



**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

(1) REPORTABLE: YES
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED.
DATE: 20 AUGUST 2026
SIGNATURE [Redacted Signature]

CASE NO: 067434/2020

In the matter between:

EX PARTE: G VAN ANTWERP

Applicant

CASE NO: 076862/2026

EX PARTE: A J VAN DER WESTHUIZEN

Applicant

CASE NO: 067567/2026

EX PARTE: P J SNYMAN

Applicant

CASE NO: 082579/2026

EX PARTE: Q and P M VERMAAK

Applicants

Summary: *Insolvency Law – voluntary surrender – in the Gauteng Division it is the practice that applicants for the acceptance of the voluntary surrender of their estates indicate the availability of a dividend of 20c/Rand for concurrent creditors, after the costs of the application and the administration of the estate have been accounted for. Upon a consideration of a number of matters enrolled on the insolvency court roll of the Pretoria seat of this Division, it appeared that a practice has developed where parties only disclose so much of their assets as to enable them to achieve the minimum dividend threshold, alleging that this represented an advantage to creditors. The non-disclosure of assets and the contrivance of evidence to reach a targeted dividend, are unlawful and improper. Applications for the acceptance of the voluntary surrender of estates wherein a court cannot be satisfied that dividend calculations have not been manipulated, should be refused.*

ORDER

The applications for voluntary surrender of the applicants' respective estates in matters *Ex parte G Van Antwerp* Case No. 067434/2026, *Ex parte A J Van der Westhuizen* Case No, 076862/2026, *Ex parte P J Snyman* Case No. 067567/2026 and *Ex parte Q and P M Vermaak* Case No. 082579/2026, are refused.

J U D G M E N T

The matters under consideration were heard in open court and the judgment was prepared and authored by the judge whose name is reflected herein and was handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date of handing-down is deemed to be 20 August 2026.

DAVIS, J

Introduction

[1] Despite “debtor-friendly” voluntary bankruptcy systems operating in some foreign jurisdictions and despite occasional calls for a change in the approach to applications for the surrender of estates in South Africa, our law is still that insolvency proceedings are creditor driven¹. This means that the invocation of the mechanisms provided for in the Insolvency Act² (the Act), must be to the advantage of the general body of concurrent creditors of a debtor³.

[2] The practice in this Division is that, in order to indicate to a court that there would be a sufficient pecuniary benefit for creditors in applications for the

¹See: Acta Universitatis Danubis, *The Meaning of Advantage to Creditors under Voluntary, Compulsory and Friendly Sequestration in South Africa*, AUDI, Vol 15 No 2/2019 pp 62-83, Roestoff & Boraine, *Body Corporate Palm Lane v Masinge: Discretion and powers of the court in applications for sequestration* 2013 De Jure 208 and Boraine, Evans, Roestoff & Steyn, *The Pro-Creditor Approach in South African Insolvency Law and the Possible Impact of the Constitution* (2015) 3 NIBLeJ 5

² 24 of 1936

³ Section 2 of the Act and see: *Meskin & Co v Friedman* 1948 (2) SA 555 (W).

voluntary surrender of an applicant's estate, a dividend of no less than 20c/Rand is expected⁴.

[3] In *Ex parte Slabbert*⁵ (*Slabbert*), this court has pointed out that experience has shown that a surprising number of applicants in applications for the acceptance of the voluntary surrender of their respective estates, irrespective of where they may reside within the area of the Court's jurisdiction and irrespective of the multiple permutations resulting from their differing circumstances, the differences of their assets, the number and extent of their creditors, the dividends are almost without fail 20c – 25c/Rand.

[4] In *Slabbert* the improbability of these figures being correct, raised concerns and the three applications in that matter were all refused. In those matters the applicants and/or the valuator used by them, only valued certain assets, erroneously claiming that other (undisclosed) assets may validly be excluded.

[5] The creation of insolvency courts in both seats of this Division resulted therein that multiple applications enrolled by the same attorney, often come to be considered by the same judge. While individual applications might on the face of each of them appear to be in order, once multiple applications are read jointly, patterns emerge which indicate a manipulation of the figures presented to court. In the matters under consideration in this judgment, this was not done by claiming exclusion of certain assets (as was done in *Slabbert*), but simply by selectively disclosing only sufficient of their assets to reach a target dividend.

The matters in question

[6] In the third week of term 3 of 2026, I heard 84 matters in the insolvency court of the Pretoria seat of the Gauteng Division. Among those matters, were the

⁴ *Ex parte Ogunlaja* [2011] JOL 27029 (GNP) at par 9 per Bertelsmann J.

⁵ (099263/2024) [2025] ZAGPPHC 286; [2025] 3 All SA 264 (GP) (20 March 2025).

four applications for the surrender of estates which form the subject-matter of this judgment. They are: *Ex parte G Van Antwerp* Case No 067434/2026, *Ex parte A J Van der Westhuizen* Case No 076862/2026, *Ex parte P J Snyman* Case No 067567/2026 and in the application for the surrender of their joint estate, *Ex parte Q and P M Vermaak* Case No 082579/2026.

[7] Before I deal with the consideration of these applications individually, it is apposite to first set out the legal requirements that the respective applicants had to meet, before indicating indicate why I found that the applicants' applications weren't up to scratch.

The applicable law

[8] Section 3(1) of the Act provides that “... *an insolvent debtor ... may petition the court for the acceptance of the surrender of the debtor's estate for the benefit of his creditor*”. For “petition” read “apply to”.⁶

[9] Section 4 of the Act prescribes a number of formalities applicable to applications for voluntary surrender. These pertain to prior notice of the application, both by publication and registered mail to creditors as well as the availability for inspection of the applicant's statement of affairs at the Master and, where applicable, the local Magistrates office.

[10] Section 6(1) of the Act, amongst other issues, prescribe that the voluntary surrender of an applicant's estate can only be accepted once the court is satisfied that the estate is factually insolvent and that the debtor owns “*realisable property of a sufficient value to defray all costs of sequestration ... and that it will be to the advantage of creditors if his estate is sequestrated ...*”.

⁶ Section 1 of the Petition Proceedings Replacement Act 35 of 1976.

[11] As already indicated, in this Division, the “advantage to creditors” has been taken to mean a dividend, after costs, of no less than 20c/Rand for the general body of creditors⁷. This is despite the fact that “... *the troubled economic times might engender sympathy for debtors whose financial burden has become too much to bear...*”⁸.

[12] In addition, although the requirements and formalities for applications for voluntary surrender have been statutorily prescribed, the applications remain *ex parte* in nature. As such, each applicant must display *uberrima fides*, that is utmost faith to the Court. In *Ex parte Arntzen*⁹ the court has emphasized that in applications of this nature, the requirement of full disclosure to be made by applicants, is even more stringent as the relief sought impacts on the rights of third parties, namely the estate’s creditors.

[13] In *Ex parte Steenberg & other related cases*¹⁰ the court expressed the view that often valuers give an inflated value to assets “*for insolvency purposes ... to enable the debtor ... to surmount the difficulty of showing advantage to creditors*”. To ward against this, full and proper description of the assets must be given, so much so that the court can be satisfied that the values reflected are true and realistic.

[14] The existence of a free residue, sufficient to pay all the costs of sequestration, has been described as an “indispensable condition precedent” to a court’s acceptance of a voluntary surrender¹¹.

⁷ See the various permutations of the Practice Directives and Practice manuals over the years since *Ex parte Ogunlaja* referred to in footnote 4 above.

⁸ *Ogunlaja* at par 9 again.

⁹ 2013 (1) SA 49 (KZN). See also in general *Schlezingers v Schlezingers* 1979 (4) SA 342 (W).

¹⁰ 1996 (3) SA 822 (W).

¹¹ *Ex parte Vane* 1956 (4) SA 616 (O), *Ex parte Swanepoel* 1975 (2) SA 367 (O) and *Ex parte Matthysen et uxore (First Rand Bank intervening)* 2003 (2) SA 308 (T) at 311J – 312G.

[15] In compiling a statement of the applicant's affairs as required by section 4(3) all assets must be included and no assets should be omitted merely because they are hypothecated or regarded as worthless¹².

[16] The reason why the statement of affairs must be furnished with meticulous accuracy "*... is to afford each of the creditors information concerning the debtor's property and liabilities in order to enable such creditors to determine the attitude [they] intend to adopt towards the application*".¹³

[17] Once full disclosure has been made of the applicant's estate, not only are the creditors of the debtor/insolvent in a position to determine their response to the proposed voluntary surrender, but the Court is then also in a position to make a determination as to whether the acceptance of the surrender would carry with it a sufficient advantage for the general body of creditors¹⁴.

[18] In order to assist with and provide a measure of proof of the advantage and possible dividends, the assets disclosed must be inspected by a qualified valuator in the presence of the applicant and a sworn valuation must be provided, indicating the realisable value of each item of the assets, both movable and immovable¹⁵.

[19] Against the backdrop of these requirements, I shall now deal with the applications under consideration and indicate thereafter why I was not satisfied that the substantive requirement of advantage to creditors had been met.

¹² *Ex parte Klopper* 1965 (2) SA 107 (O).

¹³ Meskin, *Insolvency Law in South Africa* at par 7.3.2 on 3-8 (3) and *Ex parte Nel (supra)* and *Ex parte Van Zyl* 1963 (2) SA 311 (G).

¹⁴ See: *Stratford and Others v Investec Bank Ltd* 2015 (3) SA 1 (CC) at par [45] and *Meskin & Co Ltd v Friedman* 1948 (2) SA 555 (W).

¹⁵ *Ex parte Erasmus* 2015 (1) SA 540 (GP) per Bertelsmann J, laying down the procedure in this regard in this Division.

Ex parte G Van Antwerp Case No 067434/2026 (Van Antwerp)

[20] The applicant in this matter is a self-employed skills developer from Edenvale, Gauteng. He has disclosed creditors of R106 288.91. The assets he disclosed consist of a three-seater aluminium couch, two typists chairs, a wooden wardrobe and two second-hand “quad bikes”. These assets were valued by a valuator at the rounded off figure of R52 000.00. Based on this, the dividend, after the attorneys fees of R10 500.00 had been taken into account, was calculated at 25c/Rand.

[21] No vehicle was listed as an asset, but the applicant listed vehicle insurance as one of his monthly expenses.

Ex parte E P Van der Westhuizen Case No 076862/2026 (Van der Westhuizen)

[22] In this matter the applicant is a self-employed debt collector from Krugersdorp, Gauteng. He disclosed creditors of R101 446.27. Household items, ranging from an air fryer to a “gaming steering wheel”, were disclosed and valued at R50 000.00. The attorneys fees were lower in this instance, being R10 000.00, resulting in a calculated dividend of 23c/Rand.

[23] Again, as in *Van Antwerp*, no vehicle was disclosed, despite the applicant claiming the payment of vehicle insurance as an expense.

Ex parte P J Snyman Case No 067567/2026 (Snyman)

[24] In this matter the applicant is a self-employed contractor from Magalieskruin in Pretoria, Gauteng. The applicant disclosed creditors of R101 209.46. The disclosed assets consisted of twelve household items, valued at R50 000.00. After a reduction of the attorneys fees to R8 500.00, the calculated dividend was 24c/Rand.

[25] Again, no vehicle was disclosed.

Ex parte Q and P M Vermaak Case No 082579/2026 (Vermaak)

[26] The applicants in this matter are married to each other. Mr Vermaak is a testing technician and his wife is unemployed, having been retrenched three years ago in 2023. They are from Boksburg, Gauteng. They have disclosed creditors in the amount of R82 107.62.

[27] This time round, a vehicle was indeed disclosed but featured as the sole asset. It was a sixteen-year-old VW in a fair/poor condition, valued at R40 000.00.

[28] After having taken attorneys fees, which now were listed as R8 000.00, into account, a dividend of 22c/Rand was calculated.

Evaluation

[29] It is immediately apparent that the applications feature remarkable similarities. The applicants in all four applications were represented by the same attorneys and all used the same valuator. All the disclosed assets consisted only of movables and were valued in rounded-off figures. While this might not alone be significant, the asset values were all close to each other, being R52 000.00, R50 000.00, R50 000.00 and R40 000.00 respectively. The value of creditors disclosed in the first three applications were similarly very close to each other, being some R106 000.00 in the matter of *Van Antwerp* and some R101 00.00 in both *Van der Westhuizen* and *Snyman*. In *Vermaak* the disclosed creditors were 20% less, but by the same measure, so was the value of the sole asset.

[30] The most striking similarity is that, despite the numerous permutations which must surely accompany each set of circumstances, the applicants all

managed to disclose dividends which are a few cents apart and which are all marginally above that which would supposedly satisfy a court.

[31] The risk for creditors when the extent of their claims are under-disclosed or underestimated, is that the eventual actual dividend ends up being far less than that portrayed to the court at the time of voluntary surrender. This is exactly what happened in the insolvent estates of a number of other clients of the same attorneys, which also featured in the same week on the same insolvency court roll. I shall give the examples hereof hereunder.

[32] In an application for rehabilitation in *Ex parte J. J. P and S Prinsloo* Case No 023 303/2026, the creation of an insolvent estate was by way of a sequestration order obtained by a single creditor. In the sequestration application, it was alleged that the insolvent owed a company, Workcraft Solution (Pty) Ltd some R80 000.00. Despite allegations that sequestration would be to the advantage of creditors, the insolvent disclosed in his subsequent application for rehabilitation, that he had no assets at the time of sequestration. Unsurprisingly, the creditor did not prove a claim. There having been insufficient funds to cover the costs of administration of the estate, a contribution was levied, which the insolvent had paid with a view to his rehabilitation. More surprising than the fact that the sequestrating creditor had not proven a claim, was that the sequestrating creditor was represented by the same attorneys who represented the applicant in the application for rehabilitation. This was the same set of attorneys who represented the applicants in all the matters under consideration in this judgment.

[33] In a similar application for rehabilitation in *Ex parte W.A Maree* Case No 093017/2026, yet another single creditor had obtained a sequestration order less than two years prior to the rehabilitation application. The sequestrating creditor was a close corporation of which the insolvent was a member, so there should not have been any doubt about the extent of the insolvent's estate. In the

rehabilitation application, the insolvent disclosed that, at the date of sequestration he had no assts. Again, unsurprising in these circumstances, no claims were proven. The same attorneys represented both the sequestrating creditor and the insolvent. They are the same attorneys as in the present matters.

[34] In yet another application for rehabilitation in *Ex parte F. J. Bzuidenhout* Case No 122112/2026 the insolvent, in his prior application for voluntary surrender, disclosed creditors of some R157 000.00 and assets sufficient to realise a 20c/Rand dividend. This was clearly an understatement of liabilities as claims exceeding R247 000.00 were proven, which reduced the dividend to about 13c/Rand. The understatement was insufficiently explained when I granted the insolvent the opportunity to supplement his papers. Yet again, the same set of attorneys featured.

[35] The fourth example appeared in the rehabilitation application of *Ex parte A. J Serfontein* Case no 100390/2026. In that matter, an understatement of creditors of R119 000.00 resulted in claims being proven in excess of R397 000.000. Once again, the understatement was insufficiently explained in a supplementary affidavit. The result was, however, that the estimated dividend of 20c/Rand in the prior voluntary surrender, was reduced to about 6c/Rand in the course of administration of the estate.

[36] In all the above applications, and after the attorneys had been furnished an opportunity to address the court's concerns regarding possible conflicts of interest in representing sequestrating creditors and thereafter representing the insolvent in the same respective estates, separate ex tempore judgments had been delivered. It is not necessary to go into the merits of those matters or the respective judgments beyond what has already been stated above, save to underline that the lack of acceptable dividends illustrate the point made earlier about the risk of a lack of a proper benefit for creditors. This court has also had other occasions to

frown upon the understatement of liabilities in applications for the surrender of estates¹⁶.

Conclusion

[37] In *Van Antwerp*, *Van der Westhuizen* and *Snyman*, I find it improbable that a person would pay for vehicle insurance, but have no vehicle to disclose in his estate, even if such a vehicle is subject to a credit agreement. Similarly, I find it improbable that *Van Antwerp* and *Snyman* would only have the limited number of household items to discover. I find it even more improbable that Mr and Mrs Vermaak would have, as the sole asset in their joint estate, an almost dilapidated vehicle. If any of these applicants have excluded household assets or other items because they (or their attorney or the valuator) believed that those assets may be shielded from execution, they have not said so and any such non-disclosure would in any event fall foul of *Slabbert*.

[38] I find it much more probable that the respective disclosures and non-disclosures of assets have been done in order to manipulate the calculation of a dividend which would satisfy the requirements already referred to above. It is not possible to determine how much of each estate has not been disclosed to the court, but from the patterns which have emerged, this court cannot reasonably be satisfied that a full and frank disclosure had been made or that the requirements of section 6(1) of the Act had been satisfied in each of the applications.

Order

[39] I therefore make the following order:

The applications for voluntary surrender of the applicants' estates in matters *Ex parte G van Antwerp* Case No. 067434/2026, *Ex parte A J van*

¹⁶ *Ex parte Le Roux* (016174/2026) ZAGPPHC (6 May 2026), relying on *Ex parte McBride* (003235/2024) [2024] ZAGOPGC 1166 (15 August 2024.)

der Westhuizen Case No. 076862/2026, *Ex parte P J Snyman* Case No. 067567/2026 and *Ex parte Q and P M Vermaak* Case No. 082579/2026 are refused.


N DAVIS

Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 04 August 2026

Judgment delivered: 20 August 2026

APPEARANCES:

For the Applicants:

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