IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN

CASE NO: D13795/2024

In the matter between:

THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE	**APPLICANT**
and	
SHAUWN MABONGY FLORA-JUNIOR MKHIZE (previously Mpisane)	**FIRST RESPONDENT**
ANDILE MPISANE	**SECOND RESPONDENT**
22 ASTON INVESTMENTS (PTY) LTD	**THIRD RESPONDENT**
ZIKHULISE GROUP (PTY) LTD	**FOURTH RESPONDENT**
YARON PERETS	**FIFTH RESPONDENT**
56 ADRIANNE STREET (PTY) LTD	**SIXTH RESPONDENT**
OBITZ (PTY) LTD	**SEVENTH RESPONDENT**
WILLEM JACOBUS VENTER N.O. (In his capacity as duly appointed curator *bonis*)	**EIGHTH RESPONDENT**
COMMISSIONER OF COMPANIES AND INTELLECTUAL PROPERTY COMMISSION	**NINTH RESPONDENT**
MINISTER OF PUBLIC WORKS AND INFRASTRUCTURE	**TENTH RESPONDENT**
MINISTER OF FINANCE	**ELEVENTH RESPONDENT**

In re:

THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE **APPLICANT**

and

SHAUWN MABONGY FLORA-JUNIOR MKHIZE (previously Mpisane) **FIRST RESPONDENT**
Identity number: 750406 0449 083
(married in community of property with the second respondent)

WISEMAN SIBUSISO MPISANE **SECOND RESPONDENT**
Identity number: 700326 5741 089
(married in community of property with the first respondent)

ANDILE MPISANE **THIRD RESPONDENT**
Identity number: 010315 5148 08 5
(married in terms of the customary laws in community of property with the fourth respondent)

TAMIA NOMBUSO LINDA MKHWAZI **FOURTH RESPONDENT**
Identity number: 961213 0236 089
(married in terms of the customary laws in community of property with the third respondent)

NOSIPHO FORTUNATE NGUBO **FIFTH RESPONDENT**
Identity number: 730609 0349 089
(married in community of property with the sixth respondent)

MVUSI SMAKADE NGUBO **SIXTH RESPONDENT**
Identity number: 540807 5501 080
(married in community of property with the fifth respondent)

22 ASTON INVESTMENT (PTY) LTD **SEVENTH RESPONDENT**
Registration number: 2020/716267/07

DPA PROJECT MANAGERS AND FACILITATORS (PTY) LTD **EIGHTH RESPONDENT**
Registration number: 2016/327140/07

NOSIPHO FORTUNATE NGUBO N.O. **NINTH RESPONDENT**
Identity number: 730609 0349 089
(In her capacity as trustee of the Lungazwile Family Trust IT 1010/2013)

MVUSI SMAKADE NGUBO N.O. **TENTH RESPONDENT**
Identity number: 540807 5501 080
(In his capacity as trustee of the Lungazwile Family Trust IT 1010/2013)

THELMA LOUISE SMUTS N.O. **ELEVENTH RESPONDENT**
Identity number: 641120 0024 084
(In her capacity as trustee of the Lungazwile Family Trust IT 1010/2013)

LUNGZA MANAGEMENT CONSULTANTS CC **TWELFTH RESPONDENT**
Registration number: 2005/059231/23

SHAUWN MABONGY FLORA-JUNIOR MKHIZE N.O. **THIRTEENTH RESPONDENT**
Identity number: 750406 0449 083
(In her capacity as trustee of the Mkhimpi Family Trust IT 000401/2007)

WISEMAN SIBUSISO MPISANE N.O. **FOURTEENTH RESPONDENT**
Identity number: 700326 5741 089
(In his capacity as trustee of the Mkhimpi Family Trust IT 000401/2007)

MADODA MBEJE N.O. **FIFTEENTH RESPONDENT**
Identity number: 740123 5553 08 1
(In his capacity as trustee of the Mkhimpi Family Trust IT 000401/2007)

ROYAL AM (PTY) LTD **SIXTEENTH RESPONDENT**
Registration number: 2018/027217/07

ROYAL AM FOOTBALL CLUB (PTY) LTD **SEVENTEENTH RESPONDENT**
Registration number: 2019/412459/07

SHAUWN MABONGY FLORA-JUNIOR MKHIZE
N.O. **EIGHTEENTH RESPONDENT**
Identity number: 750406 0449 083
(In her capacity as trustee of the
Sbusha Trust IT000957/2016)

WISEMAN SIBUSISO MPISANE N.O. **NINETEENTH RESPONDENT**
Identity number: 700326 5741 089
(In his capacity as trustee of the
Sbusha Trust IT000957/2016)

MADODA MBEJE N.O. **TWENTIETH RESPONDENT**
Identity number: 740123 5553 08 1
(In his capacity as trustee of the
Sbusha Trust IT000957/2016)

SHAUN ANDILE NAKI **TWENTY-FIRST RESPONDENT**
Identity number: 900121 15287 086

ZIKHULISE GROUP (PTY) LTD **TWENTY-SECOND RESPONDENT**
Registration number: 2016/087144/07

YARON PERETS **TWENTY-THIRD RESPONDENT**
Identity number: 681102 5921 184

ORDER

It is ordered:

1. The applicant's non-compliance with the rules and practice directives is condoned and the application is heard as urgent in terms of rule 6(12) of the Uniform Rules of Court.

2. The curator *bonis* is authorised and empowered to sell the immovable properties more fully described as:

2.1 Remaining extent of Erf 662 Sandown Extension 24 Township, Registration Division IR, Gauteng Province, in extent 1698,41 square metres, held under deed of transfer T18602/2019;

2.2 Portion 1 of Erf 662 Sandown Extension 24 Township, Registration Division IR,

Gauteng Province, in extent 1059,97 square metres, held under deed of transfer T18603/2019;

2.3 Portion 2 of Erf 662 Sandown Extension 24 Township, Registration Division IR, Gauteng Province, in extent 728,335 square metres, held under deed of transfer T18604/2019;

2.4 Portion 3 of Erf 662 Sandown Extension 24 Township, Registration Division IR, Gauteng Province, in extent 879,703 square metres, held under deed of transfer T18605/2019; and

2.5 Erf 223, Sandown Extension 24 Township, Registration Division IR, Gauteng Province, in extent 4993,000 square metres, held under deed of transfer T73119/2020;

(Collectively referred to as 'the five properties'.)

3. The curator *bonis* is authorised to conduct the sale of the five properties in accordance with paragraphs 31 and 32 of the preservation order granted on 21 November 2024, under case number D13795/2024;

4. The full proceeds of the sale of the five properties are to be held by the curator *bonis* in an interest-bearing trust account;

5. The curator *bonis* is authorised to pay the fifth respondent the outstanding balance of the purchase consideration, if any, only upon confirmation thereof, either by agreement between the parties, alternatively by confirmation of a court order;

6. Any remaining balance of the proceeds of the sale, after deduction of the balance of the purchase price mentioned in paragraph 5 hereof, is to be held in the interest-bearing trust account pending the determination of the action referred to in paragraph 7 hereof;

7. The applicant is to institute an action *inter alia* declaring the five immovable properties or the proceeds thereof to be executable for the tax debts of one or more of the respondents in the main application within one month from the date of this order;

8. The first, second, third and sixth respondents are ordered to pay the costs of the application, jointly and severally on a party and party scale, including the costs of two counsel on scale C.

JUDGMENT

Henriques J

Introduction

[1] Paying tax is not a punishment, it is a responsibility.[1] Benjamin Franklin famously noted that 'in this world nothing can be said to be certain, except death and taxes'.

[2] This is an opposed application which has as its genesis a preservation order granted on 21 November 2024 in favour of the Commissioner for the South African Revenue Service (the CSARS) in terms of s 163 of the Tax Administration Act 28 of 2011 (the TAA). In this ancillary application, the CSARS seeks leave to sell certain immovable properties, together with other related relief.

[3] The five immovable properties are situated in Sandown and are the subject of the preservation order. The nub of the CSARS's case is that it seeks to preserve the value of these immovable properties by realising them pending an action which it will institute to declare the five immovable properties or proceeds thereof executable for the tax debts of one or more of the respondents in the main application. The application is opposed by the first, second, third and sixth respondents. The tenth respondent has filed a notice to abide[2] and the remaining respondents, despite service of the papers on them, have elected not to oppose the application.

The relief

[4] The relief foreshadowed in the notice of motion is the following:

'2. Declaring that the dissolution of 22 Aston Investment (Pty) Ltd with registration number 2020/716267/07 to be void in terms of section 83(4) of the Companies Act 71 of 2008.

[1] A quote attributed to Chris Matthews.
[2] Notice to abide dated 19 February 2026, index to application to sell certain immovable properties, vol 11, at pages 994–999.

3. That the Companies and Intellectual Property Commission be directed to restore 22 Aston Investment (Pty) Ltd with registration number 2020/716267/07, to the company register.

4. Declaring that the immovable property situated at Erf 223, Sandown Extension 24 Township, Registration Division IR, Gauteng Province, in extent 4993,000 square metres held under deed of transfer T73119/2020, with street address, 22 Aston Street, be no longer *bona vacantia* and be revested in 22 Aston Investment (Pty) Ltd with registration number 2020/716267/07.

5. That the curator *bonis* be authorised and empowered to sell the immovable properties more fully described as:

5.1 Remaining extent of Erf 662 Sandown Extension 24 Township, Registration Division IR, Gauteng Province, in extent 1698,41 square metres, held under deed of transfer T18602/2019;

5.2 Portion 1 of Erf 662 Sandown Extension 24 Township, Registration Division IR, Gauteng Province, in extent 1059,97 square metres, held under deed of transfer T18603/2019;

5.3 Portion 2 of Erf 662 Sandown Extension 24 Township, Registration Division IR, Gauteng Province, in extent 728,335 square metres, held under deed of transfer T18604/2019;

5.4 Portion 3 of Erf 662 Sandown Extension 24 Township, Registration Division IR, Gauteng Province, in extent 879,703 square metres, held under deed of transfer T18605/2019; and

5.5 Erf 223, Sandown Extension 24 Township, Registration Division IR, Gauteng Province, in extent 4993,000 square metres, held under deed of transfer T73119/2020;

(Collectively referred to as “the five properties”.)

6. That the curator *bonis* be authorised to conduct the sale of the five properties in accordance with paragraphs 31 and 32 of the preservation order granted on 21 November 2024 under case number D013795/2024.

7. That the full proceeds of the sale of the five properties be held by the curator *bonis* in an interest bearing trust account.

8. That the curator *bonis* be authorised to pay the fifth respondent the outstanding balance of the purchase consideration, if any, only upon confirmation thereof either, by agreement between the parties, alternatively by confirmation of a court order.

1. That any remaining balance of the proceeds of the sale, after deduction of the balance of the purchase price mentioned in paragraph 5 thereof, be held in the aforementioned interest-bearing trust account pending the determination of the action referred to in paragraph 10 hereof.

2. That the applicant institutes an action *inter alia* declaring the five immovable properties

or the proceeds thereof to be executable for the tax debts of one or more of the respondents in the main application within one month from date of this order.

3. That the respondents be liable for the costs of this application, only in the event of opposition.'

[5] Four of the five immovable properties are registered in the name of the fifth respondent (Mr Peretz)[3], who is the 23rd respondent in the main application. The fifth property is registered in the name of 22 Aston Investments (Pty) Ltd (22 Aston). The CSARS no longer asks for the relief in paragraphs 2, 3 and 4 of the notice of motion concerning the reinstatement of 22 Aston, as it was reinstated with the ninth respondent, after the institution of the application. The CSARS now seeks relief in terms of a draft order.

Issues

[6] Although the papers are voluminous, the crisp issue for determination is whether this court can vary the preservation order of 21 November 2024, as confirmed on 6 February 2026, and order that the five immovable properties which are subject to the preservation order be sold.

[7] After the first hearing on 10 March 2026, I had requested the parties to prepare a joint practice note. One was filed by the first and second respondent and another on 31 March 2026 after circulation to the CSARS, first, second third and sixth respondents' legal representatives. The issues for determination as defined by the parties in such practice notes (which I freely borrow from) are the following.

[8] According to the CSARS, the court will be requested to consider, *inter alia*, whether:

(a) the urgency relied on by the South African Revenue Service (SARS) is commensurate with the process followed and the time periods afforded to the respondents;

(b) the properties are diminishing in value, sufficiently so that it is necessary to allow the sale of the properties to retain their value; and

[3] The CSARS spells the fifth respondent's surname as 'Perets', however, having regard to annexure 'FA17', his surname is spelt as 'Peretz'.

(c) a case has been made out for the court to exercise its discretion in favour of SARS, the judgment creditor, as envisaged in rule 46A of the Uniform Rules of Court.

[9] According to the respondents opposing the application, the court will also be requested to consider the following, namely, whether:

(a) the application is premature in that the CSARS seeks to realise the immovable properties prior to establishing any lawful entitlement to execute against them;

(b) the relief sought by the CSARS constitutes execution in substance;

(c) the relief sought results in an arbitrary deprivation of property in terms of s 25(1) of the Constitution;

(d) this court (not being the court dealing with preservation proceedings) has jurisdiction;

(e) this application is moot since the provisional order granted on 21 November 2024 has been confirmed;

(f) the non-joinder of Mr Happy Godi, Godi Enterprises (Pty) Ltd (Godi Enterprises), DPA Project Managers and Facilitators (Pty) Ltd, Mr du Plessis, Mr Hamilton and Ms Helena Andrew is material;

(g) the joinder of Obitz (Pty) Ltd constitutes a mis-joinder on the grounds of it not being a party to the main preservation application;

(h) the CSARS ought to pay the costs on a party and party scale C, since its application to reinstate 22 Aston has become moot;

(i) the properties are diminishing in value, sufficiently so, and if it is necessary to allow the sale of the properties to retain their value;

(j) a case has been made out for the court to exercise its discretion in favour of SARS, the judgment creditor, as envisaged in rule 46A of the Uniform Rules of Court before the institution of the CSARS's intended action proceedings to declare the immovable properties executable; and

(k) the matter is urgent, and if not, whether it should be struck from the roll.

The parties

The applicant

[10] The applicant is the Commissioner for the South African Revenue Service, as defined in s 1 of the TAA, with its main offices at Lehae La SARS, Pretoria.

The respondents

[11] The first respondent is Ms Shauwn Mabongy Flora-Junior Mkhize (previously Mpisane), an adult businesswoman currently residing at 22 Aston Street and/or 56 Adrianne Street, Sandown, Gauteng. The second respondent is Mr Andile Mpisane, an adult male soccer player of 88 Addison Drive, La Lucia, Durban.

[12] The third respondent is 22 Aston, a company with its registered address at 22 Aston Street, Sandown, Gauteng. It is the owner of one of the properties where the first respondent currently resides. The fourth respondent is Zikhulise Group (Pty) Ltd (Zikhulise Group), a company with its registered address at Stanhope Place, Briardene.

[13] The fifth respondent is Mr Yaron Peretz (Mr Peretz), who resides in Israel and is the owner of four immovable properties situated at Sandown, Gauteng, which properties, together with the property owned by 22 Aston, form the subject matter of both the preservation order and this application. The sixth respondent is 56 Adrianne Street (Pty) Ltd (56 Adrianne), an interested party, which has its registered address at 56 Adrianne Street, Sandown, Johannesburg.

[14] The seventh respondent is Obitz (Pty) Ltd (Obitz), a private company with its registered address situated at Stoneridge Drive, Edenvale. It is cited in these proceedings by virtue of the fact that it may have an interest in the relief sought, given that it stores equipment and occupies one or more of the rooms in the property situated at either 56 Adrianne Street or 22 Aston Street, Sandown.

[15] The eighth respondent is Willem Jacobus Venter NO, the *curator bonis* appointed in terms of a preservation order granted under case number D13795/2024 on 21 November 2024 in the main application.

[16] The ninth respondent is the Commissioner of the Companies and Intellectual Property Commission (CIPC), established in terms of s 185 of the Companies Act 71 of 2008. The tenth respondent is the Minister of Public Works and Infrastructure, cited in his representative capacity, in whom the immovable property of 22 Aston Street vests. The eleventh respondent is the Minister of Finance, cited in his representative

capacity of a department, which has a material interest in immovable properties being *bona vacantia*.

Background to the application

[17] To determine the issues and to consider the opposition advanced by the first, second, third and sixth respondents (the opposing respondents), it is necessary to set out the antecedents to the application. The CSARS had assessed the tax liabilities of the first respondent as well as Zikhulise Group. It is common cause that the first respondent and Zikhulise Group have not settled their tax liability to the CSARS and that the first respondent has been declared to be personally liable for the tax liability of Zikhulise Group.

[18] SARS had previously commenced investigations into the tax affairs of some of the respondents in the main preservation application, which resulted from previous investigations, engagements and litigation between the CSARS, the first respondent and other taxpayers.

[19] On 9 May 2024, under case number 6071/24P, a provisional preservation order was granted in respect of the realisable assets of the Shandi Trust of which the first respondent is a trustee. Simultaneously with such order, a presiding officer was appointed for a tax inquiry to be held in terms of Part C of Chapter 5 of the TAA.

[20] Amongst the taxpayers whose tax affairs formed the subject matter of the tax inquiry were some of the respondents in this application and in the main preservation application.

[21] The tax inquiry, according to the CSARS, was intended to be an investigation of the tax affairs of those entities and individuals directly or indirectly linked to Dr Ngubo and the second respondent and not the first respondent. However, during the course of the tax inquiry, it became apparent to the CSARS that the first respondent played a pivotal role in most of the entities and the trusts that formed part of the tax inquiry, and that her tax affairs were inextricably linked to the tax affairs of the tax inquiry taxpayers.

[22] As at 5 September 2024, the first respondent was indebted to SARS in respect of income tax in the sum of R14 074 510.88 and R10 000 in respect of administrative non-compliance penalties, as a result of her failure to file income tax returns. The tax indebtedness of Zikhulise Group was in the amount of R105 124 134.78. As regards the second respondent, although he has no tax indebtedness to SARS, an investigation by SARS relating to his bank account discovered that he had failed to declare taxable income for the years 2017 to 2023 in various amounts.

[23] Several attempts have been made to obtain payment from the first respondent and Zikhulise Group to no avail and, consequently, the CSARS then instituted an application for a preservation order (the main application), as envisaged in s 163 of the TAA against *inter alia* the first and second respondents and Zikhulise Group. Some of the respondents cited in the main application are also respondents in this interlocutory application. On 21 November 2024, a provisional preservation order was granted with immediate effect by Poyo Dlwati JP.[4]

[24] In terms of the provisional preservation order, the CSARS was granted the right to register a caveat over four of the five immovable properties currently registered in the name of Mr Peretz, being the four immovable properties reflected in paragraph 5 of the notice of motion. It is common cause that the street address of the four immovable properties is 56 Adrianne Street, Sandown. In addition, the CSARS was granted an order in respect of the fifth immovable property with a street address of 22 Aston Street, Sandown, Johannesburg, which 22 Aston owns. It is common cause that this property is adjacent to the four immovable properties situated at 56 Adrianne Street.

[25] The provisional preservation order in respect of the four immovable properties at 56 Adrianne Street was confirmed and made final by Masipa J[5] on 9 July 2025. In respect of the immovable property situated at 22 Aston Street, the preservation order was at that stage still a provisional preservation order. The provisional preservation

[4] Annexure 'FA5', index to application for leave to sell certain immovable properties, vol 1, at pages 77–86.
[5] Annexure 'FA6', index to application for leave to sell certain immovable properties, vol 1, at pages 91–93.

order was extended and the application for confirmation of the rule *nisi* in respect of the remaining respondents was postponed to the opposed motion roll on 6 February 2026.[6]

[26] Subsequent to the granting of the preservation order, certain of the respondents instituted interlocutory applications relating to the relief granted in the preservation order.

[27] Ms Tamia Mkhwazi filed a declaratory application seeking to have her inclusion and citation in the preservation order declared unlawful. Royal AM Football Club (Pty) Ltd instituted an application in terms of Uniform rule 35(14) seeking leave to serve a rule 35(15) notice on the CSARS and Dr Ngubo.[7]

[28] The first respondent instituted a variation application, seeking to rescind and vary the preservation order, the effect of which would be to include the immovable properties situate at 88 and 90 Addison Drive, La Lucia and make them subject to the preservation order as realisable property and to release all the realisable property which is subject to the existing preservation order.

[29] In addition, the first, second and certain other respondents instituted an interlocutory counter-application, seeking orders declaring their citation and inclusion in the main preservation application unlawful and to be set aside.

[30] On 6 February 2026, the preservation order was made final against the first and third to 22nd respondents, which includes the first and second respondents and Zikhulise Group in this matter.[8] In addition, the court on 6 February 2026 granted orders dismissing these applications with costs, save that the applications for rescission and variation of the preservation order remain pending.

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[6] Annexure 'FA7', index to application for leave to sell certain immovable properties, vol 1, at pages 94–95.
[7] The application was for an evaluation certificate to be provided by Dr Ngubo. It appears that the incorrect references to the subrules may have been invoked to request the document.
[8] Annexure 'RA9', index to application for leave to sell certain immovable properties, vol 15, at pages 1379-1831.

[31] In terms of the interim provisional preservation order, the curator *bonis* was *inter alia* required to preserve the assets under preservation, which assets may only be realised in circumstances where the CSARS is lawfully entitled to do so. In terms of such order:

(a) the four immovable properties registered in the name of Mr Peretz were preserved and the CSARS was granted authority to cause caveats to be registered over them; and

(b) the realisable assets of the first to 22nd respondents, including 22 Aston, were preserved and vested in the curator *bonis.* The powers of the curator *bonis* were detailed in paragraphs 6 to 33 of the order.

The current application

[32] In this application, the CSARS is seeking to convert the five immovable properties to cash to be held by the curator *bonis* pending an action to be instituted to allow it to execute against the cash so generated for either the first respondent's or Zikhulise Group's indebtedness to SARS. The CSARS has indicated that, in seeking to do so, given that these are residential properties, it does so in compliance with Uniform rule 46A.

[33] The basis on which the CSARS seeks to do so, relates to the financial burden of preserving the five properties and their deterioration. The CSARS indicates that these costs are substantial every month and are eroding the value of the immovable properties. Such expenses include and are not limited to bi-annual insurance premiums, unpaid monthly municipal charges, the lack of maintenance to the five immovable properties, the monthly cost of security guards and the curator *bonis's* fees, which the respondents are liable for but which costs are paid by the CSARS in the interim.

[34] The application, the CSARS submits, is essential to prevent the value of the five immovable properties from being eroded and further diminishing in value but also to reduce the monthly costs being incurred due to the lack of general maintenance of the properties. It is contended that should the application not be granted and the costs escalate, then the immovable properties will no longer serve the purpose of the main preservation order.

[35] The sole purpose of the application is to ensure that the realisable assets are secured at their highest value for the eventual satisfaction of the respondents' tax obligations, specifically that of the first respondent and Zikhulise Group to the CSARS.

The immovable property and the expenses related thereto

[36] The CSARS sets out in some detail the costs associated with the immovable properties to demonstrate how they are eroding in value. It is common cause that the first respondent currently resides at 56 Adrianne and 22 Aston Streets, Sandown. Although the five immovable properties are separate properties with two separate registered owners, they effectively form a single unit. SARS obtained a sworn valuation report in respect of the properties and they have a total municipal value of R22 831 000. After the valuation, the collective market value of the five properties was estimated as being R35 million[9] and the collective forced sale value as being R24.5 million.[10] The valuation certificate of the valuer dated 13 October 2025 is annexed to the report.[11]

[37] At the time of determining the value of the properties, the valuer also discovered that various improvements were effected to the properties registered in the names of 22 Aston[12] and Mr Peretz.[13] However, at the time of his inspection of all five properties, the valuer noted that the improvements showed a lack of general maintenance and damp damage.[14]

[38] Based on the valuation report, SARS conducted an inquiry into the affairs of the second respondent and 22 Aston. This was pursuant to the provisions of Chapter 5 of the TAA. A subpoena was issued to the Johannesburg Municipality to obtain copies of the building plans in respect of the improvements to the five properties. The municipality provided the building plans for the improvements on 22 Aston's property. The municipality also provided a letter issued to the occupants of the property situated at 56 Adrianne Street, still registered in the name of Mr Peretz, in which they were

[9] Index to application for leave to sell certain immovable properties, vol 2, at page 112.
[10] Index to application for leave to sell certain immovable properties, vol 2, at page 113.
[11] Index to application for leave to sell certain immovable properties, vol 2, at page 114.
[12] Index to application for leave to sell certain immovable properties, vol 2, at page 105.
[13] Index to application for leave to sell certain immovable properties, vol 2, at page 104.
[14] Index to application for leave to sell certain immovable properties, vol 2, at page 105.

advised that the building plans were not approved and that the improvements were unlawful and they were served with a contravention notice.[15]

[39] Pursuant to investigations, the CSARS established that the properties with the improvements were not insured and to preserve their value, the curator *bonis* was instructed to obtain insurance over the five properties, which insurance policy was issued in the name of 22 Aston.[16] According to the policy schedule issued by Hollard Insurance Company, the immovable properties and improvements have a replacement value of R82.46 million.[17] SARS indicates that the cost of insurance is the sum of R97 922.30 bi-annually.

[40] Further expenses are being incurred in respect of the monthly charges owing to the municipality in respect of various amounts levied on the five properties. However, the Johannesburg Municipality has only issued statements in respect of four of the five properties.[18] Having regard to these statements, the total amount outstanding in respect of the four properties at 3 October 2025 is an amount of R1 792 294.26.

[41] The curator *bonis* was also instructed to place security guards at the properties, given the CSARS's concern that the properties may be vandalised and/or movable assets removed. Hi Zone Security Services (Pty) Ltd has been contracted by the curator *bonis* to provide such security services and the monthly expenses at the five properties are R188 261.90, which expense is being paid for by the CSARS.[19]

[42] At the time of the granting of the main preservation order, the curator *bonis* took control of the bank accounts of the various respondents, including the first respondent and Zikhulise Group. There are no funds available to make payment of the continual monthly expenses or the curator *bonis's* fees, as the closing balance of the accounts

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[15] Annexure 'FA9', index to application for leave to sell certain immovable properties, vol 2, at pages 143-145.
[16] Annexure 'FA10', index to application for leave to sell certain immovable properties, vol 2, at pages 146-153.
[17] Annexure 'FA10', index to application for leave to sell certain immovable properties, vol 2, at page 146
[18] Annexure 'FA11', index to application to sell certain immovable properties, vol 2, at pages 154–161.
[19] Annexure 'FA12', index to application for leave to sell certain immovable properties, vol 2, at page 162.

reflected minimal funds.[20] Presumably, there are no additional incoming funds either.

[43] The CSARS alleges that although the immovable properties are registered in the names of 22 Aston and Mr Peretz, the ultimate beneficial owner of the five immovable properties is the first respondent. In addition, it also indicates that insofar as it may be alleged that Zikhulise Group may have paid the majority of the purchase consideration for the immovable properties and is therefore the owner, the right to execute against the immovable properties in respect of the first respondent's and Zikhulise Group's indebtedness to the CSARS will form the subject matter of the action to be instituted.

[44] During the course of the tax inquiry, the CSARS received four instalment sale agreements in terms of which Mr Peretz sold the four immovable properties situated at 56 Adrianne Street to the second respondent.[21] The agreements confirmed that the second respondent would have purchased the four properties for a purchase consideration of R19.498 million from Mr Peretz. In respect of the fifth property registered in the name of 22 Aston, an unsigned agreement was provided in terms of which the first respondent would acquire the shareholding in 22 Aston from Mr Peretz for a purchase consideration of R5 million.[22]

[45] Mr Peretz confirmed during the course of his evidence at the tax inquiry that, although the four instalment sale agreements for the immovable properties were signed by the second respondent, at all times he negotiated with the first respondent, who paid R5 million for the purchase price in respect of the sale of the shares in 22 Aston, which monies were used to pay off part of the existing bond over the property situated at 22 Aston Street. The shareholding in 22 Aston was consequently changed.

[46] After the purchase price for the properties had been agreed upon with the first respondent, she requested to attend at the five properties to take measurements and

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[20] Annexure 'FA13', index to application for leave to sell certain immovable properties, vol 2, at pages 163-177, specifically at pages 170–172.
[21] Annexure 'FA14', bundle of agreements of sale entered into between Y Peretz and Andile Mpisane, index to application for leave to sell certain immovable properties, vol 2, at pages 178–221.
[22] Annexure 'FA16', index to application for leave to sell certain immovable properties, vol 3, at pages 230-240.

he made the keys available to her, as the property was vacant at the time. He subsequently received notification that the first respondent had moved into the premises without any prior arrangement and paid R1 million towards the purchase price on the day she took occupation.

[47] She had not made any subsequent payments and he then instituted eviction proceedings. The first respondent made further payments and remained in occupation of the properties. He confirmed that he did not grant the first respondent permission to build on any of the five properties and that he is not paying the municipal accounts. Confirmation of this emanates from his evidence at the tax inquiry.[23]

[48] Mr Peretz undertook to provide the sale of shares agreement and when he was subsequently unable to do so, he referred the CSARS to an attorney, Mr Happy Godi, of Taleni Godi Kupiso Inc.[24] When Mr Happy Godi attended the tax inquiry on 28 August 2025, he produced three signed sale agreements,[25] which reflected that Mr Peretz sold three of the immovable properties to 56 Adrianne. He, however, did not produce an agreement concerning the remaining portion, although he indicated that there is a fourth sale agreement. He confirmed that the instalment sale agreements concluded with the second respondent were cancelled as a consequence of the eviction proceedings and new agreements were concluded.

[49] When questioned regarding the signed sale of shares agreement, Mr Happy Godi confirmed that Mr Peretz's attorney had prepared it and he did not have a copy thereof, as his role was restricted to that of conveyancer in respect of the four properties situated at 56 Adrianne Street. When questioned concerning the correspondence exchanged between himself and Mr Peretz's attorney of record,[26] it became evident that there was a dispute regarding the outstanding balance payable in respect of the purchase consideration for the five properties.

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[23] Annexure 'FA17', extract of the transcript of the evidence of RB Peretz at the tax inquiry held in 2024, index to application for leave to sell certain immovable properties, vol 3, at pages 241–260.
[24] Mr Happy Godi's brother is the sole director of Godi Enterprises.
[25] Annexure 'FA20', index to application for leave to sell certain immovable properties, vol 3, at pages 288-310.
[26] Annexure 'FA21', index to application for leave to sell certain immovable properties, vol 3, at pages 311-341.

[50] According to Mr Peretz, an amount of R5.25 million remains outstanding for the purchase consideration as at 15 December 2022[27] but the first respondent indicates that as of 11 July 2022, the full purchase consideration had been paid. According to Mr Peretz, the first respondent and Godi Enterprises (Mr Happy Godi's brother), each made payment of some of the funds that constituted the purchase consideration.[28]

[51] In addition, the second respondent confirmed during the course of his evidence at the tax inquiry in 2024 that the sale agreements were cancelled and he did not acquire the properties.[29] A deeds search of the properties reflected in the valuation report confirms this. Investigations by SARS into the payment of the purchase consideration for the four immovable properties and the shares in 22 Aston indicated that Mr Peretz received an amount of approximately R21 022 278.66 from various individuals, being the first respondent, Zikhulise Group (of which the first respondent was solely in control of the bank account), DPA Project Managers and Facilitators (Pty) Ltd (DPA) and Godi Enterprises.

[52] During the course of the tax inquiry, Mr Godi indicated that he was instructed to act as paymaster on behalf of the first respondent and received commission for the amounts paid to Godi Enterprises and paid to the first respondent. The CSARS's investigation into payments received and paid on by Godi Enterprises to Mr Peretz established that the main source of these payments was Zikhulise Group and the total amount was the sum of R21 600 000. Mr Godi indicated that he was instructed either by the first respondent or her assistant, Ms Samantha Holland,[30] to effect the payments. The payments which Godi Enterprises made after the receipt of funds from Zikhulise Group amounted to R21 240 000.

[53] On examination of Mr Peretz's bank accounts, it was established that R21 000 000 was received directly into his bank account and further that the bond

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[27] Annexure 'FA22', schedule of payments submitted by Mr Peretz, index to application for leave to sell certain immovable properties, vol 4, at page 342.
[28] Annexure 'FA23', CIPC disclosure certificate issued in respect of Godi Enterprises (Pty) Ltd, index to application for leave to sell certain immovable properties, vol 4, at pages 343–344.
[29] Annexure 'FA18', index to application for leave to sell certain immovable properties, vol 3, at pages 261-265.
[30] Annexure 'FA24', extract of the transcript of the evidence of MJ Godi at the tax inquiry in 2025, index to application for leave to sell certain immovable properties, vol 4, at pages 345-412.

account with Mercantile Bank in respect of the immovable property situated at 22 Aston Street was settled in the sum of R1 551 467.27 by the sale of the shares in 22 Aston.[31] It would thus appear that, based on the CSARS's analysis, the amount owing to Mr Peretz is less than R5.25 million.

[54] The CSARS has undertaken to keep the proceeds of the sale of the five properties in trust pending the finalisation of the action to be instituted as well as separately keeping an amount of R5.25 million, pending resolution of any dispute between Mr Peretz and the first respondent and/or any of the other parties to the application regarding the outstanding purchase consideration due in respect of the four immovable properties, as well as the sale of shares in 22 Aston.

[55] On 9 May 2024, a provisional preservation order was granted in terms of s 163 of the TAA in respect of the realisable assets of the Shandi Trust (Shandi preservation order) and the powers of the curator *bonis* were extended on 30 May 2024.[32] The first respondent is a beneficiary of the Shandi Trust.[33]

[56] Pursuant to the Shandi preservation order, in May 2024, the curator *bonis* attempted to implement and execute the provisions of the Shandi preservation order at the premises situated at 22 Aston and 56 Adrianne Streets. However, the curator *bonis* was unable to do so. His report dated 25 May 2024[34] sets out in detail the reasons. He, together with the security personnel who had accompanied him, were met with resistance by persons at the premises, whom he presumed were instructed by the first and second respondents.

[57] The curator *bonis* also executed the main preservation order at 56 Adrianne and 22 Aston Streets and removed and attached movable assets belonging to the first respondent, which were subsequently sold by way of auction as follows:

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[31] Annexure 'FA25', index to application for leave to sell certain immovable properties, vol 5, at page 413.
[32] Annexure 'FA26', index to application for leave to sell certain immovable properties, vol 5, at pages 414-425A.
[33] Annexure 'FA27', Shandu Deed Trust, index to application for leave to sell certain immovable properties, at vol 5, at pages 426-449.
[34] Annexure 'FA28', index to application for leave to sell certain immovable properties, vol 5, at pages 450-455.

(a) on 2 July 2025, vehicles were sold in an amount of R3.280 million;
(b) on 15 October 2025, various luxury bags and movable assets were sold to the value of R933 000;
(c) on 18 November 2025, various movable assets to the value of R1 764 620 were sold; and
(d) on 19 November 2025, various movable assets to the value of R134 000 were sold.

[58] The CSARS recovered a total amount of R6 112 420 by way of the sale of these movable assets at auction.[35] The proceeds of the sale of the movable assets were paid over to the CSARS and used in the partial reduction of the respective tax indebtedness of the first respondent and Zikhulise Group. The first respondent was advised of the amounts allocated to the respective income tax accounts by way of communication to her attorney of record, Ms Nefuri, on 28 October 2025.[36]

[59] In November 2024, a warrant for search and seizure[37] was executed by the CSARS at *inter alia* the residence of the first respondent at 22 Aston and 56 Adrianne Streets, whilst she was present. Although the first respondent has never indicated in an affidavit that she is residing at the five properties, the CSARS was satisfied that she was there and that the second respondent does not stay there, but visits on a regular basis or uses the premises as a temporary residence. The regular residence of the second respondent and his family is the La Lucia residence in Umhlanga, KwaZulu-Natal at 88 Addison Drive.

[60] As a consequence of the execution of that warrant of search and seizure, the curator *bonis* received correspondence on behalf of Obitz, laying claim to movable assets removed by the curator *bonis* and confirmed that Obitz was using the sound room situated on the five properties. The CSARS requested the curator *bonis* to establish the relationship between the first respondent and Obitz, however, Obitz has

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[35] Annexure 'FA35', index to application for leave to sell certain immovable properties, vol 8, at pages 705-758.
[36] Annexure 'FA36', index to application for leave to sell certain immovable properties, vol 9, at pages 759-853.
[37] Annexure 'FA29', index to application for leave to sell certain immovable properties, vol 5, at pages 456-486.

not provided any information on its relationship to the first and second respondents nor the legal basis on which it uses the sound room and stores equipment at 56 Adrianne Street or 22 Aston Street.[38]

The tax indebtedness of the first respondent and Zikhulise Group

[61] The CSARS indicates that as at 19 September 2025, the first respondent was indebted to SARS as follows:

(a) a personal income tax debt, including interest, in the sum of R13 331 166.02; and

(b) personal liability for the tax indebtedness of Zikhulise Group, including interest, in the sum of R112 574 520.43.

[62] Exactly how such liability has accrued is dealt with in detail in the main application, extracts of which have been annexed to this application[39] and are summarised as follows. On 9 and 22 May 2023, SARS demanded payment from the first respondent of her outstanding personal income tax liability. On 21 August 2023, SARS caused a certified statement in terms of s 172 of the TAA to be filed and caused a warrant of execution against immovable assets to be issued. On 17 October 2023, the respective sheriffs attempted to obtain satisfaction of such amounts owing by executing against the immovable assets of the first respondent.

[63] In relation to Zikhulise Group, in respect of whom the first respondent was held personally liable for its tax indebtedness and whose realisable assets are subject to the main preservation order, SARS took the following steps:

(a) A notice in terms of s 184 of the TAA was addressed to the first respondent through her then attorneys, BDP Attorneys, on 4 November 2024. The first respondent was thus afforded an opportunity to submit representations concerning the content of the notice. On 25 November 2024, the first respondent, through her attorneys, requested further information and such information was provided on 17 December 2024.

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[38] Annexure 'FA33', index to application for leave to sell certain immovable properties, vol 6, at pages 505-521.

[39] Annexure 'FA33', index to application for leave to sell certain immovable properties, vol 6, at pages 522-575.

(b) SARS then caused a letter to be addressed to the attorneys on 6 February 2025, advising the first respondent that she was afforded an opportunity to respond to the said notice. A further extension of three days was granted. In response, BDP Attorneys indicated that the first respondent's rights were reserved and that she would deal more fully with the contents of such notice in due course in the appropriate forum. A request was made for a round table discussion by the first respondent.

(c) On 11 February 2025, BDP Attorneys was advised that SARS was not willing to receive representations at a round table discussion and that written representations must be submitted by the first respondent by 19 February 2025. No representations were submitted and, as a consequence, on 24 February 2025, SARS issued a formal notice advising the first respondent that she had been held liable for the tax indebtedness of Zikhulise Group by invoking the provisions of *inter alia* ss 155, 180 and 183 of the TAA. The first respondent, through her attorneys, reacted on 10 March 2025, disputing the legal basis upon which SARS made such determination.

(d) On 14 March 2025, in response to such dispute, SARS caused a letter to be addressed to the first respondent's attorneys, referring to the judgment in *Greyvensteyn v CSARS and Others*, in which the court confirmed that SARS was entitled to hold a person liable in terms of s 183 of the TAA.

(e) On 4 April 2025, BDP Attorneys responded saying that they were considering their client's position.

(f) On 10 April 2025, SARS issued a certified statement in terms of s 172 of the TAA in respect of the first respondent's personal liability for the tax indebtedness of Zikhulise Group. In addition, on 14 April 2025, a further letter was addressed to BDP Attorneys, in which SARS specifically mentioned that the liability of the first respondent was a joint and several liability with Zikhulise Group and such liability was due and payable. Despite a request for a round table meeting on 15 April 2025, such meeting did not take place despite the exchange of correspondence.

(g) On 25 June 2025, BDP Attorneys addressed a letter on behalf of the first respondent and Royal AM Football Club (Pty) Ltd, requesting SARS to suspend the auction of the immovable assets pending a proposed meeting. On 25 June 2025, SARS indicated that it would not suspend the auction, which would proceed in terms of the provisional preservation orders and that the first respondent as well as Royal AM Football Club (Pty) Ltd had tax liabilities.

(h) In August 2025, BDP Attorneys withdrew as legal representative on behalf of

the first respondent as well as Royal AM Football Club (Pty) Ltd.

[64] It is for these reasons, that the CSARS indicates that both the first respondent and Zikhulise Group have been aware of the nature of their indebtedness and the first respondent has been aware of the judgment relating to her personal income tax since at least March 2023, as this was communicated to her then attorneys of record. Despite timeous demand and time granted to the first respondent and Zikhulise Group to make payment, no payment has been forthcoming. Most notably, the first respondent has not taken any steps to set aside the CSARS's determination of her liability in terms of *inter alia* ss 155, 180 and 183 of the TAA.

The proposed action to be instituted by SARS

[65] Having regard to what is set out in the founding affidavit, specifically paras 34-52, the CSARS submits that there is sufficient evidence to support the conclusion that the five properties were acquired by and for the benefit of the first respondent. The CSARS submits that the first respondent and Zikhulise Group have attempted to frustrate the collection of their tax liability and hide their assets by entering into the various agreements in respect of the four immovable properties and the sale of shares in 22 Aston.

[66] The purchase consideration relating to the properties, as well as the shares in 22 Aston, was mainly paid from the first respondent's own funds and that of Zikhulise Group, in circumstances where the first respondent was not the shareholder of Zikhulise Group and in circumstances where neither the second respondent nor 56 Adrianne had any entitlement to the funds.

[67] The CSARS submits this was done to dissipate assets and hinder it in its attempt to recover the outstanding tax indebtedness of the first respondent and Zikhulise Group. To bolster this submission, according to the CSARS's records, the sole shareholder of Zikhulise Group is the Mkhimpi Family Trust of which the first respondent is a beneficiary and trustee.

[68] In the proposed action which will be instituted within a month of this order, SARS will seek an order declaring the first respondent and Zikhulise Group the

beneficial owners of the five properties and an order declaring those properties executable to settle their tax indebtedness.

Compliance with s 26 of the Constitution and Uniform rule 46A

[69] In compliance with the provisions of rule 46A, which provisions deal with the sale in execution of immovable property that is a primary residence of a judgment debtor, the CSARS relies on the sworn valuation of the properties and the outstanding rates and taxes established by the curator *bonis*. It also canvasses the other properties owned by the first respondent, thereby indicating available alternative accommodation and/or housing.

[70] Although SARS indicates that it is of the opinion that the first respondent is the beneficial owner of the properties situated at 56 Adrianne and 22 Aston Streets, the first respondent and Mr WS Mpisane own the following additional immovable properties.

[71] The immovable properties owned by the first respondent and her ex-husband, Mr WS Mpisane, reflect that the properties are still registered in both their names. It is common cause that the first respondent and Mr WS Mpisane are formally divorced, having been married in community of property but the division of their assets has not occurred. Mr WS Mpisane still resides at 88 Addison Road, La Lucia.

[72] Two of the immovable properties are physically situated at 88 and 90 Addison Drive, La Lucia. The property at 90 Addison Drive is occupied by the second respondent and his family and the property at 88 Addison Drive is being occupied by Mr WS Mpisane. The records reflect that these properties were registered jointly in their names in August and October 2007 and that there are presently mortgage bonds registered over the properties.

[73] A third property, which is unencumbered, was registered in their names on 16 March 2005 in the Sectional Title Scheme Handsworth-On-The-Hill, with a physical address at 169 King Cetshwayo Highway, Westridge. A further property is solely registered in the name of the first respondent, situate at 8 Falcon Place, Cowies Hill, Pinetown, which was encumbered by two mortgage bonds in favour of Standard Bank,

which bonds SARS has established from bank statements have been fully paid.[40]

[74] The first respondent is a beneficiary and trustee of the Mkhimpi Family Trust, which owns the following immovable properties:

(a) Erf 294 Zinkwazi Beach Township, which is unencumbered and registered in the trust's name on 29 March 2012;

(b) Erf 295 and Erf 296 situated at Zinkwazi Beach Township, registered on 3 April 2012, which are unencumbered;

(c) Erf 2384 situated at La Lucia, Ext 19 Township, registered on 7 March 2014, which property is unencumbered;

(d) Erf 2383 situated at La Lucia Ext 19 Township, registered on 20 August 2014, which is unencumbered;

(e) Portion 4 of Erf 186 situated at Elysium Township, registered on 1 March 2010, which is unencumbered;

(f) Erf 2252 situated at Umhlanga Rocks, Extension 21 Township, registered on 29 June 2007, which is encumbered with a bond with Absa Bank;

(g) Units 8 and 10 in the Sectional Title Scheme Golden Beach 339 and 528 situated at Tongaat Township registered on 26 November 2007. A security bond is registered over the property in favour of the attorneys firm Faber Goërtz Ellis Austen Inc for an amount of R5 387 698.00.[41]

[75] The first respondent is also a trustee and beneficiary of the Sbusha Trust, which owns the remaining extent of portion 48 and 59 of the Farm Aasvogelkrans, which were used as training facilities for the Royal AM Football Club. The CSARS established that the residence on the property was occupied from time to time by the first respondent.

[76] Although the CSARS indicates that no purpose would be served in setting a reserve price, should the court be of the view one ought to be set, then it submits, taking all factors into account, such as the amounts still owing and the outstanding

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[40] Annexure 'FA37', index to application for leave to sell certain immovable properties, vol 10, at pages 854–861.

[41] Annexure 'FA38', index to application for leave to sell certain immovable properties, vol 10, at pages 862–879.

purchase consideration, a reserve price of not more than the forced sale value of R24.5 million will ensure a just and equitable outcome in compliance with rule 46A.

The opposition

[77] The first, second, third and sixth respondents who oppose the application, essentially only raise points in *limine* in opposition to the application. They did not pertinently deal with the factual allegations in the CSARS's founding affidavit.

The first and second respondents' opposition

[78] The first and second respondents' opposition can be summarised as follows:

(a) lack of urgency;

(b) this court lacks jurisdiction to hear the application as only an interlocutory court of variation, rescission or review, alternatively appeal would have the requisite jurisdiction;

(c) the CSARS has not in its founding papers complied with the provisions of rule 46A or s 26 of the Constitution;

(d) the CSARS has not followed the correct procedure, as it ought to have instituted an application for the rescission or variation of the preservation order;

(e) there has been a material non-joinder of certain individuals and entities to the application;

(f) the joinder of Obitz constitutes an abuse of process by the CSARS, as these are not eviction proceedings;

(g) there is a variation[42] and rescission application pending;

(h) the CSARS has abused the provisions of the preservation order by selling assets; and

(i) the current application is an abuse of process.

[79] The first and second respondents indicate that the application is not urgent and ought to be struck off the roll with costs. The stance of the first and second respondents is that there has been non-compliance with practice directive 9.4 in relation to the enrolling of urgent applications. Additionally, they submit that rule 6(12)*(c)* is mandatory and provides that an applicant must explicitly explain the circumstances

[42] Instituted by the first and second respondents and Royal AM Football Club (Pty) Ltd.

which render the application urgent in the founding affidavit and why substantial redress will not be afforded at a hearing in due course. They submit that this matter does not meet the requirements for urgency.

[80] Several submissions were advanced at the hearing to challenge urgency and the manner in which the application was enrolled. Ms *Ndlovu* submits that the certificate of urgency, together with the notice of motion and supporting affidavits, were signed on 5 December 2025, a Friday. This demonstrates that the application was ready to be issued and served on the respondents and filed in court on that date. The CSARS's attorneys of record did not contact the registrar over the weekend or on Monday, 8 December 2025 to issue the urgent application. It was only on 9 December 2025 that the application was issued and filed.

[81] She submits that if the application was so urgent, it ought to have been issued and filed earlier and the date it was signed demonstrates this. Additionally, that, on the CSARS's own submissions at the hearing, it acknowledged the urgency has fallen away, which is tantamount to a concession on its part that the application was not urgent to begin with. The application was enrolled and heard on 10 March 2026, some three months after the papers were issued. The CSARS ought to have 'invoked the provisions of Practice Directive 9.1 and dealt with the matter as a special opposed'. It is submitted that the Judge President ought to have been approached for a preferent date for hearing.

[82] A further submission advanced was that the application ought to have been brought earlier, as a year and three months had elapsed since the initial preservation order was granted in November 2024. Relying on the decision in *Hawker* to substantiate her submissions, she submits that the Supreme Court of Appeal held the high court had erred in dismissing the application and ought to have struck it off the roll for lack of urgency.

[83] The first and second respondents further submit that the CSARS ought not to have waited in excess of a year to institute these proceedings, the owner ought to be keeping up to date with the payment of the municipal charges and 56 Adrianne had hired security, therefore, there was no need for the CSARS to do so. In addition, Ms

Ndlovu submits that the reason why the first and second respondents are unable to maintain the properties is because their bank accounts have been preserved and, therefore, they acknowledge not paying for these services, or the maintenance and upkeep of the properties. Nothing is said, however, relating to the unauthorised building which has occurred on the properties.

[84] Additionally, she submits, given the lack of urgency, there was no need for the first and second respondents to deal with the merits. Consequently, the application was not urgent and ought to be struck from the roll with costs of two counsel on scale C, and enrolled in the normal course for hearing.

[85] The second point in *limine* is that an application for variation ought to have been instituted at the time or shortly after the initial preservation order was granted in November 2024, or prior to its confirmation on 6 February 2026. The CSARS ought to have foreseen that these costs would be incurred and ought to have sought to vary the preservation order within a few months of it having been granted, not after a year and three months.

[86] Thirdly, the CSARS has not explained why it did not seek the sale of the immovable properties in terms of rule 46A and s 26 of the Constitution at the time it sought the *ex parte* provisional order on 21 November 2024.

[87] Allied to this submission, which was raised only at the hearing of the matter, is that the CSARS ought to have instituted a separate and substantive application in terms of rule 46A and that no case had been made out in the founding affidavit in compliance with rule 46A and s 26 of the Constitution.

The third and sixth respondents' opposition

[88] The third and sixth respondents' opposition advanced in the answering affidavit, deposed to by Mr Lethukuthula Zuma (Zuma), who describes himself as a businessman, director and shareholder, can be summated as follows:

(a) the application lacks urgency;

(b) they are not cited in the main application as respondents;

(c) they will seek to rescind the preservation order as it was granted in their

absence and consequently any relief in this application is premature; and

(d) the relief the CSARS seeks is premature as the question of whether the immovable properties are executable must first be determined by the court in the action to be instituted.

In addition, they seek to file a supplementary affidavit fully ventilating the factual issues raised by the CSARS, specifically the commercial arrangements between 22 Aston, Zikhulise Group and Godi Enterprises.

[89] Zuma, submits that the relief sought in the application directly affects the property rights and commercial interests of the third and sixth respondents in circumstances in which they are not the taxpayers whose liabilities form the basis of SARS's claim.

[90] At the outset, he reserves the third and sixth respondents' rights to file a more fully comprehensive answering affidavit dealing with the commercial transactions and arrangements involving multiple entities and payment flows, as he indicates that given the truncated timetable imposed by the CSARS in respect of the enrolment of the application, the third and sixth respondents have been unable to do so.

[91] Thus, he indicated the third and sixth respondents would require time to file a supplementary affidavit indicating the source and purpose of payments made to Mr Peretz, the contractual arrangements between 22 Aston and other entities, the basis for the first respondent's occupation of the properties in question and the commercial arrangement involving Godi Enterprises (Pty) Ltd and Zikhulise Group.

[92] He submits that the first respondent is not a shareholder or director of 22 Aston and the properties remain registered in the name of Mr Peretz. 56 Adrianne has concluded agreements of sale for the acquisition of these properties and holds contractual rights to claim transfer in respect thereof. Any sale in execution of these immovable properties would directly impact and affect the rights of the third and sixth respondents.

[93] A further aspect raised by Mr Zuma is the fact that when the provisional preservation order was granted, the third and sixth respondents were not cited or

joined as respondents in those proceedings. The interlocutory application which the CSARS relies on has as its foundation the preservation order. Given that there has been no declaration of executability, any sale in execution of these properties is premature. In addition, the third and sixth respondents indicate that they intend to institute proceedings seeking the rescission of the final preservation order which was obtained in their absence. What has been omitted from their papers is whether they had done so by 9 March 2026 and if not, when they intended doing so.

[94] Although the third and sixth respondents indicate in the answering affidavit dated 9 March 2026 that they will seek leave to file a supplementary affidavit on receipt and location of all the documents that they need to supplement their papers, at the hearing on 10 March 2026, no such application or reservations of rights were made by the third and sixth respondents. In addition, it was open to them at that stage to seek leave to file any supplementary affidavits before the hearing on 1 April 2026, approximately three weeks away. No such leave was sought, nor was any leave sought on the date of the hearing of the application, being 1 April 2026, for leave to file any further supplementary affidavits.

[95] In the main, the opposition advanced by the third and sixth respondents is that the application is premature, as the CSARS seeks authorisation to realise immovable property and to determine whether it is entitled to execute against them during the course of an action, which is yet to be instituted. The provisions of s 163 of the TAA, they submit, do not cater for this application until such time as a court determines the CSARS's entitlement to execute against the properties in satisfaction of the tax debt owing in the action.

[96] It is not only the property rights of the taxpayer which are affected but also those of innocent third parties, whose liability to the CSARS has not yet been established in the action. The statutory scheme envisaged by s 163 of the TAA is directed at the preservation of assets pending lawful execution, not execution before establishing such entitlement.

[97] They submit that the effect of the order which the CSARS now seeks, is to execute in advance of entitlement, which is impermissible. The sale of the immovable

properties would have the effect of extinguishing the respondents' ownership of the properties to convert them into cash secured for the CSARS. In the event of the court hearing the action and determining that there was no entitlement by the CSARS to execute against the properties, the immovable properties have already been realised.

[98] The third and six respondents submit that the effect of the order results in an arbitrary deprivation of property, as it entails the sale of immovable property owned by 22 Aston and Mr Peretz and the conversion of such property into cash. The sale of such properties is irreversible and once effected, ownership of the properties will be extinguished and the properties cannot be restored to their owners in any subsequent determination. The deprivation is final and not temporary in nature.

[99] Additionally, the third and sixth respondents also challenge urgency and indicate that the circumstances relied on by the CSARS, including the costs of maintaining the properties and the erosion of value are not new, nor were they unforeseen. Such circumstances have existed since the granting of the preservation order and arise from the preservation regime created by such order and any prejudice is self-created.

[100] Such prejudice was self-created which has precipitated the application as opposed to any erosion in value or deterioration of the properties as it is the CSARS who is "feeling the pinch" given that it is meeting all the expenses resulting from the preservation order. They submit that the CSARS controlled the timing of proceedings and its entitlement to execute and had deferred that determination at the time of granting of the preservation order and cannot now claim urgency arising from a change in circumstances emanating from such preservation regime created in November 2024.

[101] Because SARS has delayed in instituting the action to determine its entitlement to execute it is the author of its own misfortune and it has not made out a case for urgency. Like the first and second respondents, the third and sixth respondents submit that because urgency has not been established, the application falls to be struck from the roll for lack of urgency with costs on scale C, alternatively, the application falls to be dismissed with costs on scale C, as no case has been made for such relief on the

merits.

Analysis

Urgency

[102] I propose to deal with the aspect of urgency having regard to the respective submissions of the parties.

[103] The application was launched on a semi-urgent basis by the CSARS. The application was instituted on 9 December 2025, the certificate of urgency having been signed on 5 December 2025. Provision was made in the notice of motion for any notice of opposition to be filed by 16h00 on Thursday, 15 January 2026, answering affidavits to be filed on 5 February 2026 and the replying affidavit on or before 19 February 2026. The matter was enrolled for hearing on 10 March 2026 on the unopposed motion roll. The dies for the filing of affidavits took into account the rules of court as well as the dies non.

[104] The CSARS has canvassed how service of the application was effected on the various respondents. These are dealt with in the service affidavits of Mr A Wessels, deposed to on 28 January 2026[43] and Mr Jan Enrico Viljoen, dated 28 February 2026.[44] These affidavits indicate that service on the first, second, third and sixth respondents occurred on 11 December 2025.

[105] The first and second respondents did not comply with the dies stipulated in the notice of motion. Service on the first respondent was effected by affixing the application to the gates at 22 Aston and 56 Adrianne Streets. A notice to oppose was served by the first respondent on 29 January 2026, accompanied by a letter from her indicating that she was notified of the application, not by service of application papers but by a phone call received from the legal representatives for the third and sixth respondents.

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[43] Index to application for leave to sell certain immovable properties, vol 10, at pages 918-934.
[44] Index to application for leave to sell certain immovable properties, vol 11, at pages 1010-1028.

[106] Presumably, it is for these reasons that a copy of the application papers was delivered to 1 Byrne Court, La Lucia Ridge. The application was served on the second respondent at 88 Addison Drive, La Lucia and at 22 Aston and 56 Adrianne Streets. It was also emailed to the second respondent's known email address. The first respondent delivered a notice to oppose appointing the address at 1 Byrne Court.[45] Subsequently, Nefuri Inc served and filed a notice to oppose on behalf of the first, second, third and sixth respondents.[46] The first and second respondents only delivered answering affidavits via email on Monday, 9 March 2026.

[107] The third and sixth respondents were served with the application papers on 11 December 2025. Despite the notice of intention to oppose being filed by Nefuri Inc, another notice of intention to oppose was filed on 15 January 2026[47] by Taleni Godi Kupiso Inc. Their answering affidavits were only filed on 9 March 2026.

[108] In the founding affidavit, the CSARS indicated that although the respondents had been afforded timeframes to file affidavits close to the normal time periods prescribed in the Uniform Rules of Court, it required the matter to be afforded a preferent and/or expedited hearing date for the following reasons:

(a) it had been expending large amounts of money monthly to secure the five properties in circumstances where the respondents were not maintaining the five properties;

(b) the value of the five immovable properties is being reduced monthly, as the respondents are not making payment of the monthly municipal charges;

(c) the first respondent has no regard to the obligations relating to the five properties for the following reasons, *inter alia*, there has been construction of improvements on the five properties without approved building plans, failure to make payment of the municipal charges as well as the outstanding purchase consideration relating to the five properties, lack of maintenance of the improvements on the five properties and a lack of cooperation with the curator *bonis*;

(d) the CSARS is making payment of the monthly expenses relating to the maintenance and upkeep of the five properties, security and insurance payments, as

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[45] Index to application for leave to sell certain immovable properties, vol 14, at pages 1338–1340.
[46] Index to application for leave to sell certain immovable properties, vol 14, at pages 1347–1351.
[47] Index to application for leave to sell certain immovable properties, vol 14, at pages 1327-1333.

the respondents have not made any funds available to make such payments or payment of the curator *bonis's* fees and expenses; and

(e) if the matter is heard in the normal course, it would stultify the purpose of the provisional preservation order and the value of the properties will continue to decrease monthly.

[109] The certificate of urgency indicated that the CSARS required the matter to be heard as a matter of semi-urgency given the circumstances set out in its founding affidavit, with specific reference to the paragraphs in the founding affidavit which it relied on for urgency. The opposing respondents all allege the application is not urgent for various reasons canvassed hereinbefore. The CSARS has in its founding affidavit dealt with urgency in some detail, indicating that it together with the curator *bonis* are required to preserve assets. Its allegations that the properties are not maintained and are losing value are not refuted by the opposing respondents, with the first and second respondents acknowledging this on oath, however, laying the blame for not doing so at the CSARS's door given the preservation order. Most notably, none of the facts set out in paragraphs 102 and the sub-paragraphs were disputed.

[110] The usual practice is that urgent applications not instituted as *ex parte* applications in terms of Uniform rule 6(4) involve the abridgement of times provided by the Uniform Rules of Court and the departure from established filing and sitting times of the court.[48]

[111] In *Luna Meubel*, Coetzee J, after setting out the factors which may be considered in determining the nature of the urgency relied upon, remarked as follows:[49]

'Practitioners should carefully analyse the facts of each case to determine, for the purposes of setting the case down for hearing, whether a greater or lesser degree of relaxation of the Rules and of the ordinary practice of the Court is required. The degree of relaxation should not be greater than the exigency of the case demands. It must be commensurate therewith. Mere lip service to the requirements of Rule 6(12)*(b)* will not do and an applicant must make

[48] *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another (t/a Makin's Furniture Manufacturers)* 1977 (4) SA 135 (W) (*Luna Meubel*) at 136H.
[49] Ibid at 137E-G.

out a case in the founding affidavit to justify the particular extent of the departure from the norm, which is involved in the time and day for which the matter be set down.'

[112] In *Commissioner, South African Revenue Services v Hawker Air Services (Pty) Ltd; Commissioner, South African Revenue Service v Hawker Aviation Partnership and Others*,[50] in relation to urgency, Cameron JA said the following:

'One of the grounds on which Patel J dismissed the applications was that at their inception they had lacked urgency. This was erroneous. Urgency is a reason that may justify deviation from the times and forms the Rules prescribe. *It relates to form, not substance, and is not a prerequisite to a claim for substantive relief.* Where an application is brought on the basis of urgency, the Rules of Court permit a Court (or a Judge in chambers) to dispense with the forms and service usually required, and to dispose of it "as to it seems meet" (Rule 6(12)*(a)*). This, in effect, permits an urgent applicant, subject to the Court's control, to forge its own Rules (which must "as far as practicable be in accordance with" the Rules). Where the application lacks the requisite element or degree of urgency, the Court can, for that reason, decline to exercise its powers under Rule 6(12)*(a)*. The matter is then not properly on the Court's roll, and it declines to hear it.' (My emphasis.)

[113] Our courts have indicated that urgency may not necessarily be confined to a threat to life or liberty and that the 'urgency of commercial interests may justify the invocation of the subrule no less than any other interest'.[51] Our courts have thus held that commercial interests justify urgency, depending on the individual circumstances of a matter[52] and each case must be decided on its own set of peculiar facts.

[114] I have considered the submissions of the opposing respondents challenging urgency and I am not in agreement with them. Firstly, that there are degrees of urgency is well established and a court must, having regard to the particular facts, give proper consideration to the degree of urgency. I align myself with the sentiments expressed in *Cathay Pacific Airways Ltd and another v HL and another*,[53] where the court held

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[50] *Commissioner, South African Revenue Services v Hawker Air Services (Pty) Ltd; Commissioner, South African Revenue Service v Hawker Aviation Partnership and Others* [2006] ZASCA 51; 2006 (4) SA 292 (SCA) (*Hawker*) para 9.

[51] D E van Loggerenberg *Erasmus: Superior Court Practice* (RS 30, 2026) at D1 Rule 6-52.

[52] *Twentieth Century Fox Film Corporation and Another v Anthony Black Films (Pty) Ltd* 1982 (3) SA 582 (W) at 586F–G; *Bandle Investments (Pty) Ltd v Registrar of Deeds and Others* 2001 (2) SA 203 (SE) at 213E–F.

[53] *Cathay Pacific Airways Ltd and Another v HL and Another* [2017] ZASCA 35; [2017] 2 All SA 722 (SCA) para 29.

the following:

‘It is axiomatic that there are degrees of urgency. An applicant may, in a case of sufficient urgency, create its own rules subject only to the court’s control and insofar as possible in accordance with the Rules. Uniform Rule 6(12)(a) permits a court in an urgent application to dispense with the normal forms and service and to deal with the matter “as to it seems meet”. The degree of urgency will determine to what extent a departure from the rules will be permitted. Where appropriate and in cases of extreme urgency, the application may even be heard without service or notice to the Registrar. Urgency is of course facts based. I am satisfied that the matter before Wright J on 26 July 2014 which culminated in the first order was of the utmost urgency which justified hearing it over the telephone and issuing an order telephonically.’ (Footnotes omitted.)

[115] Secondly, I have considered the grounds for urgency relied on by the CSARS. I am of the view that these factors and reasons, as contained in the founding affidavit, constitute sufficient grounds of urgency – as there are commercial interests justifying urgency.

[116] Thirdly, I do not agree with the opposing respondents’ submissions that the urgency had been established in November 2024 at the time the preservation order was obtained or that the CSARS has delayed in bringing this application. Some of these expenses were not known to the CSARS and were incurred subsequent to the granting of the preservation order.

[117] It was not anticipated at that stage that it would be necessary to sell the properties to preserve their value, as the following only emanated after the preservation order was granted:

(a) from evidence obtained during the tax inquiry:
    (i) the manner in which the immovable properties were acquired;
    (ii) that the building and construction works had commenced and were completed without approved building plans; and
    (iii) the flow of monies to acquire the immovable properties;

(b) in October 2025, the Johannesburg Municipality provided SARS with the information relating to the arrear municipal charges;

(c) the curator *bonis* had the immovable properties valued and inspected, resulting

in the valuation report dated 13 October 2025; and

(d) the curator *bonis* had the properties insured and had to place guards on the premises/properties.

[118] It must follow, therefore, that I am of the view that the CSARS has not delayed in instituting this application for one year and four months.

[119] What the CSARS has not done is seek to abridge the time frames for the filing of answering affidavits, which is what typically occurs in urgent applications, and it is unsurprising that this is not one of the challenges raised. The notice of motion, when prescribing the time frames, calculated the dies as close to the time period allowed in the Uniform Rules of Court.

[120] Consequently, by doing so, the respondents were provided with sufficient time to file their answer and their right to a fair procedure was afforded to them, as envisaged and commented upon in *Mashele v Gildenhuys Malatji Attorneys and Others,*[54] where the court held:

'It is trite that a party's failure to institute proceedings on an issue that existed and of which that party may have been aware for some time would make it difficult for such a party to have the issue adjudicated on an urgent basis. It would, however, not, necessarily, close the doors of the urgent court to such an applicant, particularly where an ongoing violation of rights occurs. It might impact only the time frames laid down by the CSARS in its notice of motion for filing a notice to oppose and an answering affidavit. Where reasonable time frames for the delivery of opposing papers are provided that correspond with the periods prescribed in the Uniform Rules of Court, an applicant only needs to explain why the matter cannot be heard on the ordinary opposed motion roll since the respondent's rights in relation to fair procedure have been safeguarded.'

[121] This resulted in the CSARS being able to seek an expedited hearing date in the recess period outside of the sitting times of the court. It was thus only required to explain on the facts why it would not be able to obtain substantial redress in due course, as highlighted in *Mashele* as follows:[55]

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[54] *Mashele v Gildenhuys Malatji Attorneys and Others* [2024] ZAGPPHC 1128 (*Mashele*) para 10.
[55] *Mashele* para 11.

'The need for the applicant to explicitly deal with the question as to why the facts of this particular matter render it apposite to deal with the matter in the urgent court, however, remains. The facts of each case will determine whether the applicant has made a case demonstrating that substantial redress would not be obtained in due course. The substantial redress must relate to the applicant herself; it is fact and context-specific.'
In addition, I am of the view that the CSARS followed the rules as strictly as possible.

[122] From the unchallenged allegations in the founding affidavit, the properties and the improvements are not being maintained. The monthly expenses are decreasing the value of the properties. The municipal charges have not been paid and will continue to escalate, as will the rates (if they have not been paid), which may also result in the municipality instituting execution proceedings against the immovable properties. In any event, any transfer of the properties will require the upfront payment of any rates and municipal charges, which will diminish the value of the properties.

[123] There is also no concession on the part of the CSARS that urgency has fallen away. Following on what Cameron JA said in *Hawker*, the submissions of the first and second respondents must be dismissed outright, as urgency has been satisfied. In any event, urgency 'is not a prerequisite to a claim for substantive relief'.[56]

[124] It must therefore follow that I am satisfied that the CSARS has made out a case for urgency, warranting the matter being heard when it was and has established that it would not have obtained substantial redress had it been enrolled in the ordinary course. The request for the matter to be struck off the roll for want of urgency must fail.

[125] I propose to deal with the points in *limine* raised first before delving into the merits of the relief sought by the CSARS and the opposition in relation thereto. At the outset, it warrants mentioning that I have carefully considered all the points in limine proffered by those respondents who opposed the application. Having done so, I can find no merit in any of them and they fall to be dismissed.

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[56] *Hawker* para 9.

Jurisdiction

[126] Ms *Ndlovu*, who appeared with Mr *Sepeesa* for the first and second respondents, submits that this court did not have jurisdiction to deal with this interlocutory application. They submit that the CSARS ought to have brought a supplementary application to vary the preservation order in terms of paragraph 44, and ought to have filed an affidavit supplementing the preservation application dealing with the request to vary the order and not to bring a separate application.

[127] She submits that 'the application itself is misleading, as they ought to have stated it is a variation order varying the preservation order including the execution of the immovable properties'. This submission is fallacious. At the hearing of the matter, it was pointed out that paragraph 23 of the founding affidavit indicates that this application is interlocutory to the main application for the preservation order. Ms *Ndlovu* then informed the court that her instructions were to concede the point in *limine* in respect of this court lacking jurisdiction and abandon this in *limine* point.

[128] It is evident that this is an interlocutory application in which the CSARS seeks authority from the court to realise assets subject to the preservation order. It has been issued as an application on notice of motion with a founding affidavit. The CSARS has indicated on oath that it is interlocutory to the main preservation application, therefore, this in *limine* point is without merit.

[129] There is also no merit in the suggestion that only the court granting the preservation order has jurisdiction to vary the order. This court, being the KwaZulu-Natal Division of the High Court, Durban, has jurisdiction and paragraph 44 of the preservation order confers jurisdiction.

Mootness in relation to 22 Aston

[130] A further point raised during the course of argument was that in relation to 22 Aston, the application has become moot, as part of the relief sought in the notice of motion was for the reinstatement of 22 Aston. In addition, the court granted the CSARS an opportunity to supplement its papers but it did not do so and therefore this application in respect of 22 Aston has become moot and the first and second respondents are entitled to costs.

[131] In my view, at the time of the institution of this interlocutory application, the CSARS was required to seek orders for the reinstatement of 22 Aston. Simply because it was reinstated subsequent to the institution of the application, does not entitle the respondents to costs, specifically the first and second respondents.

[132] A further submission was advanced that the application had been rendered moot as a consequence of the provisional preservation order being confirmed. The general principle is that a matter is considered moot when a court's judgment will have no practical effect on the parties.[57] This usually occurs where there is no longer an existing live issue between the parties.[58] This application was instituted as one ancillary to the main preservation application. There remains a live issue for determination despite the confirmation of the preservation order. This application relates to the property preserved and the further 'dealing' with it.

[133] Similarly, this point in *limine* falls to be dismissed.

Non-compliance with rule 46A and s 26 of the Constitution

[134] I now turn to the alleged non-compliance with rule 46A and s 26 of the Constitution, as it is submitted that the property in question is the primary residence of the first and second respondents. Ms *Ndlovu* attempted to suggest that the CSARS had not dealt with the jurisdictional requirements of rule 46A in its founding affidavit. However, she did not persist with these submissions and conceded that, when pressed by the court with reference to the founding affidavit, these had been met.

[135] These aspects relate to the market and forced sale values of the properties, a reserve price and whether or not it is the primary residence of the first and second respondents and alternative housing. She, however, inexplicably submitted that a separate rule 46A application ought to have been instituted and served on the first and second respondents. I do not agree that a separate rule 46A application was warranted. This application arises from and is ancillary to the preservation order, not an application in terms of rule 46A, as envisaged in the rule in the true sense.

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[57] *AB and Another v Pridwin Preparatory School and Others* [2020] ZACC 12; 2020 (5) SA 327 (CC) para 110.
[58] Ibid.

[136] As regards whether the properties constitute the primary residences of the first and second respondents, an attempt was made to advance submissions from the bar as well as based on a further supplementary affidavit, which had been filed regarding the *locus standi* of the CSARS. I did not allow the affidavit to be filed. My reasons for doing so are the following.

[137] It is customary for only three sets of affidavits to be filed in applications.[59] Additional affidavits may be filed with leave of the court. In this regard, I refer to *Hano Trading CC v JR 209 Investments (Pty) Ltd and Another*,[60] where the SCA held the following:

'[10] … It is accepted that the affidavits are limited to three sets. It follows thus that great care must be taken to fully set out the case of a party on whose behalf an affidavit is filed. It is therefore not surprising that rule 6(5)*(e)* provides that further affidavits may only be allowed at the discretion of the court.

[11] Rule 6(5)*(e)* establishes clearly that the filing of further affidavits is only permitted with the indulgence of the court. A court, as arbiter, has the sole discretion whether to allow the affidavits or not. A court will only exercise its discretion in this regard where there is good reason for doing so.' (Footnote omitted.)

[138] When the matter was first heard on 10 March 2026, despite the time frames for the filing of affidavits being prescribed in the notice of motion and the service of the papers in December 2025, the opposing respondents did not comply with such time frames and filed answering affidavits the day before the hearing on 9 March 2026. As affidavits had been filed, a consent order was issued in terms of which the respective parties were directed to file heads of argument, including any supplementary heads of argument and a joint practice note. None of the parties sought leave to file further affidavits, specifically the first and second respondents.

[139] At the hearing of the matter, Ms *Ndlovu* conceded that no leave had been sought to file additional supplementary affidavits and that neither of these affidavits

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[59] M Dendy and C Loots *Herbstein and Van Winsen: The Civil Practice of the Superior Courts of South Africa* (RS 4, 2026) at p13-40.

[60] *Hano Trading CC v JR 209 Investments (Pty) Ltd and Another* [2012] ZASCA 127; 2013 (1) SA 161 (SCA) paras 10-11.

had been accompanied by any applications seeking leave to do so. No explanation was advanced as to why leave was not sought earlier nor, more importantly, what the reasons for the late filing were. In the absence of any explanation, it was not in the interests of justice to permit their filing[61] nor were special circumstances advanced.[62]

[140] Should I have erred in doing so, the affidavit belatedly challenged the CSARS's *locus standi* to institute this application. This challenge was without merit as the CSARS has not been divested of *locus standi* to institute this application – its locus arises from the preservation order which has been granted in its favour. It is not correct that the curator *bonis* has *locus standi* – the four immovable properties registered in the name of Mr Peretz do not vest in him, only the immovable property registered in the name of 22 Aston does.

[141] Turning now to the submissions in relation to rule 46A, this rule was enacted to deal with the sale in execution of immovable property which is the primary residence of a judgment debtor. It was enacted to ensure judicial oversight in respect of the authorisation of such sales in execution. This is in keeping with the provisions of s 26 of the Constitution and the obligation to ensure that there is no arbitrary deprivation of property and that the sales in execution are just and equitable.

[142] The rule prescribes certain prerequisites which a judgment creditor has to satisfy a court of before such property is declared specially executable. These prerequisites ensure the sale of the property is just and equitable, like *inter alia* the setting of a reserve price, the availability of alternative accommodation/housing for the occupier and taking into account the needs of people with disabilities and minor children.

[143] Although this is not a rule 46A application in the traditional sense, in this particular instance, the CSARS has complied with those factors which the court considers in such applications. It has provided the market and forced sale values of the property but also indicated in what respects it would be just and equitable to

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[61] *James Brown & Hamer (Pty) Ltd (Previously Named Gilbert Hamer & Co Ltd) v Simmons, NO* 1963 (4) SA 656 (A) at 660D-H.
[62] *Standard Bank of SA Ltd v Sewpersadh and Another* 2005 (4) SA 148 (C) para 10.

declare these properties specially executable.

[144] Having regard to the various affidavits deposed to by the second respondent, the properties situated at 22 Aston and 56 Adrianne Streets are not his primary residence. If one has regard to each and every one of the affidavits he deposed to in this application (being three), he provides his address as being 88 Addison Drive, La Lucia. He has not elected to deal with this pertinently in his answering affidavit and consequently the properties which the CSARS seeks to have declared executable are not his primary residence. Even if I am incorrect in this regard, it is evident that he and his family have an alternative residence to occupy, being Addison Drive. In addition, having regard to his wife's affidavit in the declaratory application, her address is reflected as 3 Byrne Court.

[145] As regards the first respondent, the CSARS has assumed that the four immovable properties are where she resides. When the curator *bonis* attended at the premises, she was in attendance and it appears as though she is occupying the premises. However, in my view, should this court declare the properties executable and authorise the sale, she will not be left without accommodation or destitute. This is as she has several other properties which she could occupy and thus has access to alternate housing.

[146] This is evident considering the curator *bonis's* report and also correspondence that she has put up indicating her alternate address as being 1 Byrne Court. In any event, there are several properties registered in her name, at least seven which she can move to and occupy. I am therefore satisfied that she would not be prejudiced by such sales to the extent that she has alternative accommodation. It is also for these reasons that her right to adequate housing in terms of s 26 of the Constitution has not been prejudiced.

[147] For the sake of completeness, given that the third and sixth respondents are juristic entities, the properties cannot be their primary residence and rule 46A does not apply to them. Mr Zuma in the answering affidavit interestingly enough, confirms the first respondent is in occupation, although he does not proffer any explanation of the reasons why this is so.

[148] The CSARS has also denied that Mr Zuma is a shareholder of 22 Aston. It has indicated in its replying affidavit that during the execution of the search and seizure warrant, amongst the documents found was a duly signed sale of shares agreement in terms of which the first respondent acquired the shareholding in 22 Aston.[63]

[149] SARS has cited 56 Adrianne in the proceedings as it may have an interest. At present, the properties are not registered in the name of 56 Adrianne.

[150] Similarly, this ground of opposition is without merit.

Misjoinder of Zikhulise Group and non-joinder of parties

[151] Mr *Sepeesa* also submits that there is a misjoinder of Zikhulise Group and a non-joinder of Taleni Kupiso Godi & Associates. In respect of the misjoinder, he submits that Zikhulise Group was not cited in the preservation proceedings, however, he did not pursue this line of argument, as it was pointed out to him that it was cited as the 22nd respondent in the main preservation application. He then corrected himself to reference Obitz and submitted that it was not a party to the preservation proceedings and therefore there has been a misjoinder.

[152] He indicated that these current proceedings, in the first and second respondents' view, are proceedings to evict Obitz from the premises and therefore the point in *limine* is a good one and ought to be upheld.

[153] I do not agree with these submissions. The CSARS was required to join Obitz as it is an affected party, as envisaged in the Uniform Rules of Court. Obitz had filed documents saying it occupies a room and is the owner of equipment in the room at 22 Aston/56 Adrianne Streets. It will be affected by any orders granted in this application should the CSARS be successful.

[154] In respect of the non-joinder of certain parties, being Taleni Godi Kupiso Inc, Mr Happy Godi, the directors of 22 Aston, DPA, Mr du Plessis, Mr Hamilton and Ms

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[63] Annexure 'RA20', index to application for leave to sell certain immovable properties, vol 15, at pages 1409–1420.

Andrew, Ms *Ndlovu*, during the course of Mr *Sepeesa*'s submissions, submitted that they had received instructions to abandon this point in *limine* and there would be no further submissions in this regard.

[155] As regards the submission relating to the CSARS needing to seek the rescission or variation of the preservation order prior to instituting this application, these submissions are fallacious. The preservation order allows the CSARS to preserve the assets. What is being sought now is an order to realise these assets. There is no need to either vary or rescind the preservation order to achieve that purpose – paragraph 44 of the order authorises this application, as it is ancillary to the preservation order.

[156] There is nothing, in my view, which precludes the CSARS from seeking the orders sought in this interlocutory application, as this application is not precluded, because both the variation application and the rescission application are pending. The rescission application relates to having the confirmation of the rule nisi set aside and the variation application does not relate to the immovable properties which are registered in the first respondent's name.

The remainder of the third and sixth respondents' grounds of opposition

[157] I now turn to consider the remainder of the grounds of opposition advanced by the third and sixth respondents. The third and sixth respondents, represented by Mr *Khoza* at the hearing, confined themselves to three submissions in opposition to the application. This was despite the challenges raised in their answering affidavit. Similarly, they elected not to deal with the factual allegations in the CSARS's founding affidavit. The first ground is that of the prematurity of the application as a central point, the second being that the sale would constitute an arbitrary deprivation, and, thirdly, distinguishing *Carmel Trading Co Ltd v Commissioner, South African Revenue Service and Others*[64] from the present matter.

[64] *Carmel Trading Co Ltd v Commissioner, South African Revenue Service and Others* [2007] ZASCA 160; 2008 (2) SA 433 (SCA) (*Carmel Trading*).

[158] Mr *Khoza* submits that if one properly characterises this application, what the CSARS is seeking to do is to obtain judicial authorisation to realise immovable property now and thereafter determine whether it is entitled to execute against such immovable property. This is in conflict with the statutory scheme of the TAA, is impermissible and renders the application premature.

[159] In addition, he submits that should the court grant the relief, it would amount to an arbitrary deprivation of property in contravention of s 25 of the Constitution. In support of these contentions, he submits that the properties are owned by 22 Aston and Mr Peretz and as a consequence, the relief sought by the CSARS implicates not only the property rights of the taxpayer but also third parties, being the third, fifth and sixth respondents, whose liability to SARS has not been established.

[160] As regards the first aspect, the prematurity of the application, Mr *Khoza* submits that because SARS acknowledges that it needs to institute an action and has no present entitlement to execute against the property, its formulation of the relief sought is dispositive of this point in *limine*, as it acknowledges that it is impermissible for it to sell properties and establish their executability later. He submits further that, having regard to the plain meaning of s 163 of the TAA, the section is directed at the preservation of assets pending lawful execution and is not a mechanism for the execution in advance of determining SARS's entitlement to execute.

[161] The relief that SARS is seeking is one of execution. The sale of the properties would extinguish the respective respondents' ownership of the properties and convert them into cash secured for SARS's benefit. The action proceedings contemplated by SARS are there to determine not whether execution ought to occur but whether SARS is entitled to retain the proceeds of a sale already effected.

[162] Execution is a means of enforcing a judgment or an order of court and is incidental to prior judicial determination. It is submitted that our law does not permit execution against properties before a lawful entitlement to do so has been established.

[163] Regarding the second point, the third and sixth respondents submit that because the relief sought by the CSARS entails the sale of immovable properties

owned by 22 Aston and Mr Peretz and the conversion of such property into cash, such constitutes an arbitrary deprivation of property envisaged in terms of s 25(1) of the Constitution. The deprivation of property is arbitrary, as there is insufficient reason for the deprivation and it is in circumstances where it is disproportionate. The consequences of the sale are irreversible and once effected, ownership of the properties will be extinguished and the properties cannot be restored to their owners. He submits that the deprivation is not temporary or preservative in nature; it is final.

[164] Mr *Khoza* submits that the CSARS has not established the justification for the order for the following reasons:

(a) it has not established any present entitlement to execute against the properties, as on its own version that issue remains to be determined in future action proceedings;

(b) the deprivation is disproportionate, as there are less restrictive means available to SARS, including the continued preservation of the properties under the existing order. Section 163 of the TAA functions to preserve assets pending lawful execution without resorting to a sale;

(c) the deprivation affects the property of third parties, as the properties on the papers as they presently stand are owned by 22 Aston and Mr Peretz; and

(d) the proposed sale would determine in advance the issue which SARS requires to be determined in the action proceedings, being whether the properties are executable.

[165] The next submission made by Mr *Khoza* related to the CSARS's reliance on *Carmel Trading*. The third and sixth respondents submit that the reliance on such decision is misplaced. *Carmel Trading*, they submit, concerns the preservation of a movable asset, being an aircraft which had been stranded abroad and had been rapidly deteriorating in value and would soon be worthless, with the result that the preservation order would become ineffective unless a sale of the movable asset took place. The SCA, they submit, authorised the conversion of the asset into cash to render the preservation order effective in circumstances where the continued preservation had become impracticable.

[166] The case, they submit, recognised a limited power to realise an asset where preservation had failed and the sale of such property was necessary to preserve its

value. On the facts, the third and sixth respondents submit that the current case is materially distinguishable. Their reasons for the submissions are the following:

(a) firstly, the assets are immovable properties, which do not exhibit the inherent and rapid depreciation associated with the aircraft in *Carmel Trading*;

(b) secondly, no comparable urgency has been established by SARS in this matter, as the costs they rely on for submitting that urgency arises are the ordinary incidences of preservation and do not render the properties wasting assets, given that such costs are *inter alia*, security, insurance and municipal charges;

(c) thirdly, *Carmel Trading* did not concern a situation in which the entitlement to execute against the asset remained unresolved like in this particular matter. *Carmel Trading,* they submit, does not constitute authority for the realisation of assets in advance of establishing a lawful entitlement to execute. *Carmel Trading,* they submit, recognised a narrow exception applicable to wasting assets where preservation had become ineffective.

[167] The CSARS is correct, in my view, that in relation to the first and second respondents and, for that matter, the third and sixth respondents, they have not challenged the factual allegations made in the founding affidavit. The first and second respondents have contented themselves with merely raising points in *limine* and none of the factual allegations in relation to the first and second respondents, as contained in the founding affidavit, have been dealt with at all. In respect of the third and sixth respondents, they, too, similarly have raised certain preliminary aspects, thus Mr *Snyman* is correct that there are no disputes of fact which exist on these papers.

[168] Most notably, the third and sixth respondents indicate that they did not have access to documents. What could, in my view, have been explained is what they term the first respondent's right of occupation of the premises and her right to occupy. In addition, there was also nothing precluding them from dealing with this on oath and seeking leave to file supporting documents evidencing this later.

[169] Mr Zuma, as director and shareholder of the third and sixth respondents, would have firsthand knowledge of these arrangements with the first respondent, and this would certainly not constitute hearsay. Secondly, what is also evident from the founding affidavit, as well as the evidence of Mr Peretz at the tax inquiry, is that all

negotiations in respect of the sale of the properties were between him and the first respondent. When the sale 'fell through' between him and the second respondent, he indicated that all negotiations were with the first respondent.

[170] These, at present, are allegations that remain unchallenged by the third and sixth respondents. What is also not explained and, in my view, which are facts that fall within Mr Zuma's knowledge, is why the first respondent made payment of the money herself and why Zikhulise Group did so. It would be quite easy for him to explain the nature of the subcontracting relationship between Godi Enterprises and Zikhulise Group, and they have elected not to do so. As a result, the prima *facie* allegations made by the CSARS specifically in relation to the nature of the relationship remain unchallenged.

Is SARS entitled to the relief?

[171] In dealing with the submissions advanced, specifically by the opposing respondents, it is important to mention the following. The factual allegations contained in the CSARS's founding affidavit remain unrefuted. They have not placed in dispute any of the facts detailed in the CSARS's founding affidavit. They, instead, raise various points in *limine* and failed to deal with the factual basis of the CSARS's case. They have not seriously and unambiguously addressed the facts alleged by the CSARS and, as a consequence, I agree with the submission of the CSARS that the factual foundation for its case is left entirely unchallenged. In addition, there are no real, genuine or bona fide disputes of facts raised.

[172] In addition, although the third and sixth respondents reserved their rights to file additional affidavits in the answering affidavit, they did not seek leave to do so and have had ample opportunity to do so, both at the hearing on 10 March 2026, and prior to the opposed hearing on 1 April 2026. Their allegations in relation to the commercial arrangements between them, the first respondent, Zikhulise Group and Godi Enterprises fall squarely within their knowledge and their bare denials, in my view, fall short of satisfying the test for a dispute of fact barring this court from dealing with this application on the papers.

[173] I am fortified in this view, having regard to *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another*,[65] in which the SCA held the following:

'A real, genuine and *bona fide* dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied.'

[174] I now turn to consider the submissions advanced by the third and sixth respondents and the CSARS's entitlement to the relief. The starting point, in my view, is the relevant provisions of the TAA and the preservation order itself. The provisions of s 163 of the TAA deal with preservation orders. Section 163(1) reads as follows:

'A senior SARS official may, in order to prevent any realisable assets from being disposed of or removed which may frustrate the collection of the full amount of tax that is due or payable or the official on reasonable grounds is satisfied may be due or payable, authorise an *ex parte* application to the High Court for an order for the preservation of any assets of a taxpayer or other person prohibiting any person, subject to the conditions and exceptions as may be specified in the preservation order, from dealing in any manner with the assets to which the order relates.'

[175] Section 163(3) sets out the various aspects which may be covered by a preservation order:

'A preservation order may be made if required to secure the collection of the tax referred to in subsection (1) and in respect of—

(*a*) realisable assets seized by SARS under subsection (2);

(*b*) the realisable assets as may be specified in the order and which are held by the person against whom the preservation order is being made;

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[65] *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* [2008] ZASCA 6; 2008 (3) SA 371 (SCA) para 13.

(c) all realisable assets held by the person, whether it is specified in the order or not; or

(d) *all assets which, if transferred to the person after the making of the preservation order, would be realisable assets*." (My emphasis.)

[176] The provisions of s 163(7) deal with various ancillary orders which a court may make in granting the preservation order and specifically authorise the realisation of assets:

'The court, in granting a preservation order, may make any ancillary orders regarding how the assets must be dealt with, including—

(a) authorising the seizure of all movable assets;

(b) if not appointed under subsection (4)(*d*), appointing a *curator bonis* in whom the assets vest;

(c) *realising the assets in satisfaction of the tax debt*…' (My emphasis.)

[177] At the outset, it is necessary to remind ourselves of the purpose of a preservation order – it is to preserve assets and all realisable property for the eventual satisfaction of a taxpayer's liability to SARS. The greater the value of these assets, the greater the advantage to the taxpayer. In my view, it is in the interests of a taxpayer whose liability to SARS has been established to ensure that realisable assets are preserved at their highest value, for the eventual payment and/or settlement of their tax obligations.

[178] One must also bear in mind the terms of the preservation order granted and confirmed: it preserves the assets and all realisable property of the taxpayers and any 'other person'. Any 'other person', in my view, on the facts of this matter would extend to persons like 22 Aston, Mr Peretz and 56 Adrianne. Such property vests in the curator *bonis,* who is authorised to ensure the value of the assets is maintained.

[179] In *Commissioner for the South African Revenue Services v Esibonga Investment (Pty) Ltd and Others*,[66] the court was asked to confirm an interim preservation order in which a rule *nisi* was granted directing the respondents to place information before the court so as to motivate why the rule *nisi* should not be

[66] *Commissioner for the South African Revenue Services v Esibonga Investment Pty (Ltd) and Others* [2022] ZAWCHC 144 (*Esibonga*).

confirmed. In other words, to establish that their assets were not realisable assets as envisaged in terms of s 163 of TAA.

[180] The following was stated:[67]

'Section 163 (1) of the Act authorizes the preservation of any assets of a taxpayer or other person. The person to whom monies are paid or on whose behalf monies are paid by a taxpayer, for reasons unknown to the taxpayer, without more, is indebted to the taxpayer and may be such "other person" as envisaged in section 163.'

[181] In this matter, Mr Peretz has stated under oath that the sale of the immovable properties and the sale of shares in 22 Aston were negotiated solely with the first respondent. SARS has obtained a sale of shares agreement signed by the first respondent. The first respondent and Zikhulise Group paid the major portion of the purchase price for the immovable properties and sale of shares. In addition, Mr Godi indicated that he was paymaster and received instructions from the first respondent and her assistant. It is certainly indicative that certain of the respondents in this application may very well be such 'other persons' envisaged in s 163.

[182] Further, in *Esibonga*, the court held:[68]

'…it was necessary to place the respondents' property beyond their control and into the hands of the curator pending the outcome of the application for the order... The purpose of that preservation order was to secure the collection of tax. The purpose of the curator was to investigate the whereabouts of Esibonga's assets and the assets of the respondents, amongst others, and to take control thereof in order to secure the collection of tax.'

[183] This is precisely what Part F of the preservation order envisages. It contains the relevant provisions pertaining to this application. Paragraph 30 authorises the curator *bonis* to dispose of assets to satisfy the tax debt, as authorised by the TAA or the operation of law.

[184] The opposing respondents have obliquely suggested that there was no indication of an intention to dissipate any assets, thereby frustrating SARS in the

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[67] Ibid para 11.
[68] Ibid para 12.

collection of tax debts. Rogers J discussed the jurisdictional requirements for a preservation order in his judgment in *Commissioner, South African Revenue Service v Tradex (Pty) Ltd and Others.*[69]

[185] Although s 163 has been amended, the requirements identified in *Tradex* remain the same, in my view. Rogers J remarked specifically as regards the requirements of s 163(7) of the TAA as follows:[70]

'I do not think that "required" in s 163(3) entails proof of such an intention on the part of the taxpayer. However, SARS is required to show, I think, that there is a material risk that assets which would otherwise be available in satisfaction of tax will, in the absence of a preservation order, no longer be available. The fact that the taxpayer *bona fide* considers that it does not owe the tax would not stand in the way of a preservation order if there is the material risk that realisable assets will not be available when it comes to ordinary execution. An obvious case is that of a company which, believing it owes no tax, proposes to make a distribution to its shareholders.'

[186] I accept that at the time of delivery of *Tradex*, s 163(1) did not include the following provision, which was only inserted later, but with retrospective effect to 1 October 2012, by the amendment to the TAA:

'In order to prevent any realisable assets from being disposed of or removed which may frustrate the collection of the full amount of tax.'

[187] I align myself with the sentiments expressed that all SARS is, required to show is a material risk that assets will no longer be available should a preservation order not be granted.[71]

[188] Realisable assets are assets that can easily be realised, such as movable or immovable property, as well as funds kept in either investments or bank accounts or even shareholding in private companies or listed entities.

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[69] *Commissioner, South African Revenue Service v Tradex (Pty) Ltd and Others* 2015 (3) SA 596 (WCC) (*Tradex*).
[70] Ibid para 35.
[71] Ibid para 35.

[189] Preservation orders are granted to prevent realisable assets from being disposed of or removed, which may further frustrate the collection of the full amount of the tax liability being recovered that is due and payable.

[190] In terms of s 163 of TAA, realisable property refers not only to the assets of the taxpayer but may also include that of a third party that can be seized and subjected to a preservation order to prevent dissipation. They are often referred to as 'asset preservation provisos'. If one applies the rules of interpretation laid down in *Natal Joint Municipal Pension Fund v Endumeni Municipality*,[72] then to give a sensible and businesslike interpretation to s 163, the section contemplates not only the granting of a preservation order against a taxpayer but also an 'other person'. This would achieve the aim of preventing the dissipation of assets.

[191] I align myself with the sentiments of Davis J in *Commissioner for the South African Revenue Service v Raphela and Others*,[73] where he noted that any assets, including those of an 'other person' or third party, may be attached – it is not punishment and innocence or the 'intention' of the other person need not be proved.

[192] Once one accepts that the realisable property of a third party may be preserved, it must follow that the assets can be sold.

Does s 163 of the TAA allow a court to order the realisation of assets prior to execution?

[193] The CSARS submits that the immovable properties need to be realised prior to the action determining their executability. The third and sixth respondents submit that the action proceedings ought to have been brought and decided prior to this application and is therefore premature.

[194] Much has been made by the opposing respondents of the fact that SARS ought to have instituted the action to obtain orders in relation to executability prior to bringing

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[72] *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; 2012 (4) SA 593 (SCA) para 18.
[73] *Commissioner for the South African Revenue Service v Raphela and Others* [2021] ZAGPPHC 191 paras 6.4-6.5.

this application. *Carmel Trading* is clear on this point. What SARS seeks to do is to convert assets to cash. This is authorised by *Carmel Trading* and specifically by s 163 of the TAA and the preservation order. Having regard to the facts placed before the court, I agree that these properties are depreciating assets. Firstly, the monthly municipal charges are increasing. Secondly, the costs to maintain the property in the form of security and insurance would depreciate its value as a capital asset, thus resulting in a depreciation in value.

[195] Of further importance is the fact that the purpose of the preservation order is being defeated. It is in not only SARS's interest but also the interests of the opposing respondents, specifically the first and second respondents and Zikhulise Group that the value of these assets are maximised to ensure that, in the event of the CSARS being successful in its order for executability, there is sufficient equity in the properties to settle their tax liabilities given the quantum thereof. These tax liabilities are increasing and are not reducing, similarly with the costs of maintaining these properties.

[196] *Carmel Trading* has been relied on extensively by the CSARS in these proceedings for the relief it seeks. Unsurprisingly, it has also been relied on by the third and sixth respondents quite extensively to argue the contrary. Given the reliance on the judgment by the parties, it is necessary for this court to devote similar time and attention to the judgment.

[197] *Carmel Trading* concerned a movable asset, being a Falcon 900B executive jet, which had been languishing at an airport near Paris, France. Such jet had been registered in South Africa in the name of Hawker Air Services. The holding company of Hawker Air Services was Metlika Trading. Hawker Air Services was an equal partner in a partnership with Hawker Aviation Services Partnership and such partnership was the beneficial owner of the jet.

[198] SARS had proceeded against Mr David King and a number of corporate entities, specifically Ben Nevis Holdings Ltd, which both had a substantial income tax liability. SARS had contended that Mr King and Ben Nevis Holdings Ltd were using corporate entities to conceal assets to prevent the satisfaction and settlement of their

tax liability with SARS. One of those companies was Carmel Trading Co Ltd (Carmel).
[199] SARS, given the deterioration in value of the executive jet, wanted it sold and the proceeds kept in trust pending the finalisation of an action instituted by it against Mr King and a number of corporate entities. Carmel was the only one who opposed the sale of the executive jet. On 3 September 2002, Hartzenberg J had issued a preservation and anti-dissipation order in relation to this debt. Despite this order, Carmel took over the interests in the jet on 5 September 2002. On 18 February 2003, Hartzenberg J extended the preservation and anti-dissipation order and ordered Carmel to return the jet to South Africa.

[200] During the course of his judgment, he found that the sale of the interests in the jet to Carmel was a contrived transaction to bypass the preservation order and that Carmel was 'but a tool of King and under his direct control'.[74] Carmel's attitude was that it was not prepared to pay for the return of the jet and that the Commissioner must pay for the repair and maintenance to have it returned. At the time of the preservation order, the value of the jet was approximately R200 million.

[201] It was common cause at the time that the jet was fast deteriorating and would be worthless. If it was stored in a hangar, it would cost R150 000 per month, which would reduce the rate of depreciation but the costs to keep it in a hangar would escalate. Having found that the preservation order had become meaningless unless amplified, Preller J then issued a variation order to the effect that the jet should be sold by the sheriff and the proceeds kept in an interest-bearing account, pending the outcome of the action. Carmel appealed against this order.

[202] Harms ADP, considering the purpose of the preservation order, was of the view that all that the high court was being asked to do was authorise the conversion into cash of a deteriorating asset, which already was the subject of a preservation order.[75]

[203] It would thus appear that although decided before the amendments to the TAA, *Carmel Trading* is authority for the proposition that a sale of a deteriorating asset

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[74] *Carmel Trading* para 4.
[75] *Carmel Trading* para 12.

subject to a preservation order, can be authorised, as it is tantamount to converting such asset to cash. In addition, *Carmel Trading* is also authority for the proposition that this can be done prior to an action to determine the executability for satisfaction of the taxpayer's indebtedness.

[204] Thus, based on *Carmel Trading,* the answer to this question appears to be that the CSARS can do so prior to the institution of the action. In *Commissioner for the South African Revenue Service v Majestic Silver Trading 275 (Pty) Ltd and Others*,[76] the realisation of immovable property was allowed. Thus, further reinforcing *Carmel Trading*. In *Majestic Silver*, the court was faced with a similar argument that the preservation order was obtained to disguise execution. Davis J held the following:[77]

'As for the last point of objection to the preservation order being made final, the "ulterior motive" alleged by the respondents appears to be the allegation that SARS seeks to, under the guise of a preservation order, obtain an "execution mechanism". There is nothing "ulterior" or clandestine about SARS' application. In is notice, it already envisaged that, after assets have been seized and preserved by the curator, the court will be requested to authorise the sale and disposal thereof to pay tax debts. I am mindful of the comments made by Rogers J in *Tradex* at par [73] that section 163 is in itself not an execution mechanism. The learned judge continued in his judgment after this comment to refer to the levying of execution "in the ordinary manner". Whilst this is of course so, I do not find that course to be a bar to the combination of relief sought in this matter. What would it benefit SARS to attach the various properties Mr Shabangu and the Trust (most of which are encumbered) and to proceed bit by bit to attempt to sell them when it appears that there are other assets (shares and funds) which can only be traced and secured by a curator and which can then constitute a viable recovery of tax debt, particularly where previous attempts of execution via third party appointments of the taxpayers' bankers have failed? I find that the matter is distinguishable on the facts from that in *Tradex* and that the additional relief, in conjunction with a final order in terms of section 163 of the TAA, is justified in this case. I certainly do not find that the taxpayers' accusation of an ulterior motive is justified, let alone that SARS' attempts to recover tax in this manner should result in a discharge of the preservation order, which is what the respondents claim.'

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[76] *Commissioner for the South African Revenue Service v Majestic Silver Trading 275 (Pty) Ltd and Others* [2023] ZAGPPHC 1791 (*Majestic Silver*).
[77] Ibid para 49.

[205] A further ground of opposition advanced on behalf of Carmel in *Carmel Trading* was that the sale constituted an arbitrary deprivation of property, contravening s 25(1) of the Bill of Rights. The submission being that to sell the property and keep the proceeds in trust pending the finalisation of an action was tantamount to an arbitrary deprivation. Harms ADP considered the submission and was of the view that because the jet was not Carmel's property, it could not rely on a simulated and fraudulent agreement.

[206] In addition, the deprivation arose at the time the preservation order was issued. The order of Peller J was to replace an asset which was deteriorating. It found that Carmel's position would not be different after the sale, as 'no one is divested of anything on a permanent basis. The value of the asset is being retained for both the owner and those creditors who, eventually, would be entitled to execute'.[78]

[207] Harms ADP held that whether the order to sell the property was arbitrary, depended on whether there was sufficient reason for the deprivation and whether it was procedurally fair.[79] He found that these were factual issues. On the facts of the matter, he found that the deprivation was not arbitrary and had been taken after a procedurally fair hearing. A preservation order did not create any security or preference for the applicant creditor.[80]

[208] As regards whether the orders constitute an arbitrary deprivation, the Constitutional Court in *First National Bank of SA Ltd t/a Wesbank v Commissioner, South African Revenue Service and Another; First National Bank of SA Ltd t/a Wesbank v Minister of Finance*,[81] canvassed the approach to determining deprivation in the context of s 25 of the Constitution. It considered the word 'arbitrary' as depending on its statutory context: here one is concerned with 'deprivation' in the context of the statutory provisions of the TAA. Given that s 163 of the TAA, as well as the preservation order, sanction the realisation of 'realisable property', it can hardly be

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[78] *Carmel Trading* para 16.
[79] Ibid para 17.
[80] Ibid para 3.
[81] *First National Bank of SA Ltd t/a Wesbank v Commissioner, South African Revenue Service and Another; First National Bank of SA Ltd t/a Wesbank v Minister of Finance* [2002] ZACC 5; 2002 (4) SA 768 (CC) para 57-60.

said that this constitutes an arbitrary deprivation, as envisaged in s 25 of the Constitution, as the respondents have had sufficient opportunity to place facts before the court in such determination and have failed to do so.

[209] I have carefully considered the submissions in relation to *Carmel Trading*. In my view, whilst I accept that *Carmel Trading* was decided prior to the current amendment to the TAA and that it dealt with a deteriorating movable asset, *Carmel Trading* is still good authority, given the applicable principles which the SCA considered in that matter, namely:

(a) the purpose of a preservation order; and

(b) the effectiveness of such order should assets, movable or otherwise, be deteriorating.

[210] *Carmel Trading* is still authority for the following propositions:

(a) the purpose of the preservation order is to ensure that the highest amount available is realised from realisable assets for the benefit not only of the CSARS but also the tax debtor. Whilst SARS thus feels the pinch to maintain such realisable assets, it must be done in the context of ensuring the highest amount is available to satisfy the taxpayer's tax debts; and

(b) although one is dealing with immovable property, the ownership of which is being challenged, on the available evidence, which factual allegations have not been challenged, the CSARS has established on a balance of probabilities, in my view, at this stage of the proceedings that the beneficial owner of the properties is the first respondent.

[211] A further matter which warrants some attention, in my view, is that the immovable properties have not been transferred.

[212] In *Legator Mckenna Inc and Another v Shea and Others*,[82] it was held that there are two requirements for the passing of ownership which have to be met:

'In accordance with the abstract theory the requirements for the passing of ownership are twofold, namely delivery - which in the case of immovable property is effected by registration

[82] *Legator Mckenna Inc and Another v Shea and Others* [2008] ZASCA 144; 2010 (1) SA 35 (SCA) para 22.

of transfer in the deeds office - coupled with a so-called real agreement or "saaklike ooreenkoms". The essential elements of the real agreement are an intention on the part of the transferor to transfer ownership and the intention of the transferee to become the owner of the property. … Broadly stated, the principles applicable to agreements in general also apply to real agreements. Although the abstract theory does not require a valid underlying contract, eg sale, ownership will not pass - despite registration of transfer - if there is a defect in the real agreement….'

[213] This means that before ownership can pass, registration of the transfer is required in the Deeds Office and ownership has not passed when the transfer has not been registered. However, the purchaser has a personal right to claim transfer, which becomes a real right upon the transfer being registered.

[214] In *Bowring NO v Vrededorp Properties CC and Another*[83] the court said the following:

'The essential quality of the right that the purchaser acquires from a contract of sale is therefore no different from the right of the beneficiary under a servitude agreement. Both rights are so-called *iura in personam ad rem acquirendam*, ie personal rights to acquire a real right.'[84]

[215] This then means that a person has a personal right to acquire a real right to the property. This concession was made in the affidavit of the second respondent where he submits that the first respondent acquired personal rights to acquire a real right to the property. If one considers *Esibonga*[85] a company had bought a property but registered it in the name of someone else, the court found that the "circumstances entertained a reasonable belief that Esibonga used the respondents to hide its assets" and confirmed a provisional preservation despite the respondents' assertion they had no involvement with Esibonga.

[216] In *Ethekwini Municipality v Mounthaven (Pty) Ltd,*[86] the Constitutional Court endorsed the SCA's test to determine whether a right is real as opposed to being

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[83] *Bowring NO v Vrededorp Properties CC and Another* [2007] ZASCA 80; 2007 (5) SA 391 (SCA) para 17.
[84] See also *Umhlaba Erf 1 Properties CC v Shell Downstream South Africa (Pty) Ltd and Others* [2025] 2 All SA 620 (GJ) para 64.
[85] *Esibonga* at par 11
[86] *Ethekwini Municipality v Mounthaven (Pty) Ltd* [2018] ZACC 43; 2019 (4) SA 394 (CC) para 11.

personal:

'Two requirements must be met: (1) the person who created the right must have intended the present owner as well as successors in title to be bound; and (2) the right must result in a subtraction from the *dominium* of the land against which it is registered.' (Footnote omitted.)

[217] In relation to what is meant by beneficial ownership in South Africa, the Constitutional Court in *Independent Community Pharmacy Association v Clicks Group Limited and others*[87] discussed this aspect. It is perhaps apposite to quote the following from the judgment:[88]

'[236] To sum up, in South African law the expression "beneficial ownership" is imprecise. The exact legal rights enjoyed by the "beneficial owner" depend on the circumstances. Unless a person is in law the owner, to call them a "beneficial owner" merely conveys that they have personal rights against the owner entitling them to some or all of the benefits which accrue to the actual owner. "Beneficial ownership" is not a species of ownership. The rights comprehended by the expression are located in the field of personal rights, not real rights.

[237] From this it follows that the first judgment's interpretation of "beneficial interest" connotes the interest held by a person who does not "own" the pharmacy business but who has a personal right (for example, a right created by contract) to claim the benefits of ownership from the owner. This is, of course, quite different from the severance that comes about where real rights such as servitudes are subtracted from full ownership. In the latter case, the holders of ownership and the servitude both have real rights.'

[218] At this stage of the proceedings all I need be satisfied of is that, on a balance of probabilities, the CSARS would be able to argue that the first respondent it is the beneficial owner. Although s 1 of the TAA only has a definition for a beneficial owner, having considered the definition, such definition does not assist in this particular matter, given the facts. An asset is defined in s 1 of the TAA as including:

'*(a)* property of whatever nature, whether movable or immovable, corporeal or incorporeal; and

(b) a right or interest of whatever nature to or in the property…'

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[87] *Independent Community Pharmacy Association v Clicks Group Limited and others* [2023] ZACC 10; 2023 (6) BCLR 617 (CC) paras 231-237.

[88] Ibid paras 236-237.

[219] Following this line of argument and without intruding on any finding a court may make in the action to be instituted, it may successfully be argued that the first respondent is a beneficial owner of the properties for reasons already canvassed at paragraph 171 of this judgment and in the absence of an explanation from the third and sixth respondents, coupled with the documents and evidence obtained during the tax inquiry.

[220] In the result I am of the view that the grounds of opposition advanced by the respondents are without merit and fall to be dismissed. The applicant is entitled to the orders sought for the sale of the properties for the reasons mentioned in the judgment. I have also considered the submissions advanced in relation to the setting of a reserve price in the applicant's founding affidavit in compliance with rule 46 A. I agree with the submissions advanced that having regard to the amount of the first and fourth respondents indebtedness to the CSARS, the sale ought to proceed without a reserve price being set as it would serve no purpose.

Costs

[221] There is no reason why the general principle that costs should follow the result should not be applied.

[222] The submissions of all parties have been for costs to be awarded to the successful party, with counsel's fees on scale C.

[223] I see no good reason why the costs of counsel should not be on scale C. I am also of the view that the costs occasioned by the employment of two counsel were warranted.

Order

[224] In the result, the following order will issue:

1. The applicant's non-compliance with the rules and practice directives is condoned and the application is heard as urgent in terms of rule 6(12) of the Uniform Rules of Court.

2. The curator *bonis* is authorised and empowered to sell the immovable properties more fully described as:

2.1 Remaining extent of Erf 662 Sandown Extension 24 Township, Registration Division IR, Gauteng Province, in extent 1698,41 square metres, held under deed of transfer T18602/2019;

2.2 Portion 1 of Erf 662 Sandown Extension 24 Township, Registration Division IR, Gauteng Province, in extent 1059,97 square metres, held under deed of transfer T18603/2019;

2.3 Portion 2 of Erf 662 Sandown Extension 24 Township, Registration Division IR, Gauteng Province, in extent 728,335 square metres, held under deed of transfer T18604/2019;

2.4 Portion 3 of Erf 662 Sandown Extension 24 Township, Registration Division IR, Gauteng Province, in extent 879,703 square metres, held under deed of transfer T18605/2019; and

2.5 Erf 223, Sandown Extension 24 Township, Registration Division IR, Gauteng Province, in extent 4993,000 square metres, held under deed of transfer T73119/2020;

(Collectively referred to as 'the five properties'.)

3. The curator *bonis* is authorised to conduct the sale of the five properties in accordance with paragraphs 31 and 32 of the preservation order granted on 21 November 2024, under case number D13795/2024;

4. The full proceeds of the sale of the five properties are to be held by the curator *bonis* in an interest-bearing trust account;

5. The curator *bonis* is authorised to pay the fifth respondent the outstanding balance of the purchase consideration, if any, only upon confirmation thereof, either by agreement between the parties, alternatively by confirmation of a court order;

6. Any remaining balance of the proceeds of the sale, after deduction of the balance of the purchase price mentioned in paragraph 5 hereof, is to be held in the interest-bearing trust account pending the determination of the action referred to in paragraph 7 hereof;

7. The applicant is to institute an action *inter alia* declaring the five immovable properties or the proceeds thereof to be executable for the tax debts of one or more of the respondents in the main application within one month from the date of this order;

8. The first, second, third and sixth respondents are ordered to pay the costs of

the application, jointly and severally on a party and party scale, including the costs of two counsel on scale C.



HENRIQUES J

Case Information

Dates of hearing:	10 March 2026, 1 April 2026
Date of judgment:	26 October 2026
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This judgment was handed down electronically by circulation to the parties' representatives by email, and released to SAFLII. The date and time for hand down is deemed to be 14h30 on 26 October 2026.