



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 2023-054694

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

DATE: 24 July 2025

SIGNATURE OF JUDGE: [REDACTED]

In the matter between:

IMPERIAL LOGISTICS ADVANCE(PTY) LTD

Applicant

and

THE MASTER OF THE HIGH COURT, PRETORIA

First Respondent

**REMNANT WEALTH HOLDINGS (PTY)LTD
(in Liquidation)**

Second Respondent

SELAHLE N.O.; KOKETSO LEUWANCE

Third Respondent

MULLER N.O.; JOHANNES ZACHARIAS HUMAN

Fourth Respondent

MATHEBULA N.O., TIRHANI SITOS DE SITOS

Fifth Respondent

KHAMMISSA N.O., SUMAIYA ABDOOL GAFFAR

Sixth Respondent

FIRSTRAND BANK LIMITED

Seventh Respondent

VENTER, RONALD THOMAS t/a RTG CONSULT

Eighth Respondent

ABSA BANK LIMITED

Ninth Respondent

EBERHARD BERTLESMANN N.O. (RET. JUSTICE)

Tenth Respondent

ORDER

1. Pending the final determination of Part B of this application:

- i. The First Respondent's decision on 4 May 2023 to appoint the Fourth, Fifth, and/or Sixth Respondents together with the Third Respondent as liquidators of the Second Respondent is interdicted.
- ii. The First Respondent's directive of 26 May 2023, postponing "*until further notice*" the sections 417 and 418 enquiries ordered by this Court under case number 38634/022 into the affairs of the Second Respondent is interdicted.
- iii. The First Respondent's directive of 31 May 2023, that the said inquiry is not to proceed until further notice is given, is suspended.
- iv. The First and Sixth Respondents are to pay the costs of this Application, which costs shall include the employment of two counsel on scale C.

JUDGMENT

FLATELA J

Introduction

[1] This is an opposed application for an interim interdict. The Applicant applies in Part A of the notice of motion for an order in the following terms:

2. Interdicting and restraining the implementation, operation, actioning, pursuit and or validity of the following acts and/or decisions of the Respondent

1. The First Respondent's decision on 4 May 2023 to appoint the 4th, 5th, and or 6th respondents together with the 3rd Respondent as liquidators of the second respondent, which decision is communicated in annexure X hereto.
2. The First respondent's directive /instruction
 - (i) of 26 May 2023, postponing "*until further notice*" the sections 417 and 418 enquiries ordered by this court under case number 38634/022 into the affairs of the second respondent-which directive is contained and communicated in paragraph 5 of Annexure Y hereto; and
 - (ii) of 31 May 2023, that the said inquiry is not to proceed until further notice, which directive /instruction is contained and communicated in annexure Z hereto.

[2] The relief sought in Part A is an interim relief pending the determination of Part B of the relief, which effectively is an application for the review of the above-mentioned decisions or directives by the First Respondent.

[3] For convenience, the Applicant will be referred to as Applicant or Imperial, the First Respondent as the Master, the Second Respondent as Remnant and the Sixth Respondent as Ms Khammissa.

Parties

[4] The Applicant is Imperial Logistics (Pty) Ltd, a major unsatisfied creditor of Remnant Wealth (Pty) Ltd (in Liquidation), the Second Respondent, as defined under section 346(1)(b)¹ of the Companies Act 61 of 1973 (the Companies Act), with a claim amounting to R80,802,540.29.

[5] The First Respondent is the Master of the High Court, Pretoria. The Second Respondent is Remnant Wealth (Pty) Ltd in Liquidation. The Third Respondent is Koketso Leuwance Selahle N.O. (Mr Selahle). The Third Respondent is one of the provisional liquidators appointed on 22 September 2022 at the commencement of the winding-up process of the Second Respondent's estate. The Fourth, Fifth, and Sixth Respondents are Johannes Zacharias Human Muller N.O (Mr Muller), Tirhani Sitos

¹ **346. Application for winding-up of company**

(1) An application to the Court for the winding-up of a company may, subject to the provisions of this section, be made –

(a).....

(b) by one or more of its creditors (including contingent or prospective creditors).

De Sitos Mathebula N.O (Mr Mathebula), and Sumaiya Abdool Gafaar Khammissa N.O (Ms Khammissa) (the “co-liquidators”). The Fourth, Fifth, and Sixth Respondents are all insolvency practitioners duly appointed by the Master on 4 May 2023 as additional co-liquidators with the Third Respondent, Leuwance Selahle N.O. (Mr Selahle).

[6] Only the Master and the Sixth Respondent oppose the application. The Sixth Respondent solely contests the relief concerning the suspension of her appointment as a co-liquidator of the Remnant Assets.

[7] The Applicant asserts that their right to fair administrative action has been violated by the Master's appointment of the Sixth Respondent as an additional liquidator without providing the Applicant with an opportunity to be heard, as they had requested prior to the Sixth Respondent's appointment as a co-liquidator. The Applicant also argues that this action by the Master conflicts with the earlier resolution to hold a creditors' meeting specifically for the purpose of appointing a liquidator.

[8] The Applicant asserts that the *concursum creditorium* of Remnant is materially compromised by the Master's unilateral and seemingly arbitrary decision to appoint additional liquidators. This concern is heightened by the fact that the Sixth Respondent and Mr. Muller present a substantial conflict of interest. As the largest creditor of the First Respondent, the Applicant expresses legitimate concerns regarding the Sixth Respondent's ability to act in its best interests.

[9] The Applicant contends that the Master's decision to appoint the Fourth, Fifth and Sixth Respondents as co-liquidators under section 374 of the Companies Act is *ultra vires*. This argument stems from the fact that the Master initially instructed Mr Selahle N.O. (the Third Respondent) to convene a meeting of creditors for the appointment of a liquidator under section 377(1) of the Companies Act. The Third Respondent then published the notice in the Government Gazette. However, before the creditors' meeting took place, the Master, without notice, appointed the Fourth, Fifth, and Sixth Respondents as additional liquidators under section 474 of the Companies Act

Historical Background

[10] This case represents the latest development in an ongoing legal dispute between the Applicant and Imperial Logistics. The parties have a long history of litigation, which has been extensively discussed in various judgments of this Court and the Supreme Court of Appeal. Although I will refrain from reiterating the details, a brief historical overview is warranted.

[11] The facts are largely a common cause. Prior to its liquidation, Remnant was a logistics company controlled by its sole director, Mr Neluheni. One of the Applicant's trading divisions, KWS Logistics (KWS), supplied transport and logistics services to Remnant's client, South 32 SA LTD (South 32), as a subcontractor. Remnant owes the Applicant an amount of R80 802 540.29 plus interest. Remnant received more than R304 405,111.03 from South 32 for services provided by KWS and has not accounted for it.

[12] In an effort to recover its debt, the Applicant initially sought an anti-dissipation order, which included the Appellant requesting the freezing of Remnant's bank accounts, access to its bank statements and financial interests, and an interdict to restrain Remnant and its director, Mr. Mulinda Neluheni (Neluheni), from disposing of, encumbering, or dealing with their property and vehicles pending the outcome of the proceedings to be instituted. The anti-dissipation application was to be followed by an urgent application for winding up, but the winding-up application was dismissed by this Court. However, on appeal, the Supreme Court of Appeal granted provincial winding-up of the First Respondent, which this Court confirmed on 14 October 2022.

[13] On 22 September 2022, the Master appointed Mr. Muller, Mr Selahle, and the late Mr Cloete Murray as provisional liquidators. On 4 November 2022, the provisional liquidators brought an urgent application to the Court seeking leave permission to extend their duties and for leave to hold an enquiry in terms of sections 417 and 418 of the Companies Act to investigate the affairs of the company. Millar J granted the provisional liquidators an order extending their duties, and Judge Bertelsmann was appointed as the commissioner of the enquiry.

[14] The Section 417/418 inquiry commenced on 26 November 2022 and continued with sessions on 16-17 January 2023, 1-2 March 2023, and 8-9 May 2023. After these sessions, the inquiry was scheduled to resume in June 2023, specifically on the 22nd and 23rd. However, the Master issued directives to postpone the inquiry indefinitely. It is these directives of the Master that necessitated the launching of the present application.

First meeting of creditors

[15] The first meeting of creditors took place on 7 March 2023. The Applicant, together with FirstRand, Venter, and Absa, proved claims totalling R93.6 million, as outlined in annexure FA 19. The Applicant is a major creditor with a significant claim amount of R80,802,540.29 plus interest, constituting 88.5% of the total claims. Mr Caleb Mhlabane, the Assistant Master, presided over the meeting. Mr Mhlabane accepted the claims at the first creditors' meeting.

[16] The Master also dismissed the claims submitted on behalf of five Imperial employees concerning unpaid salaries. Furthermore, the claims from the Zambian entity, Mpanvu Petroleum, regarding the amount of R187,000.7 allegedly stemming from a loan agreement between Mpanvu Petroleum and Imperial have likewise been rejected by the presiding officer. The preliminary mention of these claims is relevant. They will be examined in greater detail later in the judgment, emphasising their importance within the broader context and the conclusions reached in this case.

[17] The verified creditors unanimously nominated Mr. Murray for the position of final liquidator of Remnant.

[18] On 8 March 2022, the day after the initial creditors' meeting on 7 March 2022, the Master received a formal complaint from Khammissa Trust regarding alleged irregularities reported by Ms. Khammissa, the Sixth Respondent. The correspondence details specific discrepancies that allegedly occurred during the initial creditors' meeting. I find it prudent to repeat the contents of the letter. It states as follows:

“Our Ref: SAG KHAMMISSA

Your Ref: T1336/20

Dear Sirs

INSOLVENT ESTATE: REMNANT
MASTER REFERENCE: T1336/20

We refer to the above matter.

Kindly note that we shall provide the full transcript of the first meeting held.

Please note the irregularities that has taken place:

-Tania Nordier allowed the power of attorney to be added to a claim that was not lodged timeously.

-All employees' claims were rejected after Mr Cloete placed the incorrect bank statement before the master. Even if employees were paid after liquidation, it is a disposition, and the employees have a claim.

Trust the master to investigate irregularities.

Yours faithfully.

Khammissa Trust"

[19] Following the meeting, the Master was set to appoint Mr. Murray and Mr. Selahle as the final liquidators, while Mr. Muller was released from his duties. Tragically, on 18 March 2022, Mr. Murray and his son fell victim to a fatal shooting carried out by unidentified assailants. This incident created a vacancy in the liquidator position for Remnant due to Mr. Murray's premature death, leaving Mr. Selahle as the sole remaining liquidator.

[20] On 22 March 2023, the Applicant's attorneys sent an urgent letter to the Master, requesting an expedited decision regarding the vacancy created by Mr. Murray's death. The letter is detailed, comprising 16 paragraphs and spanning over 10 pages. The Applicant also expressed concerns about Mr. Selahle's ability to manage the winding-up process of Remnant alone. The Applicant formally asked the Master to either organise a meeting or instruct the remaining liquidator, Mr. Selahle, to hold a

meeting in accordance with section 377(1)(c) of the Companies Act for the purpose of nominating the liquidator. In the same correspondence, the Applicant informed the Master of the information received, indicating the Master's intention to appoint the Sixth Respondent as co-liquidator.

[21] The Applicant outlined several objections to this proposed appointment of the Sixth Respondent as a co-liquidator, citing potential conflicts of interest, as detailed below:

1. The Sixth Respondent had previously been nominated as a business rescue practitioner for Remnant in a latter application, which was ultimately withdrawn.
2. The Master had already appointed the Sixth Respondent alongside Mr. Muller as liquidators for the Moto-Mac estate, which is a debtor within the Remnant estate with liabilities exceeding R100 million. The Applicant argued that the dual appointment creates significant conflict issues, particularly since Mr. Muller had indicated that this situation presents a potential conflict of interest.
3. The Applicant stated that concerns were raised during the initial creditors' meeting regarding the validity of certain claims. Some claims related to false allegations of unpaid salaries for five Imperial employees, who had been paid, and a dubious claim from the fictitious Mpanvu Petroleum for R187,000.72 were also questioned and rejected.
4. The Applicant stated that deliberate attempts were made to prevent Mr. Murray's nomination and election as the final liquidator. This obstruction was allegedly orchestrated by Mr. Mendelson, who represented Imperial and other creditors with a history of pursuing fraudulent claims, reflecting a clear bias favouring the Sixth Respondent. The Applicant stated that the presiding Master, Mr. Hlabane, was duly informed of these objections against the Sixth Respondent's appointment.

[22] Taking these concerns into account, the Applicant formally requested a hearing with the Master before proceeding with the appointment of the Sixth Respondent, should the Master, among other considerations, decide to appoint the Sixth

Respondent. The Applicant's request for a hearing prior to the appointment of the Sixth Respondent is detailed in paragraphs 12 and 13 of the letters. In the relevant sections, the letter states:

12. Please note that our client, even at this early juncture, vigorously opposes the nomination and appointment of Sumaiya Abdul Gafaar Khammissa as a substitute/replacement liquidator of Remnant. As indicated above, Miss Khammissa is materially conflicted, given inter alia her proposed appointment as a business rescue practitioner of Remnant within the context of the contrived, but subsequently aborted, business rescue application.

13. Should you nevertheless believe, or deem it appropriate:

13.1 to act and/or to act in terms of the proviso to section 377 (1) and all in terms of section 377(3) of the Companies Act, 1973.

13.2 To direct the remaining liquidator (Mr. Selahle) to complete the winding up, and/or

13.3 for any reason, seek to pursue the appointment of Miss Khammissa as the substitute replacement liquidator.

We are instructed to insist- on behalf of our client and as we hereby do- that, prior to you (the master) doing so and within the context of that set out in paragraph 9/10/11 and 12 above, you give us written notice of such intention and, moreover, allow our client and as a reasonable opportunity to address you, in writing with such further and or additional correspondence and reasons why you should not do so."

[23] The Applicant asked the Master to reply to its correspondence by 27 March 2023. The Applicant's legal representatives stated that their client might take further action depending on the reply received.

[24] On 5 May 2023, Assistant Master TL Nortier formally instructed Mr. Selahle in writing to convene a meeting of creditors pursuant to section 377(1). The contents of the letter, which I find relevant to reiterate here, are as follows:

"Kindly take note that the first meeting of creditors was held on 7 March 2023,

Creditors number 1,3,4,5 voted for C Murray as the final liquidator to be appointed.

On the 8th of March 2023, I complied with PAJA by informing JZH Muller that it was my intention to remove him as liquidator, as he was voted out of the first meeting of creditors.

Unfortunately, Mr. C. Murray passed away during this period, and the final certificate appointing Mr. Murray and Mr. KLC Selahle as final liquidators could not be issued.

I am instructing you, Mr KL Selahle, to convene a creditors' meeting in terms of section 377(1)(c) of the Companies Act 61 of 1973, for the purpose of nominating a liquidator as prescribed in this section (My emphasis)

Hope you find the above to be in order.”

[25] Acting on the Master’s instructions, Mr. Selahle advertised the meeting in accordance with section 377(1)(c). The notice of the meeting was duly published in the Government Gazette No. 48655 dated 26 May 2023. It read as follows:
T1336/2020– (In Liquidation) REMNANT WEALTH HOLDINGS (PTY) LTD, 2021/098436/07, (3) 2023-06-12, 10:00 Master’s Office, Pretoria (4) Special Meeting: Nomination of Liquidator in terms of section 377(1)(c) of the Companies Act 61 of 1973.

[26] This special meeting to nominate a replacement liquidator was scheduled for 21 June 2023 at 10:00 at the offices of the Master in Pretoria.

[27] In an unexpected turn, prior to the scheduled meeting, the Master appointed the Fourth, Fifth, and Sixth Respondents as joint liquidators under section 374 of the Companies Act and issued a certificate to that effect. This certificate bears an official stamp dated 2023-04-05.

[28] The Applicant states that they became aware of this appointment through Mr. Muller's attorneys on 18 May 2023. They understood that the Assistant Master had appointed these individuals as additional co-liquidators in accordance with Section 374 of the Companies Act, as detailed in the master’s certificate.

[29] On 19 May 2023, the Applicant sent an urgent letter to the Master, raising concerns about the appointment of the Sixth Respondent as liquidator and formally objecting to this decision. The Applicant sought clarification regarding the issuer of the certificate, which did not include the official name of the Master who issued it, and inquired about the reasons for the respective appointments. The letter urged the Master to rescind the nominations and the associated certificate, while also requesting that Mr. Selahle proceed with convening the meeting as previously mandated under section 377(1)(c).

[30] Ms. Nortier, the Assistant Master, acknowledged the authorship of the certificate but directed the Applicant to Mrs. Seopa for further assistance. The Master did not respond to the letter, and the Applicant reports that efforts to contact Mrs. Seopa have been unsuccessful.

Genesis of the litigation

[31] The Applicant initially sought urgent interim relief from the court on 20 June 2023, but the matter was postponed and only heard by Holland-Mutter J on 19 July 2023. The Court determined that the matter did not meet the threshold of urgency and removed it from the roll. Consequently, the Applicant re-enrolled the matter in the normal court roll.

[32] The Applicant contends that the Master's proper assessment of their representations would have suggested against appointing the Sixth Respondent, thereby casting doubt on the Master's judgment. The Applicant emphasises in paragraph 160 that the Sixth Respondent did not submit an affidavit affirming her independence and did not provide the security expected of a liquidator.

[33] The Applicant asserts that the appointment of the Sixth Respondent, which was vigorously advocated for by those who submitted fraudulent claims during the first meeting of the creditors, was ultimately realised through the Master's appointment.

The decision to postpone the enquiry.

[34] The Applicant contests the Master's decision to indefinitely postpone section 417/418 inquiry, claiming it is irrational, unlawful, and prejudicial to creditor rights.

[35] The Applicant states that since the commencement of the Winding-Up of Remnant, they have borne costs exceeding R2.4 million. The Applicant believes that numerous assets related to Remnant need to be accounted for, justifying a formal inquiry. However, the key witnesses, particularly Mr. Neluheni, have not cooperated and appear to be obstructing the process.

[36] The Applicant contends that to avoid prescription, various legal actions must be initiated against the Remnant post-inquiry. The Applicant asserts that the Master's directives hinder these efforts and may compromise the effectiveness of the entire 417/418 inquiry.

[37] The Applicant's assertion is supported by the report of the Tenth Respondent, Justice Bertelsmann, filed in response to the Master's indefinite postponement of the inquiry; the learned judge reported that:

"The inquiry has to date been concluded over eight days spread over six months. It has been an exceptionally difficult inquiry for the creditors and the provisional liquidators because the director of the insolvent company and his family members and associates have consistently attempted to derail or delay the proceedings by adopting a most uncooperative approach.

New line witnesses have disobeyed subpoenas on spurious grounds and have clearly sought to disguise or hide assets that should be devoted to the payment of creditors by refusing to disclose the relevant information or giving misleading evidence.

The murder of senior liquidator, Mr Cloete Murray, has had the most negative effect on the proceedings, as some individuals appear to believe that the inquiry is doomed to fail and no heed is to be paid to the proceedings in future.

In the light of the above, I am of the considered view that any delay in the conduct of the inquiry would be most invidious and may seriously hamper the liquidator's task of finding assets that should be recovered for the benefit of the creditors. The evidence received so far clearly suggests that liquidators may need to litigate to challenge transactions that have deprived the estate of millions.

I would therefore strongly urge that the inquiry be continued as arranged at this stage. Any further delay will most certainly redound to the prejudice of creditors”.

[38] The Applicant further states that there is a risk posed by Mr Neluheni and undisclosed nefarious Remnant stakeholders who supported the appointment of the Sixth Respondent as Remnant's business rescue practitioner and subsequently as liquidator. This risk suggests that there might be someone “in the room” — so to speak — when such decisions are being debated and decided upon.

[39] The Applicant asserts that while it does not contest the wide discretion granted to the Master under section 374 of the Companies Act, it genuinely believes that the Master failed to exercise this discretion properly and appropriately in this case. The Applicant maintains that the appointments of the co-liquidators in question are fundamentally incompatible with and contradictory to the earlier directive issued by the Master, which mandated that Mr. Selahle convene a meeting under section 377 to nominate a replacement to succeed the liquidator, Mr. Murray.

[40] The Applicant further argues that the Master did not adequately address the objections raised regarding the potential conflict of interest in the Sixth Respondent's appointment as a liquidator. Additionally, the Master failed to give the Applicant an opportunity to present its case about appointing a replacement liquidator, despite the Applicant's specific request for a hearing. Furthermore, the Master did not consult with certain proposed liquidators on issues of conflict and security requirements before their appointments. The Applicant contends that the Master's actions were unilateral and arbitrary, demonstrating failure to act in accordance with legal standards and principles of rationality and fairness.

[41] The Applicant contends further that it has a constitutional right to fair and lawful administrative action. It asserts that the actions of the Master are fundamentally flawed and fail to be reviewed on grounds of illegality, irrationality, procedural unfairness, and unreasonableness. Additionally, the Applicant maintains that it possesses, at the very least, a *prima facie right* to pursue the relief specified in Part B.

Master's submissions

[42] In his answering affidavit, the Master, relying on Section 377(1)(c) of the Companies Act, contends that it has unfettered discretion to fill the vacant post and that the Applicant has no business in appointing the liquidators.

[43] The Master states that he believed the remaining liquidator, Mr Selahle, could handle the liquidation; however, he considered the Applicant's representations regarding the appointment of an additional liquidator. Accordingly, the Master exercised his discretion under section 374, which authorises him to appoint liquidators with unfettered discretion at any time, resulting in the appointment of the Sixth Respondent.

[44] It was argued on behalf of the Master and the Sixth Respondent that the Master cannot be criticised for responding to the Applicant's pressing request for the appointment of a replacement liquidator.

[45] Regarding the postponement of the inquiry, the Master states that on 26 May 2023, he requested key documentation from the Third Respondent to assist the

liquidators in finalising their report under sections 400² to 402³ of the Companies Act. The Third Respondent was given 14 days to comply but had not done so by the time of the hearing. The First Respondent expressed confusion over the Applicant's insistence on continuing the inquiry without the necessary documentation, arguing that postponement would benefit all creditors, especially the Applicant, once the requested documents are provided.

² 400. Liquidator's duty to expose offences and to report thereon

(1) A liquidator shall examine the affairs and transactions of the company before its winding-up in order to ascertain -

(a) whether any of the directors and officers or past directors and officers of the company have contravened or appear to have contravened any provision of this Act or have committed or appear to have committed any other offence; and

(b) in respect of any of the persons referred to in paragraph (a), whether there are or appear to be any grounds for an order by the Court under section 219 disqualifying a director from office as such.

(2) A liquidator shall, before lodging his final account with the Master, submit to him a report containing full particulars of any such contraventions or offences, suspected contraventions or offences and any such ground which he has ascertained.

(3)

(a) Any report submitted to the Master under subsection (2) shall be confidential and shall not be available for inspection by any person.

(b) If any such report contains particulars of contraventions or offences committed or suspected to have been committed or of any of the said grounds, the Master shall forthwith transmit a copy thereof to the Director of Public Prosecutions concerned.

(4) A liquidator shall conduct such further investigation and shall render such assistance in connection with any prosecution or contemplated prosecution as the Master or the Director of Public Prosecutions may require.

401. Director of Public Prosecutions may make application to Court for disqualification of director

When a Director of Public Prosecutions, upon receipt of the report referred to in section 400(3)(b) and after such further enquiry as he may deem fit, is satisfied that there are grounds for an application to the Court for an order in terms of section 219, he may make such application to the Court.

³ 402. Liquidator's duty to present report to creditors and contributories

Except in the case of a members' voluntary winding-up, a liquidator shall, as soon as practicable and, except with the consent of the Master, not later than three months after the date of his appointment, submit to a general meeting of creditors and contributories of the company concerned a report as to the following matters:

(a) the amount of capital issued by the company and the estimated amount of its assets and liabilities.

(b) if the company has failed, the causes of the failure.

(c) whether or not he has submitted or intends to submit to the Master a report under section 400(2).

(d) whether or not any director or officer or former director or officer appears to be personally liable for damages or compensation to the company or for any debts or liabilities of the company as provided in this Act.

(e) any legal proceedings by or against the company which may have been pending at the date of the commencement of winding-up or which may have been or may be instituted.

(f) whether or not further enquiry is in his opinion desirable in regard to any matter relating to the promotion, formation or failure of the company or the conduct of its business.

(g) whether or not the company has kept the accounting records required by section 284, and, if not, in what respects the requirements of that section have not been complied with.

(h) the progress and prospects of the winding-up; and

(i) any other matter which he may think fit or in regard to which he may desire the directions of the creditors or the contributories.

[46] Relying on the judgment of *Ex Parte Master of the High Court*⁴, where Bertellsmaan J made the following declaratory order:

'It is declared that the Master of the High Court of South Africa is the only official authorised to appoint liquidators and provisional liquidators of companies and close corporations in liquidation or provisional liquidators.

No judge of the High Court of South Africa has authority or jurisdiction to affect any appointment of any person to any position referred to in paragraph one, nor to make any recommendation to the Master in respect of any appointment to any of these positions.

[47] The respondents also relied on the judgments of this Court in *Wessels NO v The Master of the High Court*⁵, as well as the recent judgment of this division in the matter of *Venter NO and Others v The Master of the High Court and Others*⁶. The First Respondent urged this court to follow the judgment of Millar J in the *Venter* matter.

[48] In response to the Master's failure to consider the Applicant's representations and to give the Applicant an opportunity to be heard, the Master asserts the following position:

- (i) The demands of the Applicant as pleaded show a disturbing appetite to run and control the affairs of the master by the Applicant and to dictate who the master is to appoint a liquidator.
- (ii) Section 374 of the Companies Act confers the powers to the Master to exercise its discretion rationally and in accordance with the law, nothing less and nothing more.
- (iii) The conduct of the Applicant in this matter is akin to a litigant choosing a judge with respect. It has no business appointing liquidators.

⁴ 2011 (5) SA 311.

⁵ *Wessels NO v The Master of the High Court Pretoria and Others* (83560/17) [2018] ZAGPPHC 892.

⁶ *Venter N.O and Others v Master of The High Court, Pretoria and Others* (27131-2022) [2022] ZAGPPHC 578 (*Venter*).

[49] On whether the Applicant has fulfilled the requirements of the interim interdict, the Master submitted that:

- (i) *Prima facie right* – The Master states that the applicant failed to identify the right that has been violated as a result of exercising his discretion in terms of section 374 of the Companies Act in appointing the court liquidators
- (ii) *Internal remedies* – The Master contends that the applicant has an alternative remedy in terms of section 371 of the Companies Act.⁷ Citing the provisions of section 371, the Master submits that in terms thereof, an aggrieved individual must write to the Master requesting the reasons for the refusal of the appointment to the Minister. The Master asserts it is evident from the Applicant's founding affidavit that the procedure was not followed. This is an internal remedy, submits the Master, that is less costly and highly effective in addressing any grievances the applicant may have regarding the appointment of the joint liquidators.
- (iii) The Master further states that the applicant has an internal remedy under section 379⁸ of the Companies Act, which will

⁷ **371. Remedy of aggrieved persons—**

- (1) Any person aggrieved by the appointment of a liquidator or the refusal of the Master to accept the nomination of a liquidator or to appoint a person nominated as a liquidator, may within a period of seven days from the date of such appointment or refusal request the Master in writing to submit his reasons for such appointment or refusal to the Minister.
- (2) The Master shall within seven days of the receipt by him of the request referred to in subsection (1) submit to the Minister, in writing, his reasons for such appointment or refusal together with any relevant documents, information or objections received by him.
- (3) The Minister may, after consideration of the reasons referred to in subsection (2) and any representations made in writing by the person who made the request referred to in subsection (1) and of all relevant documents, information or objections submitted to him or the Master by any interested person, confirm, uphold or set aside the appointment or the refusal by the Master and, in the event of the refusal by the Master being set aside, direct the Master to accept the nomination of the liquidator concerned and to appoint him as liquidator of the company concerned.

⁸ **379. Removal of liquidator by Master and by the Court**

- (1) The Master may remove a liquidator from his office on the ground -
 - (a) that he was not qualified for nomination or appointment as liquidator or that his nomination or appointment was for any other reason illegal or that he has become disqualified from being nominated or appointed as a liquidator or has been authorized, specially or under a general power of attorney, to vote for or on behalf of a creditor, member or contributory at a meeting of creditors, members or contributories of the company of which he is the liquidator and has acted or purported to act under such special authority or general power of attorney; or

afford it substantial redress, through the office of the Master, if it becomes apparent that the Sixth Respondent is failing to perform her duties as per the Companies Act and her appointment.

[50] Regarding the objections raised by the Applicant concerning the appointment of the Sixth Respondent as a co-liquidator due to a conflict of interest, the Master asserts that the Sixth Respondent has no personal stake in Remnant or Moto Mac and he is satisfied that there is no conflict of interest.

Sixth Respondent's pleaded case.

[51] The Sixth Respondent asserts that the legal basis on which the Applicant's application is based is incorrect and unsubstantiated for the following reasons:

1. The Applicant has no right to be heard prior to the appointment of a liquidator in terms of section 374. There is no precedent suggesting that any creditor or any affected party has a right to make a presentation to the Master before the latter exercises their discretion in terms of section 374 of the Companies Act
2. The Sixth Respondent claims that the Master has unfettered discretion to appoint liquidators for Remnant and Moto-Mac. She states that she was unaware of her nomination as a business rescue practitioner for

(b) that he has failed to perform satisfactorily any duty imposed upon him by this Act or to comply with a lawful demand of the Master or a commissioner appointed by the Court under this Act; or
(c) that his estate has become insolvent or that he has become mentally or physically incapable of performing satisfactorily his duties as liquidator; or
(d) that the majority (reckoned in number and in value) of creditors entitled to vote at a meeting of creditors or, in the case of a members' voluntary winding-up, a majority of the members of the company, or, in the case of a winding-up of a company limited by guarantee, the majority of the contributories, has requested him in writing to do so; or
(e) that in his opinion the liquidator is no longer suitable to be the liquidator of the company concerned.
(2) The Court may, on application by the Master or any interested person, remove a liquidator from office if the Master fails to do so in any of the circumstances mentioned in subsection (1) or for any other good cause.

Remnant and did not consent to it. She also denies being nominated by creditors who failed to prove their claims.

3. Relying on *Knoop and Another NNO v Gupta (Tayob Intervening)*⁹ The Sixth Respondent argues that there is no conflict of interest. The mere existence of a debtor-creditor relationship between the entities does not necessarily indicate a conflict. She also states that she has committed to resigning as a liquidator if a conflict of interest arises.
4. The Sixth Respondent submits that the Applicant has not proven any irreparable harm, nor has it demonstrated that the balance of convenience will favour it.
5. The Applicant failed to pursue alternative remedies as provided for in the Companies Act.

Analysis

[52] In *De Wet and Another v Khammissa and Others*¹⁰ The Master appointed the respondents as co-liquidators, having previously refused to do so. The liquidators, of which the Sixth Respondent, along with his co-liquidators, launch a review application aimed at overturning the Master's decision. The liquidators contended that the Master was *functus officio*, asserting that the decisions had been made and duly communicated to the affected parties involved. The court *a quo* formulated the determinable as follows:

“....The first is, who can legitimately challenge *an appointment of a liquidator*? In this case, can the applicants challenge the appointment of another liquidator? The second is, what is the correct gateway to relief when there is a *challenge to the appointment of a liquidator*? There is limited and conflicting authority on these issues.’ (Emphasis added.)

⁹ 2021 (3) SA 88 (SCA).

¹⁰ *De Wet and Another v Khammissa and Others* (358/2020) [2021] ZASCA 70 (4 June 2021)

[53] After analysing the provisions of the Companies Act and the Insolvency Act, the court *a quo* held that the Master was *functus officio* and set aside the appointment. The Respondents appealed the decision. The Supreme Court appeal analysed the provisions of the Company and Insolvency Act and held that the Applicant's challenge should be considered within the framework of administrative law.

[54] Makgoka JA, writing for the majority, said:

“The respondents’ challenge, properly construed, was not about the merit of the appointment of the appellants as joint liquidators, as the court *a quo* consistently mentioned in its judgment. It is so that the decision under review has its genesis in that appointment. However, the thrust of the respondents’ challenge was that the Master had become *functus officio* once she had made the first decision, and thus had no power to revoke it and replace it with a **second decision**”.

[55] In the following paragraph, the learned judge held that:

“Viewed in that light, the application quintessentially concerned administrative law, as opposed to insolvency or company law”.

[56] Similarly, in this case, the Applicant's primary challenge is that the Master’s decision to appoint the Sixth Respondent was made after the Master had already issued a directive to the Third Respondent to call the meeting of creditors for the purpose of nominating a replacement for Mr Murray. The notice of the meeting was published in the government gazette. The Applicant argues that the Master's decision was *ultra vires*. Secondly, the Applicant asserts that Master’s decision to nominate the Sixth Respondent was made without giving the Applicant the opportunity to be heard, despite the Applicant’s prior request to be heard before a decision was reached. As a result, in Part B of the Application, the Applicant seeks to review the decision of the Master. The issue clearly falls within the scope of administrative Law.

[57] In this respect, the Master adopts the following stance:

- (i) The First Respondent has no legal obligation to explain to the Applicant in respect of the appointment of liquidators. Creditors have no legal standing to dictate and choose liquidators; the Companies Act and the legal position are clear in that respect. The tone of the applicant demonstrates a feeling of entitlement by the applicant to run the affairs of the master
- (ii) It is the First Respondent's submission that the Master cannot and is not legally bound to explain and give reasons to any creditor, including the Applicant, for the appointment of liquidators, which decision was made lawfully and rationally”.

[58] In its supplementary heads of argument, the Master states that *“the Applicant is bitter that the Master acted in terms of section 374 automatically taking away powers to nominate and appoint the liquidators from the Applicant, who is hell-bent on taking over the powers of the Master with this hyperbolically manufactured interdict”*.

[59] The Master has misunderstood the Applicant's case, and their attitude is shockingly inappropriate, to say the least.

[60] I now consider whether the Applicant has met the requirements for an interim interdict and whether the court can grant the relief sought.

Requirements of an interim interdict

[61] The requirements for an interim interdict are trite. More than 110 years ago, Innes JA laid down the requisites of interim interdict in ***Setlogelo v Setlogelo***¹¹ As follows: (a) the applicant must establish a prima facie right, (b) a well-grounded apprehension of irreparable harm if the interim relief is not granted, (c) that the balance of convenience must favour the granting of an interim interdict; and (d) the applicant must the lack of another satisfactory or adequate remedy.

[62] The above legal requisites have been approved in numerous judgments of our courts since the constitutional dispensation. Recently, Madlanga ADCJ, writing for the

¹¹ 1914 AD 221.

majority in *Eskom Holdings SOC Ltd v Vaal River Development Association (Pty) Ltd and others*¹², held

‘A litigant seeking an interim interdict must show: a *prima facie* right even if it is open to some doubt; a reasonable apprehension of irreparable and imminent harm to the right if an interdict is not granted; that the balance of convenience favours the grant of an interim interdict; and that the applicant has no other satisfactory remedy.’¹³

Prima facie right

[63] The First Respondent says that the Applicant has not asserted any right as a basis of their entitlement to the relief sought. I disagree. From its letter of demand, the Applicant clearly set out that the right to be heard, which they assert, is the right to just and lawful administrative action in terms of Section 33 of the Constitution.

[64] In an application for an interim interdict pending review, the applicant must establish a right, even though it is open to some doubt that they have a prospect of success in the review proceedings. In *Mfolozi Community Environmental Justice Organisation*¹⁴ Koen JA, referring to *Webster v Mitchell*,¹⁵ as qualified in *Gool v Minister of Justice*¹⁶ Held that:

“The test is whether the applicant has furnished proof which, if uncontradicted at the trial (or the final interdict in part B of the notice of motion), would entitle the applicant to final relief. The proper approach is:

‘to take the facts as set out by the applicant, together with any facts set out by the respondent which the applicant cannot dispute, and to consider whether, having regard to the inherent probabilities, the applicant should on those facts obtain final relief at the

¹² 2023 (4) SA 325 (CC).

¹³ Ibid para 253.

¹⁴ *Mfolozi Community Environmental Justice Organisation and Others v Tendele Coal Mining (Pty) Ltd and Others* [2023] 3 All SA 768 (KZP).

¹⁵ *Webster v Mitchell* 1948 (1) SA 1186 (W) at 1189.

¹⁶ *Gool v Minister of Justice and another* 1955 (2) SA 682 (C) at 688.

trial. The facts set forth by the respondent should then be considered. If serious doubt is thrown upon the case of the applicant, he could not succeed in obtaining temporary relief, for his right, *prima facie* established, may only be open to “some doubt”. But if there is mere contradiction, or unconvincing explanation, the matter should be left to trial and the right be protected in the meanwhile, subject, of course, to the respective prejudice in the grant or refusal of interim relief.’¹⁷

[65] It is noteworthy that the Master has not challenged the factual assertions put forth by the Applicant regarding its representations opposing the nomination of the Sixth Respondent as co-liquidator, citing a conflict of interest. The only response from the Master is his conclusion that no conflict of interest exists; however, he has not adequately addressed the concerns raised by the Applicants.

[66] Significantly, in his answering affidavit, the Master discloses that on 8 March 2022, shortly after the creditors' meeting held on 7 March 2022, he received a formal complaint from Khammissa Trust concerning alleged irregularities reported by the Sixth Respondent. Notably, it appears that the Master did not notify the creditors of the complaint from the Sixth Respondent. Instead, the Master has taken the position that the Sixth Respondent has no interest in the affairs of the Remnant.

[67] Both the Master and the Sixth Respondent dismissed the Applicant's assertions regarding the Sixth Respondent's potential conflict of interest in her role as co-liquidator in these proceedings. The Sixth Respondent claimed to be unaware of the events that took place during the inaugural meeting of creditors. This raises a crucial question about whom the Sixth Respondent was representing when she filed a complaint with the Master concerning alleged irregularities involving Mr. Murray.

[68] The Master's position is clear that he is not legally bound to explain and give reasons to any creditor, including the Applicant, for the appointment of liquidators, which decision was made lawfully and rationally. The position taken by the Master clearly suggests that there was a failure to adequately consider the Applicant's submissions concerning their right to be heard.

¹⁷ Ibid para 43.

[69] In ***EFF v Gordhan***,¹⁸ The Constitutional Court said the following:

*‘...Before a court may grant an interim interdict, it must be satisfied that the applicant for an interdict has good prospects of success in the main review. The claim for review must be based on strong grounds which are likely to succeed. This requires the court to adjudicate the interdict application, examining the grounds of review raised in the main review application and assessing their strength. It is only if a court is convinced that the review is likely to succeed that it may appropriately grant the interdict.’*¹⁹

[70] More recently, in ***Eskom v Vaal River Residents***,²⁰ Madlanga J, writing for the majority, having analysed the prima facie right and what would lead to a dismissal of an interim interdict, said:

*‘If, in the interim interdict proceedings, it was to appear unlikely that the intended review would succeed, that would detract from the requirement of a prima facie right.’*²¹

[71] Having considered the facts set out by the Applicant, together with the facts set out by the Respondent, I am of the considered view that the Applicant has established a compelling *prima facie* case.

Reasonable Apprehension of Harm

[72] The Applicant has articulated a reasonable apprehension of harm that should the order not be granted, expressing concern that substantial redress may not be achievable under the current circumstances. It asserts that if the enquiry does not proceed swiftly with appropriate actions taken in a timely manner, the chance of recovering benefits for Remnant’s creditors will be lost, and both the Applicant and creditors will suffer irreparable harm. The Applicant submits that the Sixth Respondent will not face any inconvenience if the order is granted.

¹⁸ *Economic Freedom Fighters v Gordhan and Others; Public Protector and Another v Gordhan and Others* 2020 (6) SA 325 (CC).

¹⁹ *Ibid* para 42.

²⁰ *Eskom Holdings SOC Ltd v Vaal River Development Association (Pty) Ltd and Others* 2023 (4) SA 325 (CC).

²¹ *Ibid* para 272.

Balance of convenience

[73] The Applicant argues that the balance of convenience favours both the Applicant and Remnant's creditors. Regarding the balance of convenience, I am of the view that the balance of convenience favours the granting of the application. Since the Applicant has a strong *prima facie* right, the Sixth Respondent and the Master would suffer no prejudice if the *status quo* were retained until the main application is finalised. The balance of convenience clearly favours the Applicant.

No alternative remedy

[74] The Applicant argues that there is no alternative remedy available, as its letters of demand received no response, leading it to seek recourse through the court. Furthermore, the Applicant claims that pursuing damages claims against the Master would be of minimal benefit to Imperial or Remnant's *creditorium*, given that such claims are inherently unquantifiable and difficult to assess.

[75] It was submitted on behalf of the Respondents that the Applicant had not exhausted internal remedies; they should have used Section 371 of the Companies Act. This submission lacks merit. The First Respondent overlooks the fact that the Applicant had formally requested reasons for the decision. In any event, The Master takes the view that he cannot and is not legally bound to explain and give reasons to any creditor, including the Applicant, for the appointment of liquidators, which decision was made lawfully and rationally." Consequently, it is unnecessary even to explore the contention made by the Master that the Applicant ought to have requested reasons for the appointment to be submitted to the Minister.

[76] Consequently, the following order is made:

1. The First Respondent's decision on 4 May 2023 to appoint the Fourth, Fifth, and/or Sixth Respondents together with the Third Respondent as liquidators of the Second Respondent is interdicted.

2. The First Respondent's directive of 26 May 2023, postponing "*until further notice*" the sections 417 and 418 enquiries ordered by this Court under case number 38634/022 into the affairs of the Second Respondent is interdicted.
3. The First Respondent's directive of 31 May 2023, that the said inquiry is not to proceed until further notice is given, is suspended pending the determination of Part B of the relief.
4. The First and Sixth Respondents are to pay the costs of this Application, which costs shall include the employment of two counsel on scale C.



FLATELA LULEKA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

This Judgment was handed down electronically by circulation to the parties' and or parties' representatives by email and by being uploaded to CaseLines. The date and time for the hearing are deemed to be 10h00 on 24 July 2025

APPEARANCES:

Counsel for the Applicant:	GW AMM SC GM Mamabolo
Instructed by:	Haffajee Roskam Savage Attorneys
Counsel for the First Respondent:	Sibara SR Dube N Nkosi P
Instructed by:	The State Attorney, Pretoria

Counsel for the Sixth Respondent: Adv MMW Van Zyl SC
Instructed by : Goodes & Co Attorneys

Date of the Hearing: 17 October 2024

Date of the Judgement: 22 July 2025