IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

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

27 May 2026
DATE

SIGNATURE

Case No. 121282 / 2023

In the matter between:

THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE — Applicant

and

NGWANE ROUX SHABANGU — First Respondent

NOMZAMO PERSERVERENCE SHABANGU — Second Respondent

AND

Case No. 121275 / 2023

In the matter between:

THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE — Applicant

and

NGWANE ROUX SHABANGU N.O.	First Respondent
PROE SHABANGU N.O	Second Respondent
STEMBILE ALPHONSINA SHABANGU N.O.	Third Respondent
NOMZAMO PERSERVERENCE SHABANGU N.O.	Fourth Respondent

(First to Fourth Respondents cited in their capacities as the appointed trustees of the Roux Shabangu Family Trust, IT 4848/05)

ORDER

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1. A final sequestration order is granted in matter with case number 121282/2023 and case number 121275/2023.
2. The costs of the applications will be costs in the sequestration.

JUDGMENT

TOLMAY J:

Introduction

[1] These are the return dates of two provisional sequestration orders granted on 15 October 2024.[1] The sequestration orders deal with Mr Shabangu's personal estate case number 121282/2023 and that of the Roux Shabangu Family Trust (the Trust) case number 121275/2023. Prior to the sequestration applications, SARS filed a preservation application under section 163 of the Tax Administration Act[2] (the TAA). This application was opposed, but SARS succeeded in obtaining a final preservation order. This application will be referred to as the s163 application.

[2] The two sequestration applications, although not consolidated, were heard simultaneously. The applications, although requiring separate orders, are interrelated and the one cannot be determined without reference to the other.

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[1] *Commissioner for the South African Revenue Service v Shabangu and Another and a related matter* [2024] JOL 67424 (GP).
[2] 28 of 2011.

[3] The application to sequestrate Mr Shabangu's personal estate was originally brought against both Mr Shabangu and his wife, since SARS could not determine their marital regime. During the hearing of the provisional sequestration SARS accepted that s21 of the Insolvency Act[3] would afford the *concursus creditorum* sufficient protection and a provisional order was granted against the estate of Mr Shabangu only.

The Background to the sequestration applications

[4] The basis for the sequestration application by SARS for both Mr Shabangu's and the Trust sequestration was his indebtedness to SARS. On 22 April 2024 tax returns were filed on behalf of Mr Shabangu in respect of the 2021 and 2022 assessments claiming credits to the value of R129 588 870.00. This would have extinguished his tax liability. These tax returns were, however, fraudulent. Mr Shabangu acknowledged that fraud was committed but blamed his tax advisor for it. Due to Mr Shabangu's subsequent admission of the tax liability this fraud became irrelevant for present purposes. His tax liability and as a result the indebtedness to SARS is undisputed.

[5] Mr Shabangu owed SARS R126,068,305.80 for the 2006 and 2009–2020 periods based on his tax returns. The amount has increased due to interest. On 5 August 2024, SARS filed its supplementary affidavit, indicating that the amount was R221,151,047.33. There are no outstanding objections or appeals concerning the original and additional assessments.

[6] As far as the case against the Trust is concerned the indebtedness to SARS was also not disputed. It owed SARS an amount of R7 046 501,10 in respect of income tax for the 2008, 2011, 2013 and 2016 years of assessment.

[7] SARS argued that the requests for a debt compromise under s200 of the TAA amounts to an act of insolvency as defined by s8(e) of the Insolvency Act. Mr Shabangu also indicated in correspondence with SARS that he was unable to pay the debt, this constitutes an act of insolvency as envisaged in s8(f), says SARS.

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[3] 24 of 1936.

[8] According to SARS, the sequestration will benefit creditors, as assets - although encumbered - may be realised and sold to their advantage. The main benefit for creditors is that trustees and investigators can examine the finances of both Mr Shabangu and the Trust and begin impeachment proceedings under the Insolvency Act. SARS refers to convoluted transactions that require scrutiny and said that Mr Shabangu controls a large group of corporate structures. He and his wife are also trustees of the Trust. SARS is a creditor of these entities, which are alleged to have failed to fulfil their tax obligations. SARS furthermore refers to Mr Shabangu's lavish lifestyle and access to substantial amounts of money that flow through bank accounts that he has access to.

[9] In his opposing affidavit Mr Shabangu indicated that his only desire was to settle his tax indebtedness. The opposition to the sequestration application is based on the assertion that the sequestration applications brought by SARS is mala fide and should be dismissed.

Events after the hearing of the application

[10] After the hearing, on 12 August 2025, my secretary received an email confirming that the Trust had settled its entire debt to SARS. On 5 September 2025, SARS filed a supplementary affidavit requesting time to determine the source of funds used for the payments. The Trust refused to disclose the source of the payments. SARS further asserted that prior cost orders issued against the Trust remain outstanding. These cost orders included the costs awarded in the s163 application, as well as the costs incurred by the joint provisional trustees. SARS requested that the judgment be deferred until a subsequent supplementary affidavit was filed. Mr Shabangu wanted SARS to withdraw the application which SARS was not willing to do.

[11] On 16 September 2025, a supplementary affidavit was filed on behalf of the Trust and Mr Shabangu personally. In this affidavit the Court was requested to forthwith discharge the rule nisi against the Trust as the debt had been extinguished.

[12] As far as the case against Mr Shabangu personally was concerned, he said that the supplementary affidavit filed supported his argument that the sequestration application was mala fide and an abuse of process. He stated that the identity of the

entity that made the payment is of no concern to a debt extinguishing agreement. He averred that the reliance on the costs order in the s163 application was a mala fide attempt to keep the Trust in a state of sequestration. In any event as far as these costs were concerned SARS has no preference over other creditors. Despite indicating that no further affidavits should be allowed he requested permission to file a further affidavit dealing with SARS' alleged mala fide conduct. He also requested a case management meeting.

[13] A case management meeting was held on 9 October 2025 and the Court issued directives regarding the filing of further affidavits and heads of argument. On 24 October 2025 SARS filed a further supplementary affidavit. In this affidavit the particulars of the payments made were set out and it was indicated that the source of the payment had been established. SARS issued letters requesting relevant material in terms of s46 of the TAA (Request Letters) from several entities. SARS detailed the movement of funds across various accounts and entities, ultimately determining that inaccurate information was submitted regarding the origin of the money. SARS indicated that the funds applied to settle the Trust's debt may not have originated from a legitimate source, and the transaction could potentially be subject to challenge. SARS asserted that the facts suggest that Mr Shabangu obtained a loan, thereby further encumbering his insolvent estate. The argument was that transactions entered into after the *concursus creditorum* may be considered impeachable by the insolvency trustee.

[14] SARS also dealt in detail with the costs that must be paid to it considering the litigation. SARS argued that despite receiving the Trust's payment of the tax debt into its account, it does not constitute acceptance of the payment. SARS is prohibited by legislation to be party to impeachable dispositions and can therefore not accept payment.

[15] On 10 November 2025 Mr Shabangu filed a response to this affidavit. It was argued that the Trust's tax liability was paid and therefore SARS no longer had legal standing to pursue the sequestration of the Trust. The source of the funds, he says, is immaterial to SARS. The claims of additional grounds for sequestration (curator's costs, untaxed legal costs from the preservation order, and untaxed legal costs from the current application) are disputed. SARS, the affidavit states, abused its

investigative powers under s46 of the TAA. The allegations of mala fides were again repeated. He states that SARS' attempt to introduce new grounds for sequestration in its second supplementary affidavit is improper and demonstrates an attempt to keep the Trust under sequestration.

[16] On 14 November 2025 SARS filed its affidavit in response to this affidavit. SARS questioned the identity of a borrower who contributed to the repayment. SARS pointed to a discrepancy in this regard. Initially it was stated that Mr Shabangu personally procured the loan to settle his tax debts. However, the Trust later claimed that it was the borrower. SARS highlighted that both Mr Shabangu and the Trust were under provisional sequestration when the loan was allegedly procured. It argued that neither had the legal capacity to encumber assets or attract liabilities without the consent of the provisional insolvency trustee. Despite repeated requests, the Trust did not provide sufficient clarity or particularity regarding the origin of the funds.

[17] SARS contended that the Trust and Mr Shabangu are liable for the curator's costs as per the provisional preservation order, which was confirmed in the final order. SARS denied any malice or ulterior motive in filing the sequestration applications. It argued that the applications were a last resort to recover tax debts and were necessary to protect creditors' interests. It argued that the payment of the Trust's tax debt only after the hearing of the matter demonstrated the Trust's ability to procure funds when faced with the risk of final sequestration.

[18] Mr Shabangu persisted with his contention that the applications were in bad faith. He claimed SARS is running an integrated campaign with a hidden agenda against him. He pointed out that SARS pursued litigation after the Trust paid, suggesting an ulterior motive for the applications. He claimed that SARS dependence on the unpaid costs of section 163 of the application indicated hostility, unfair treatment, and a desire to punish him instead of simply recovering tax. SARS denied these allegations.

[19] SARS filed the amicus curiae report on 28 November 2025 and Mr Shabangu filed an affidavit in response thereto on 31 March 2026. In my view the report and the affidavit only assist to support my conclusion that an investigation in terms of the Insolvency Act is required and I do not deal with the content thereof.

Analysis

[20] Initially the argument was raised on behalf of Mr Shabangu and the Trust that SARS lacks the authority to launch a sequestration application due to the other remedies provided for in the TAA for collection of a tax debt. This argument was abandoned and correctly so, as SARS is empowered by s177 of the TAA to institute a sequestration application for an outstanding tax debt. Nothing further needs to be said about this.

[21] Section 12(1) of the Insolvency Act outlines three key requirements that must be satisfied for a court to grant a sequestration order. The applicant must establish a liquidated claim against the debtor of at least R100.00, as defined in section 9(1). The debtor must have committed an act of insolvency as defined in section 8 of the Insolvency Act or be factually insolvent and an advantage to creditors must be proven.

[22] The applicant bears the onus of proving these requirements on a balance of probabilities. For a provisional sequestration order, prima facie evidence suffices, but for a final order, the court requires proof on a balance of probabilities. The court, however, retains a discretion to refuse sequestration even if all statutory requirements are met, particularly in cases where the application is abusive or lacks bona fides.

[23] It is incontrovertible that the threshold requirement of indebtedness existed at the time that the sequestration applications were launched, and the provisional orders were granted. Mr Shabangu and the Trust committed acts of insolvency, in terms of s8(f) as both were unable to pay their debts to SARS. The requests for debt compromises in terms of s200 of the TAA constitute an act of insolvency in terms of s8(e) of the Insolvency Act.

[24] The question of whether the sequestrations will be to the advantage of creditors may be more controversial, although this does not constitute the mainstay of the opposition to the applications. SARS relies in this regard on both a pecuniary and an indirect advantage to creditors. It is an established principle that a creditor does not have to prove advantage to creditors with certainty but must merely prove a reason to believe that sequestration will be to the advantage of creditors.

[25] A trustee is appointed to administer the insolvent estate, and this trustee is vested with extensive investigative powers. These powers include the ability to interrogate the insolvent, examine financial records, and set aside certain dispositions made by the insolvent. In *Meskin & Co v Friedman*[4] which was cited with approval in *Commissioner, SARS v Hawker Aviation Services Partnership & Others*[5] the Court explained:

> "The right of investigation is given, as it seems to me, not as an advantage in itself, but as a possible means of securing ultimate material benefit for the creditors in the form, for example, of the recovery of property disposed of by the insolvent or the disallowance of doubtful or collusive claims. In my opinion, 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 Act some may be revealed or recovered for the benefit of creditors, that is sufficient".

[26] The right to investigate the financial affairs of a sequestrated person plays a crucial role in determining an advantage to creditors. While the investigative powers are not an advantage in themselves, they enable trustees to uncover hidden assets, rectify irregularities, and ensure equitable distribution among creditors. This aligns with the broader objectives of the Insolvency Act, which prioritises the collective interests of creditors over individual claims. Thus, the investigative process is integral to establishing the reasonable prospect of pecuniary benefit required to justify sequestration.

[27] If there are doubts about the source of a payment, an investigation should be considered, as it can inform the court's exercise of a discretion. The idea of "advantage to creditors" is fundamental to the court's decision to issue a final sequestration order. The Constitutional Court in *Stratford and Others v Investec Bank Ltd and Others*[6] clarified that advantage to creditors means a reasonable prospect of some pecuniary

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[4] 1948(2) SA 555 (W) at 559.See also *Hillhouse v Stott; Freban Investments (Pty) Ltd v Itzkin; Botha v Botha 1990 (4) SA 580 (W), Nedbank Ltd v Thorpe, [2008] JOL 22675 (N).*

[5] 2006 (4) SA 292 (SCA).

[6] [2014] ZACC 38.

benefit to creditors, which need not be a likelihood but must be more than speculative[7] However, where there is a possibility of an impeachable transaction the court should take that into account the advantage to creditors may be situated in the investigation that will follow. The payment of the Trust's debts in and of itself, in the circumstances of this case, cannot be the end of the matter. It is abundantly clear that a proper investigation in terms of the Insolvency Act is required.

[28] The facts in this case, the flurry of affidavits after the hearing and the payments made, amply illustrate the need to investigate the financial affairs of Mr Shabangu and the Trust. I am satisfied that a sequestration order will be to the advantage of creditors.

[29] We now come to the main objection to the sequestration applications and that is that they are *mala fide* and an abuse of process. It is a settled principle that a court has a discretion to refuse a sequestration application on the basis that the application is not made for bona fide purposes and if that is the case the application is an abuse of process and *mala fide*.[8]

[30] The question that follows is what would constitute an abuse or mala fides. Our courts have held that an application is an abuse of process when it is diverted from its true purpose to serve extortion, oppression, or to exert pressure for an improper end.[9] What would constitute an abuse of process will depend on the facts of the case.[10] In *Price Waterhouse Coopers Inc and Others v National Potato Co-Operatives Ltd* [11] the SCA had the following to say about abuse of process:

> "It has long been recognised in South Africa that a Court is entitled to protect itself and others against the abuse of its process, but no all-embracing definition of 'abuse of process' has been formulated. Frivolous or vexatious litigation has been held to be an abuse of process, and it has been said that 'an attempt made to use for ulterior purposes machinery devised for the better administration of justice' would constitute an abuse of the process (Hudson v Hudson and another supra at 268). In general, legal process is used properly when it is invoked for the vindication of rights or the enforcement of just claims and it is abused when it is diverted from its true course so as to serve extortion or oppression; or to exert pressure so as to achieve an improper end. The mere application

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[7] 2015 (3) SA 1 (CC) para 45.
[8] *Wackrill v Sandton International Removals (Pty) Ltd and others* 1984 (1) SA 282 (W) at 293C-E.
[9] Class A Trading 153 (Pty) Ltd v Seven Falls Trading 55 (Pty) Ltd, [2025] JOL 69757 (WCC).
[10] *Beinash v Wixley* 1997 (3) SA 721 (SCA) at 734F-G.
[11] 2004 (6) SA 66 (SCA).

of a particular Court procedure for a purpose other than that for which it was primarily intended is typical, but not complete proof, of mala fides. In order to prove mala fides a further inference that an improper result was intended is required. Such an application of a Court procedure (for a purpose other than that for which it was primarily intended) is therefore a characteristic, rather than a definition, of mala fides. Purpose or motive, even a mischievous or malicious motive, is not in general a criteria for unlawfulness or invalidity. An improper motive may however be a factor where the abuse of Court process is in issue. Accordingly, a plaintiff who has no bona fide claim but intends to use litigation to cause the defendant financial (or other) prejudice will be abusing the process."[12]

[31] In both applications, SARS initiated proceedings under circumstances where an undisputed debt was present and where acts of insolvency were committed by both Mr Shabangu and the Trust. SARS chose to avail itself of remedies provided for in both the Insolvency Act and the TAA. The facts before this court point to complex and, on the face of it, convoluted and intertwined financial operations. To seek sequestration applications and to investigate the flow of money and the financial affairs of Mr Shabangu and the Trust cannot on the papers before me be defined as an abuse of process or mala fide. The allegations of abuse of process are without merit and are based on a perceived and unmeritorious assumption of mala fides.

[32] The payment of the debt after the provisional sequestration order and final hearing does not automatically preclude the granting of a final sequestration order. The court must assess whether the legal requirements under section 12(1) of the Insolvency Act are met, including whether sequestration will provide an advantage to creditors. The contentious source of the payment may warrant further investigation, which supports the need for final sequestration orders. Ultimately, the court has a discretion to confirm or refuse the final sequestration order based on the balance of probabilities and the circumstances of the case.

[33] It is common cause that a debt existed when the applications were launched. Even if the Trust's debt has been extinguished, after the matter was heard, this may of itself not lead to a dismissal of either of the applications.[13] The Trust's payment of the tax debt subsequent to the hearing does not render the persistence with the application as abusive or mala fide. SARS set out in some detail why it would not

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[12] Id para 50.
[13] *Lundy v Beck* 2019 (5) SA 503 (GJ) par26-27.

withdraw the applications despite the payment. SARS' argument that the payment could form part of an impeachable transaction and SARS cannot be party to such a transaction has merit.

[34] Based on all the facts, I exercise my discretion that final sequestration orders should be granted in both the applications.

[35] The following order is made:

1. A final sequestration order is granted in case number 121282/2023 and case number 121275/2023.
2. The costs of the applications will be costs in the sequestration.

R TOLMAY
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

This judgment was prepared and authored by the judge whose name is 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 27 May 2026.

APPEARANCES:

For the Applicant	:	Adv MP Van Der Merwe SC with Adv A Louw
Instructed by	:	MacRobert Inc Attorneys
For the Respondent	:	Adv PF Louw SC with Adv R Mastenbroek
Instructed by	:	Mayet Inc.
Matter heard on	:	22 & 23 July 2025 and 1 December 2025
Judgment date	:	27 May 2026