

JUDGMENT

MAKGOBA JP

- [1] The Applicant applies for the sequestration of the estate of the Respondent, Jan Walter Slippers. Simultaneously under case number 4258/2017 the Applicant applies for the sequestration of the Walter Slippers Family Trust. The two applications form part of five related matters that include the liquidation of three close corporations of which the Respondent is the sole member. All these five related matters were instituted in this Court.
- [2] The three liquidation applications are:
- 2.1. Case number 4253/2017 between The Standard Bank of South Africa Limited v Ingogo Safaris CC;
 - 2.2. Case number 4259/2017 between The Standard Bank of South Africa Limited v Ingogo Wildsplaas CC and
 - 2.3. Case number 4270/2017 between The Standard Bank of South Africa Limited v Ingogo Wildlife Studio & Taxidermy CC.
- [3] On 26 April 2019 the High Court of South Africa, Gauteng Division, Pretoria granted provisional liquidation orders in respect of the three close corporation listed aforesaid. In the light of the provisional liquidation of the three close corporations the Applicant now only proceeds with the two remaining sequestration applications.
- [4] For the sake of convenience reference will be made hereinafter to Mr Jan Walter Slippers as "Respondent", to Walter Slippers Family Trust as "the Trust" and to the liquidated close corporations as "the liquidated close corporations".

- [5] The contents of the founding affidavits in these applications read *mutatis mutandis* the same given that the Respondent, the Trust as well as the liquidated close corporation bound themselves as sureties and co-principal debtors in respect of the same amounts owed to the Applicant.
- [6] It needs to be mentioned that while the liquidation applications in respect of the three close corporations were pending in this Court, the Respondent filed applications for business rescue in respect of the close corporations in the Gauteng Division of the High Court, Pretoria. On 26 April 2019 Potterill J dismissed the business rescue applications. The Court exercised its discretion in terms of section 131(4)(b) of the Companies Act 71 of 2008 by liquidating the close corporations instead of authorising the commencement of business rescue proceedings. A return date of 9 October 2019 was ordered for the confirmation of the provisional liquidation orders.

Jurisdiction

- [7] In an interlocutory application heard together with the main application, the Respondents prayed that the sequestration proceedings be removed to the Gauteng Division of the High Court of South Africa, Pretoria. The application is premised on section 27(1) of the Superior Courts Act 10 of 2013 that the two sequestration applications be removed to the Gauteng Division, Pretoria to be enrolled together with the three liquidation applications on the return day of the *rule nisi* that have been issued in each such liquidation applications.
- [8] Section 27(1) of the Superior Courts Act, 2013 provides that

"27 Removal of proceedings from one Division to another or from one seat to another in same Division

- (1) *If any proceedings have been instituted in a Division or at a seat of a division, and it appears to the Court that such proceedings -*
- (a) *should have been instituted in another Division or at another seat of that Division; or*

(b) would be more conveniently or more appropriately heard or determined-

(i) at another seat of that Division; or

(ii) by another Division, that Court may, upon application by any party thereto and after hearing all other parties thereto, order such proceedings to be removed to that other Division or seat, as the case may be."

Section 149 of the Insolvency Act 24 of 1936 deals with jurisdiction in sequestration matters and provides as follows:

"149 Jurisdiction of the Court.

(1) The Court shall have jurisdiction under this Act over every debtor and in regard to the estate of every debtor who -

(a) on the date on which a petition for the acceptance of the surrender or for the sequestration of his estate is lodged with the Registrar of the Court, is domiciled or owns or is entitled to property within the jurisdiction of the Court, or

(b) at any time within twelve months immediately preceding the lodging of the petition ordinarily resided or carried on business within the jurisdiction of the Court:

provided that when it appears to the Court equitable or convenient that the estate of a person over whom it has jurisdiction be sequestrated by another Court within the Republic, the Court may refuse or postpone the acceptance of the surrender or the sequestration."

[9] It is common cause that the Respondent , the Trust and the liquidated close corporations own or are entitled to immovable property situated within the jurisdiction of Limpopo Division of the High Court, to wit Farm Alldays, Limpopo Province.

Furthermore the Respondent, the Trust and the liquidated close corporations carried on business within the jurisdiction of this Court. This is

irrespective of the fact that, and for some unknown reasons, the business rescue proceedings were instituted in the Gauteng Division of the High Court, Pretoria where the provisional liquidation orders were ultimately made.

[10] On the assumption that the assets in Respondent's personal estate and also the assets of the Trust form part of a single business unit, the Respondent argued that a successful application for sequestration of either of the estate of the Trust or Respondent personal estate will result that the property concerned will vest in the Master of High Court Limpopo and will have to be administered in accordance with the directives of the said Master of the High Court, Pretoria. This, so the argument goes, will simply cause confusion and is not convenient.

[11] I disagree with the above assumption and conclusion by the Respondent and for the following reasons:

11.1. Respondent conducts business through the Trust and the corporate entities within the area of jurisdiction of the Limpopo Division of the High Court;

11.2. The Trust's assets, which comprise mostly of immovable properties, are situated within the jurisdiction area of this Court.

11.3. It is convenient that the present two applications be heard by this Court and not the Gauteng Division, Pretoria.

[12] In **Goode, Durrant & Murray (SA) Ltd and Another v Lawrence 1961 SA 329 (WLD)** it was held that where, in an application for the sequestration of a respondent's estate, there is competition between the jurisdiction of two Provinces, the question of convenience is what happens after the order is granted, not which Court hears the matter
See also **Deutsche Bank AG v Moser and Another 1999 (4) SA 216 (CPD) at 219H-H/I.**

[13] The Respondents' application for the removal of these matters to Gauteng Division, Pretoria is accordingly refused.

Respondents' Indebtedness

- [14] The Respondent, the Trust and the liquidated close corporations are financially inter-dependent upon each other. The Applicant contends that the Trust and the liquidated close corporations conducted business as a single unit and that it is difficult to distinguish between the interests of the different legal entities. The Respondent in his capacity as the sole member of the liquidated close corporations and a trustee of the Trust was in charge of, managed and controlled a large game farming business under the name and style of Ingogo Safaris.
- [15] The Respondent, the Trust and the liquidated close corporations are indebted to the Applicant as sureties and co-principal debtors for payment of an amount in excess of R 14 637 737.00. As at October 2016 the aggregate indebtedness was R 12 637 737.70 but that amount has increased to R 14 637 737.70 as at February 2018. The Respondent conceded in paragraph 18 of his answering affidavit that the Applicant is the creditor of his estate. The Applicant is therefore vested with the necessary *locus standi* to bring the present applications.
- [16] The Respondent does not dispute his indebtedness to the Applicant. The Respondent reneged on numerous promises and undertakings to settle his indebtedness. Accordingly, the Respondent is factually as well as commercially insolvent and unable, to repay the amounts owed to the Applicant.
- [17] The Respondent and the Trust relied in opposition of their sequestration upon the applications for business rescue in respect of the now liquidated close corporations. All three applications for business rescue failed and were dismissed. This has destroyed all the grounds of opposition raised by the Respondent and the Trust in respect of their sequestration.

Respondents' Insolvency

- [18] In opposition to the sequestration applications, the Respondent and the

Trust allege that the reasonable market value of Ingogo's assets far exceeds his and the Trust's liabilities and that he and the Trust are therefore not insolvent. These allegations of solvency are disproved by the fact that the Respondent has been unable to pay the amounts due to the Applicant for more than eighteen months. Despite the Respondent's allegations of solvency, he was and remains unable to realise any assets and use the proceeds thereof to settle the Applicant's debt.

[19] Once the following requirements have been established *prima facie* the Court may grant a provisional sequestration order:

- 19.1. That the Applicant has established against the debtor / Trust a liquidated claim for not less than R 100.00;
- 19.2. That the Respondent / Trust has committed an act of insolvency or his insolvent; and
- 19.3. That there is reason to believe that it will be to the advantage of creditors of the debtor if the debtor/ Trust's estate is sequestrated.

[20] In the case of **Stratford and Other v Investec Bank Limited and Others 2015 (3) SA 1 (CC)** it was authoritatively confirmed that:

"[43]. ... the 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 "

The concept of commercial insolvency as a ground for sequestration or winding up postulates the primary question whether or not the Respondent's assets value exceeds its liabilities, once the Court finds that it cannot settle its concurrent debts.

See **ABSA Bank Limited v Rhebokskloof (Pty) Ltd and Others 1993 (4) SA 436 (C) 440F - 441C.**

[21] The contention by the Respondent and the Trust that they are solvent in as much as their assets exceed their liabilities is neither here nor there. It is trite that irrespective of whether an act of insolvency is proved, the Court remains vested with the discretion to sequester a debtor's estate if satisfied that the debtor is insolvent. In this regard the well-known words by Innes CJ in **De Waard v Andrew & Thienhaus (1907) TS 727 at 733** is of importance:

"Speaking for myself I always look with great suspicion upon, and examine very narrowly, the position of a debtor who says "I am sorry but I cannot pay my creditors, but my assets far exceed my liabilities". To my mind the best proof of solvency is that a man should pay his debts; and therefore I always examine in a critical spirit the case of a man who does not pay what he owes".

[22] In establishing the benefit to creditors as provided for in section 12(1)(c) of the Insolvency Act, 1936 a Court need not be satisfied that there will be advantage to creditors, only that there is reason to believe that will be same. There need not always be immediate financial benefit. It is sufficient if it be shown that investigation and enquiry under the relevant provisions of the Act might unearth assets thereby benefitting creditors. - **Dunlop Tyres (Pty) Ltd v Brewitt 1999 (2) SA 580 (W) at 585 C.**

In the matter of **Meskin and Co v Fruitmen 1948 (2) SA 555 (W)** Roper J held that there should only be a *"reasonable prospect, not necessarily a likelihood, but a prospect which is not too remote, that some pecuniary benefit will result to creditors"*.

Conclusion

[23] On the conspectus of evidence before me, I am satisfied that the Respondent and the Trust are insolvent or have committed an act of

insolvency and that there is a reasonable prospect that some pecuniary benefit will result to creditors. There is a substantial estate in the form of immovable properties to sequester given the fact that the Applicant, as the creditor, cannot obtain payment of its debts in the ordinary way. I believe that it will be to the advantage of creditors that the Respondent's and the Trust's estate be sequestered.

[24] The Respondent and the Trust are indebted to the Applicant in their capacities as sureties and co-principal debtors. The Respondent and the Trust attempted to avoid sequestration by applying for business rescue in respect of the liquidated close corporations. That attempt failed and the close corporations were ultimately liquidated.

[25] The following orders are granted:

CASE NUMBER 4252/2017

1. The estate of the Respondent, JAN WALTER SLIPPERS (Identity Number [...]) is placed under provisional sequestration.
2. The Respondent and any other party who wishes to avoid such an order being made final, are called upon to advance the reasons, if any, why the Court should not grant a final order of sequestration of the said estate on 26 November 2019 at 10H00 or soon thereafter as the matter may be heard.
3. The costs reserved in terms of the Court order dated 15 December 2017 together with costs of 11 and 12 September 2019 shall be costs in the sequestration including the costs consequent upon the employment of two Counsel.

CASE NUMBER 4258/2017

1. The estate of the WALTER SLIPPERS FAMILY TRUST (Master's ref: IT3976/09) herein duly represented by the Respondents in their capacity as trustees for the time being of the WALTER SLIPPERS FAMILY TRUST is placed under provisional sequestration.
2. The WALTER SLIPPERS FAMILY TRUST and any other party who

wishes to avoid such an order being made final, are called upon to advance the reasons, if any, why the Court should not grant a final order of sequestration of the said estate on 26 November 2019 at 10H00 or soon thereafter as the matter may be heard.

3. The costs reserved in terms of the Court order dated 15 December 2017 together with costs of 11 and 12 September 2019 shall be costs in the sequestration including the costs consequent upon the employment of two Counsel.

EM MAKGOBA
JUDGE PRESIDENT OF THE
HIGH COURT, LIMPOPO
DIVISION, POLOKWANE

APPEARANCES

Heard on	12 September 2019
Judgment delivered on	20 September 2019
For the Applicant	Adv. B H Swart SC
	Adv. J P van den Berg
Instructed by	Adams & Adams Attorneys
	c/o Bosman Attorneys
For the Respondents	Adv.M H Van Twisk
Instructed by :	Machobane Kriel Attorneys
	c/o Badenhorst Attorneys