

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

CASE NO.: 2023-070978

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

Date: 18 August 2026

E van der Schyff

In the matter between:

THE LEISURE BAY BODY CORPORATE

APPLICANT

And

LESEGO LOVEDELIA MORETLWE

RESPONDENT

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. In the event that there is a discrepancy between the date the judgment is signed and the date it is uploaded to CaseLines, the date the judgment is uploaded to CaseLines is deemed to be the date that the judgment is handed down.

JUDGMENT

VAN DER SCHYFF J

Introduction

- [1] The applicant seeks the final sequestration of the respondent's estate. The application arises from arrears levies and related charges owed by the respondent, as the owner of Unit 179 in the Leisure Bay sectional title scheme.
- [2] The respondent fell into arrears. On 30 May 2022, the applicant obtained judgment in the Magistrates' Court for R46 150.52, interest, and costs on attorney-and-client scale. In September 2022, the parties concluded an acknowledgment of debt for R65 053.97, incorporating the legal costs then incurred. The respondent undertook to pay R6 938.68 monthly. The applicant avers that she paid twice, in September and November 2022, and thereafter defaulted. The levy statement annexed to the founding affidavit records three

payments of R6 940 each, in September, November and December 2022. The last was late. Three instalments had by then fallen due.

- [3] Execution followed. The sheriff demanded satisfaction of the judgment and rendered a *nulla bona* return. The sequestration application was launched during July 2023, when the arrears stood at R73 946.45. It was served personally on the respondent. Ceylon AJ granted a provisional order on 13 November 2023, with a return date of 14 March 2024.
- [4] The return date was extended from time to time. The rule *nisi* ultimately lapsed when the matter was removed from the roll without a further extension. On 19 May 2026, Labuschagne J held that the rule had been discharged in error. He dismissed the revival application and directed in terms of s 173 of the Constitution that the sequestration application be enrolled on the opposed roll for finalisation.

The procedural position

- [5] The procedural position should be stated at the outset. No provisional order is presently in force. The rule *nisi* lapsed and the revival application was dismissed. Labuschagne J dismissed the revival application and directed, in terms of s 173 of the Constitution, that the Registrar enrol the sequestration application on the opposed roll for finalisation. The sequestration application as a whole is therefore before me. This Court may grant a rule *nisi* under s 10 of the Insolvency Act, grant a final order under s 12, or dismiss the application. The applicant asked that the matter be determined finally on the affidavits already filed. I approach it on that basis. The order below disposes of the application in both its provisional and final form.
- [6] The matter must be determined on the evidence now before this Court. Under s 12(1) of the Insolvency Act 24 of 1936, a final sequestration order may be granted only if the Court is satisfied that the applicant has established the requisite claim, 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.
- [7] The applicant relies on the historical *nulla bona* return and on statements by the respondent concerning her inability to meet all her financial obligations. It also relies on the increase in the balance reflected on the levy account and contends that the respondent's financial position has not materially changed.

The act of insolvency

- [8] The sheriff's return constituted an act of insolvency under s 8(b) of the Insolvency Act, and it remains one. The passage of time does not cause such a return to cease establishing an act of

insolvency. The application was served personally on the respondent, whose case throughout has been that she cannot meet the amounts demanded of her. The age of the return is, however, relevant to the exercise of the Court's discretion. I deal with it there.

- [9] There have subsequently been material subsequent developments. Most importantly, the judgment debt in respect of which execution was undertaken has since been paid. The applicant accepts this in its heads of argument. The respondent has also continued to make payments to the applicant and remains in salaried employment. The papers contain proof of recurring payments of approximately R4 000 to R4 300 during 2025 and 2026. The March and June 2026 payment notifications each reflect R4 300. On the estate manager's own advice in August 2024, the monthly levy contribution for the unit was R2 065. The recurring payments therefore exceed the current monthly contribution by a substantial margin, leaving an excess available to reduce accrued arrears. This payment history, however, is met by the submission that the respondent does not pay enough towards the monthly levy contribution to satisfy the arrears and remain up to date.
- [10] The applicant relies on the increase in the respondent's levy-account balance as evidence that her financial position has not materially improved. The amount is, however, composite: it includes levy contributions, interest and substantial legal costs. The application was founded on a judgment debt of R46 150.52. The arrears stood at R73 946.45 when the application was launched during July 2023, and at R129 019.47 by May 2024. A final letter of demand dated 19 September 2025 reflected R203 122.42. In its heads of argument the applicant puts the arrears, costs and interest at the hearing of the revival application at R243 410.39. The revival judgment described the figure as being in the region of R205 000. Measured against a monthly levy of some R2 065, unpaid contributions alone cannot explain that increase. Counsel confirmed that the outstanding amount contains untaxed legal costs and interest.
- [11] Prescribed Management Rule 25(4) provides that a member is liable to a body corporate for all reasonable legal costs and disbursements incurred in the recovery of arrear contributions, as *taxed or agreed by the member*. In *SS Glen High v Kruger NO*¹ it was held that legal costs already incurred by a body corporate, and therefore standing to be reimbursed to it, constitute a liquidated amount which need not be taxed before it can be claimed. The Court there also found that the member had agreed to reimburse those costs, so that the requirement of agreement was in any event satisfied. In *Mannikin Close Body Corporate v Mrabalala*² that

¹ *SS Glen High v Kruger NO* (2023/055133) [2024] ZAGPJHC 1059 (10 September 2024) paras [30]-[32].

² *Mannikin Close Body Corporate v Mrabalala and Others* (2024/118851) [2025] ZAGPJHC 959 (22 September 2025).

reasoning was declined. It was held that to treat untaxed attorney invoices as liquidated debts would expose owners to unverified and potentially inflated charges, and that taxation is an important safeguard of reasonableness and proportionality where the owner has no visibility of the work done. It is unnecessary for me to resolve that difference. What is material in this matter is the manner in which the subsequent legal costs came to be reflected in this respondent's running account.

- [12] The costs incorporated in the September 2022 acknowledgment of debt were agreed within its meaning. The respondent expressly acknowledged a composite indebtedness that included the legal costs then incurred. The costs relevant to this judgment are different. They are substantial legal expenses debited to the running levy account after that date.
- [13] The statements show that untaxed legal costs were debited to the same running account as the respondent's levy indebtedness. Interest was thereafter periodically debited as "Interest on Arrears" against the running balance. The sequence and amounts indicate that the interest calculation included balances to which legal costs had already been added.
- [14] Once the costs were incorporated into the running balance, they contributed to the base against which further interest was calculated. Their inclusion therefore had a compounding effect on the headline indebtedness.
- [15] Before growth in the headline balance can reliably support an inference of continuing inability to pay, the cause of that growth must be known. The account combines unpaid contributions, interest and substantial legal costs in a single running balance. Whether or not some or all of the costs are ultimately recoverable, the escalating composite balance cannot, without a proper reconciliation, reliably measure either unpaid levy contributions or a deterioration in the respondent's financial position.
- [16] The applicant further contends that the respondent preferred one creditor above another and relies on s 8(c) of the Insolvency Act. Section 8(c) is concerned with a disposition of property which has, or would have, the effect of prejudicing creditors or preferring one creditor above another.³
- [17] The factual basis advanced is principally that, while unable to meet all her obligations as they fell due, the respondent incurred and serviced education-related debt and from time to time applied her limited income to different obligations. That conduct may demonstrate financial distress. Without more, it does not identify a particular disposition having the effect

³ *Standard Bank of South Africa Ltd v Danie Thomas Boerdery CC* (4535/2012, 4534/2012) [2013] ZAFSHC 32 (21 February 2013) at para [18].

contemplated in s 8(c). The papers identify no payment or transfer that placed a particular creditor in a demonstrably preferential position vis-a-vis the general body of creditors.

- [18] Extinguishment of a preferred creditor's claim is not the legal test. A partial payment may, in an appropriate case, have a preferential effect. In this matter, the respondent's substantial and recurring payments to the applicant itself militate against the broader contention that she persistently preferred other creditors above the applicant.
- [19] The applicant also relies on s 8(e), which concerns a debtor who makes or offers to make an arrangement with any creditor for releasing her wholly or partially from her debts. The reliance is based on the respondent's repeated attempts to arrange payment. An offer to pay a debt in instalments is not an offer to be released from it, whether wholly or in part. The correspondence discloses requests for a reconciled statement and a payment plan. Their tenor is an intention to discharge the indebtedness, not to be released from any part of it. Her request that legal fees and interest be removed from the levy account stands on the same footing. Section 8(e) is not established.
- [20] Section 8(g) concerns a debtor who gives written notice to any one of her creditors that she is unable to pay any of her debts. The applicant relies on the respondent's written statements of inability to pay. This ground has considerably more substance. In her affidavits and correspondence the respondent stated in terms that she could not meet the amounts demanded of her. It is unnecessary to decide whether a written statement of inability to pay a particular disputed amount, coupled with an offer to pay a stipulated monthly sum, amounts to notice of the general inability at which the section is directed. I am prepared to assume in the applicant's favour that s 8(g) is established. The assumption does not affect the outcome. An act of insolvency under s 8(b) has in any event been established, and s 12(1)(b) is thereby satisfied.
- [21] One further submission should be recorded. The applicant contends, correctly, that it may rely on one or more acts of insolvency, including acts coming to its knowledge after commencement of the proceedings. Nothing in this judgment denies that proposition. The difficulty is not that the applicant is confined to the act pleaded at the outset. It is that the additional acts relied upon are, on the evidence, either not established or immaterial to the outcome.

Factual insolvency

- [22] The applicant also alleges factual insolvency. Actual insolvency requires that the debtor's liabilities, fairly estimated, exceed her assets. An applicant need not establish the position in rands and cents. It discharges the onus if the evidence justifies the inference, as a matter of probability, that the respondent is insolvent, whereupon it falls to the respondent to show

sufficient assets to meet her liabilities. An inability to meet current demands is not the same thing. Commercial insolvency in that sense is a ground for winding up a company; it does not establish the actual insolvency of a natural person. Here the evidence goes no further than a persistent failure to meet payment obligations. That indicates cash-flow difficulty rather than a balance-sheet deficit, and the respondent owns immovable property of substantial value. Factual insolvency is not established. Nothing, however, turns on that finding because s 12(1)(b) is satisfied by the act of insolvency.

Advantage to creditors

- [23] The applicant relies principally on the respondent's immovable property to indicate that there is reason to believe that the respondent's sequestration will be to the advantage of creditors. The threshold is not a high one. It suffices that there is a reasonable prospect, not too remote, of some not-negligible pecuniary benefit to the general body of creditors, or that an investigation into the debtor's affairs may unearth assets which will benefit them.⁴
- [24] The respondent owns Unit 179. The applicant holds no security in the conventional sense, but a body corporate is not in the position of an ordinary unsecured creditor. The statutory embargo on the issue of a clearance certificate operates as an effective preference upon transfer and is not displaced because the sale occurs in execution or in the administration of an insolvent estate. The papers disclose a mortgage bond over the unit, registered on 24 June 2016 in the amount of R1 315 000, but no evidence of what, if anything, remains owing under it. The applicant states that it does not know. That gap is not fatal. In the revival judgment Labuschagne J recorded, taking judicial notice of property values within the scheme, that the amount outstanding is but a fraction of the value of the respondent's property. I am satisfied that s 12(1)(c) is established.

The exercise of the discretion

- [25] The applicant has established a liquidated claim well above the statutory minimum, an act of insolvency under s 8(b), and reason to believe that sequestration will be to the advantage of creditors. The jurisdictional requirements of s 12(1) are satisfied. The remaining question is whether the Court should nevertheless decline to grant the order.
- [26] The judgment debt underlying the sheriff's return has been paid. The respondent commenced making monthly payments exceeding her current levy contribution. She remains in salaried employment. The indebtedness now asserted also includes a substantial legal component

⁴ *Meskin & Co v Friedman* 1948 (2) SA 555 (W) at 559.

which the applicant's own management regarded as requiring separation and quantification before the account could sensibly be discussed. None of these matters defeats a jurisdictional requirement. Each bears on whether the order should be granted.

- [27] Even where the requirements of s 12(1) are established, the Court retains a discretion whether to grant a final order. The discretion is judicial and not at large. It has been described as a power coupled with a duty. Absent special or unusual circumstances, the order should ordinarily follow, and the respondent must establish circumstances warranting refusal. The respondent appeared in person and did not frame her opposition in those terms. The material on which such circumstances would rest is nevertheless squarely before me and must be considered. The question is whether the circumstances are sufficiently special to justify refusing the order.
- [28] In exercising that discretion, I attach considerable weight to the manner in which the respondent's alleged indebtedness accumulated. The application was founded on a judgment debt of R46 150.52. That debt has since been paid. The respondent thereafter continued to make payments to the applicant, yet the amount presented as outstanding increased substantially. The statements show that subsequent legal costs were debited to the running levy account and that interest was thereafter calculated on balances including those costs.
- [29] I have not overlooked the applicant's considerations. A body corporate has no source of income other than its members' contributions. If one member does not pay, the shortfall is carried by the remaining owners, who bear a default for which they are not responsible. The applicant made the point squarely in argument and it is weighty. The courts have repeatedly recognised the importance of effective recovery mechanisms for bodies corporate and the prejudice caused to a scheme by delinquency in payment of contributions. Nothing in this judgment diminishes that consideration or suggests any general reluctance to sequester a defaulting member.
- [30] I am of the view, however, that sequestration should not follow because a running account has increased where that increase is materially affected by legal charges whose quantum has not been separately reconciled, and interest has then been calculated on the enlarged balance. The effect is not limited to the addition of the legal charges. Once incorporated, they contributed to the base on which further interest was calculated. The resulting compounding effect materially weakens the inference that growth in the headline balance demonstrates a corresponding deterioration in the respondent's financial position.
- [31] This does not absolve the respondent from liability for levies properly raised, nor does it finally determine what legal costs the applicant may recover from her. Those matters may be pursued and quantified through the appropriate processes. The question here is whether the

respondent's estate should now be sequestrated. In deciding that question, it would be unsafe to treat the escalating composite balance, without more, as evidence of continuing insolvency.

[32] A further consideration points in the same direction. Sequestration brings about a *concursum creditorum* for the benefit of the general body of creditors. It is not a mechanism for the collection of a single creditor's debt.⁵ On the papers before me, the applicant has not sought to execute against the respondent's unit, an asset in respect of which it enjoys the protection of the embargo described above. Where a creditor has available to it a less drastic route to satisfaction of its claim and elects instead to seek the sequestration of a debtor, is a matter the Court is entitled to weigh. I do not suggest that a creditor must exhaust every other remedy before applying for sequestration. The ready availability of an obvious alternative nevertheless affects the question of whether this drastic order should be granted in this case.

[33] Taken together with payment of the judgment debt underlying the sheriff's return, the respondent's payment history, and the way the balance said to demonstrate deterioration has been compiled, these considerations persuade me that final sequestration is not warranted. Although the jurisdictional requirements of s 12(1) are satisfied, they justify declining the order in the exercise of the discretion conferred by that section.

[34] The application must therefore be dismissed.

Costs

[35] Costs ordinarily follow the result, and the respondent has succeeded. She has, however, appeared in person throughout and incurred no legal costs. Any award in her favour would therefore be confined to disbursements, which were neither quantified nor sought. There is a further consideration. Each party will bear its own costs.

ORDER

In the result, the following order is made:

1. The application for the sequestration of the respondent's estate is dismissed.
2. There is no order as to costs.


E VAN DER SCHYFF

⁵ *Standard Bank of South Africa Ltd v Danie Thomas Boerdery CC* (4535/2012, 4534/2012) [2013] ZAFSHC 32 (21 February 2013) at para [15].

**JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

For the applicant:	Adv J Vorster
Instructed by:	Maree Attorneys Inc
For the respondent:	In person
Date of the hearing:	11 August 2026
Date of judgment:	17 August 2026