

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
(NORTH GAUTENG, PRETORIA)

CASE NO: 8095/2014

(1)	REPORTABLE: <u>YES</u> / NO
(2)	OF INTEREST TO OTHER JUDGES: <u>YES</u> / NO
(3)	<u>NOT</u> REVISED.
	<u>20/02/2014</u> DATE
	<u>Es. Welsh</u> SIGNATURE

In the matter between:

THOMAS WILLIAM LYONS

20/2/2014

APPLICANT

And

THE SHERIFF OF THE HIGH COURT FOR THE DISTRICT OF TZANEEN

1<sup>ST</sup> RESPONDENT

CONRAD ALEXANDER STARBUCK

2<sup>ND</sup> RESPONDENT

MOHERANE WILLIAMS MATHIBEDI

3<sup>RD</sup> RESPONDENT

NEDBANK LIMITED

4<sup>TH</sup> RESPONDENT

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JUDGMENT

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WEBSTER J

1. The applicant seeks an order:

- (i) For the stay for the execution of the sequestration order granted on 24 May, 2013 and another order made on 30 September, 2013 in case no. 22848/2013 "...pending the final outcome and determination of the rescission application in case number 22848/2013";

- (ii) That the Respondents be interdicted and restrained from taking any further steps in execution of the abovementioned liquidation orders pending the final outcome and determination of the rescission application filed by the applicant under case number 22848/2013;
  - (iii) That the liquidation orders issued by the Registrar of this Court on 24 May, 2013 and 30 September, 2013 be set aside; and
  - (iv) A costs order against the Respondents jointly and severally, the one paying the others to be absolved.
2. At the commencement argument counsel for the applicant indicated that he was persisting only with an order in terms of prayers (ii) and (iii) and (iv).
3. The case for the Applicant (Thomas William Lyons) is that:
- (i) "...the Second Respondent sought and obtained liquidation orders against the applicant surreptitiously and opportunistically...";
  - (ii) The correspondent attorneys under the impression that it was one matter then forwarded only one application to the attorneys of record, case number 22848/2013 "...and his attorney entered a notice of opposition only in case number 22848/2013",
  - (iii) That he has "...excellent prospects of success with the rescission application...";
  - (iv) The applicant has strong prospects of success and that the balance of convenience favours the applicant.
4. The application against the applicant in case number 22847/2013 was brought against him in his personal capacity and not in a representative capacity.
5. In answer to the founding affidavit the respondent avers that:
- (i) A provisional sequestration order was granted on 24 May, 2013: it was served on the Lyons and advertised in case number 22847/2013
  - (ii) On the return day, the 9<sup>th</sup> July, 2013 counsel appeared on behalf of Lyons and the *rule nisi* was extended to 28 August, 2013 and the applicant

(Lyons) was ordered to file his opposing affidavit by no later than 26 July, 2013;

(iii) On 28 August, 2013 the *rule nisi* was extended to 28 October, 2013 and the applicant ordered to file his answering affidavit by no later than 28 October, 2013. He failed to do so.

6. With regard to case number 22848/2012 the respondent avers that the applicant herein was sued in his capacity as a co-trustee. Both trustees filed a notice of intention to oppose: they failed to file opposing affidavits, however.

7. The matter was placed on the unopposed roll and a provisional sequestration order was granted on 17 July, 2013.

8. The said order was served and advertised: there was no response from the respondents and a final sequestration order was duly granted.

9. From the above facts it is impossible that the applicant could have been unaware that final orders had been granted in each of the case numbers on the return dates.

(i) Against the background sketched above it is clear that the applicant was aware of the following, viz. that he had to file an affidavit in each matter in order to avert a final sequestration order being made in each of the two matter

10. The applicant, well-aware of this, failed to do so.

11. The respondents have resisted the application primarily on the facts set out above.

12. In addition the following issues were raised namely:

- (i) That upon the granting of the provisional sequestration order the applicant herein was divested of his estate;
- (ii) The applicant had waited several months before bringing this action;

- (iii) Lyons attempted to rely on the provisions of the National Credit Act were to no avail;
- (iv) Neither the Master nor the liquidators have been cited;
- (v) The application for rescission had been brought well out of time and no effort had been made to explain the delay.

13. Having considered the facts and the submissions herein it is clear that the applicant has failed to

- (i) satisfy the court that this matter is urgent;
- (ii) satisfy the Court that he has the necessary *locus standi* to bring this application without citing the Master, the liquidators or the trust as interested parties.

14. Upon a conspectus of the issues this Court is satisfied that any urgency, if any, was caused by the applicant himself. In addition, he delayed between August, 2013 and January, 2014 before launching the proceedings in this matter. The so-called urgency was clearly of his own making.

15. **The application is accordingly dismissed with costs.**



**G. WEBSTER  
JUDGE IN THE HIGH COURT**