



**THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Reportable/Not Reportable

Case no: 2025-134472

In the matter between:

ACCESS BANK (SOUTH AFRICA) LIMITED

Applicant

and

RICHARD JOHANNES DE VOS N.O. (SENIOR)

First Respondent

RICHARD JOHANNES DE VOS N.O. (JUNIOR)

Second Respondent

(The Respondents are cited in their capacities as the trustees for the time being of the De Vos Boerdery Trust [Trust No: IT 9082/97].)

Neutral citation: *Access Bank (South Africa) Limited v Richard Johannes De Vos N.O. (Senior) and Another* (Case no 2025-134472).

Coram: Tyuthuza AJ.

Heard: 06 March 2026.

Delivered: 08 September 2026. *This judgment was 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.*

Summary: Provisional sequestration – Insolvency Act 24 of 1936 – requirements for provisional sequestration to be established *prima facie* – applicant's *locus standi* and liquidated claim established – trust bound as surety and co-principal debtor – principal debtor subject to business rescue – statutory moratorium does not afford surety a defence to enforcement of its obligations – factual insolvency – liability under

suretyship to be taken into account in determining solvency – ordinary right of recourse against principal debtor had not accrued in absence of payment by surety – no reliable evidence of the value of any claim or remedy available to Trust against principal debtor – advantage to creditors – reasonable prospect of pecuniary benefit – provisional sequestration granted.

ORDER

1. The estate of the De Vos Boerdery Trust (Trust No: IT 9082/97) is placed under provisional sequestration and is placed in the hands of the Master of the High Court, Kimberley.
2. A rule *nisi* is hereby issued calling upon all interested parties to appear and show cause, if any, to this Court on the **16th** day of **October 2026** at 09:30 or so soon thereafter as the matter may be heard, why the estate of the De Vos Boerdery Trust should not be placed under final sequestration and why the costs of this application, on the attorney and client scale, should not be costs in the sequestration.
3. This order operates with immediate effect as a provisional order for the sequestration of the De Vos Boerdery Trust.
4. Service of this order shall be effected in the following manner:
 - 4.1. on the respondents at Farm Quaggasfontein, Terewa Road, Colesberg, 9795;
 - 4.2. on the employees of the De Vos Boerdery Trust, if any;
 - 4.3. on every registered address of the trade unions that represent employees of the Trust, if any;
 - 4.4. on the South African Revenue Service; and

4.5. on the Master of the High Court, Kimberley.

JUDGMENT

Tyuthuza AJ

Introduction

[1] The applicant is Access Bank (South Africa) Limited (“Access Bank”), a company with limited liability, duly registered and incorporated as such in terms of the company laws of the Republic of South Africa. Its head office is situated in Sandton, Gauteng Province. The first respondent is Richard Johannes De Vos N.O. (Senior), who ordinarily resides at Farm Quaggasfontein in Colesberg. The second respondent is Richard Johannes De Vos N.O. (Junior), who also ordinarily resides at Farm Quaggasfontein in Colesberg. In terms of the signature page of the Unlimited Suretyship, the Trust’s address and *domicilium citandi et executandi* is also Farm Quaggasfontein. The first and second respondents are cited in their capacities as the trustees for the time being of the De Vos Boerdery Trust (“the Trust”).

[2] The applicant (Access Bank) seeks, *inter alia*, an order placing the estate of the Trust under provisional sequestration in terms of the Insolvency Act 24 of 1936 (“the Insolvency Act”) and placing the estate in the hands of the Master of the High Court, Kimberley (“the Master”). It further seeks an order issuing a *rule nisi* calling upon all persons interested to show cause, if any, on a specified date and at a specified time, why the estate of the Trust should not be finally sequestrated and placed in the hands of the Master, and why the costs of this application, on the attorney and client scale, should not be costs in the sequestration. The applicant further seeks an order that the provisional sequestration order operate with immediate effect.

Background

[3] On 6 November 2019, De Vos Landgoed (Pty) Ltd (“De Vos Landgoed”), whose registered address is also Farm Quaggasfontein, Colesberg, concluded a Facility Letter with the applicant in terms of which it was provided the following facilities: (a) a Working Capital Facility with an initial limit of R1 500 000.00 which was subsequently increased to R5 000 000.00 and (b) a Term Loan Facility of R 18 800 000.00.

[4] In or around 6 December 2019, pursuant to clause 2.5 of the Facility Letter, De Vos Landgoed and the applicant concluded a Term Loan Facility Agreement (Term Loan Facility Agreement), the purpose of which was to record the full terms and conditions of the Term Loan Facility. Around 8 December 2019, the Trust signed a Limited Guarantee, wherein it *inter alia* guaranteed to and in favour of the applicant the due and punctual payment of the Facility Letter and Term Loan Facility Agreement limited to R22 million.

[5] On 1 August 2022, the Trust executed an unlimited deed of suretyship in favour of the applicant; in terms thereof, the Trust guaranteed and bound itself jointly and severally as surety and co-principal debtor with De Vos Landgoed for the due and punctual payment and discharge of all obligations and liabilities, actual or contingent, present or future, owed by De Vos Landgoed to Access Bank. This includes, but is not limited to, obligations arising from loans, negotiable instruments, credit agreements, guarantees, damages, compensation, and any indebtedness acquired by cession or assignment. On 4 August 2022, De Vos Landgoed and the applicant concluded a Medium-Pre-Term Agreement/Agreement of Loan and Acknowledgement of Debt which replaced the Term Loan Facility.

[6] It is averred in the founding affidavit that the Suretyship is unlimited in amount and covers all costs of recovery, including attorney and client costs and collection commission. It is further averred that the Unlimited Suretyship may be called upon in circumstances where the Debtor fails to pay or perform any of its obligations, whether such failure is due to insolvency, liquidation, death, insanity, incapacity or any other cause. The Suretyship may also be enforced where any of the Debtor’s liabilities to the Bank become due and payable, irrespective of whether the Bank has granted the Debtor any indulgence, extension or compromise. It is further averred that, where any payment made by the Surety or on behalf of the Debtor is set aside under insolvency

laws or by court order, or where any security is set aside or released, the Surety's liability is revived. The Suretyship remains in force notwithstanding the liquidation, judicial management or sequestration of the Debtor or any other surety, or any compromise or agreement with creditors. The applicant further avers that it is not required to exhaust its remedies against the Debtor before proceeding against the Surety, as the Surety has renounced the benefits of excussion and division. Finally, it is averred that a certificate signed by any manager or accountant of the applicant, stating the amount owing by the Debtor, that such amount is due and payable, and the applicable interest rate, constitutes *prima facie* proof of the amount due by the Surety.

[7] On 26 August 2024, the applicant instructed its attorneys to dispatch two letters of demand to De Vos Landgoed, the first in terms of the Term Loan Facility Agreement and the second in terms of the Working Capital Facility. De Vos Landgoed failed and/or neglected to make payment as demanded, and no response was received by the applicant's representatives. On 3 September 2024, the applicant addressed a further letter of demand to De Vos Landgoed in terms of section 345 of the Companies Act 61 of 1973. On 11 September 2024, the applicant addressed a letter of demand to the Trust in terms of the Limited Guarantee. On 27 September 2024, De Vos Landgoed resolved to commence business rescue proceedings, following which the applicant submitted a claim to the business rescue practitioners in respect of the facilities agreements in the amount of R23 995 001.98. On 28 July 2025, a further letter of demand was sent to the Trust in terms of the Unlimited Suretyship. The Trust failed to make payment pursuant to the demands. The applicant relies on the Trust's failure to satisfy these demands as supporting its contention that the Trust does not have sufficient funds to discharge its indebtedness in full and is, in fact, insolvent.

Applicant's case:

[8] The applicant seeks the provisional sequestration of the estate of the De Vos Boerdery Trust. It relies on the Trust's alleged indebtedness arising from the Limited Guarantee and the Unlimited Suretyship executed by the Trust in respect of the indebtedness of De Vos Landgoed (Pty) Ltd to the applicant.

[9] The applicant contends that it is the lawful successor to Grobank Limited and therefore the creditor under the Facilities and Guarantee originally concluded with Grobank. It accordingly relies on its alleged succession to Grobank's rights and on the Unlimited Suretyship executed by the Trust in favour of Access Bank.

[10] The applicant contends that the Trust is indebted to it in an amount exceeding R27 million, comprising the liability under the Unlimited Suretyship and the Limited Guarantee. It relies, *inter alia*, on the demands made upon the Trust and the certificates of balance as proof of the indebtedness.

[11] The applicant contends that the Trust is factually insolvent. Its case is that, once the amount allegedly owing to Access Bank is taken into account, the Trust's liabilities exceed its assets.

[12] The applicant further contends that sequestration will be to the advantage of creditors. It relies on the Trust's assets and submits that the appointment of a trustee would enable an investigation into the Trust's affairs and the recovery or realisation of assets for the benefit of creditors.

[13] The applicant accordingly contends that it has established the requirements for provisional sequestration, including that it has *locus standi* as a creditor, that the Trust is insolvent and that sequestration will be to the advantage of creditors.

Respondents' case:

[14] The respondents oppose the application and contend that the applicant has failed to establish the jurisdictional and statutory requirements for provisional sequestration. They submit that the application is premature, defective and an abuse of process. They further contend that the applicant has failed to establish *locus standi*, in that it has not proved that it lawfully succeeded to the rights of Grobank.

[15] The respondents submit that the applicant has not established that it is the holder of an enforceable claim against the Trust. They contend that the Facilities and the Limited Guarantee were concluded in favour of Grobank and that the alleged

transfer of Grobank's rights to the applicant under section 54 of the Banks Act 94 of 1990 has not been proved. In this regard, they rely on the absence from the papers of, *inter alia*, a transfer scheme, ministerial approval, Gazette publication, deed of cession or confirmatory affidavit evidencing the alleged transfer.

[16] The respondents further submit that the Unlimited Suretyship is accessory in nature and that the applicant must accordingly establish a valid, due and enforceable principal indebtedness of De Vos Landgoed. They rely on the ongoing business rescue proceedings relating to De Vos Landgoed, including the statutory moratorium under section 133 of the Companies Act 71 of 2008 ("Companies Act") and the pending application in terms of section 153(7) of the Companies Act. They contend that, until those proceedings have been determined, the principal indebtedness is not presently enforceable and cannot found liability under the Unlimited Suretyship.

[17] The respondents further submit that the applicant participated in the business rescue proceedings, lodged its claim with the business rescue practitioners and voted against the proposed business rescue plan, and opposed the section 153(7) application. They contend that the applicant cannot use sequestration proceedings to obtain an advantage in respect of a debt whose enforceability is the subject of the business rescue process and that its conduct amounts to an abuse of the insolvency process.

[18] As to insolvency, the respondents contend that the Trust is not factually insolvent. They rely on the Trust's audited financial statements and submit that these reflect assets exceeding its liabilities, resulting in a positive net asset value. Their case is that the applicant's allegation of insolvency depends substantially upon treating its disputed claim as a liability of the Trust.

[19] The respondents further submit that the applicant has failed to establish that sequestration will be to the advantage of creditors and that the allegations relied upon in this regard are speculative. They also contend that the applicant impermissibly introduced new matter in its replying affidavit in an attempt to cure deficiencies in its founding papers and that such matter should be disregarded.

[20] The respondents accordingly submit that the applicant has failed to establish an enforceable claim, the insolvency of the Trust and that sequestration would be to the advantage of creditors, and that the application should therefore be dismissed.

Law:

[21] In terms of section 9(1) of the Insolvency Act, a creditor (or his agent) who has a liquidated claim for not less than fifty pounds against a debtor who has committed an act of insolvency or is insolvent may petition the court for the sequestration of the estate of the debtor. In *Kleynhans v Van der Westhuizen NO*¹, the threshold of fifty pounds was treated as R100.² This approach was subsequently followed by the Supreme Court of Appeal in *Osborne v Cockin NO* 2018 JDR 1298 (SCA). Section 9(2) of the Insolvency Act further provides that a liquidated claim which has accrued but is not yet due on the date of the hearing of the petition shall be reckoned as a liquidated claim for purposes of subsection (1).

[22] In *Osborne v Cockin NO*³, the Supreme Court of Appeal observed as follows: ‘Alkema J pointed out that the predominant purpose of a sequestration of an estate is the bona fide achievement of sequestration, not the resolution of a dispute over a debt. This is trite: see *Investec Bank Ltd v Lewis* 2002 (2) SA 111 (C). Section 9(1) of the Insolvency Act provides that a creditor who has a liquidated claim for not less than R100 against a debtor who has committed an act of insolvency, or is insolvent, may apply to court for the sequestration of the estate of the debtor. But Osborne showed neither that he had a claim against the Cockin Trust, nor that it was liquidated. To the extent that he made allegations of fact (rather than speculated on what must have happened to his cattle) these were disputed.

. . .

The liquidated nature of the claim or rather, the “liquidatedness” of the claim, is relevant only insofar as the threshold in terms of s 9(1) of the Insolvency Act 24 of 1936 is

¹ 1970 (2) SA 742 (A).

² See also A Smith, K Van Der Linde and J Calitz *Hockly’s Law of Insolvency (winding-up & Business Rescue)* 10th ed (2022) at 42.

³ 2018 JDR 1298 (SCA), para 20 and 30.

concerned. In terms thereof, in order to apply to (petition) the court for the sequestration of the estate of a debtor, one must have a claim “for not less than fifty pounds” against a debtor. The purpose of the provision was plainly to prevent persons who had trifling claims or claims that were speculative from being able to sequester the estate of another person. The longevity of the currency of the Insolvency Act is testimony to its extraordinarily capable draftsmanship. The passage of time has, however, eroded the value of money. Translated into modern South African currency, the threshold is R100. It had to appear in the application (petition, to use the original terminology) that a creditor had a claim incontestably worth at least this amount in order to have *locus standi*.’

[23] Section 10 of the Insolvency Act provides as follows:

‘Provisional sequestration

If the court to which the petition for the sequestration of the estate of a debtor has been presented is of the opinion that *prima facie*-

- (a) the petitioning creditor has established against the debtor a claim such as is mentioned in subsection (1) of section *nine*; and
- (b) the debtor has committed an act of insolvency or is insolvent; and
- (c) there is reason to believe that it will be to the advantage of creditors of the debtor if his estate is sequestrated, it may make an order sequestrating the estate of the debtor provisionally.’

[24] Essentially, the sequestrating creditor approaches the Court at two stages. The first is to obtain a provisional order of sequestration in terms of section 10 of the Insolvency Act, and the second is to have the provisional order confirmed and made final in terms of section 12. The requirements for sequestration must be established at each stage, but the standard of proof differs. At the provisional stage, the Court must be satisfied that there is *prima facie* evidence that the statutory requirements for sequestration have been established. At the final stage, the Court must be satisfied, on a balance of probabilities, that the requirements for a sequestration order have been established.⁴

⁴ A Smith, K Van Der Linde and J Calitz *Hockly’s Law of Insolvency (Winding-up & Business Rescue)* 10th ed (2022) at 66.

[25] In *Magnum Financial Holdings (Pty) Ltd (In Liquidation) v Summerly and Another NNO*⁵, the Court observed:

‘Clearly then the trust as such is enabled to possess an estate and incur liabilities. That this has occurred, is apparent from the founding affidavit. It is alleged that the trust holds the entire issued share capital of the applicant as also shares in various other companies, together with other assets such as a yacht, aeroplane and motor car, and that it is indebted to the applicant in respect of monies lent and advanced to the trust. It is further stated that the trust has substantial other debts. The trust is, in the result, so it seems to me, “a debtor in the usual sense of the word”, and accordingly susceptible of sequestration - provided that it is not

“a body corporate or a company or other association of persons which may be placed in liquidation under the law relating to companies”.

[26] It is so that, in terms of section 11(1) of the Insolvency Act, if the Court provisionally sequesters the estate of a debtor, it must simultaneously grant a rule *nisi* calling upon the debtor, on a day specified in the rule, to appear and to show cause why his or her estate should not be sequestered finally.

[27] Once an applicant for a provisional order of sequestration has established on a *prima facie* basis the requisites for such an order, the Court retains a discretion whether to grant the order. In *Firststrand Bank Ltd v Evans*⁶, the Court held that, where the prescribed conditions for a provisional sequestration order have been satisfied, the Court should, in the absence of special circumstances, ordinarily grant the order. The onus rests on the respondent to establish the special or unusual circumstances warranting the exercise of the discretion in its favour.

[28] In *Meskin & Co v Friedman*⁷, the Court held that the petitioning creditor bears the onus of establishing, in addition to the debtor’s insolvency or an act of insolvency, that there is “reason to believe” that sequestration will be to the advantage of creditors.

⁵ 1984 (1) SA 160 (W) at 163A – C.

⁶ 2011 (4) SA 597 (KZD) para 27.

⁷ 1948 (2) SA 555 (W) at 558–559.

At the provisional stage, it is sufficient for the Court to be of the opinion that *prima facie* there is such reason to believe. Even at the final stage, the Court need only be satisfied that there is reason to believe that sequestration will be to the advantage of creditors; it need not be satisfied that sequestration will in fact result in a financial advantage. The facts must disclose a reasonable prospect, not necessarily a likelihood, but one which is not too remote, that some pecuniary benefit will result to creditors.

[29] In *Orestisolve (Pty) Ltd t/a Essa Investments v NDFT Investment Holdings (Pty) Ltd and Another*⁸, the Court observed:

‘In an opposed application for provisional liquidation the applicant must establish its entitlement to an order on a *prima facie* basis, meaning that the applicant must show that the balance of probabilities on the affidavits is in its favour (*Kalil v Decotex (Pty) Ltd and Another* 1988 (1) SA 943 (A) at 975J-979F). This would include the existence of the applicant’s claim where such is disputed.’

[30] In an opposed application for provisional sequestration, the applicant must establish its entitlement to an order on a *prima facie* basis, including, where its claim is disputed, the existence of that claim on a *prima facie* basis. Once the applicant has shown that the debt *prima facie* exists, the onus rests on the respondent to show that the debt is *bona fide* disputed on reasonable grounds. This principle is reflected in the *Badenhorst* rule, which precludes the use of insolvency proceedings as a means of enforcing payment of a debt that is *bona fide* disputed on reasonable grounds.⁹ Stated differently, *Badenhorst*¹⁰ establishes that sequestration proceedings are not debt-collection proceedings and should not be used to enforce a debt that is *bona fide* disputed on reasonable grounds. The rationale is that insolvency proceedings are designed to address insolvency and not to resolve ordinary disputes concerning indebtedness.¹¹

⁸ 2015 (4) SA 449 (WCC) para 7.

⁹ *Orestisolve (Pty) Ltd t/a Essa Investments v NDFT Investment Holdings (Pty) Ltd and Another* 2015 (4) SA 449 (WCC) para 7 – 8.

¹⁰ *Badenhorst v Northern Construction Enterprises (Pty) Ltd* 1956 (2) SA 346 (T).

¹¹ *Commissioner for the South African Revenue Service v Muleya* [2026] JOL 76787 (GP) para 97-99.

[31] In *Exploitatie-en Beleggingsmaatschappij Argonauten 11 BV and Another v Honig*¹², the Supreme Court of Appeal insightfully observed:

‘Sequestration proceedings are designed to bring about a *concursum creditorem* to ensure an equal distribution between creditors, and are inappropriate to resolve a dispute as to the existence or otherwise of a debt. Consequently, where there is a genuine and *bona fide* dispute as to whether a respondent in sequestration proceedings is indebted to the applicant (as in this case), the court should as a general rule dismiss the application. This is the so-called “*Badenhorst rule*”. Named after the decision in *Badenhorst v Northern Construction Enterprises Ltd*, this principle was reaffirmed by this Court in *Kalil v Decotex (Pty) Ltd and another* and applies equally in both winding up and sequestration proceedings. It is a rule of long standing and good sense and is not likely to be departed from in circumstances such as the present. On this basis alone, the appellants may well face grave difficulty in obtaining a sequestration order against the respondent, as their counsel correctly conceded.’ (footnotes omitted)

Locus Standi:

[32] As alluded to above, the respondents contend that the applicant has failed to establish its *locus standi* in terms of section 9(1) of the Insolvency Act. Their contention is that the applicant has failed to prove that it lawfully succeeded to Grobank Limited’s rights under the Facility Agreements and the Limited Guarantee and, consequently, that it has failed to establish that it is a creditor of the Trust.

[33] Section 9(1) of the Insolvency Act provides:

‘A creditor (or his agent) who has a liquidated claim for not less than fifty pounds, or two or more creditors (or their agent) who in the aggregate have liquidated claims for not less than one hundred pounds against a debtor who has committed an act of insolvency, or is insolvent, may petition the Court for the sequestration of the estate of the debtor.’

¹² [2012] 2 All SA 22 (SCA) para 11.

It follows that, for purposes of section 9(1), the applicant must establish that it is a creditor of the debtor with a qualifying liquidated claim and that the debtor has committed an act of insolvency or is insolvent. At the provisional stage, these requirements need only be established on a *prima facie* basis, whereas at the final stage they must be established on a balance of probabilities.

[34] In its founding affidavit, the applicant asserts that it took over the assets and liabilities of Grobank Limited pursuant to a transfer in terms of section 54 of the Banks Act 94 of 1990 and, by virtue thereof, stepped into the shoes of Grobank and became entitled to exercise the rights previously held by it. It accordingly contends that it is the creditor of the Trust pursuant to the Unlimited Suretyship and Limited Guarantee executed by the Trust in respect of the indebtedness of De Vos Landgoed. The respondents dispute the alleged section 54 transfer, characterising the applicant's assertions as bald and contending that the applicant has produced no evidence of the alleged transfer. They further dispute the applicant's assertion that the transfer is common cause and, on that basis, contend that the applicant has failed to establish that it succeeded to Grobank's rights, thereby placing its *locus standi* squarely in issue.

[35] Dealing with the challenge to its *locus standi* in reply, the applicant explains that Access Bank (South Africa) Limited is owned by Access Bank PLC, based in Nigeria, which acquired a controlling stake in Grobank. In the founding affidavit, Mr John Vlismas, the deponent to both the founding and replying affidavits, had stated that the acquisition had been implemented through a transfer of the assets and liabilities of Grobank in terms of section 54 of the Banks Act. Following the respondents' challenge to this assertion, he explains that he investigated the matter further and established that the acquisition was not implemented by way of a section 54 transfer. Instead, Access Bank PLC acquired a controlling stake in Grobank through the acquisition of shares in terms of section 37 of the Banks Act. In support thereof, the applicant relies on the approval issued by the South African Reserve Bank.

[36] The applicant further explains that Grobank subsequently changed its name to Access Bank (South Africa) Limited. In support of this, it relies on the statement issued by the South African Reserve Bank on 31 March 2021, the confirmation of the name change issued by the CIPC and the certificate issued by the Prudential Authority. The

applicant accordingly contends that Grobank and Access Bank (South Africa) Limited are the same legal entity. Of particular significance, it relies on the fact that the registration number 1947/025414/06 reflected in the founding affidavit as the applicant's registration number is the same registration number reflected in the relevant documents concluded in the name of Access Bank and in documents concluded in the name of Grobank.

[37] The applicant submits that, in these circumstances, the respondents' insistence that it prove compliance with section 54 of the Banks Act is misconceived. Its contention is that the common registration number, together with the evidence of the subsequent name change, demonstrates that Grobank and Access Bank (South Africa) Limited are the same juristic person and that the reference to Grobank, being its former name, in the relevant agreements does not deprive the applicant of *locus standi*. The applicant further submits that the Trust's allegation that it lacks *locus standi* is not made *bona fide*. In support of the latter submission, it points to the acceptance of its claim in the business rescue proceedings of De Vos Landgoed without any issue being raised as to why the claim was in Access Bank's name rather than Grobank's name, and to correspondence in which representatives of De Vos Landgoed made undertakings to pay Access Bank.

[38] The respondents contend that the Facility Letter, the Term Loan Facility Agreement and the Guarantee were concluded with Grobank and, as such, that the applicant has failed to discharge the onus of proving its *locus standi* as a creditor. The respondents aver that the applicant has failed to demonstrate that any rights were ceded or assigned to it.

[39] In its papers, the Trust at no stage disputes that it stood surety for De Vos Landgoed. It concedes that the Unlimited Suretyship was executed in favour of the applicant, but disputes that the Unlimited Suretyship is presently enforceable. The respondents contend that the Unlimited Suretyship is an accessory obligation and that its liability would arise only once the obligations of De Vos Landgoed have been proved and are enforceable.

[40] It is so that on 1 August 2022, the Trust executed the Unlimited Suretyship in favour of Access Bank and bound itself *in solidum* as surety and co-principal debtor with De Vos Landgoed. The first and second respondents, in their capacities as trustees of the Trust, were authorised to execute the deed of suretyship on its behalf. In terms of the Unlimited Suretyship, the Trust guaranteed and bound itself jointly and severally as surety and co-principal debtor with De Vos Landgoed for the due and punctual payment and discharge of all obligations and liabilities, actual or contingent, present or future, owed by De Vos Landgoed to Access Bank.

[41] The conduct of the parties thereafter is consistent with the applicant's case. The letter of demand addressed to the Trust advised the trustees that Access Bank had taken over the assets and liabilities of Grobank Limited and had stepped into the shoes of Grobank. Although the reference therein to section 54 of the Banks Act was erroneous, the demand itself identified Access Bank as the creditor asserting the rights arising from the Guarantee. The correspondence further demonstrates that the Trust was thereafter dealing with Access Bank. More importantly, the trustees had themselves executed the Unlimited Suretyship in favour of Access Bank on 1 August 2022. The respondents provide no explanation for this subsequent execution of the Unlimited Suretyship if Access Bank was, as they now contend, a wholly different creditor with no entitlement arising from the Trust's earlier obligations to Grobank.

[42] It is common cause that De Vos Landgoed has been under business rescue since September 2024 and that an application in terms of section 153(7) is currently pending. The respondents accordingly aver that, until the section 153(7) application has been finalised, there has been no final determination as to whether the business rescue plan will be adopted and implemented. This Court, however, notes that the said section 153(7) application has recently been dismissed by the North Gauteng High Court, Pretoria.¹³

[43] It is trite that the statutory moratorium in favour of a company undergoing business rescue proceedings constitutes a defence *in personam*. It is a personal

¹³ *De Vos Landgoed (Pty) Ltd v Access Bank (South Africa) Ltd (Al Mabroor Agri (Pty) Ltd intervening)* (2025/047078) [2026] ZAGPPHC 899 (20 August 2026).

privilege or benefit in favour of the company.¹⁴ A defence which is purely personal to the principal debtor may not be raised by the surety. Business rescue proceedings do not affect the right to pursue sureties for the company.¹⁵

[44] The respondents dispute the indebtedness relied upon by the applicant, principally on the basis that the Unlimited Suretyship is not presently enforceable while the indebtedness of De Vos Landgoed remains unresolved. The issue, therefore, is whether the respondents have raised a bona fide dispute as to the indebtedness on reasonable grounds.

[45] I am of the view that the respondents' defence in this regard is neither bona fide nor founded on reasonable grounds. The documentary evidence, considered together with the subsequent conduct of the parties, establishes on a prima facie basis that Grobank Limited and Access Bank (South Africa) Limited are the same juristic person, the latter being the changed name of the former. The error in the founding affidavit concerning the statutory mechanism by which the acquisition occurred does not alter that conclusion. Nor does the fact that certain agreements were concluded in the name of Grobank, while the subsequent Unlimited Suretyship was concluded in the name of Access Bank, establish that the Trust was dealing with two different creditors.

[46] The respondents further contend that the applicant's reliance in reply on section 37 of the Banks Act amounts to an impermissible attempt to make out a new case. I do not agree. The applicant's case, both in the founding affidavit and in reply, remained that Access Bank was entitled to enforce the rights arising from the banking relationship previously conducted in the name of Grobank. The reference in the founding affidavit to section 54 of the Banks Act was an error concerning the statutory mechanism by which the acquisition occurred. The explanation in reply that the acquisition was effected through the acquisition of shares in terms of section 37, coupled with the evidence of the subsequent name change, was directly responsive to the respondents' challenge to the applicant's *locus standi*. It did not introduce a new cause of action or a new basis for the applicant's claim against the Trust. The

¹⁴ *Investec Bank Ltd v Bruyns* 2012 (5) SA 430 (WCC) para 18.

¹⁵ *New Port Finance Co (Pty) Ltd and Another v Nedbank Ltd* 2016 (5) SA 503 (SCA).

respondents were therefore not prejudiced by the explanation, and their objection on this ground cannot be sustained.

[47] The applicant has accordingly established, on a prima facie basis, that it is a creditor of the Trust with a liquidated claim as contemplated in section 9(1) of the Insolvency Act. The respondents' challenge to the applicant's locus standi therefore falls to be rejected.

Factual insolvency/ act of insolvency:

[48] In *Boschpoort Ondernemings (Pty) Ltd v Absa Bank Ltd*¹⁶, the Supreme Court of Appeal discussed the distinction between factual insolvency and commercial insolvency. It is apt, in the circumstances, to quote the relevant remarks:

'For decades our law has recognised two forms of insolvency: factual insolvency (where a company's liabilities exceed its assets) and commercial insolvency (a position in which a company is in such a state of illiquidity that it is unable to pay its debts, even though its assets may exceed its liabilities). See, for example, *Johnson v Hirotec (Pty) Ltd*; *Ex parte De Villiers and Another NNO: In re Carbon Developments (Pty) Ltd (in Liquidation)*; *Rosenbach & Co (Pty) Ltd v Singh's Bazaars (Pty) Ltd*.

That a company's commercial insolvency is a ground that will justify an order for its liquidation has been a reality of law which has served us well through the passage of time. The reasons are not hard to find: the valuation of assets, other than cash, is a notoriously elastic and often highly subjective one; the liquidity of assets is often more viscous than recalcitrant debtors would have a court believe; more often than not, creditors do not have knowledge of the assets of a company that owes them money — and cannot be expected to have; and courts are more comfortable with readily determinable and objective tests such as whether a company is able to meet its current liabilities than with abstruse economic exercises as to the valuation of a company's assets. Were the test for solvency in liquidation proceedings to be whether assets exceed liabilities, this would undermine there being a predictable and therefore

¹⁶ 2014 (2) SA 518 (SCA) para 16 – 17.

effective legal environment for the adjudication of the liquidation of companies: one of the purposes of the new Act, set out in s 7(l) thereof.’ (footnotes omitted)

[49] Although a creditor may have good reason for believing that the debtor is insolvent, he may seldom be able to prove that the debtor’s liabilities exceed his assets. This appears to have been the reason why the legislature has designated certain acts or omissions by a debtor as “acts of insolvency”. It follows that, if a creditor can establish that the debtor has committed one or more of these acts of insolvency, he may seek an order sequestrating the debtor’s estate without having to prove that the debtor is actually insolvent. An *act of insolvency* is a statutory concept which obviates the necessity of proving actual insolvency.¹⁷ An act of insolvency is distinct *and* separate from actual insolvency and constitutes a separate basis upon which sequestration may be sought.¹⁸ Commercial insolvency refers to a situation in which a debtor cannot pay his debts as and when they fall due for payment.¹⁹ Section 9(1) of the Insolvency Act accordingly envisages two distinct and separate bases upon which sequestration may be sought: one based on a legislatively defined act of insolvency and the other on actual insolvency. It follows that a debtor’s estate may be sequestrated even though he is technically solvent.²⁰ In the present matter, the applicant relies on actual insolvency and contends that, if the debt owed to it by the Trust is taken into account, the Trust’s liabilities exceed its assets and it is therefore factually insolvent.

[50] The applicant submits that it has made a *prima facie* case that the Trust is factually insolvent. The Trust disputes this and avers that its financial statements reflect a clear surplus of assets over liabilities. This, the Trust contends, is the position unless and until the disputed liability owed by the Trust to the applicant is included among its liabilities.

¹⁷ *De Villiers NO v Maursen Properties (Pty) Ltd* 1983 (4) SA 670 (T) at 676E.

¹⁸ *Absa Bank Limited v Appelcryn* 2022 JDR 1780 (GJ) para 15.

¹⁹ *Absa Bank Limited v Appelcryn* 2017 JDR 1802 (GJ) para 5.

²⁰ *DP Du Plessis Prokureurs v Van Aarde* 1999 (4) SA 1333 (T).

[51] In *Ullman Sails (Pty) Ltd and others v Jannie Reuvers Sails (Pty) Ltd and Others and Related Matters*²¹, the Court observed:

‘It is not incumbent on an applicant relying on factual insolvency to adduce evidence that would enable the respondent’s assets and liabilities to be finitely determined in rands and cents. It would be a rare case, other than in the context of so-called friendly sequestrations, for an applicant to be able to do that. It is well established that an applicant can discharge the onus of establishing a *prima facie* case on the basis of factual insolvency by adducing sufficient evidence to justify the inference as a matter of probability that the respondent is insolvent. Once an applicant does that, the respondent attracts an evidential onus to rebut the inference by showing that he does possess sufficient assets to be able to settle his liabilities, see *Absa Bank Ltd v Rhebokskloof (Pty) Ltd and Others* 1993 (4) SA 436 (C) at 443D-G and *Mackay v Cahi* 1962 (4) SA 193 (O) at 204F-G. A strong and persuasive indicator of insolvency is the failure by a respondent to pay his debts; *cf* the oft-cited observation by Innes CJ in *De Waard v Andrews and Thienhans Ltd* 1907 TS 727 at 733:

“To my mind the best proof of solvency is that a man should pay his debts; and therefore I always examine in a critical spirit the case of a man who does not pay what he owes”.’

[52] The applicant has attached the financial statements of the Trust as at February 2024, the veracity of which is not disputed. The applicant further alleges that the financial statements do not take into account the liability owed by the Trust to it. In its answering affidavit, the Trust does not dispute the accuracy of the financial statements, but disputes its liability in terms of the Unlimited Suretyship on the basis that it is unenforceable and that the applicant lacks *locus standi*.

[53] The applicant correctly relied on *Fedco Cape (Pty) Ltd v Meyer*²², wherein the Court held that, in determining whether a debtor is insolvent, the enquiry is not confined to direct evidence concerning the debtor’s assets and liabilities. Where such evidence is inconclusive, the court may have regard to indirect and inferential evidence concerning the debtor’s conduct and consider such evidence together with the direct evidence in determining whether the debtor is insolvent.

²¹ [2022] 3 All SA 290 (WCC) para 48.

²² 1988 (4) SA 207 (E) at 211B-D and 212D-I.

[54] The question whether the applicant's claim against the Trust is to be taken into account in determining its factual solvency requires consideration of the nature of the Trust's liability under the Unlimited Suretyship. The liability of a surety is accessory to the principal debt. The accessory nature of the obligation does not, however, render the surety's liability contingent merely because it is accessory. Where, as in the present case, the Trust bound itself as surety and co-principal debtor, its liability is enforceable when the principal debt becomes due and payable, subject to the terms of the suretyship.

[55] In *Millman and Another NNO v Masterbond Participation Bond Trust Managers (Pty) Ltd (under curatorship) and Others*²³ ("Millman"), the Court held that, unless the parties have agreed otherwise, where a surety has bound himself also as co-principal debtor, his debt becomes enforceable at the same time as the principal debt. The Court further held that the liability of a surety and co-principal debtor is not contingent unless the principal debt itself is contingent. It follows that, in determining whether the liabilities of the surety and co-principal debtor exceed his assets, the obligations undertaken by him as surety and co-principal debtor must be included among his liabilities. To the extent that an amount is recoverable pursuant to the right of recourse, a corresponding amount must be taken into account as an asset.

[56] In the present matter, the Trust expressly bound itself as surety and co-principal debtor for the obligations of De Vos Landgoed to the applicant. The Trust, however, disputed its liability under the Unlimited Suretyship on the basis that its obligation was accessory and that the indebtedness of De Vos Landgoed remained unresolved. I have dealt with this contention above and found that it does not constitute a bona fide dispute founded on reasonable grounds. The applicant's claim against the Trust is accordingly enforceable and due and payable. Its liability under the Unlimited Suretyship cannot, merely by reason of its accessory nature, be excluded from the determination of its liabilities. It must be taken into account.

²³ 1997 (1) SA 113 (C) at 123A–D.

[57] It is also relevant that, on 28 July 2025, the applicant demanded payment from the Trust in terms of the Unlimited Suretyship. The Trust did not make payment as demanded. At the time, however, the Trust disputed its liability and contended that the principal indebtedness remained unresolved. The failure to make payment must therefore be considered in the light of my finding above that the defence relied upon by the Trust is not *bona fide* and is not founded on reasonable grounds.

The surety's right of recourse:

[58] It is so that a surety who has *paid* the debt of the principal debtor to the creditor has a right of recourse against the debtor; he is entitled to reimbursement by the principal debtor of what he has paid the creditor. This was so in Roman law, notwithstanding that payment of the debt extinguished it and released the debtor; it became the Roman-Dutch law and is our law.²⁴ In *Zungu-Elgin Engineering (Pty) Ltd v Jeany Industrial Holdings (Pty) Ltd and others*²⁵, the Supreme Court of Appeal, with reference to *Proksch v Die Meester en Andere*²⁶, confirmed that, at common law, a surety becomes a creditor of the principal debtor upon payment to the creditor.

[59] In *Taylor and Thorne, NNO, and Others v the Master* 1965 (1) SA 658 (N), the Court insightfully made the following apt observations:

‘Those rights embrace pre-eminently the right of recourse and, save in the exceptional circumstances which I shall mention, that right depends upon the surety having discharged the principal debtor's obligation, that is to say by payment in the legal sense. That is clear from the following authorities. . . . Having so paid, the surety is subrogated by law to the rights of the creditor against the principal debtor; in these days there is no necessity for him to obtain a cession of action (though in certain circumstances there may be advantages to be gained from doing so) but he is entitled to claim directly against the principal debtor to be re-imbursed his outlay. See also Burge on *Suretyship* pp. 358, 359.

²⁴ CF Forsyth and JT Pretorius *Caney's The Law of Suretyship* (6 ed) (2010) at 159) — (cited with approval by the Supreme Court of Appeal in *Zungu-Elgin Engineering (Pty) Ltd v Jeany Industrial Holdings (Pty) Ltd and others* [2020] JOL 49099 (SCA) para 12.

²⁵ *Ibid* para 13.

²⁶ 1969 (4) SA 567 (A).

If the principal debtor is insolvent and the surety has made payment in pursuance of the suretyship, he is an unconditional creditor in the insolvency. *Rossouw and Rossouw v Hodgson and Others*, 1925 AD 97. If the surety has not made payment, then *prima facie* his claim against the insolvent estate of the principal debtor is conditional; but, for the applicants, *Mr. Leon* contended that events may occur, as he submitted they have in the instant case, to make the claim unconditional. The consequence of a claim being conditional is that the provisions of sec. 48 of the Insolvency Act operate in respect of it: “a creditor whose claim against an insolvent estate is dependent upon a condition may prove that claim . . . , but subject to the following provisions”, and para. (b), applicable in the present case, provides for valuation of the claim. The Act contains no definition of a conditional claim or an unconditional claim, but it appears to me that the statement in Erskine's *Institutes of the Law of Scotland*, quoted in *Winter and Others v Inland Revenue Commissioners*, (1961) 3 All E.R. 855 at p. 859, is apposite. The condition upon which a surety's claim against the insolvent estate of the principal debtor is dependent is, in accordance with the general principle I have stated, the fact of his having discharged the obligation or, at any rate, partly discharged it, for to the extent that he has done so he has a right of recourse against the principal debtor; see the authorities cited above. To that extent only has he then an unconditional claim.’²⁷

[60] The corresponding issue is whether, and to what extent, any right or remedy available to the Trust against De Vos Landgoed should be taken into account as an asset. In *Millman*, the Court held that, to the extent to which an amount is recoverable pursuant to the right of recourse, a corresponding amount must be taken into account as an asset. In the present matter, however, the Trust has not paid the applicant pursuant to the Unlimited Suretyship. Its ordinary common-law right of recourse has accordingly not accrued. Furthermore, the evidence does not establish the existence or value of any presently recoverable monetary claim against De Vos Landgoed.

[61] This is particularly so because De Vos Landgoed is subject to business rescue proceedings, and the papers do not provide a sufficiently reliable basis upon which to determine what, if anything, the Trust could presently recover from De Vos Landgoed.

²⁷ At 661A-H.

The potential existence of a remedy available to the Trust before payment does not, without evidence of its nature and recoverability, justify attributing a corresponding value to the Trust's assets. The applicant's claim against the Trust must accordingly be brought into account as a liability, without treating a presently unquantified or unrealisable claim against De Vos Landgoed as an equivalent asset.

[62] The applicant has accordingly established that its claim against the Trust is enforceable and due and payable. The Trust's failure to satisfy that debt is a relevant consideration in determining whether it is factually insolvent. The respondents rely on the financial statements, which reflect a surplus of assets over liabilities, but that position does not take into account the liability arising from the Unlimited Suretyship. Nor is there a sufficiently reliable evidential basis upon which to attribute a corresponding value to any claim which the Trust may have against De Vos Landgoed.

[63] Having regard to the liability arising from the Unlimited Suretyship, the evidence regarding the Trust's assets and liabilities, the absence of a sufficiently reliable basis upon which to attribute a monetary value to any claim by the Trust against De Vos Landgoed, and the Trust's failure to satisfy the enforceable and due debt, I am satisfied that the applicant has established a *prima facie* case that the Trust's liabilities exceed its assets. The inference of factual insolvency is, in the circumstances, justified as a matter of probability.

Advantage to Creditors:

[64] To be successful with a provisional sequestration application, the applicant must satisfy the Court that there is *prima facie* reason to believe that sequestration will be to the advantage of the creditors of the debtor.

[65] In *Meskin & Co v Friedman*²⁸, the Court held:

'In my opinion, the facts put before the Court must satisfy it that there is a reasonable prospect – not necessarily a likelihood, but a prospect which is not too remote – that

²⁸ 1948 (2) SA 555 (W) at 559.

some pecuniary benefit will result to the creditors. It is not necessary to prove that the insolvent has any assets. Even if there are none at all, but there are reasons for thinking that as a result of enquiry under the Act some may be revealed or recovered for the benefit of creditors, that is sufficient.’

[66] In *Liberty Group Ltd v Moosa*²⁹, the Supreme Court of Appeal reaffirmed the principle formulated in *Meskin & Co v Friedman* that advantage to creditors may lie in the prospect of assets being found in the insolvent estate, including assets which may have been concealed or improperly disposed of. The creditor must, on an overall consideration of the papers, demonstrate reasonable grounds for concluding that, upon investigation and inquiry, a trustee may be able to uncover assets which can be attached and sold for distribution amongst creditors. The Court confirmed that it is not necessary to prove that the insolvent has assets at the time of the application, provided that there is a reasonable prospect, not too remote, that some pecuniary benefit will result to creditors.

[67] In *Body Corporate of Empire Gardens v Sithole and Another*³⁰, the Supreme Court of Appeal considered the concept of advantage to creditors and held: ‘The phrase “advantage to creditors” is not defined in the Insolvency Act, but if the principle of *concurso creditorum* is taken into account, it means that there should be a reasonable prospect of some pecuniary benefit to the general body of creditors as a whole. (See *Lynn and Main Inc. v Naidoo and Another* 2006 (1) SA 59 (N) paras 33-35; *Ex Parte Bouwer and Similar Applications* 2009 (6) SA 382 (GNP) para 13). This requirement is fulfilled where it is established that there is reason to believe that there will be advantage to a “substantial proportion” or the majority of the creditors reckoned by value. (See *Fesi and Another v Absa Bank Ltd* 2000 (1) SA 499 (C) 505-506; *Trust Wholesalers and Woolens (Pty) Ltd v Mackan* 1954 (2) SA 109 (N); *Samsudin v De Villiers Berrange NO* [2006] SCA 79 (RSA)). Although advantage to creditors is not a rigid concept (*Stratford and Others v Investec Bank Ltd and Others* 2015 (3) SA 1 (CC) para 44), it requires proof of a tangible benefit to the general body of creditors.’

²⁹ 2023 (5) SA 126 (SCA) para 27.

³⁰ 2017 (4) SA 161 (SCA) para 10.

[68] In *London Estates (Pty) Ltd v Nair*³¹ the court held:

‘The standard of proof differs in respect of a provisional and final order (cf. *Sacks Morris (Pty) Ltd v Smith* 1951 (3) SA 167 (O) at 170). This must relate to the proof of the facts giving rise to the belief - not to the degree of conviction the belief engenders. In both cases the facts must show that there is a reasonable prospect - not necessarily a likelihood, but a prospect which is not too remote - that some pecuniary benefit will result to creditors. *But in the case of a provisional order there need only be prima facie proof of those facts; in the case of a final order the Court must be satisfied that those facts exist, presumably on a balance of probabilities. This must be the case whether the applications are opposed or not.* The onus is on the applicant and in general he must allege and prove his facts. A bald allegation in the petition that sequestration will be to the benefit of creditors is not sufficient.’

[69] The applicant submits that the Trust’s asset structure indicates that, upon sequestration, there is a substantial pool of assets that could satisfy creditors’ claims. It was further submitted that the appointment of a trustee would have concomitant benefits for creditors, in that the appointed trustee will be able to conduct an insolvency inquiry into the affairs of the Trust. The respondents submit that the allegation of a clear advantage is unfounded and that sequestration would not produce any non-negligible dividend. The respondents further submit that the applicant has not, on a balance of probabilities, demonstrated that sequestration will be to the advantage of the creditors.

[70] In *Stratford and Others v Investec Bank Ltd and Others*³², the Constitutional Court considered the requirement of advantage to creditors and held:

‘In terms of the Insolvency Act, a court may grant a sequestration order, either provisionally or finally, if “there is reason to believe that it will be to the advantage of creditors of the debtor if his estate is sequestrated”. It is the petitioner who bears the onus of demonstrating that there is reason to believe that this is so. In *Friedman* the court held:

³¹ 1957 (3) SA 591(D) at 593B-D.

³² 2015 (3) SA 1 (CC) para 43 – 45.

“(T)he facts put before the Court must satisfy it that there is a reasonable prospect — not necessarily a likelihood, but a prospect which is not too remote — that some pecuniary benefit will result to creditors. It is not necessary to prove that the insolvent has any assets. Even if there are none at all, but there are reasons for thinking that as a result of enquiry under the [Insolvency] Act some may be revealed or recovered for the benefit of creditors, that is sufficient.”

The meaning of the term “advantage” is broad and should not be rigidified. This includes the nebulous “not-negligible” pecuniary benefit on which the appellants rely. To my mind, specifying the cents in the rand or “not-negligible” benefit in the context of a hostile sequestration where there could be many creditors is unhelpful. Meskin et al state that —

“the relevant reason to believe exists where, after making allowance for the anticipated costs of sequestration, there is a reasonable prospect of an actual payment being made to each creditor who proves a claim, however small such payment may be, unless some other means of dealing with the debtor’s predicament is likely to yield a larger such payment. Postulating a test which is predicated only on the quantum of the pecuniary benefit that may be demonstrated may lead to an anomalous situation that a debtor in possession of a substantial estate but with extensive liabilities may be rendered immune from sequestration due to an inability to demonstrate that a not-negligible dividend may result from the grant of an order.”

The correct approach in evaluating advantage to creditors is for a court to exercise its discretion guided by the dicta outlined in *Friedman*. For example, it is up to a court to assess whether the sequestration will result in some payment to the creditors as a body; that there is a substantial estate from which the creditors cannot get payment, except through sequestration; or that some pecuniary benefit will redound to the creditors.’

[71] The Trust’s financial statements reflect a surplus of assets over liabilities. The respondents rely on this position in support of their contention that the Trust is solvent. As I have found above, however, the liability arising from the Unlimited Suretyship must be taken into account in determining the Trust’s solvency. The question whether sequestration will be to the advantage of creditors is nevertheless a separate enquiry. Having regard to the circumstances disclosed in the papers and the fact that the financial affairs of the Trust warrant investigation, I am satisfied that there is a reasonable prospect that sequestration will result in a pecuniary benefit to the general body of creditors.

[72] In conclusion, it is clear from the papers that the applicant has the necessary *locus standi* to bring this application, that the Trust is factually insolvent, and that there is reason to believe that sequestration will be to the advantage of its creditors. Accordingly, the applicant has made out a case for the provisional sequestration of the Trust.

[73] Consequently, I make the following order:

1. The estate of the De Vos Boerdery Trust (Trust No: IT 9082/97) is placed under provisional sequestration and is placed in the hands of the Master of the High Court, Kimberley.
2. A rule *nisi* is hereby issued calling upon all interested parties to appear and show cause, if any, to this Court on the **16th** day of **October 2026** at 09:30 or so soon thereafter as the matter may be heard, why the estate of the De Vos Boerdery Trust should not be placed under final sequestration and why the costs of this application, on the attorney and client scale, should not be costs in the sequestration.
3. This order operates with immediate effect as a provisional order for the sequestration of the De Vos Boerdery Trust.
4. Service of this order shall be effected in the following manner:
 - 4.1. on the respondents at Farm Quaggasfontein, Terewa Road, Colesberg, 9795;
 - 4.2. on the employees of the De Vos Boerdery Trust, if any;
 - 4.3. on every registered address of the trade unions that represent employees of the Trust, if any;
 - 4.4. on the South African Revenue Service; and
 - 4.5. on the Master of the High Court, Kimberley.



T TYUTHUZA
ACTING JUDGE OF THE HIGH COURT

NORTHERN CAPE DIVISION

Appearances

For applicant:	Adv D.M. Leathern SC.
Instructed by:	Edward Nathan Sonnenbergs Inc. c/o Duncan & Rothman.
For respondents:	Adv P.J.J Zietsman SC.
Instructed by:	Dreyer and Dreyer Attorneys Inc. c/o Roux Welgemoed & Du Plooy Attorneys.