



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

Case no: 6435/2007 & 2192/2008

In the matter between:

**VENTER N.O., ANNA FRANCINA**

1<sup>st</sup> Plaintiff

**NDUNA N.O., RAINOTES BANTUBONKE**

2<sup>nd</sup> Plaintiff

**KLOPPER N.O., JOHANNES FREDERICK**

3<sup>rd</sup> Plaintiff

(in their capacity as the duly appointed joint trustees  
of the insolvent deceased estate of Roger Brett Kebble)

**STEENKAMP N.O., JURGENS JOHANNES**

4<sup>th</sup> Plaintiff

**KAJIE N.O., HASSAN**

5<sup>th</sup> Plaintiff

(in their capacity as the duly appointed joint trustees  
of the insolvent estate of the Kebble Buitendag Investment Trust)

and

**MJONGILE, SONGEZO BENTON**

Defendant

Heard: 22 October 2013

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**REASONS FOR ORDER - DELIVERED 28 OCTOBER 2013**

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SAVAGE AJ

## Introduction

[1] First, second and third plaintiffs are the duly appointed joint trustees of the insolvent estate of the later Roger Brett Kebble (“Kebble”), whilst fourth and fifth plaintiffs are the duly appointed joint trustees of the insolvent estate of the KebbleBuitendag Investment Trust (“KBIT”).

[2] On 14 October 2009 an order consolidating case number 6435/2007 and 2192/2008 was granted by this Court, both actions being founded on s26(1)(b) of the Insolvency Act, 24 of 1936 (“the Act”) which provides that:

*‘(1) Every disposition of property not made for value may be set aside by the court if such disposition was made by an insolvent-*

*... (b) within two years of the sequestration of his estate, and the person claiming under or benefited by the disposition is unable to prove that, immediately after the disposition was made, the assets of the insolvent exceeded his liabilities.*

*Provided that if it is proved that the liabilities of the insolvent at any time after the making of the disposition exceeded his assets by less than the value of the property disposed of, it may be set aside only to the extent of such excess.’*

[3] Plaintiffs seek an order in terms of s26(1)(b) of the Act setting aside dispositions made by Kebble and the KBIT to defendant. In order to rely on s26(1)(b), plaintiffs must prove a disposition by the insolvent of property to defendant for no value less than two years before the sequestration of the

insolvent's estate. It is incumbent upon defendant to show that immediately after the disposition of the property, the insolvent's assets exceeded liabilities, failing which, the dispositions are liable to be set aside. Once the provisions of s26(1)(b) have been met, the Court has a limited discretion not to proceed to set the dispositions aside and direct the defendant to make payment of the amounts of the dispositions<sup>1</sup> with interest from date of judgment and costs.<sup>2</sup>

[4] The matter proceeded in default, notice of set down having been sent to defendant's attorneys of record on 26 August 2013. In addition, plaintiffs served consolidated notices on defendant's correspondent attorneys on 10 October 2013, the index to the trial bundle on defendant's attorneys on 14 October 2013 and no response was received to a letter sent by plaintiffs' attorneys to defendant's attorneys on 14 October 2013 enquiring as to whether defendant intended to supplement the trial bundle. It was apparent from these facts that defendant was duly informed of the date of set down and yet failed to appear on this date. The matter accordingly proceeded in his absence.

#### Kebble dispositions - Case No: 6435/2007

[5] From 15 November 2004 until 17 February 2005 payments in the amount of R214 593,40 were made by Kebble to defendant, with one of these payments made to a third party on defendant's request. On 27 September 2005 Kebble passed away. His estate was provisionally sequestrated on 25

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<sup>1</sup>Visser en 'n ander v Rosseau en andere NNO 1990 (1) SA 129 (A) at 156-9

<sup>2</sup>Janse van Rensburg and others NNO v Steyn 2012 (3) SA 72 (SCA)

April 2006, less than two years after the payments were made to the defendant, with an order of final sequestration granted on 13 June 2006. On 11 September 2006 first, second and third plaintiffs were appointed joint final trustees of Kebble's insolvent estate.

[6] Third plaintiff, Mr Johannes Frederick Klopper N.O., testified that the dispositions were made by Kebble to defendant for no value less than two years before the sequestration of the insolvent's estate.

[7] In response to plaintiffs' claim to set aside the dispositions made, defendant pleaded that the Kebble payments were made to him "*by Kebble, alternatively JCI Limited alternatively companies which were at the time related (sic) and/or subsidiaries of JCI Limited ("the JCI Group") through Kebble to the defendant for value in part settlement of salary and commission due and payable to the defendant by Kebble, alternatively JCI Limited and/or the JCI Group through Kebble they being jointly and severally liable to the defendant for same.*" In addition, defendant had raised a counterclaim against plaintiffs for alleged outstanding commission and salaries in the amount of R4 598 852,45 plus interest and costs. Given that the matter proceeded in default no evidence was led in respect of this counterclaim, nor was evidence led in support of defendant's defence to plaintiff's claim.

KebbleBuitendag Investment Trust dispositions - Case No: 2192/2008

[8] From 26 May 2005 until 15 September 2005 payments in the amount of R142 124.80 were made by the KebbleBuitendag Investment Trust ('KBIT') to the defendant. On 11 May 2007 KBIT's estate was provisionally sequestrated, less than two years after the payments were made to the defendant, and on 11 June 2007 KBIT's estate is finally sequestrated with the third and fourth plaintiffs appointed as joint final trustees of KBIT's insolvent estate on 21 August 2007.

[9] Fourth plaintiff, Mr Jurgens Johannes Steenkamp N.O., testified that the dispositions were made by the KBIT to defendant for no value less than two years before the sequestration of the insolvent's estate.

[10] The defendant pleaded that the KBIT payments were made to him "*by Kebble alternatively by KBIT alternatively companies which were at the time related (sic) and/or subsidiaries of KBIT through Kebble to the defendant for value in part settlement of salary and commission due and payable to the defendant by Kebble alternatively by KBIT through Kebble they being jointly and severally liable to the defendant for the same.*" No evidence was led in support of such defence given that the matter proceeded in default.

#### Evaluation

[11] Having considered the pleadings and the evidence led by plaintiffs, I am satisfied that plaintiffs have discharged the onus to prove that the dispositions made by Kebble and KBIT respectively were made within two years of their respective sequestrations; that these dispositions were not

made for value and were made in circumstances in which Kebble and KBIT were insolvent. It follows accordingly that the dispositions must be set aside in accordance with the provisions of s26(1)(b) of the Act.

[12] Given the absence of any evidence to support the counterclaim, such claim has not been proved and falls to be dismissed with costs.

### Order

[13] In the result, judgment is granted in favour of plaintiffs against defendant as follows:

#### In Case No. 6435/2007

1. The dispositions of the following amounts are set aside in terms of the provisions of Section 26(1)(b) of the Insolvency Act:

1.1	15 November 2004	-	R50 000,00
1.2	16 November 2004	-	R46 493,40
1.3	21 December 2004	-	R40 000,00
1.4	17 February 2005	-	R78 100,00

2. Payment is to be made by the defendant of the sums of:

2.1 R50 000.00;

2.2 R46 493.40;

2.3 R40 000.00;

2.4 R78 100.00.

3. Interest on the aforesaid amounts calculated at the interest rate of 15,5% per annum from date of judgment, to date of payment;
4. Costs of suit.

Case No: 2192/2008

1. Dispositions in the total amount of R142 142,80 are set aside in terms of Section 26(1)(b) of the Insolvency Act ;
2. Payment is to be made by the defendant of the sums of R142 124,80;
3. Interest on the sum of R142 124,80 at the rate of 15,5% per annum from date of judgment to the date of final payment;
4. Costs of suit.

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K M SAVAGE

ACTING JUDGE OF THE HIGH COURT

Appearances:

Plaintiffs: Mr J W Steyn instructed by Brooks & Brand

Defendant: No appearance