on the respondent at his residential address and a *nulla bona return* was issued.
- [15] In the result, an application for the provisional sequestration of the respondent was brought that was served personally on the respondent on 20 October 2025.
- [16] At the outset it must be mentioned that during the course of the sequestration proceedings thus far, the respondent has represented himself and must thus be regarded as a lay litigant.
- [17] The respondent's conduct of the litigation since his entering an appearance to defend on 3 November 2025 becomes crucially relevant to the current postponement sought and is detailed below.
- [18] Although the respondent filed a notice of intention to oppose on 3 November 2025, he failed to timeously file his answering affidavit that ought to have been filed by no later than 24 November 2025.
- [19] Accordingly, the matter was set down for hearing on the unopposed insolvency roll on 1 December 2025. On this occasion, the respondent appeared in person and informed the Court that he was in the process of securing legal representation. At his request, the matter was removed from the unopposed insolvency roll to afford him an opportunity to obtain legal representation and to deliver his answering affidavit. Symon AJ removed the matter from the role and afforded the respondent an indulgence to file his answering affidavit within 15 days of the Court Order.

- [20] The respondent failed to do so, and thus the matter was again set down on the unopposed insolvency roll on 16 March 2026, which came before Notshe AJ. The respondent again appeared in person and requested a further postponement to afford him additional time to secure legal representation and file an answering affidavit. The respondent secured yet a further indulgence from Notshe AJ to file his answering affidavit by no later than 17 April 2026. Again the matter was removed from the unopposed insolvency roll.
- [21] Finally on 17 April 2026, the respondent filed his answering affidavit as directed by Notshe AJ. The respondent filed his answering affidavit after court hours on 17 April 2026, with the result that the matter was removed from the unopposed insolvency roll again. This affidavit was only filed on Court Online, was not uploaded onto Caselines; nor was it served on the applicant's attorneys.
- [22] On 1 May 2026, the respondent filed a supplementary answering affidavit, again without uploading it onto Caselines or serving on the respondent's attorneys.
- [23] On 4 May 2026, the matter was again placed on the unopposed insolvency roll. Again, the respondent appeared in person and indicated that he had filed answering papers, requiring that the matter be removed from the unopposed roll and directing that it now be set down on the opposed roll. The learned judge advised the respondent to approach the Registrar to enable him to upload his answering papers onto Caselines as required and familiarise himself with how to navigate Caselines, which he did.
- [24] On each of these occasions, the Court afforded the respondent an indulgence to obtain legal representation. Despite those indulgences, the respondent had not yet secured legal representation by the time the matter came before me on 4 August 2026 where it had been set down on my opposed insolvency roll.

The steps taken by the respondent to obtain legal representation

- [25] The respondent applied to Legal Aid South Africa for legal representation, but that application was unsuccessful. On 15 July 2026, the respondent approached the Legal Practice Council ("LPC")'s Pro Bono Office in a further attempt to secure legal representation. He indicated to me that he had provided the LPC with the required financial documentation and was informed he would be informed of the outcome of his application in the next few weeks.

- [26] There appears to be a related matter pending in the Pretoria High Court in which the respondent is seeking to set aside the final liquidation of BTT, amongst other matters, that are not before me. The respondent is not represented in those proceedings either, but it appears that one of the judges hearing that matter sought to assist the respondent by requesting the Pretoria Society of Advocates to assign a member to represent the respondent *pro bono*, which they did. However, the respondent states that he has been struggling to find an attorney to brief him and also act *pro bono*. He informed me that he had approached Bowman Gilfillan and Webber Wentzel Attorneys, amongst others, without success.
- [27] These steps, however, involve his representation in the proceedings in Pretoria and not in the proceedings before me, although as I understand it he has approached the LPC to assign a *pro bono* attorney to him to brief the advocate who has already agreed to act *pro bono* in the Pretoria proceedings and he believes, would represent him in both proceedings, that is the proceedings for his provisional sequestration in Johannesburg and the proceedings involving BTT in Pretoria.

The hearing before me

- [28] The applicant's counsel was understandably frustrated by the proceedings before me and the respondent's attempt to again seek a postponement in order to afford him an opportunity to obtain legal representation, which it was submitted was merely a delaying tactic designed to avoid the inevitable sequestration of his estate. I agree that the persistent indulgences afforded to the respondent must stop.
- [29] I am advised that when the respondent appeared before Notche AJ, the learned acting judge warned the respondent that the respondent would not be afforded any further indulgences; yet he secured further time to obtain legal representation on 4 May 2026 because his affidavits had not been pulled through from Court Online to Caselines and could not be heard. That necessitated that the matter again be removed from the roll and set down again for the week commencing 3 August 2026.
- [30] Because the respondent appears to have further advanced in his quest to secure legal representation on a *pro bono* basis I am prepared to grant him one last indulgence to do so. I believe that the registrar is presently allocating dates for October 2026. That would afford the respondent further time to obtain legal representation. However, should he not have secured legal representation by the time that the matter is set down again on the opposed insolvency roll, he must know that he will not be afforded any further

indulgences or postponements to do so, and must accept that he has no option but to represent himself, as do several litigants in these courts.

[31] I stress further that the respondent is to secure legal representation sufficiently timeously to afford his legal representatives the opportunity to familiarise themselves with the papers, file heads of argument or take whatever steps that may be required to ensure that the matter is ripe for hearing on the next set down date. The Court will not permit the respondent a further indulgence to afford his legal representatives to familiarise themselves with his case or take any further steps on his behalf on the basis that they were belatedly briefed to represent the respondent.

[32] The next time this matter appears on the roll, the respondent is warned that it will be heard and disposed of and no further indulgences or postponements will be allowed.

[33] With this stern warning to the respondent, I agree to remove the matter from the opposed roll and will reserve the question of costs. The respondent is fortunate that I have not made an Order of punitive costs against him, but I am prepared to allow the Court next hearing this matter to determine the appropriateness of such Order as by then, it is hoped that the respondent will be represented. I am reluctant to make such an Order while the respondent remains unrepresented. But his unrepresented state should not hinder the Court next hearing this matter making a punitive costs order should it deem same appropriate.

[34] In the circumstances, I make the following Order.

- (1). The matter is removed from the opposed insolvency roll.
- (2). The wasted costs occasioned by this postponement are reserved.


S.M WENTZEL-THOMPSON
JUDGE OF THE HIGH COURT
JOHANNESBURG

HEARING:

Date of the hearing: 4 August 2026

Date of the judgment: 6 August 2026

APPEARANCES

For the applicant: Ms. Dionne Gana instructed by Du Toit, Sanchez and Moodley Inc.

For the respondent: Self-represented

