

Summary: K2015353139 South Africa (Pty) Ltd v Kgomotso Motsoane and Another

K2015353139 South Africa (Pty) Limited (the applicant) sought the final sequestration of the joint estate between Kgomotso Motsoane, adult female (the first respondent) and Mandla Archybald Nkhata, adult male (the second respondent). The joint estate was placed under provisional sequestration by this Court on 27 October 2022. The provisional sequestration order was not opposed by the respondents. However, they opposed the granting of a final order of sequestration. The only issue which was necessary for the court to decide was whether there will be an advantage to creditors as envisaged in terms of subsection 12(1)(c) of the Insolvency Act if the joint estate is finally sequestrated.

The applicant submitted that the respondents had failed to place before this Court sufficient evidence to satisfy this Court that there would not be an advantage to creditors if the joint estate of the respondents was finally sequestrated. Further, it was submitted that it would be to the advantage of the respondents' creditors if their estate was sequestrated and a Trustee appointed. The respondents submitted that the applicant was a single creditor and was being paid by them in respect of their indebtedness to the applicant. Accordingly, the respondents submitted that the court should, in the exercise of its discretion, dismiss the application and discharge the provisional sequestration order.

The court found that the respondents had placed before it no evidence which this Court could find that there would be no advantage to creditors, is a good one. Further, the respondents have failed to place before it any real facts, supported where necessary with documentary proof, in terms of which the court could find that there would be no advantage to creditors. The court concluded that that all the formalities of the Act had been complied with and on a balance of probabilities it will be to the advantage of creditors of the respondents if their joint estate is finally sequestrated. Accordingly, it was held that the joint estate of the respondents should be finally sequestrated.