

SOUTH AFRICA / JUDGMENT

Kullman v Moloney and Others (2023/008569) [2023] ZAGPJHC 1290 (10 November 2023)

[2023] ZAGPJHC 1290**COURT**

South Gauteng High Court, Johannesburg

BEFORE

Kaplan

CASE / FILE NUMBER

2023/008569

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

Case no: 2023/008569

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

In the case of a surrender application by:-

CONRAD KULLMAN APPLICANT AND SARAH JANE MOLONEY AND 12 OTHERS FIRST
RESPONDENT ANN CLARISSA CARSTEN SECOND RESPONDENT TSHOLOFELO MALETSATSI
WESI THIRD RESPONDENT KIM KULLMAN FOURTH RESPONDENT

JUDGMENT

KAPLAN AJ:

1. In this matter the Applicant seeks an order placing his estate into voluntary sequestration in accordance with Sections 3 to 6 of the Insolvency Act 24 of 1936 (“the Act”). The application has become opposed by first to fourth respondents who were represented at the hearing by counsel.

2. The applicant avers that he is de facto insolvent more particularly in that his total liabilities amount to the sum of R13 004 183,40 as opposed to the value of his immovable property which he contends has a market related value of R4 450 000,00 with a forced sale value of R3 650 000,00.
3. Applicant avers that his creditors would receive a dividend of at least 34.90 cents in the rand.
4. It is incumbent on applicant to establish that the provisions of Section 4 of the Act have been complied with.
5. Section 6 (1) of the Act provides that if the Court is satisfied that the provisions of Section 4 thereof has been complied with, that the estate of the debtor in question is insolvent, that the debtor owns realizable property of a sufficient value to defray all costs of sequestration and that it will be to the advantage of the debtor's creditors if his estate is sequestrated, it may accept the surrender of his estate and make an order sequestrating that estate.
6. The application is opposed by a number of creditors.
7. I have a number of difficulties with the application. They are as follows:

7.1 Applicant alleges in paragraph 11 of the Founding Affidavit that his immovable property is valued in the sum of R3.6 to R4.4 million as appears from a desktop valuation by an estate agent which is attached thereto marked FA2 ("the valuation"). In my view the valuation constitutes no more than a suggestion by the estate agent that an asking price for the immovable property is the sum of R4.3/R4.4 million and that offers from R3.6 million be considered having regard to the current market and a comparative market analysis. the difficulties which I have with the valuation are as follows:

7.1.1 it is dated 6 October 2021 and is not contemporaneous with the application brought in 23 March 2023 (it is out of date);

7.1.2 it does not constitute a valuation. This is because the value of the immovable property must be accurately calculated by an expert valuator who must assess the value on the basis of a forced sale and confirm the valuation under oath. See *ex parte Steenkamp* and related cases 1996 (3) SA 822 (W).

7.2 The applicant gives the value of his movable assets as the sum of R50 000.00 as appears from Annexure FA3 to the Founding Affidavit at p03-18. As appears from the said annexure this is mere conjecture. There is no affidavit by an expert supporting the value of the said assets in the sum of R50 000.00.

7.3 The applicant avers in paragraph 29 of the Founding Affidavit that his brother is also liable to pay for the Applicant's "litigation liabilities" set out in the Founding Affidavit jointly and severally and that his brother has a property registered in his name which is valued in at least the sum of R4 550 000.00. Applicant however fails to disclose that his brother, John Peter Gerald Kullman, has also brought an application for the surrender of his own estate. This appears from the Government Gazette annexed to Applicant's service affidavit (Annexure SH1 at p01-115).

7.4 Applicant avers in paragraph 28 of the Founding Affidavit at p01- 60 that if his property is sold by his insolvent estate, his creditors would receive the sum of R4 450 000,00 which he alleges is the "forced sale value of the assets". This is contradictory to paragraph 11 of his Founding Affidavit at p01-55 where he alleges that the forced sale value of the property is R3.6 million.

7.5 Applicant makes no disclosure in his Founding Affidavit of a creditor, Kim Suzanne Kullman who has brought litigation against him. This appears from Applicant's statement of debtor's affairs at p03-56.

8. Because the applicant has failed to prove the value of his immovable property and movable assets, I am of the view that he has failed to discharge his onus of proving advantage to creditors as required by Section 6 of the Act.
9. In addition to the foregoing it is a requirement that this application be brought with the utmost good faith. (See Mars Law on Insolvency Tenth Edition at p74, para 2). I am of the view for the reasons set out in paragraphs 7.1 to 7.5 supra that Applicant has failed to demonstrate the utmost good faith.
10. By virtue of the foregoing I order that:

10.1 the application for the voluntary surrender of Applicant's estate is dismissed with costs.

JL kaplan

ACTING JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

Appearances:

Appearance for Applicant:

Advocate Tyrone Lautré

Instructed by:

Kaveer Guinness Inc.

Appearance for Respondents:

Advocate S W Van Der Merwe

Eversheds Sutherland (SA) Inc.

Date of hearing: 6 November 2023

Date of judgment: 10 November 2023

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Prepared on 11 October 2026 · Esheria