

**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG**

**CASE NO: 25057/2018**

In the matter between:

**VBS MUTUAL BANK (IN LIQUIDATION)**

Applicant

and

**MADZONGA, MMBULAHENI ROBERT**

Respondent

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**JUDGMENT SUMMARY**

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*Insolvency – final sequestration – Insolvency Act 24 of 1936 – requirements in terms of s 9 and s 12 of the Insolvency Act – establishment of liquidated claim – loss occasioned by fraud perpetrated against applicant – respondent, as co-perpetrator of the fraud, jointly and severally liable for total loss – although full extent of loss still to be determined, liability of not less than R100 established by applicant – factual insolvency may be proved inferentially, such as from inability to pay a debt – Court has a discretion not to grant final sequestration order even where requirements are met – no circumstances to warrant exercise of discretion in respondent’s favour – respondent’s estate placed under final sequestration.*

**Background**

The application was for the final sequestration of the respondent’s estate. The applicant, VBS Mutual Bank (in liquidation) suffered significant financial losses due to wide-scale fraud perpetrated against it. The respondent in this matter was the former Acting Chief Operating Officer of the applicant, who subsequently became the Chief Operating Officer and Chief Executive

Officer of Vele Investments (Pty) Ltd, a company which became the majority shareholder of VBS and the primary recipient of proceeds derived from the fraudulent scheme.

### **The Court**

The basis of the applicant's claim against the respondent was that VBS had suffered a loss of at least R1 521 925 280.46, and that as a co-perpetrator of the scheme, the respondent was jointly and severally liable for the repayment of the full amount.

The respondent denied his involvement in the fraudulent scheme, arguing that this raised a genuine and bona fide dispute of fact that could not be resolved on the papers. He further argued that the applicant had failed to establish a liquidated claim against him, and that the requirements of s 12 of the Insolvency Act 24 of 1936, read with s 9 (1) thereof, had not been met.

The Court rejected the respondent's assertion that he did not knowingly benefit from the fraudulent scheme. It stated that the respondent was dishonest; that he had been intimately involved with the individuals and entities involved in the fraudulent scheme; and that he substantially benefitted from the scheme. These factors, taken together with the respondent's high-ranking positions within VBS, Vele Investments (Pty) Ltd and other relevant entities, coupled with his knowledge, education and experience, make it inconceivable that he was ignorant of the fraudulent scheme to which VBS fell victim. The Court found that the respondent's denials were so untenable that they do not raise a real and bona fide dispute of fact.

In assessing whether the requirements of s 12 of the Insolvency Act had been met, the Court held that the applicant had established a liquidated claim against the respondent. In this regard, the Court found that the respondent was a joint wrongdoer who is liable for the full amount claimed by the applicant. The Court also found that although the losses caused to VBS could ultimately amount to more than the sum claimed in the papers, the applicant had established a liability of not less than R100, as required by the Insolvency Act.

The Court held that the respondent was factually insolvent, and that this could be proved inferentially from the respondent's inability to repay a debt. It also held that there was a reasonable prospect of the final sequestration of the respondent's estate being advantageous to creditors. Therefore, the statutory requirements for a final sequestration were met and the order could be granted. The circumstances did not warrant an exercise of the Court's discretion in favour of the respondent.

### **ORDER:**

1. The estate of the respondent is placed under final sequestration;

2. The respondent's estate is to pay the costs of this application, including the costs of senior counsel and all previously reserved costs.

**Coram:** Matojane J

**Heard:** 21 June 2019

**Delivered:** 23 August 2019