REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2023-047735

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

13/11/2026
DATE


SIGNATURE

In the matter between:

THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE Applicant

and

TSHEPO LUCKY MONTANA First Respondent

SEFORA DEVEREAUX LETSOALO Second Respondent

In re:

THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE Applicant

and

TSHEPO LUCKY MONTANA Respondent

Delivered: *This judgment was prepared and authored by the judge whose name is reflected and is handed down electronically by circulation to the parties' legal representatives by email and uploading it to the electronic file of this*

matter on Caselines. The date of hand-down is deemed to be 13 November 2026.

J U D G M E N T

TEFFO, J:

Introduction

[1] This is an opposed application by the Commissioner for the South African Revenue Service ("SARS") for the provisional sequestration of the estate of Mr Tshepo Lucky Montana, the first respondent. The application was launched in May 2023 to recover an outstanding tax debt which, on SARS's papers, stood at R46 963 959.81 when the founding affidavit was deposed to.[1] The debt is said to be a judgment debt, two certified statements having been filed with the Registrar of this Court under section 172 of the Tax Administration Act[2] ("the TAA"). The first respondent appeared in person after his attorneys of record had withdrawn on 1 September 2026.

[2] Three matters fall for decision. The first is whether Mr Montana's answering affidavit, delivered on 17 November 2025, some eighteen months after it was due, should be admitted. The second is SARS's interlocutory application to join Ms Sefora Devereaux Letsoalo, to whom Mr Montana was married in community of property on 29 November 2023, as the second respondent, and for the consequential amendment of the notice of motion so

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[1] Founding affidavit ("FA") para 59, CaseLines 02-17. The liquidated claim relied upon in para 10 of the FA (CaseLines 02-5) is R45 516 160.23; the balance is the historical 2015 debt dealt with in para 14 and paras 42 to 47 (CaseLines 02-5 and 02-13 to 02-14).
[2] Act 28 of 2011.

that the joint estate is the subject of the relief sought.[3] The third is whether SARS has made out a prima facie case for a provisional order of sequestration under section 10 of the Insolvency Act[4] ("the Insolvency Act").

[3] The matter has a long and unhappy procedural history. It is necessary to set it out in some detail because Mr Montana's defences are, for the most part, directed not at the requirements of section 10 of the Insolvency Act but at the manner in which the underlying tax debt came into existence.

The parties and the relief sought

[4] SARS is the organ of state responsible for the administration of the Income Tax Act[5] ("the ITA") and the TAA. It is authorised by section 177(1) of the TAA to institute sequestration proceedings for the recovery of a tax debt.

[5] Mr Montana is a former Group Chief Executive Officer of the Passenger Rail Agency of South Africa ("PRASA"). Ms Letsoalo was personally served with the sequestration application, the answering affidavit, the condonation papers, the replying affidavit and the joinder application on 2 February 2026.[6] She has delivered no notice of intention to oppose and no affidavit. The only notices of opposition on the file, including the notice filed in the joinder application, are those of Mr Montana.[7]

[6] SARS seeks an order joining Ms Letsoalo as the second respondent, amending prayer 2 of the notice of motion of 19 May 2023 to refer to the joint

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[3] Notice of motion in the joinder application, CaseLines 32-2 to 32-5; marriage certificate, annexure "AA8" to the answering affidavit, CaseLines 30-419.
[4] Act 24 of 1936.
[5] Act 58 of 1962.
[6] Sheriff's return of service, CaseLines 32-69.
[7] CaseLines 32-71 to 32-73 and 32-92 to 32-94.

estate, placing the joint estate under provisional sequestration and issuing a rule nisi.[8] Mr Montana asks that his late answering affidavit be condoned, that the joinder and the sequestration applications be dismissed, alternatively stayed pending what he describes as pending review proceedings, with costs on the attorney and client scale.[9]

The background

The audit and the assessments

[7] By November 2020 Mr Montana already owed SARS R1 800 762.38 in respect of the 2015 year of assessment. On 2 October 2019 SARS had filed a certified statement with the Registrar of this Court for that amount and had caused warrants of execution to issue. The movable property attached at a Randburg property realised approximately R192 500. Attempts to execute at properties in Waterkloof and Sandton were unsuccessful.[10] Mr Montana says that he paid R971 641.74 on 11 June 2021 and R350 000 on 20 October 2021 towards that debt; the payments are reflected in SARS's statement of account.[11]

[8] On 5 November 2020 SARS notified Mr Montana of an audit of his income tax affairs for the 2009 to 2019 years of assessment and requested relevant material under section 46 of the TAA. Extensions were sought and granted. A final demand for the material was issued on 2 February 2021. On 7

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[8] CaseLines 32-2 to 32-3; SARS's draft order, CaseLines 21-6 to 21-8; SARS's heads of argument paras 1 to 3 and 91, CaseLines 37-3 to 37-4 and 37-27.

[9] Mr Montana's practice note para 9, CaseLines 39-8 to 39-9; heads of argument paras 10, 50, 86 and 169, CaseLines 39-19, 39-28, 39-34 and 39-51.

[10] FA paras 14 and 42 to 47, CaseLines 02-5 and 02-13 to 02-14; annexures "SARS25" to "SARS29", CaseLines 02-252 to 02-273.

[11] AA para 6 and annexure "AA1", CaseLines 30-2 and 30-48 to 30-49; statement of account, CaseLines 02-205 (entries dated 11 June 2021 and 20 October 2021).

July 2021 SARS issued a letter of audit findings proposing adjustments on the basis of under-declared income and capital gains totalling R38 769 612, with a tax value of R15 579 822. The letter dealt expressly with prescription and recorded the basis on which SARS relied on section 99(2) of the TAA to re-open the earlier years.[12] Mr Montana responded on 16 August 2021. Correspondence followed in which he recorded that he would not co-operate with an audit extending beyond five years.[13]

[9] On 11 April 2022 SARS issued its finalisation of audit letter and raised the assessments. The letter runs to 57 pages and deals, among other things, with prescription under section 99(2) and the imposition of an understatement penalty of 200 per cent on the basis that Mr Montana's conduct amounted to intentional tax evasion and was obstructive.[14] Objections under section 104 of the TAA were due by 26 May 2022. What followed was a "partial objection" on 31 May 2022, a request by Mr Montana's auditors on 1 July 2022 for a further 30 days, a refusal of that request coupled with the furnishing of the supporting documents on 22 July 2022, a letter from Mr Montana dated 20 September 2022 styled a "final objection", a notice of invalid objection issued by SARS on 30 November 2022 affording him a further 20 days to lodge a compliant objection, and an email from Mr Montana on 22 December 2022 stating that he did not intend to file a new objection and persisted with what he had already

[12] FA paras 15 to 21, CaseLines 02-5 to 02-8; annexure "SARS7", CaseLines 02-52 to 02-78, in particular paras 40 and 41 at CaseLines 02-73 to 02-74; RA para 68, CaseLines 32-24.
[13] FA paras 22 to 28, CaseLines 02-8 to 02-10; annexures "SARS8" to "SARS12".
[14] Annexure "AA2" to the AA, CaseLines 30-50 to 30-106, in particular CaseLines 30-100 to 30-104; FA para 29, CaseLines 02-10; RA paras 69 and 70, CaseLines 32-25.

submitted.[15] No valid objection was ever lodged. No application was made to the Tax Court for an extension of the period within which to object.

The tax judgment of 11 August 2022 and the attempts at execution

[10] On 11 July 2022 SARS delivered a letter headed "Final demand for outstanding debt" to Mr Montana at his email address, recording an outstanding debt of R44 736 577.55, calling for payment within 10 business days (by 25 July 2022), drawing attention to the remedies of deferral (section 167), suspension of payment (section 164) and compromise (section 200) of the TAA, and warning that failure to pay might result in a civil judgment being entered against him.[16] On 11 August 2022 SARS filed with the Registrar of this Court a certified statement, under case number 72501/19, reflecting a tax debt of R44 927 320.23. The statement bears the Registrar's stamp of 11 August 2022.[17] Warrants of execution were issued and executed on 15 September 2022 at three properties of Mr Montana. At the Hurlingham property the premises were found vacated and locked. At the Mamelodi property the sheriff demanded payment from a nephew of Mr Montana, no disposable property sufficient to satisfy the warrant was pointed out or found, and the sheriff's return is one of nulla bona. At the Waterkloof property the sheriff, after a diligent search, found no movable or disposable property wherewith to satisfy the warrant and likewise returned nulla bona.[18] Mr Montana's sister subsequently laid claim to the movables attached at Mamelodi and to a vehicle; SARS abandoned that

[15] FA paras 30 to 41, CaseLines 02-10 to 02-13; annexures "SARS14" to "SARS24", CaseLines 02-174 to 02-251.
[16] Annexure "SARS20", CaseLines 02-200 to 02-202.
[17] Annexure "SARS30", CaseLines 02-275; FA para 48, CaseLines 02-15.
[18] Annexures "SARS31" to "SARS36", CaseLines 02-278 to 02-304, in particular the returns at CaseLines 02-285, 02-287 and 02-304; FA paras 51 to 58, CaseLines 02-15 to 02-17.

attachment because the value of the goods (some R130 000) did not warrant interpleader proceedings.[19]

The sequestration and the condonation applications

[11] SARS issued the sequestration application on 22 May 2023. The notice of motion and the founding affidavit describe Mr Montana as unmarried. Because he could not be located for service, SARS obtained an order on 18 March 2024 authorising substituted service; service was effected by email on 22 March 2024 and by publication on 27 March 2024.[20] Mr Montana gave notice of intention to oppose on 5 April 2024. His answering affidavit was due on 26 April 2024. SARS granted an extension to 6 May 2024 and refused further extensions.[21]

[12] On 31 May 2024 Mr Montana launched an application for condonation of the late filing of his answering affidavit, without attaching the answering affidavit and without saying when it would be delivered. SARS opposed. SARS also applied to strike out scandalous, vexatious and irrelevant matter in Mr Montana's replying affidavit. Labuschagne J heard both applications on 8 May 2025 and on 21 July 2025 granted the strike-out with costs on the attorney and client scale and dismissed the condonation application with costs. The learned Judge held that, in the absence of the answering affidavit, the full period of non-compliance could not be determined, that the court would not grant an open-

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[19] FA paras 56 and 57, CaseLines 02-16 to 02-17; annexures "SARS34" and "SARS35", CaseLines 02-290 to 02-302.

[20] Notice of motion, CaseLines 04-17 to 04-19; order of 18 March 2024, CaseLines 02-311 to 02-312; FA para 6, CaseLines 02-4; SARS's heads para 20, CaseLines 37-8; AA para 26, CaseLines 30-8.

[21] Labuschagne J's judgment of 21 July 2025 paras [2] and [14], CaseLines 0001-2 and 0001-4; AA paras 27 to 30, CaseLines 30-8 to 30-11.

ended condonation covering the future, and that it could not determine whether a bona fide defence had been raised.[22] An application for leave to appeal, directed only at the refusal of condonation, was dismissed with costs on 17 October 2025.[23]

[13] SARS then set the application for sequestration down on the unopposed roll for 19 November 2025. On 17 November 2025, two days before the hearing, Mr Montana delivered an answering affidavit of 46 pages with annexures running to a further 383 pages. The matter was removed from the roll.[24] The answering affidavit disclosed, for the first time in these proceedings, that Mr Montana had married Ms Letsoalo in community of property. The marriage certificate records the date of the marriage as 29 November 2023, roughly six months after the application was issued.[25] Neither Mr Montana's founding affidavit in the condonation application (May 2024) nor his replying affidavit in that application (July 2024), both deposed to after the marriage, made any mention of it.[26]

[14] SARS delivered a rule 35(12) notice on 1 December 2025 calling for documents referred to in the answering affidavit. Mr Montana's attorneys responded on 27 January 2026, producing some documents and explaining

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[22] Judgment, CaseLines 0001-1 to 0001-10 (also at CaseLines 26-1 to 26-10), in particular paras [26] to [28]; typed order, CaseLines 000-1 to 000-2.

[23] Notice of application for leave to appeal, CaseLines 27-1 to 27-6; AA para 40, CaseLines 30-13; SARS's practice note para 11, CaseLines 16-17; SARS's chronology, CaseLines 37-267.

[24] AA, CaseLines 30-1 to 30-429, sworn on 17 November 2025 (CaseLines 30-46); RA para 6, CaseLines 32-9; order of Brand AJ of 19 November 2025, CaseLines 000-3.

[25] AA paras 59 and 106, CaseLines 30-19 and 30-41; annexure "AA8", CaseLines 30-419. SARS's affidavits refer to 6 December 2023 (RA para 13, CaseLines 32-11), which is the date of issue of the certificate, not the date of the marriage.

[26] CaseLines 03-6 to 03-48 and 03-330 to 03-349 (also annexures "AA3" and "AA5" to the AA).

that others were unavailable or awaited.[27] On 27 January 2026 SARS delivered an affidavit which serves both as its replying affidavit in the sequestration application and as the founding affidavit in the joinder application.[28] Mr Montana opposed the joinder by affidavit dated 20 March 2026. SARS replied on 7 April 2026.[29]

The issues

[15] The issues for determination are: (a) whether the late filing of the answering affidavit should be condoned; (b) whether Ms Letsoalo should be joined; (c) whether SARS has established, prima facie, a liquidated claim of not less than R100 against Mr Montana, in which regard the attacks on the validity of the tax judgments, the "pending review", the alleged disputes of fact and the non-joinder of other creditors must be considered; (d) whether Mr Montana has committed an act of insolvency or the estate is insolvent; (e) whether there is reason to believe that sequestration will be to the advantage of creditors; (f) whether the Court should, in the exercise of its discretion, decline to grant a provisional order; and (g) costs.

Condonation and the admission of the answering affidavit

[16] Mr Montana seeks condonation for the late filing of his answering affidavit.[30] Rule 27(3) permits the court, on good cause shown, to condone non-compliance with the rules. The familiar considerations are the degree of

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[27] CaseLines 33-2 to 33-4; 34-1 to 34-5 and annexures "TMA1" to "TMA7", CaseLines 34-7 to 34-36.

[28] CaseLines 32-7 to 32-44.

[29] CaseLines 32-78 to 32-88 (re-filed at 32-97 to 32-108); 36-5 to 36-16.

[30] AA paras 26 to 51, CaseLines 30-8 to 30-17. SARS's practice note (para 13, CaseLines 16-17) states that he did not ask for condonation; that is not correct, and SARS's heads of argument (para 60, CaseLines 37-18) proceed on the footing that condonation is sought.

lateness, the explanation for it, the prospects of success, the importance of the case, the prejudice to the other side and the interests of justice. Condonation is not to be had merely for the asking; a full, detailed and accurate account of the causes of the delay must be furnished.[31]

[17] The delay here is grossly inordinate. The affidavit was due on 26 April 2024 (extended to 6 May 2024) and was delivered on 17 November 2025. The explanation covers, at best, the period up to mid-2024: the illness of counsel, difficulty in obtaining the substituted service papers and certain pages of the founding papers, and the volume of the documentation.[32] Labuschagne J has already found, in a judgment that stands, that the lapse of more than a year was sufficient an indicator that Mr Montana was playing for time.[33] For the period after the hearing of 8 May 2025 there is no explanation at all beyond the pursuit of leave to appeal. Mr Montana says that at that hearing he offered to commit to a date for filing; he did not do so, and the affidavit followed only when the application was about to be heard unopposed.[34] SARS's complaint that the affidavit was filed as a tactical measure has merit.

[18] Against that must be weighed the following: (a) the answering affidavit is now before the Court; (b) SARS has replied to it comprehensively; and (c) the matter was argued on the full papers; (d) the prejudice to SARS is one of delay

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[31] Melane v Santam Insurance Co Ltd 1962 (4) SA 531 (A) at 532C–F; Uitenhage Transitional Local Council v South African Revenue Service 2004 (1) SA 292 (SCA) para 6; Van Wyk v Unitas Hospital 2008 (2) SA 472 (CC) paras 20–22; eThekwini Municipality v Ingonyama Trust 2014 (3) SA 240 (CC) paras 24–25.

[32] AA paras 28 to 31, CaseLines 30-8 to 30-11; condonation founding affidavit paras 7 to 8, CaseLines 03-8 to 03-10. SARS denies that any medical certificate was ever furnished to it: RA para 103, CaseLines 32-32.

[33] Judgment para [26], CaseLines 0001-7.

[34] AA para 39, CaseLines 30-13; SARS's heads paras 67 and 68, CaseLines 37-20.

and costs, which a costs order can address. (e) sequestration is a drastic remedy with far-reaching consequences for a respondent's status, and a court is slow to shut out a respondent's version altogether at the provisional stage when that version is in fact available to it. (f) SARS itself contemplated, when resisting leave to appeal, that a fresh application for condonation accompanied by the answering affidavit could be entertained.[35] Under the circumstances the interest of justice demands admitting the answering affidavit so that all the issues can be fully ventilated, and by marking the Court's disapproval of the delay in the order as to costs. The late filing of the answering affidavit is therefore condoned.

The joinder of Ms Letsoalo

[19] It is common cause that Mr Montana and Ms Letsoalo are married in community of property and that they married after the application was issued.[36] Mr Montana raised the non-joinder of his wife as a point in limine, contending that the application was fatally and procedurally defective and contrary to the principles of audi alteram partem because she had not been joined.[37] When SARS responded by applying to join her, he opposed the joinder, contending that she has no direct and substantial interest, that the marriage post-dates the proceedings, that she never cohabited with him, and that joinder would prejudice her.[38] The two positions cannot be reconciled. It is a matter of some

[35] CaseLines 28-6 to 28-7.

[36] AA paras 59 and 106, CaseLines 30-19 and 30-41; Mr Montana's answering affidavit in the joinder application ("JAA") para 4, CaseLines 32-79; RA paras 9 and 12 to 13, CaseLines 32-10 to 32-11.

[37] AA paras 59 to 62 and 70, CaseLines 30-19 to 30-21.

[38] JAA paras 5 to 22 and 26 to 31, CaseLines 32-80 to 32-88; heads of argument paras 145 to 160, CaseLines 39-46 to 39-49.

concern that the non-joinder of Ms Letsoalo was raised as a reason to dismiss the application and that her joinder is now resisted as a reason to do the same.

[20] The law is clear. Spouses married in community of property have a single joint estate. Sequestration for debts incurred by either spouse is sequestration of the joint estate and renders both spouses insolvent. Section 17(4)(b) of the Matrimonial Property Act[39] ("the MPA") provides that an application for the sequestration of a joint estate shall be made against both spouses.[40] It follows that a spouse married in community of property has not merely a financial interest in the outcome but a direct and substantial legal interest in the order sought, since the order will divest her of her share of the joint estate and alter her status.[41] That is precisely why she must be before the Court before any order is made.

[21] Mr Montana's argument that the direct and substantial interest must have existed when the proceedings were instituted confuses the test for joinder with the cause of action. Joinder may be sought at any stage before judgment. The question is whether the person to be joined will be affected by the order the court is asked to make. Ms Letsoalo plainly will be. Mr Montana's own point in limine proceeds from that very premise. His further argument that section 17(4)(b) presupposes a marriage subsisting when the cause of action arose finds no support in the language of the section, which speaks of the application,

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[39] Act 88 of 1984.

[40] Du Plessis v Pienaar NO and Others 2003 (1) SA 671 (SCA) paras [4] to [7], where Nugent JA observed that section 17(4)(b) "now requires both spouses to be cited in an application for the sequestration of a joint estate".

[41] Amalgamated Engineering Union v Minister of Labour 1949 (3) SA 637 (A) at 659; Gordon v Department of Health, KwaZulu-Natal 2008 (6) SA 522 (SCA) para 9; Snyders and Others v De Jager (Joinder) [2016] ZACC 54; 2017 (5) BCLR 604 (CC) para 9.

not the debt. The proviso to section 17(4)(b) that an application shall not be dismissed on the ground that the debtor's estate is a joint estate where the applicant, despite reasonable steps, was unable to establish whether the debtor was married in community of property reinforces the point. SARS could not have known of a marriage that did not exist when it drew its papers, and Mr Montana thereafter said nothing about it in the two affidavits sworn after the marriage.[42]

[22] The allegations that Ms Letsoalo never cohabited with Mr Montana, did not pool resources with him and will be traumatised and prejudiced by joinder are made by Mr Montana alone. There is no confirmatory affidavit from her. She was served personally with all the papers in February 2026 and has elected neither to oppose the joinder nor to oppose the sequestration of the joint estate.[43] In any event, cohabitation is irrelevant to the existence of a joint estate, which arises by operation of law upon the marriage. Nor is there any procedural prejudice: joinder is the mechanism by which Ms Letsoalo is afforded the opportunity to be heard, and the rule nisi procedure gives her a further opportunity to show cause on the return day.

[23] It therefore follows that the joinder application must succeed.

The requirements for a provisional order

[24] Section 10 of the Insolvency Act provides that if the court is of the opinion that prima facie (a) the petitioning creditor has established against the debtor a

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[42] RA para 13, CaseLines 32-11; SARS's heads paras 75 to 76, CaseLines 37-22 to 37-23.

[43] JAA paras 13 to 14 and 31.3 to 31.5, CaseLines 32-81 to 32-82 and 32-87 to 32-88; SARS's replying affidavit in the joinder application ("JRA") paras 23 to 24, 29 and 54, CaseLines 36-10, 36-11 and 36-15; return of service, CaseLines 32-69.

claim such as is mentioned in section 9(1); (b) the debtor has committed an act of insolvency or is insolvent; and (c) there is reason to believe that it will be to the advantage of creditors of the debtor if his estate is sequestrated, it may grant a provisional order. Section 9(1) requires a liquidated claim of not less than R100. The standard at this stage is prima facie proof. The applicant need not prove its case on a balance of probabilities, which is the standard on the return day under section 12.[44] Even where the requirements are met the court retains a discretion, but it is a discretion to be exercised judicially on the facts, not a licence to withhold relief from a creditor who has established its case.

A liquidated claim: the attacks on the tax judgments

The judgments

[25] SARS relies on two certified statements filed under section 172 of the TAA: one on 2 October 2019 for R1 800 762.38 and one on 11 August 2022 for R44 927 320.23. Section 174 provides that a certified statement filed under section 172 must be treated as a civil judgment lawfully given in the relevant court in favour of SARS for a liquid debt for the amount specified in the statement.[45] Mr Montana admits that SARS obtained a default judgment against him; what he disputes is its legality and the amount.[46] Neither judgment has been rescinded or set aside. No application for rescission has been brought in the more than four years since the second statement was filed,

[44] London Estates (Pty) Ltd v Nair 1957 (3) SA 591 (N) at 593; Meskin & Co v Friedman 1948 (2) SA 555 (W) at 558–559; Stratford and Others v Investec Bank Ltd and Others 2015 (3) SA 1 (CC) paras [43] to [46].
[45] Sections 172 to 174 of the TAA, CaseLines 41-1; FA paras 42 and 48 to 49, CaseLines 02-13 and 02-15; annexures “SARS25” and “SARS30”.
[46] AA paras 52 and 109, CaseLines 30-17 and 30-41.

notwithstanding Mr Montana's stated intention, as long ago as May 2024, to bring one.[47]

[26] A judgment of this Court stands and has full effect until it is set aside. A judgment creditor holds a liquidated claim par excellence. Unless Mr Montana can show that the judgments are nullities, or that there is a bona fide and reasonable dispute capable of being raised in these proceedings about the existence of the debt, the first requirement of section 10 is met. He advances four lines of attack, which I consider in turn.

(i) The section 172 notice

[27] Mr Montana contends that SARS filed the 2022 statement without giving him through the Tax Practitioner, the notice of 10 business days as required under Section 172.[48] Section 172(1) requires SARS, after giving the person at least 10 business days' notice, to file the statement. The record shows that on 11 July 2022 SARS delivered a final demand to Mr Montana personally, at the email address he used throughout his dealings with SARS, calling for payment within 10 business days and warning expressly that a civil judgment might be entered against him. The statement was filed on 11 August 2022, more than 10 business days later.[49] The section requires notice to the taxpayer, not to his tax practitioner. Mr Montana's complaint, as formulated in his affidavit, is that notice was not given through his tax practitioner; he does not engage with the letter of 11 July 2022 at all, and nowhere denies receiving it. On the papers, prima facie,

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[47] Condonation founding affidavit paras 12 and 13, CaseLines 03-11; RA paras 46 to 47 and 116, CaseLines 32-19 to 32-20 and 32-35.
[48] AA para 20, CaseLines 30-6; heads of argument paras 25 and 28, CaseLines 39-22 to 39-23.
[49] Annexure "SARS20", CaseLines 02-200 to 02-202; annexure "SARS30", CaseLines 02-275; RA para 90, CaseLines 32-29 to 32-30.

section 172(1) was complied with. Section 172(2) in any event permits the filing of a statement irrespective of whether the tax is subject to objection or appeal, unless payment has been suspended under section 164. No suspension was ever applied for.

(ii) The constitutional attack on the registrar's judgment

[28] Mr Montana contends that a civil judgment not granted by any Court or tribunal but obtained through the Registrar violates section 34 of the Constitution, and in his heads he asks, in the alternative, that sections 172 and 174 be declared invalid.[50] This contention faces two insuperable difficulties.

[29] The first is binding authority. In Metcash Trading Ltd v Commissioner, South African Revenue Service the Constitutional Court considered section 40(2)(a) of the Value-Added Tax Act 89 of 1991, which permitted the Commissioner to file with the clerk or registrar a statement having the effect of a civil judgment – a mechanism materially identical to sections 172 and 174 of the TAA. The Court held that the provision specifically goes via the ordinary judicial institutions, that the Commissioner is not thereby authorised to usurp any judicial function, that a wide field of defences remains open to the taxpayer by way of rescission, and that the provision does not unconstitutionally limit the right of access to courts. The Court declined to confirm the High Court's declaration of invalidity.[51] More recently, in Barnard Labuschagne Incorporated v South African Revenue Service, the Constitutional Court held that a certified statement filed under section 172 of the TAA is a civil judgment susceptible of

[50] AA paras 21 to 23, CaseLines 30-6 to 30-7; heads of argument paras 30 to 37 and 41 to 47, CaseLines 39-23 to 39-27.
[51] Metcash Trading Ltd v Commissioner, South African Revenue Service and Another 2001 (1) SA 1109 (CC) paras [49] to [52], [66] to [68] and [74].

rescission under the common law, so that a taxpayer with a genuine defence is not without a remedy.[52] The remedy was available to Mr Montana. He has not utilised it.

[30] The second difficulty is procedural. No constitutional relief is claimed in the answering affidavit. The declaration of invalidity surfaces for the first time in heads of argument. A case is made in the pleadings and not in argument. The constitutional challenge is therefore not properly before me and, were it before me, would be answered by Metcash.

(iii) The correctness of the assessments

[31] The greater part of the answering affidavit, and of Mr Montana's heads, is devoted to the merits of the audit: the treatment of the R2 million deposit on the Hurlingham property, payments from the proceeds of the Parkwood property, the primary residence exclusion, base costs, the motor vehicle transactions, personal loans of some R5 million, duplications, the 200 per cent penalty and interest.[53] These are complaints about the assessments. The TAA prescribes how such complaints are to be pursued. Section 104 deals with objections, section 107 with appeals to the Tax Court, and section 105 provides that a taxpayer may only dispute an assessment in proceedings under Chapter 9, unless a High Court otherwise directs. Section 100 provides that an assessment is final if no objection is made. Section 170 provides that a document issued by SARS purporting to be a copy of an assessment is

[52] Barnard Labuschagne Incorporated v South African Revenue Service and Another 2022 (5) SA 1 (CC) para [40].
[53] AA paras 85 to 103, CaseLines 30-25 to 30-40; heads of argument paras 97 to 112 and 117 to 123, CaseLines 39-36 to 39-42.

conclusive evidence of the making of the assessment and, except in proceedings on appeal against it, that all its particulars are correct.

[32] Mr Montana did not lodge a valid objection. He was told in terms on 30 November 2022 that what he had lodged was invalid and was given a further 20 days; he declined to use them. He did not apply to the Tax Court for an extension. He has not asked this Court to otherwise direct under section 105 and has made out no case for it to do so. The assessments are final. In his own answering affidavit he accepts that SARS's tax assessment is legally enforceable, final, and conclusive, unless and until it is formally disputed under the TAA.[54] The Constitutional Court observed in Barnard Labuschagne that where a taxpayer's grievance relates to an assessment governed by Chapter 9, the taxpayer will struggle to demonstrate a bona fide defence even in rescission proceedings.[55] A fortiori, such grievances cannot be ventilated collaterally in sequestration proceedings before a court that has no jurisdiction to decide them. The pay now, argue later principle, now embodied in section 164 of the TAA and upheld in Metcash, means that a taxpayer's obligation to pay is not suspended by a dispute, let alone by a dispute that has never been properly raised.

[33] It follows that the principle in Badenhorst v Northern Construction Enterprises (Pty) Ltd that liquidation or sequestration proceedings ought not to be used to enforce a debt which is bona fide disputed on reasonable grounds, does not assist Mr Montana.[56] The principle presupposes a dispute that the

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[54] AA para 44.5, CaseLines 30-15; RA para 107, CaseLines 32-32 to 32-33.
[55] Barnard Labuschagne (supra) para [41].
[56] Badenhorst v Northern Construction Enterprises (Pty) Ltd 1956 (2) SA 346 (T) at 347–348; Kalil v Decotex (Pty) Ltd 1988 (1) SA 943 (A).

respondent is entitled to raise and that the court is able to assess. A debt that has become a judgment debt, founded on assessments that have become final by statute, is not disputed in the relevant sense merely because the judgment debtor continues to say that he disagrees with how the tax was computed. If it were, otherwise, every taxpayer who ignored the objection procedure could immunise himself against sequestration by repeating his grievances in an answering affidavit. I add that even on Mr Montana's own version he owes SARS R9.35 million, he lists SARS as a creditor for that sum, and he has tendered payment of nothing.[57]

(iv) The "pending review"

[34] Mr Montana's heads assert that he has instituted review proceedings challenging the audit, the assessments and the certified statement, and ask that this application be dismissed or stayed pending their determination.[58] There is no evidence of any such proceedings. The answering affidavit of November 2025 does not mention a review application; it records only that Mr Montana reserved his rights to challenge the judgment.[59] SARS's replying affidavit of January 2026 states in terms that no application for review or rescission has been brought; Mr Montana filed nothing in answer to that.[60] No case number, notice of motion or founding papers were placed before me. A court decides an application on the evidence, not on assertions from the bar. Even if such an application existed, its mere pendency would not suspend the

[57] AA para 67.1, CaseLines 30-21; see also AA para 82, CaseLines 30-24 (R9.89 million "still disputed").
[58] Heads of argument paras 38 to 50, CaseLines 39-25 to 39-28; practice note paras 9.3, 10.6 and 11.2, CaseLines 39-9 to 39-10; chronology, CaseLines 39-68.
[59] AA para 22, CaseLines 30-6.
[60] RA paras 46 to 47 and 116, CaseLines 32-19 to 32-20 and 32-35.

judgments or the finality of the assessments, and no case has been made out for a stay. This point fails.

(v) The alleged disputes of fact

[35] Mr Montana contends that SARS ought to have foreseen material disputes of fact and proceeded by action, and that the application should be dismissed under rule 6(5)(g).[61] The contention is misconceived. Sequestration may only be sought by way of application. Section 9(1) of the Insolvency Act speaks of a petition, and there is no procedure by which a creditor may sue for sequestration by action. More fundamentally, the facts material to section 10 are not genuinely in dispute. The existence of the judgments is admitted. Non-payment is admitted. The sheriff's returns are prima facie evidence of their contents, and Mr Montana does no more than profess lack of knowledge of them.[62] The marriage is admitted. The only dispute is about the correctness of the assessments, which, for the reasons given, is not a dispute this Court can entertain. On the approach in Plascon-Evans, as explained in Wightman, a respondent who wishes to raise a real, genuine and bona fide dispute of fact must seriously and unambiguously address the facts said to be disputed; bare denials and non-admissions do not suffice.[63]

[36] I am persuaded that SARS has established, prima facie, a liquidated claim against Mr Montana far in excess of R100.

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[61] AA paras 72 to 77, CaseLines 30-22 to 30-23.

[62] AA para 122, CaseLines 30-43; section 43(2) of the Superior Courts Act 10 of 2013.

[63] Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A) at 634E–635C; Wightman t/a JW Construction v Headfour (Pty) Ltd and Another 2008 (3) SA 371 (SCA) para 13.

Non-joinder of other creditors

[37] Mr Montana contends that the application is defective because SARS did not join or notify his other creditors, and that SARS is not his largest creditor. He points to a judgment obtained against him by Midtownbrace (Pty) Ltd on 9 May 2025 for R11 550 000 and lists six further creditors to whom he says he owes some R7.55 million.[64] There is no requirement in the Insolvency Act or the rules that other creditors be joined to a sequestration application. Section 9(1) entitles any creditor with a liquidated claim of R100 or more to apply, whatever the size of other claims. Section 9(4A) prescribes those to whom a copy of the application must be furnished; creditors are not among them. Creditors are protected by the rule nisi, by publication, and by the concursus creditorum which a sequestration order creates and in which they are entitled to prove their claims. Far from being an objection to sequestration, the existence of a judgment creditor for R11.55 million and of several other unpaid creditors is a reason for it: it demonstrates that the estate is one in which a collective process is called for. This point is therefore dismissed.

Act of insolvency and insolvency

[38] SARS relies, first, on an act of insolvency under section 8(b) of the Insolvency Act, which is committed where a court has given judgment against the debtor and either he fails, on demand by the officer charged with executing it, to satisfy it or to indicate disposable property sufficient to satisfy it, or it appears from the officer's return that insufficient disposable property was found to satisfy the judgment.[65] The returns of 15 September 2022 at the Mamelodi

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[64] AA paras 59 and 63 to 71, CaseLines 30-19 to 30-22; annexure "AA9", CaseLines 30-420 to 30-421.

[65] FA para 61, CaseLines 02-17.

and Waterkloof properties fall squarely within the second limb: in each case the sheriff certifies that after a diligent search no disposable property sufficient to satisfy the warrant was found, and in the Mamelodi return records a demand for payment which went unanswered.[66] An act of insolvency under section 8(b) is established prima facie.

[39] SARS relies, in the alternative, on factual insolvency. Its schedule of Mr Montana's known assets: three immovable properties and a motor vehicle, valued in total at R10 575 000 against the tax debt alone yields a deficit of some R36.4 million.[67] Mr Montana's response is to deny insolvency on the sole basis that the tax debt is disputed, and to say that the joint estate has not been shown to be insolvent.[68] The first basis fails with the attack on the judgments. As to the second, SARS has placed before the Court evidence that Ms Letsoalo's only known assets are a townhouse bought in 2013 for R470 000, encumbered by a bond with an outstanding balance of some R257 568 in October 2025, and a motor vehicle; Mr Montana himself confirms that she lives in a bonded townhouse and has a car.[69] Her modest assets do not alter the position of the joint estate.

[40] What is more, Mr Montana's own evidence establishes the insolvency of the estate. He lists liabilities, excluding what he says he owes SARS, of R11.55 million to Midtownbrace (secured, he says, by a bond for R7 million plus R1.4 million over the Hurlingham property) and some R7.55 million to others; he adds

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[66] CaseLines 02-287 and 02-304.
[67] FA paras 62 to 63, CaseLines 02-18 to 02-19.
[68] AA paras 124 to 125, CaseLines 30-44.
[69] RA paras 17 to 20 and annexures "RA1" to "RA3", CaseLines 32-12 to 32-13 and 32-45 to 32-58; JAA para 31.3, CaseLines 32-87.

R9.35 million which he concedes to SARS. That is R28.45 million on his own figures. Against this he says that the joint estate does not contain any unencumbered assets of value, that a forced sale would be consumed by the costs of sequestration, and that he has been attempting to repay creditors outside of sequestration.[70] He has never, in any of his affidavits, set out his assets and liabilities, although he undertook to do so if needs be.[71] Once an applicant presents evidence from which insolvency may be inferred as a matter of probability and prolonged failure to pay a judgment debt is a strong indicator, an evidential burden rests on the respondent to show that he possesses sufficient assets to meet his liabilities.[72] Mr Montana has not attempted to discharge it. The second requirement of section 10 is satisfied on both grounds.

Advantage to creditors

[41] The third requirement is that there be reason to believe that sequestration will be to the advantage of creditors. The test, settled in Meskin & Co v Friedman and endorsed by the Constitutional Court in Stratford, is whether the facts put before the court show a reasonable prospect, not necessarily a likelihood, but a prospect which is not too remote, that some pecuniary benefit will result to creditors. It is not necessary to prove that the debtor has assets; if there are reasons for thinking that an enquiry under the

[70] AA paras 64, 67 and 127 to 130 and annexure "AA10", CaseLines 30-20 to 30-21, 30-44 to 30-45 and 30-422 to 30-429.
[71] AA para 45, CaseLines 30-16; RA para 112, CaseLines 32-34.
[72] Ullman Sails (Pty) Ltd v Jannie Reuvers Sails (Pty) Ltd and Others 2022 JDR 1920 (WCC) para 48, citing De Waard v Andrews & Thienhaus Ltd 1907 TS 727 at 733: "the best proof of solvency is that a man should pay his debts".

Act may reveal or recover assets for the benefit of creditors, that is sufficient. At the provisional stage prima facie proof of such facts suffices.[73]

[42] Mr Montana contends that SARS has identified no asset, recoverable claim or impeachable transaction, that years of execution have yielded little, and that the costs of sequestration will consume whatever there is.[74] I do not agree. The following emerges from the papers:

[43] First, there are immovable properties. Mr Montana does not deny that the Waterkloof property in which he resides, the Hurlingham property and the Mamelodi property are registered in his name; SARS values them, by reference to bond values, at R2.25 million, R7 million and R125 000 respectively.[75] The Hurlingham property is encumbered by a covering bond, signed in May 2022 and registered in 2022, in favour of Joran Investments (Pty) Ltd, said to be a sister company of Midtownbrace; whether, and to what extent, that bond secures an actual indebtedness, and whether the passing of a covering bond for R8.4 million over a property SARS values at R7 million shortly before SARS's judgment is open to scrutiny, are matters a trustee is equipped to investigate.[76] The sister's claim to the Mamelodi property and movables is likewise a matter for investigation by a trustee, as SARS points out.[77] There is,

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[73] Meskin & Co v Friedman 1948 (2) SA 555 (W) at 558–559; Stratford (supra) paras [43] to [46]; London Estates (supra) at 593.

[74] Heads of argument paras 128 to 141, CaseLines 39-43 to 39-45; AA paras 126 to 130, CaseLines 30-44 to 30-45.

[75] FA para 62, CaseLines 02-18. Mr Montana's only answer is a non-admission coupled with the contention that the debt is disputed: AA paras 123 to 124, CaseLines 30-44.

[76] Annexure "AA10", CaseLines 30-422 to 30-429; AA para 64, CaseLines 30-20.

[77] FA para 67, CaseLines 02-20.

in addition, the equity in Ms Letsoalo's townhouse, which now forms part of the joint estate.

[44] Secondly, the answering affidavit discloses a history of very substantial transactions: the sale of the Parkwood property for R6.8 million, the sale of a portion of the Hurlingham property for R5.25 million, the settlement by dealerships of vehicle finance of approximately R9.6 million, and personal loans acquired from multiple sources of almost R5 million.[78] Mr Montana says he has been repaying creditors outside of sequestration while paying SARS nothing since October 2021.[79] A trustee armed with the powers of interrogation under sections 64 to 66 and 152 of the Insolvency Act, and with the remedies in respect of dispositions under sections 26 to 31, is far better placed than a single creditor to trace what became of these funds and to determine whether any disposition is impeachable. That is exactly the kind of enquiry contemplated in Meskin and in Stratford.

[45] Thirdly, Mr Montana has consistently declined to disclose his financial position. He refused to co-operate with an audit beyond five years, did not furnish the relevant material requested under section 46, has never furnished a statement of assets and liabilities, and has resisted execution. Where a debtor conceals rather than discloses, the very point of the investigative machinery of the Insolvency Act is engaged.

[46] Fourthly, the existence of a number of creditors with substantial unpaid claims on Mr Montana's own list, a judgment creditor for R11.55 million and at

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[78] AA paras 12, 95 to 103, CaseLines 30-4 and 30-28 to 30-40; reply to the rule 35(12) notice para 6.3, CaseLines 34-3.
[79] AA para 130, CaseLines 30-45.

least six others means that an orderly collective realisation and distribution under the supervision of the Master is to the advantage of the general body of creditors, as opposed to a race among them in which the debtor chooses whom to pay.

[47] The contention that the costs of sequestration will consume any value is a bare assertion unsupported by any valuation of the assets or any estimate of costs. Even a modest dividend satisfies the test; the Court need only be satisfied that there is reason to believe that some pecuniary benefit, not too remote, will result. In my view, the third requirement has been satisfied.

Discretion

[48] Mr Montana urges the Court to exercise its discretion against a provisional order because the debt is disputed, there is no evidence of dissipation of assets, sequestration is a remedy of last resort and SARS failed to consider a compromise under section 200 of the TAA.[80] None of these considerations warrants a refusal. The debt is a judgment debt. The dispute about the assessments has, by Mr Montana's own choice, never been placed before the forum competent to decide it. The tax judgments date from 2019 and 2022; nothing has been paid since October 2021; execution has failed; and no application to rescind or review has been brought in four years. The letter of demand of 11 July 2022 drew Mr Montana's attention to the remedies of deferral, suspension and compromise; there is no evidence in the affidavits of any compliant application for a compromise under section 200, and a creditor is not obliged to accept a compromise in any event. Sequestration is not here

[80] Heads of argument paras 142 to 144, CaseLines 39-45 to 39-46.

being used to pressure a debtor into paying a disputed debt; it is being used, after the ordinary processes of execution have failed, to bring a collective process to bear on an estate that is, on every version, hopelessly insolvent. The interests of the fiscus, and of the other creditors, favour the grant of the order. Mr Montana and Ms Letsoalo will have the opportunity, on the return day, to show cause why the order should not be made final.

Costs

[49] SARS has succeeded in the application for provisional sequestration. The ordinary order in a provisional sequestration is that the costs of the application are costs in the sequestration, and SARS asks for no more.[81] A party who seeks an indulgence ordinarily pays the costs occasioned by it, and Mr Montana's delay in filing the answering affidavit was grossly inordinate and largely unexplained; his opposition to the joinder, coming as it did from the very party who raised the non-joinder, was without merit. I have considered whether those features warrant separate, or punitive, costs orders against Mr Montana personally. I have decided against that course, principally because a personal costs order against a person whose joint estate is being provisionally sequestrated serves little practical purpose: any such claim would in any event have to be proved against the estate. The costs of the condonation and joinder applications will therefore also be costs in the sequestration, and the Court's disapproval of Mr Montana's conduct of the litigation is recorded in this judgment. The costs of two counsel are warranted by the volume of the record and the number of issues raised.

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[81] Draft order para 5, CaseLines 21-7; SARS's notice of motion in the joinder application, prayer 3, CaseLines 32-3.

Order

[50] In the result I make the following order:

1. The late delivery of the first respondent's answering affidavit dated 17 November 2025 is condoned.

2. Ms Sefora Devereaux Letsoalo is joined as the second respondent in the sequestration application.

3. Prayer 2 of the notice of motion dated 19 May 2023 is amended to read that the first and the second respondents are called upon to advance reasons, if any, why this Court should not order the final sequestration of their joint estate.

4. The joint estate of the first respondent, Tshepo Lucky Montana, and the second respondent, Sefora Devereaux Letsoalo, is placed under provisional sequestration in the hands of the Master of the High Court, Pretoria.

5. A rule nisi is issued calling upon the first and second respondents and all interested parties to show cause, if any, before this Court on 1 February 2027 at 10:00, or so soon thereafter as the matter may be heard, why the joint estate should not be placed under final sequestration.

6. This order shall be served: (a) on the first and the second respondents personally; (b) on the Master of the High Court, Pretoria; (c) on the South African Revenue Service; (d) on any employees of the respondents and any registered trade union representing them, as contemplated in section 11(2A) of the Insolvency Act 24 of 1936; and (e) by publication once in the Government Gazette and once in a newspaper circulating in Pretoria and once in a newspaper circulating in Johannesburg.

7. The costs of the application, including the costs of the applications for condonation and joinder as well as the costs of two counsel where so employed, shall be costs in the sequestration.



M J TEFFO
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances

For the applicant	Adv H G A Snyman SC and Adv K Kollapen
Instructed by	VZLR Inc, Pretoria
For the first respondent	In person
For the second respondent	No appearance
Date of hearing	2 September 2026
Date of judgment	13 November 2026