

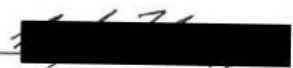
REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED: **YES**
(4)

28 August 2026
DATE


SIGNATURE

Case No. 121275 / 2023

In the matter between:

PROE SHABANGU N.O

First Applicant

STEMBILE ALFONSINA SHABANGU N.O

Second Applicant

NOMSAMU PERSEVERENCE MAHLANGU N.O

Third Applicant

and

THE COMMISSIONER OF THE SOUTH AFRICAN

Respondent

REVENUE SERVICES

ORDER

1. The application for leave to appeal is dismissed with costs on scale C.

JUDGMENT

TOLMAY J:

[1] The Roux Shabangu Family trust ("the Trust") seeks leave to appeal against the judgment and order finally sequestrating the Trust. The application is primarily based on the Trust's payment of its debt to SARS. The trust submits that payment of the debt meant that SARS no longer had a qualifying claim, from which it follows that the requirements of section 12(1)(a) of the Insolvency Act¹, had not been met.

[2] Section 17(1) of the Superior Courts Act² requires a two-stage enquiry when considering leave to appeal first, the court must decide whether there are reasonable prospects that another court, considering the same facts, would reach a different conclusion. If so, leave to appeal should be granted. If not, the court must consider whether any compelling reason exists for the appeal to be heard.

[3] The judgment explains the basis for the order and the Court's exercise of its discretion in granting a final sequestration, despite the payment. The reasons advanced in the judgment need not be repeated. The application is aimed mainly at the Court's assessment of the facts, the inferences drawn, and the exercise of its discretion.

[4] The Trust's argument is inter alia based on the mistaken assumption that the final hearing took place on 1 December 2025. The matter was heard on 22 and 23 July 2025, after which the parties filed further affidavits. On 12 August 2025, the Court was informed that the Trust had paid its debt to SARS. Additional affidavits followed, as dealt with in the judgment. The Court later convened a case-management meeting to ensure the finalisation of the matter. It is therefore incorrect to contend that the final

¹ 24 of 1936

² 10 of 2013

hearing occurred on 1 December 2025. The chronology is addressed fully in the judgment.

[5] The underlying facts are both material and decisive. The Trust had committed acts of insolvency under sections 8(e) and 8(f) of the Insolvency Act. Payment was made only after the provisional sequestration and the final hearing of the application. The source and legal character of that payment remained unresolved and was challenged by SARS. The facts also revealed potentially impeachable transactions, and the Court found that an investigation could reasonably yield a pecuniary benefit.

[6] I was referred, among other authorities, to *Scania Finance Southern Africa (Pty) Ltd v Mathafeng Investment Holdings (Pty) Ltd*³. That case is distinguishable from the present matter. In this matter and as recorded in the judgment SARS traced funds through several accounts and entities, identified inaccurate information, and uncovered a transaction that may be open to challenge. During those investigations, the alleged borrower changed from Mr Shabangu to the Trust, although both were under provisional sequestration, and no adequate explanation for the origin of the funds was provided.

[7] The Court applied the principles governing the granting of a final sequestration order, and the exercise of its discretion, in the context of the facts of this case. There is no reasonable prospect that another court would reach a different conclusion, nor is there any compelling reason to grant leave to appeal.

[8] The following order is made:

1. The application for leave to appeal is dismissed with costs on scale C.


R TOLMAY
JUDGE OF THE HIGH COURT

³ 2026 JDR 1862 (GP)

GAUTENG DIVISION, PRETORIA

This judgment was prepared and authored by the judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 28 August 2026.

APPEARANCES:

For the Applicant	:	Adv R Mastenbroek
Instructed by	:	Mayet Attorneys Inc.
For the Respondent	:	Adv MP Van Der Merwe SC with Adv CAA Lewaak
Instructed by	:	MacRobert Inc Attorneys
Matter heard on	:	20 August 2026
Judgment date	:	28 August 2026