

SOUTH AFRICA / JUDGMENT

Body Corporate Chateaux Marie v Shumba (044880/23) [2025] ZAGPPHC 644 (9 June 2025) [2025] ZAGPPHC 644

COURT

North Gauteng High Court, Pretoria

BEFORE

N.L Moila

CASE / FILE NUMBER

044880/23

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Policy**REPUBLIC****OF SOUTH AFRICA****IN****THE HIGH COURT OF SOUTH AFRICA****GAUTENG****DIVISION, PRETORIA****Case****Number:044880/23****(1)****REPORTABLE: YES / NO****(2)****OF INTEREST TO OTHER JUDGES: YES/NO****(3)****REVISED: YES/NO****DATE:**

09/06/2025

SIGNATURE

In

the matter between: THE
BODY CORPORATE CHATEAUX MARIE
Applicant
and
GIFT
MANZUNGU SHUMBA
Respondent

Delivered: 09 June 2025. This judgment was prepared and authored by the
Judge whose name is reflected and is handed down electronically
by
circulation to the parties and their legal representatives via email
and by uploading it to the electronic file of this matter
on
Caselines.

JUDGMENT

Moila, AJ

Introduction

- [1] This is an opposed application for a final sequestration order against the respondent following a nulla bona return. The provisional order was granted against the respondent on 8 February 2023. The respondent opposes the granting of a final order, arguing that it would not benefit his creditors. He asserted that he is committed to selling one of his properties to repay the outstanding amounts owed to the applicant and other creditors.
- [2] It is common cause that the applicant has a claim against the respondent and that the respondent has committed an act of insolvency.

Parties

- [3] The applicant is the Body Corporate Chateaux Marie, a legal entity established in terms of the Sectional Title Schemes Management Act 8 of 2011 (the Sectional Title Schemes Management Act) for the scheme known as Chateaux Marie. Its principal office is situated at c/o Huurkor Admin (Pty) Ltd, 3[...] H[...] Street, Hatfield, Pretoria, Gauteng.
- [4] Huurkor Admin (Pty) Ltd is a company that, among other things, provides management services to corporate bodies. It has been appointed as the managing agent to oversee the applicant's affairs. The responsibilities of the managing agent encompass the collection of monthly contributions to the applicant's administrative fund, which are to be paid by the members in accordance with section 3(1) of the Sectional Title Schemes Management Act. This process is conducted with the assistance of Rousseau and Rousseau Attorneys.

- [5] The respondent is Gift Manzungu Shumba, an adult male, whose domicilium citandi et executandi is at Unit 1[...] (Door No: 2[...]) Chateaux Marie,6[...] P[...] Street, Sunnyside, Pretoria, Gauteng. He appears in person.

Factual Background

- [6] The applicant is responsible for enforcing the management rules referred to in section 10 of the Sectional Title Schemes Management Act on the owners of the units within the scheme.
- [7] The respondent is liable for levies and associated charges payable in respect of his unit, in terms of the Sectional Title Schemes Management Act, which amount is payable to the applicant on the 7th of each month. He is also liable for the payment of the monthly levy contribution to the Community Schemes Ombud.
- [8] An action was instituted against the respondent for unpaid levies and administration fees for his unit in the Magistrate's Court for the District of Tshwane Central, held at Pretoria Central, under case number 3367/2022. The judgment was granted on 25 April 2022 in favour of the applicant for:
- (a) Payment in the amount of R10 432.30;
 - (b) Interest at 20 % per annum, calculated from 11 February 2022 to the date of payment; and
 - (c) Costs of the suit to be taxed.
- [9] The applicant's attorneys of record instructed the sheriff to execute the warrant at the respondent's domicilium address. However, the sheriff could not locate the respondent at the given address. The premises were occupied by Mr Chrispen Nyasha.
- [10] The applicant's attorneys instructed AEJ Tracers to locate the respondent. A trace report dated 19 July 2022 indicated that the respondent's current address is Unit 3[...], G[...] Flats, 2[...] J[...] Street, Arcadia, Pretoria. However, the sheriff was unable to execute the warrant, as the respondent was not located at that address.
- [11] The AEJ Tracers identified another address at Unit 8[...] D[...], 2[...] J[...] M[...] Street, Muckleneuk, Pretoria, as an address of the respondent. On 10 October 2022, the sheriff was unable to execute the warrant of execution on this address because the property was empty.
- [12] On 16 November 2022, another address was identified at Stand 1[...], S[...] 0[...]. The sheriff could not execute the warrant because the property was locked. On 24 January 2023, AEJ Tracers reported that they had exhausted all available resources and could not locate the respondent.
- [13] The applicant's attorney employed the services of two other tracers, but they, too, failed to locate the respondent. As of 19 April 2023, the outstanding balance for unpaid levies and administration fees for the immovable property was R 45 461.92.

- [14] Leave was granted in terms of section 11(2) of the Insolvency Act to serve the notice of motion and founding affidavit by substituted service, as per an order dated 21 August 2023 by Justice Millar. On 18 October 2023, the notice of motion and founding affidavit were served on the respondent by way of SMS, email, and physical at his domicilium address.
- [15] The notice of motion and founding affidavit were also served to the South African Revenue Service, the Master of the High Court and the registered bondholder, Standard Bank.
- [16] On 14 February 2024, the estate of the respondent was placed under provisional sequestration by Moshwana J. The respondent was ordered to show cause on 19 April 2024, why a final sequestration order should not be granted. Leave was granted in terms of section 11(2) of the Insolvency Act 24 of 1936 to serve the provisional order by the manner of substituted service as per the court order granted by Justice Millar on 21 August 2023.
- [17] The provisional sequestration order was served on Standard Bank, the Receiver of Revenue and The Master of the High Court.

Applicant's submission

- [18] Applicants' Counsel, Mr Broodryk, submitted that the respondent had committed an act of insolvency as per section 8 of the Act. Counsel submitted that the respondent, in his answering affidavit, sets out reasons for his indebtedness and inability to pay some of his creditors.
- [19] Mr Broodryk contended that, as seen from the property search, the respondent's unit is registered in favour of Standard Bank, illustrating favour shown to one creditor over another.
- [20] Counsel further submitted that the respondent is evading his creditors in an attempt to circumvent and frustrate their claims, as illustrated by the report of the tracing agents and Sheriff's returns.
- [21] Applicant's Counsel finally submitted that with regard to the aforesaid property valuation, there will be an advantage for prospective creditors of the respondent. Counsel submitted that the applicant has tendered security at the Master's office and that the respondent has failed to proffer any defence opposing the applicant's application for his sequestration. The applicant is entitled to the relief it seeks, being the final sequestration.

Respondent's

Submissions

- [22] As a defence to the sequestration application, the respondent contends that he was single, with six minors and two adult dependants. He is employed at Enza Construction (Pty) Ltd, earning a net salary of R 51,020.48 per month. He submitted further that he had arranged monthly payments with most creditors, including:

- a) RCS
- b) Diners Club
- c) Direct Axis SA (Pty) Ltd
- d) First National Bank (A Division of First Rand Limited)
- e) Nedbank Limited
- f) S A Home Loans (Pty) Ltd
- g) Sanlam Personal Loans
- h) Standard Bank of South Africa Limited
- i) Wesbank (A Division of First Rand Limited)
- j) Telkom.

[23] The respondent averred that he initially appointed VIP Rental agency to manage his properties and they stole money from the tenants. He changed the rental agency to Pretor Property, to manage rentals of his properties, both Chateaux Marie 205 and Gloria 408 and pay levies to both Body Corporates. However, due to tenants' non-payment, all levy accounts are in arrears.

[24] The respondent further submitted that he is committed to selling his third property at Sunnyside Gardens to repay all his creditors and is seeking to undergo debt counselling to establish a repayment plan for all creditors.

Issue for

determination

[25] From the above discussion, this court is enjoined to consider whether the applicant provided sufficient evidence to satisfy the requirements of section 12 of the Insolvency Act, 24 of 1936, that the respondent is insolvent?

Legal Principles and discussions

[26] Section 8 of the Insolvency Act serves as a tool for creditors to compel the sequestration of a debtor's estate, even without proving the debtor's actual inability to pay their debts. In terms of section 8, the debtor commits an act of insolvency if:

- a) The debtor leaves the Republic or departs from his dwelling or otherwise absents himself with intent to evade or delay the payment of his debts.
- b) The debtor cannot satisfy the judgment granted against them, and the Sheriff finds no property to attach and execute to satisfy the judgment.
- c) Debtor conceals or disposes of property with the intent to defraud creditors.

- d) Debtor removing property with the intention of prejudicing creditors
- e) Debtor fails to comply with a court order for the surrender of their estate, even if they are capable of doing so.
- f) Debtors give written notice to creditors that they are unable to pay their debts.
- g) The debtor is a trader who has given notice in the Gazette in terms of section 34(1) and is, therefore, unable to pay all his debts.
- h) The Debtor, being a trader, unable to pay debts after notice of transfer of business

[27] Section 12 of the Insolvency Act deals with the final sequestration or dismissal of a petition for sequestration. It outlines the procedures after a provisional sequestration order is made, determining whether to proceed with final sequestration or dismiss the petition. The section provides: -

a) Final Sequestration:

If the court is satisfied that the estate should be sequestrated, it will issue a final sequestration order. This order makes the sequestration official and irrevocable.

b) Dismissal of Petition:

If the court is not satisfied that the estate should be sequestrated, it will dismiss the petition. This means the sequestration proceedings are terminated, and the debtor's estate remains unaffected.'

Requirements for a final order of sequestration

[28] In terms of section 12(1) of the Act, the applicants must satisfy this court that:

12(1)(a) they have established a liquidated claim against the respondent of not less than R100,00;

12(1)(b) the respondent has committed an act of insolvency or is, in fact, insolvent; and

12(1)(c) there is reason to believe that it will be to the advantage of creditors if the respondent's estate should be sequestrated.

[29] It is trite that the applicants bear the onus of proof in respect of each of these requirements. In this case, the sheriff of the court had searched for movable properties to satisfy the debt and found none.

[30] The applicant, in his replying affidavit, submitted that the respondent's defence be struck off due to non-compliance with the rules of the court. However, the applicant condoned this failure by filing a replying affidavit. The Rules of the Court are just there for procedural fairness. In my view, the applicant will not be prejudiced.

- [31] I agree with the applicant's version that, based on the respondent's own version, he is over-indebted and unable to meet his obligations. Initially, upon issuing the application for sequestration of the respondent, the respondent committed an act of insolvency as defined in section 8(a) of Act 24 of 1936, in that he absented himself from his dwelling with intent to evade or delay payment.
- [32] It is evident that the respondent further admitted that he could not pay his debts due to reduced salary, non-paying tenants, and a high number of dependents. The Sheriff had found no property to attach and execute to satisfy the judgment, which constitute another act of insolvency in terms of section 8(b) of the Act.
- [33] By failing to list the applicant among the creditors to whom payments were offered, the respondent further constituted another act of insolvency in terms of section 8 (c) of the Act. He attempted to prefer some creditors above others.
- [34] In *Sumsudin and another v De Villiers Berange NO* (170/05) [2006] SCA 79 @para 41, the court referred to *Schlemmer v Mehnert* 1908 25 SC 782 and *Joosub v Soomar* 1930 TPD 773 - that an applicant for sequestration is entitled to rely on the commission of an act of insolvency albeit that he only became aware of it after the commencement of the sequestration proceedings.
- [35] I am satisfied that the applicant has established that the respondent has committed acts of insolvency. The provisional sequestration order was granted on 8 February 2023. If the respondent wanted to sell one of his properties, he had ample time to do so from February 2023 to May 2025. There is no explanation why that was not done.

Advantage to Creditors

- [36] The only remaining issue is whether it is to the advantage of creditors for this court to grant a final order of sequestration. In considering whether sequestration will benefit creditors, the court must, of course, have regard to the facts and circumstances placed before it in the sequestration application. Only if it is satisfied, on a balance of probabilities, that there is a reasonable prospect that creditors will receive some financial benefit will it consider granting a final order of sequestration.
- [37] In *Meskin & Co v Friedman* 1948 (2) SA 555 (W) at 559, Roper J stated:

"The right of investigation is granted, as it seems to me, not as an advantage in itself, but as a possible means of securing ultimate

material benefit for creditors in the form, for example, of recovering property disposed of by the insolvent or disallowing doubtful or collusive claims.

The facts presented to the Court must demonstrate a reasonable prospect – not necessarily a likelihood, but a prospect that is not too remote – that some pecuniary benefit will accrue to creditors. Even if there are none at all, there are reasons for thinking that, as a result of the enquiry under the Act, some may be revealed or recovered for the benefit of creditors; that is sufficient.”

[38] The respondent submitted that the court should refuse the application and allow him to proceed with debt review. In *Firststrand Bank v Evans* 2011, 4 SA 597 (KZD) at Para 25, the court stated that “consequently, a creditor may proceed with sequestration proceedings and the mere fact that the debtor preferred debt review as the solution to his or her financial problems appears to be irrelevant when the court has to decide whether a sequestration order should be granted or not.

[39] I am satisfied that the respondent is over-indebted, and the applicant has discharged the onus to establish that the respondent committed acts of insolvency in terms of sections 8(a),8(b) 8© and of the Insolvency Act 24 of 1936. I am further satisfied that the applicant proved that the final sequestration would be to the advantage of creditors.

Costs

[40] The applicant has been successful in obtaining the relief he sought and is accordingly entitled to their costs.

Order

[41] I therefore make the following order:

1. The rule nisi dated 8 February 2024 is hereby confirmed.
2. The respondent's estate is finally sequestrated and placed in the hands of the Master of the High Court.
3. Costs of this application are to be costs in the sequestration on scale A.

N.L MOILA

ACTING JUDGE OF THE HIGH COURT

FOR THE APPLICANT: ADVOCATE DUAN BROODRYK INSTRUCTED BY ROUSSEAU AND
ROUSSEAU ATTORNEYS, INC RESPONDENT : IN PERSON

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