



THE REPUBLIC OF SOUTH AFRICA

**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE HIGH COURT, CAPE TOWN**

CASE NO: 24870/11

In the matter between:

ANDRÉ FRANKEN

Applicant

versus

HENDRE FRANKEN

Respondent

JUDGEMENT: 27 FEBRUARY 2012

BOZALEK J:

[1] In this friendly sequestration the applicant seeks an order placing his brother under sequestration in the hands of the Master. The case initially made out was that the respondent had liabilities of R818 000 and assets comprising of three motor vehicles, a Mitsubishi, a Toyota and a Hyundai, totalling R264 000.

[2] The application was postponed repeatedly for the applicant to place sworn valuations of the vehicles before the court. Ultimately what has been put up are sworn valuations for the Mitsubishi and Toyota vehicles totalling R125 000. According to a fourth supplementary affidavit filed by the applicant's attorney the Hyundai vehicle was fraudulently removed or stolen from the respondent by a third party against whom criminal charges are now

being investigated. Relying on the book value of that vehicle it is contended that it remains an asset in the respondent's estate namely as a claim against the third party involved with a value of R112 000. The circumstances in which the Hyundai has disappeared with no consideration being received for it by respondent are odd, if not suspicious, and in my view it is unrealistic to afford any value to this claim for the purposes of the sequestration proceedings.

[3] That leaves assets in the amount of R125 000 as against liabilities in the sum of R818 000. In these circumstances it is contended that the advantage to creditors will be a dividend in the amount of some 15 cents. This is a dividend of marginal value and in arriving at it no account has been taken of the fees and expenses which will be incurred in winding up the estate including legal fees, auctioneers commission, liquidator's commission, sundry expenses and the like.

[4] From similar applications these could very easily be in the region of R50 000. If that be the case the estimated dividend to creditor would have been in the region of ten cents to the rand. Bearing in mind that the Toyota motor vehicle was attached and was already in the possession of auctioneers by 2 February 2012 and could already have been sold in execution, thus placing yet a further asset outside of the estate, I consider that the prospects of reasonable dividend to creditors is remote. It certainly does not present an advantage to creditors which would justify the winding up proceedings.

[5] In the circumstances the application for the respondent's sequestration is dismissed.



L. J. BOZALEK, J
JUDGE OF THE HIGH COURT