Editorial note: Certain information has been redacted from this judgment in compliance with the law.

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: 18665/2021

(1) REPORTABLE: **NO**

(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED. **YES**

20 MARCH 2023
DATE

SIGNATURE

In the matter between:

ADRIAAN WILLEM VAN ROOYEN N.O. First Applicant

JUSTI STRÖH N.O. Second Applicant
[In their capacities as joint liquidators of Fawcett Security Services (Gauteng Province) (Pty) Ltd (in liquidation)]

and

PITSO GEORGE NKWINIKA First Respondent
(Identity No: […])

LEA NOMPOPI KABINI NKWINIKA Second Respondent
(Identity No: […])

NEUKIRCHER J:

1] This is the return day of an opposed application for sequestration. The provisional order was granted on 4 November 2021. In the interim, the respondents brought

an urgent application to anticipate that order which was struck from the roll due to lack of urgency with costs. Since then, the respondents have been given several opportunities to file further answering affidavits, and the applicants have also filed responses to those. Thus, at the hearing, both sets of parties had filed several affidavits and had been given every opportunity to put their respective cases before court.

2] Section 12(1) of the Insolvency Act 24 of 1936 (the Act) provides:

"12.(1) If at the hearing pursuant to the aforesaid rule or dismissal of nisi the Court is satisfied that -

(a) the petitioning creditor has established against the debtor a claim such as is mentioned in subsection (1) of section 9; 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 sequestrate the estate of the debtor."

3] Unlike at the provisional order stage where a *prima facie* case must be established, the bar at the hearing of a final order is higher - the applicant must establish the requirements of section 12(1) on a balance of probabilities[1].

4] Given these provisions the question is simply whether the applicants have made out a case for the confirmation of the rule. This issue must be seen in light of the trite principle that winding-up proceedings are not to be used to enforce payment of a debt that is disputed on *bona fide* and reasonable grounds[2] as the procedure is not designed for the resolution of disputes as to the existence or non-existence of a debt.[3]

SOME BACKGROUND

5] Fawcett Security (Gauteng Province) (Pty) Ltd (the company), from its inception in 2015, provided security services in both the public and the private sectors. Its main source of income however appears to have been derived from tenders awarded to it from various Government entities. The two respondents were the company's sole directors with the first respondent acting as managing director and the second respondent overseeing its financial management. Both respondents had sole access to the company's bank accounts and financial records.

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[1] London Estates (Pty) Ltd v Nair 1957 (3) SA 591 (D) at 593

[2] Also known as the "*Badenhorst rule*" referring to the case of Badenhorst v Northern Construction Enterprises (Pty) Ltd 1956 (2) SA 346 (T) at 347H–348C

[3] Imperial Logistics Advance (Pty) Ltd v Remnant Wealth Holdings (Pty) Ltd 2022 JDR 3071 (SCA)

6] According to them, the company was experiencing financial difficulties and so, on the advice of their bookkeeper at the time, they placed the company in voluntary liquidation on 31 July 2017 and on 11 April 2018 the applicants were appointed as joint liquidators by the Master and they took over its books and accounts. According to the applicants, the liquidation process has proven to be a difficult task as the respondents simply refused to co-operate with the process and refused to turn over the books and accounts of the company, including the debtor and creditors details.

7] On 25 October 2018 an insolvency inquiry[4] was held at which the first respondent gave evidence. Information was extrapolated from that enquiry which, together with the documents in the possession of the applicants, have resulted in this application.

THE APPLICATION

8] The application before me is based on the following:

8.1 the company is a creditor in the respondents' estates in the amount of R51 368 017-50 (or at least R100-00). In essence, the applicants argue that the respondents defrauded the company in this amount and that as a result, the company has a claim of at least R100-00 which means that the have *locus standi;*

8.2 the respondents are factually insolvent;

8.3 there is reason to believe that it is to the advantage of creditors that the

[4] In terms of section 417 and section 418 of the Companies Act 61 of 1973 (the 1973 Act)

respondents are sequestrated.

9] At this stage it is necessary to point out that the applicants' case in their founding papers was that the respondents are married to each other in community of property and that therefore it is the joint estate that will be sequestrated. In the answering papers, the respondents stated that they were divorced in 2020. Accordingly, it is no longer the joint estate that falls to be sequestrated, but rather the individual estates of the respondents. Nothing turns on this according to the applicants as the debt arose long before the respondents were divorced, and each one participated in the denuding of the company's assets and therefore each is equally responsible for the outcome, and they are each factually insolvent. In essence, the applicants papers are such that they have attempted to demonstrate that a case is made out against each of the respondents individually.

PRELIMINARY ISSUES

10] There are a few preliminary issues that need to be discussed before I delve into the merits of the application. These are:

10.1 the application to strike out paragraphs in the answering affidavits which applicants state are vexatious, scandalous and irrelevant to the determination of the issues[5];

10.2 whether the transcript of the s417 hearing should be allowed as it was not annexed to the founding affidavit, but rather to the replying affidavit.

[5] Rule 23 (2)

THE APPLICATION TO STRIKE OUT

11] The respondents have made a number of allegations against the applicants and their previous attorney of record[6], including allegations of collusion and improper conduct. The applicants have, in reply, sought to strike out these allegations as being scandalous, vexatious and irrelevant. In argument, the applicants submitted that it is unnecessary to deal separately with this issue as it can be dealt with as part of the merits and instead of striking the offending matter, I can simply ignore it. This is for two reasons: firstly, because the allegations made by the respondents serve no purpose other than to create atmosphere, and secondly because these allegations don't actually engage with the facts of the matter. I agree that this is the most efficient approach and it is dealt with in paragraphs 18 to 22 below.

THE TRANSCRIPT

12] In the founding affidavit the applicants state that they don't attach the transcript of the enquiry because of the confidential nature thereof, and state *"… but do hereby tender copies thereof if this Court so orders."* They also set out evidence gleaned, *inter alia* during the inquiry, which informs this application.

13] In their first answering affidavit[7], the respondents state:

"86.7 I challenge the applicants to avail transcripts of the inquiry held on 22 June 2019."

[6] Who has since passed away
[7] Dated 14 January 2022

As a result of this challenge the applicants sought, and obtained, the permission of the Master to utilize the transcript of the enquiry in this application. The permission was given on 8 March 2022 and extracts of the transcript are now attached to the applicants supplementary replying affidavit dated 22 June 2022.

14] The respondents have objected to what they term is “new evidence” which they say was introduced for the first time in reply. But the objection is misplaced as:

14.1 the basis was laid in the founding affidavit;

14.2 they challenged the applicants to disclose the transcripts;

14.3 the transcripts simply provide further proof of the allegations contained in the founding affidavit and the respondents dealt with these allegations in their first answering affidavit;

14.4 on 10 August 2022 I gave respondents an opportunity to file a 3rd answering affidavit in which they could again deal with the allegations made by applicants - which they did on 25 August 2022.

15] Therefore whilst it is a trite principle that applicants must make out their case in their founding affidavit, a court may allow the filing of further affidavits and the respondents have grasped that opportunity and were not left without recourse[8].

16] The objection is therefore without merit.

[8] Shepherd v Mitchell Cotts Seafreight (SA) (Pty) Ltd 1954 (3) SA 202 (T) at 250 G-I- and 206 F

THE ISSUES

17] The respondents' defence is predicated upon the following:

17.1 they deny that the applicants have *locus standi*;

17.2 that there is a material dispute of fact on the papers such that a court cannot even exercise a robust approach and decide the disputes on the papers[9];

17.3 that, irrespective of the above, their indebtedness is disputed on *bona fide* and reasonable grounds[10];

17.4 that they are neither insolvent nor have they committed an act of insolvency nor is there proof that it would be advantageous to creditors were an order for sequestration to be granted;

17.5 the application was brought with ulterior motive.

THE ULTERIOR MOTIVE

18] It is prudent to deal with this first. This argument is based on the complaint that the respondents' previous bookkeeper, one Mr Tayob, recommended that the company be voluntarily wound up and the respondents, in good faith, relied on this advice. The next they know is that Tayob seemed to be working with the applicants and was participating in overseeing the company's liquidation process.

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[9] Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd 1949 (3) SA 1155 (T)

[10] Hannover Group Reinsurance Africa (Pty) Ltd and Another v Gungudoo and Another [2011] 1 All SA 549 (GSJ) at para 13

19] They objected to his participation and alleged collusion as, according to them, he was responsible for the company's tax affairs, submitting a claim of his own in the liquidation for services rendered as a bookkeeper and fabricated a claim of R21 million owed to SARS.

20] The respondents also make allegations against applicants' previous attorney of record, Mr Roestoff (who has since passed away). They allege that at a round table meeting on 22 June 2019 they were told to make payments to certain persons/entities "*to make the matter go away*" – these payments were to be made to the applicants, Mr Roestoff, Mr Tayob and one Mr Laros[11]. As a result of this allegedly collusive and abusive behavior, the respondents laid criminal charges.

21] The applicants have sought to strike out these allegations as being scandalous, vexatious and irrelevant. They state that:

21.1 the liquidators "heavily" rely on auditors and/or bookkeepers who were involved in the business of any liquidated company for purposes of their investigation and winding-up duties. This is because these people generally have knowledge of the company's affairs;

21.2 secondly the meeting referred to in paragraph 20 supra was called at the behest of respondents own attorneys to discuss the possibility of a compromise and/or settlement – the discussion must therefore be seen in that light. It must also be seen in the light of the fact that the

[11] He was also part of the liquidators "team"

applicants' act in the interests of the creditors of the company who's proven claims must be settled before the liquidation may be settled. In any event, it is clear from correspondence addressed to the respondents subsequently, that the applicants proposed that any agreement "*be subjected to approval by the Master*."

22] I am of the view that these allegations are made simply to create atmosphere and in an attempt to draw the attention away from the main issue in this matter. It cannot be ignored that irrespective of the advice upon which they acted, the respondents are the ones who owe the company a fiduciary duty. They cannot abdicate their responsibility to a third party and ultimately they are responsible for the liquidation as it was they, and only they, who could and did pass the resolution that placed the company in liquidation. Presumably they would not do so without cogent reason. The allegations made by them are therefore irrelevant to the issue of whether the final order should be granted and will be ignored for determination of whether a final order should be granted.

THE LOCUS STANDI ISSUE

23] Section 9(1) of the Act provides that a creditor, who has a liquidated claim of not less than R100-00, or two or more creditors who in aggregate have liquidated claims of not less than R200-00 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.

24] In this matter, that translates to the following allegations made by the applicants:

24.1 that whilst the respondents were the directors of the company and then also subsequent to the company's liquidation, they misappropriated company funds for their own benefit;

24.2 that the total amount of the funds so misappropriated is R51 368 017-50, but even if not that amount at least an amount of R109 852-50 with which the respondents paid their childrens' tuition fees.

25] The latter is an important issue as if established, then establishes the liquidated claim of not less than R100-00, so *prima facie* conferring *locus standi* on applicants. In this regard the following have been conceded by respondents:

25.1 in their first answering affidavit the respondents admit that they made the following payments from the company's bank account:

a) to Conerstone College of R66 950-00; and

b) to Lord Milner Primary School of R44 882-50.

25.2 in the joint practice note the particular common cause fact is recorded as follows:

"*12.4 That the Respondents utilized the funds of Fawcett Security in the amount of R109 852-50 for personal expenses…"*

25.3 in argument, the respondents counsel made the following submission:

"There is no doubt that respondents have conceded that there is

misappropriation of funds."[12]

(my emphasis)

26] Given that the respondents have vehemently denied that they misappropriated funds or that they used any company money for personal use, the concessions set out *supra* are somewhat startling.

27] Be that as it may, the applicants go further than just the R109 852-50 – they state that at the very least the following must be taken into account:

27.1 the respondents made cash withdrawals in the total amount of R7 287 950-00;

27.2 there are transactions for The Carousel[13] totaling R764 100-00;

27.3 payments made to or on behalf of "George"[14] totaling R283 500-00;

27.4 payments made to or on behalf of "Leah N Nkwinika"[15] totaling R1 093 150-00.

28] Over and above these, the applicants allege that respondents failed to comply with the company's tax obligations which has resulted in a SARS claim of R 21 422 802-83 in the liquidation.

29] To add insult to injury, the applicants allege that between the time the company was placed in voluntary liquidation on 31 July 2018, and the time they were

[12] The submission was checked 3 times with respondents' counsel and is quoted verbatim.
[13] An entertainment and gambling establishment in Hammanskraal
[14] The 1st Respondent
[15] The 2nd respondent

appointed as liquidators on 11 April 2018, the respondents continued to operate the company's bank account – but they diverted payments from the company's debtors into their own personal account. According to the applicants, an analysis on the bank statements attached to the respondents' final affidavit reveal that between September 2017 and March 2018, an amount of R117 800-00 was paid to first respondent and R27 700-00 to the second respondent. Thus, these further sums must be added to the R109 852-50.

30] The transcripts of the s417 enquiry also evidence the following admissions made by first respondent:

30.1 that he was in possession of the company's bank card with which he made purchases and withdrawals;

30.2 that he withdrew money for *"(c)ompany, personal, entertainment and my child*";

30.3 that the majority of the money from the company's Nedbank account went to The Carousel for mostly personal expenses;

30.4 that the children's' tuition fees were paid by the company; and

30.5 that company money was used to pay the rental of his residence of ± R15 000-00 per month.

31] Thus, say the applicants, the respondents used the company bank account as if it were their own and the misappropriation of company funds establishes the fraud perpetrated by respondents vis-à-vis the company. However, say the applicants, I am not required to make a finding that the misappropriation has been established. This, of course, in light of the fact that the respondents

admitted the misappropriation in argument before me simply establishes the applicants' allegations on this issue as common cause.

32] Given the above, I am satisfied that the applicants' have *locus standi* and the onus is on the respondents now to show that the debt is disputed on *bona fide* and reasonable grounds.[16]

BONA FIDE AND REASONABLE GROUNDS

33] It is the respondents case that despite the admissions set out in paragraph 25 supra, no monies are owed by them to the company and whatever funds they misappropriated were in fact repaid. This they say is because the monies the applicants state were paid "to or on behalf" of them as reflected in the bank statement, were not paid to them but by them[17] to the company. The amount was R1 376 650-00 and they state:

"46 … On the version of the applicant, we paid the amount of R1 376 650-00 of our own money into the bank account of the company. This means that even if we used any company monies these were paid back."

34] But there is no proof of these payments made by either of the respondents and they failed to identify any transactions on the bank statements placed before court to confirm their allegations. They also failed to provide any other proof of this allegation.

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[16] Hülse-Reutter and Another v HEG Consulting Enterprises (Pty) Ltd (Lane and Fey NNO Intervening) 1998 (2) SA 208 (C) at 218D-219C

[17] My emphasis

35] What the respondents have, in fact, done is throw up a denial of applicants' allegations in general and submitted at the hearing that, as a result, there is a material dispute of fact such that the court cannot take even a robust approach and the application should not have been brought in this form.

36] But their argument goes further – they argue that, applying the tried and true principles of the Plascon-Evans rule, their version must triumph and the application be dismissed with costs and that motion proceedings should never have been brought.

37] But motion proceedings are specifically used in applications of this nature:

"… There are certain types of proceedings (eg, in connection with insolvency) in which by Statute Motion proceedings are specially authorized or directed: in these the matter must be decided upon affidavit and Rule 9 may be invoked, as shown in ***Moahmed v Malik (1930 TPD 615)****, to permit viva voce evidence to be led in order to counteract any balance of probability appearing from affidavits …"*[18]

38] Furthermore, it is only in exceptional circumstances that an applicant of this nature will be referred to oral evidence[19].

[18] Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd 1949 (3) SA 1155 (T) at 1161
[19] The Premier Western Cape v Parker and Mohammed 1998 JDR 0999 (C)

39] The respondents also deny that any amount is owing by the company to SARS. They again argue that there is a material dispute of fact in respect of this issue. But what they lose sight of is the affidavit of one Hester Elizabeth de Wet, a registered Tax Practitioner and formally the bookkeeper of the company until 2012, who was appointed by the respondents to analyse the SARS claim. According to her

"7. Based on the above and SARS records I have calculated that the actual amount owing to SARS is R5 495 821-00. This amount excludes input costs claimable."

40] Thus the respondents' dispute regarding the SARS claim is simply a ruse – their own expert has confirmed that SARS does indeed have a claim and the fact that the claim may be R5,4 million rather than R21,4 million does not render the claim illiquid for purposes of this application[20].

41] As to the remainder of the allegations, the respondents have also failed to explain their drawings from the company after it was placed in voluntary liquidation.

42] I am also unpersuaded that there is a real, genuine and *bona fide* dispute of fact on these papers:

"[13] A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in

[20] Irvin and Johnson Ltd v Basson 1977 (3) SA 1067 (T) where the court rejected an argument that the applicant's claim could not be regarded as a liquidated claim because the full extent of the theft had not been finally established, but evidence showed that applicant had a claim for at least R103 925-49 against respondent which established a claim of at least R100. The court found that it was of "no consequence" that the respondents' liability any eventually be proven to be in excess at that amount.

his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him, But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment...factual averment seldom stand apart from a broader matrix of circumstances all of which needs to be borne in mind when arriving at a decision…"[21]

43] Given the respondents admissions in these papers, read with the evidence tendered by the first respondent during the s417 enquiry and the documentary evidence, there is certainly evidence on a preponderance of probabilities[22] to show that the respondents misappropriated funds in excess of the R100-00 threshold.[23]

44] Thus I am of the view that the respondents have failed to raise a *bona fide* dispute on reasonable grounds.[24]

ARE THE RESPONDENTS INSOLVENT

45] The respondents argue that the applicants have failed to demonstrate that they have committed an act of insolvency as enumerated in s8 of the Act. According

[21] Wightman t/a JW Construction v Headfour (Pty) Ltd and Another 2008 (3) SA 371 (SCA)
[22] Kalil v Decotex (Pty) Ltd 1988 (1) SA 943 (A) at 976C-980A
[23] Kleynhans v Van der Westhuizen NO 1970 (2) SA 742 (A)
[24] Exploitatie - en Beleggingsmaatschappij Argonauten 11 BV and Another v Honig 2012 (1) SA 247 (SCA)

to them, this omission renders the application fatally defective and thus the application must be dismissed on this basis alone.

46] But the respondents have misconstrued the provisions of s12 (1)(b) of the Act. That section does not require solely the commission of a deed of insolvency - it is framed in the alternative ie either a deed of insolvency or that the respondents are insolvent. It is the latter upon which the applicants rely.

47] As has been pointed out in the preceding paragraphs, the respondents did not raise any *bona fide* or reasonable grounds upon which their indebtedness can be disputed, and certainly none which raise a *bona fide* dispute of fact such that the Plascon-Evans rule must be applied or that the issue be referred to oral evidence.

48] The respondents have simply failed to set out any evidence to demonstrate that they are solvent. Faced with the debt (supra), and the applicants' allegations that they own two immovable properties worth a total of ± R231 929-00 and a motor vehicle, the respondents simply thrust and parry without any attempt at hitting the target of bringing the court into their confidence regarding the true state of their financial affairs.

49] At best, their argument is that they are not insolvent as:

49.1 the properties situated at Farm Blaauwboschkuil, Limpopo and Erf 4924 Soshanguve South Ext are theirs;

49.2 they own a 2009 Range Rover motor vehicle;

49.3 that the first respondent is “in the advanced stages of finalizing approvals of a property development project for resident houses which estimate at R8 000 000-00;

49.4 and he has “*another security business which has a contract with Dikala Plant. The effect of the sequestration is that I can no longer lawfully run this business. I am also negotiating a number of other business opportunities with various third parties including acquiring a 51% shareholding in a sand mining business.”*

50] Given that the respondents have both been provisionally sequestrated it is puzzling how any of these negotiations/acquisitions could have been, or are being, conducted without the knowledge or consent of their trustee. As none is attached to these papers, I can only assume that this is absent. Be that as it may, all of these efforts do not assist respondents because of the absence of any detail. Were this a summary judgment application the respondents defence would be described as bald, vague and sketchy.

51] The failure to take the court into their confidence is simply demonstrative of the fact that they have failed to show assets in a sum exceeding their liabilities[25]

ADVANTAGE TO CREDITORS

52] The applicants state:

[25] Mackay v Cahi 1962 (4) SA 193 (O) at 194 F-H, 195 C-E, 204 F-H

"59 The applicants do not have intricate details of the respondents' financial affairs, however do know that they live a lavish lifestyle. The respondents continue to drive luxury vehicles and are extremely well-dressed individuals who wear mostly luxury branded items."

53] The respondents argue that there is therefore no proof that their sequestration will be to the advantage of creditors and therefore the application must be dismissed.

54] But the applicants do not need to prove that the respondents have any assets as the *onus* to demonstrate their solvency lies on the respondents. In **Meskin & Co v Friedman**[26], Friedman J held

"(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."

55] In **Stratford and Others v Investec Bank Ltd and Others**[27] the Constitutional Court defined the meaning of the word "advantage" as follows:

"[44] The meaning of the term 'advantage' is broad and should not be rigidified. This includes the nebulous 'not-negligible' pecuniary benefit

[26] 1948 (2) A 555 (W) at 559
[27] 2015 (3) SA 1 (CC) at par 44- 45

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.'

[45] 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."

56] I am therefore satisfied that there is a reasonable prospect that some pecuniary benefit will result to creditors and that as a result of an enquiry

under the Act, same assets may be revealed or recovered for the benefit of creditors[28].

CONCLUSION

57] In the result, I am satisfied that the application should succeed.

COSTS

58] The applicants have asked that the liquidators costs of sequestration, including the reserved costs of the previous extensions of the *rule nisi* and the costs of 8 and 10 August 2022, be costs in the sequestration on an attorney and client scale. They argue that the costs of 8 and 10 August 2022 were incurred when respondents wanted a third bite at the cherry, but they squandered the opportunity given to them as they filed an affidavit which simply rehashed the same issues.

59] In my view the manner in which respondents have conducted themselves leaves much to be desired. They have played a game of cat-and-mouse, employed delaying tactics and have failed to provide the court with a full and frank disclosure of their financial position. As a result, an attorney and client costs order is warranted. However, no costs for 10 August 2022 are allowed as there was no appearance – a draft order was sent to me which I edited and which was then uploaded to Caselines.

[28] Per Stratford supra at paragraph 43

ORDER

60] The order I grant is the following:

1. A final order of sequestration is granted against 1st and 2nd respondents.

2. The liquidator's costs of sequestration, including any reserved costs in respect of any previous extensions of the *rule nisi* to facilitate the hearing of the application, and specifically the reserved costs of 8 August 2022, shall be costs in the sequestration on an attorney and client scale.

_____

B NEUKIRCHER

JUDGE OF THE HIGH COURT

Delivered: This judgment was prepared and authored by the Judges whose names are 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 20 March 2023.

Appearances:

For 1st & 2nd Applicants	: Advocate SN Davis with Advocate PWT Lourens
Instructed by	: Strydom Rabie & Heijstek Inc.
For 1st 2nd Respondents	: Advocate P Mthombeni with Advocate Mukwevho
Instructed by	: Biyela and Associates
Heard on	: 8 February 2023